

**OCTAVIO A. KALALO, PETITIONER, VS. HON. EMILIO V. SALAS,
JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH I,
AND THE PROVINCIAL FISCAL OF RIZAL, RESPONDENTS.**

G.R. No. L-38256. July 31, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

In the oral argument of this case this morning, Atty. Martiniano Vivo, counsel for the petitioners, and Provincial Fiscal of Rizal B. Jose Castillo, appeared. The latter was assisted by Assistant Fiscal Herminio I. Benito who personally conducted the preliminary investigation which petitioner now challenges before this Court. He contends that he was not granted an opportunity to present his counter-affidavits, in violation of his constitutional guarantee to due process.

We hereby commend Atty. Vivo and Fiscal Castillo for having readily acceded to the suggestion of the Court made during the oral argument to agree on a procedure that would ensure to the parties utmost protection of their rights without being hampered by technicalities. This is one way by which this Court can solve its nagging problem of a heavily clogged docket. Thus, Fiscal Castillo stated in open Court that his office was granting the petitioner ten (10) days from today, August 5, 1974, within which to submit his counter-affidavit or affidavits. On the other hand, Atty. Vivo agreed not to press before Us his submission that the respondent Judge of the Court of First Instance of Rizal abused its discretion in denying his motion to dismiss the information filed against the petitioner, which was challenged by him on the ground that the facts alleged therein do not constitute the crime of libel, without prejudice to his renewing this defense, either before the Fiscal's office after the submission of petitioner's counter-affidavits, or again before the respondent Court after the prosecution shall have submitted and closed its evidence.

IN VIEW OF THE FOREGOING, this case having become moot and academic, the same is hereby dismissed without pronouncement as to costs.

Zaldivar, (Chairman), Fernando, Barredo, Antonio, and Aquino, JJ., concur.

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