

BAYANI M. ALONTE, PETITIONER, VS. HON. MAXIMO A. SAVELLANO JR., NATIONAL BUREAU OF INVESTIGATION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 131652. March 09, 1998*

Ponente: VITUG, J.

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Pending before this Court are two separate petitions, one filed by petitioner Bayani M. Alonte, docketed G.R. No. 131652, and the other by petitioner Buenaventura Concepcion, docketed G.R. No. 131728, that assail the decision of respondent Judge Maximo A. Savellano, Jr., of the Regional Trial Court ("RTC"), Branch 53, of Manila finding both petitioners guilty beyond reasonable doubt of the crime of rape. The two petitions were consolidated.

On 05 December 1996, an information for rape was filed against petitioners Bayani M. Alonte, an incumbent Mayor of Biñan, Laguna, and Buenaventura Concepcion predicated on a complaint filed by Juvie-lyn Punongbayan. The information contained the following averments; thus:

"That on or about September 12, 1996, in Sto. Tomas, Biñan, Laguna, and within the jurisdiction of this Honorable court, the above named accused, who is the incumbent mayor of Biñan, Laguna after giving complainant-child drinking water which made her dizzy and weak, did then and there willfully, unlawfully and feloniously have carnal knowledge with said JUVIELYN PUNONGBAYAN against her will and consent, to her damage and prejudice.

"That accused Buenaventura `Wella` Concepcion without having participated as principal or accessory assisted in the commission of the offense by bringing said complainant child to the rest house of accused Bayani `Arthur` Alonte at Sto. Tomas, Biñan, Laguna and after receiving the amount of P1,000.00 left her alone with Bayani Alonte who subsequently raped her.

"Contrary to Law."[1]

The case was docketed Criminal Case No. 9619-B and assigned by raffle to Branch 25 of the RTC of Biñan, Laguna, presided over by Judge Pablo B. Francisco.

On 13 December 1996, Juvie-lyn Punongbayan, through her counsel Attorney Remedios C. Balbin, and Assistant Chief State Prosecutor ("ACSP") Leonardo Guiyab, Jr., filed with the Office of the Court Administrator a Petition for a Change of Venue (docketed Administrative Matter No. 97-1-12-RTC) to have the case transferred and tried by any of the Regional Trial Courts in Metro Manila.

During the pendency of the petition for change of venue, or on 25 June 1997, Juvie-lyn Punongbayan, assisted by her parents and counsel, executed an affidavit of desistance, quoted herein in full, as follows:

AFFIDAVIT OF DESISTANCE

"I, JUVIE-LYN YAMBAO PUNONGBAYAN, 17 years of age, a resident of No. 5 Uranus Street,

Congressional Avenue Subdivision, Quezon City, duly assisted by private legal counsel and my parents, after having duly sworn in accordance with law, depose and say:

"1. That I am the Complainant in the rape case filed against Mayor Bayani `Arthur' Alonte of Biñan, Laguna, with the RTC-Branch 25 of Biñan, Laguna;

"2. That the case has been pending for some time, on preliminary issues, specifically, (a) change of venue, filed with the Supreme Court; (b) propriety of the appeal to the Court of Appeals, and after its denial by said court, brought to the Office of the President, on the veracity of the findings of the Five-Man Investigating Panel of the State Prosecutor's Office, and the Secretary of Justice, and (c) a hold-departure order filed with the Biñan Court;

"3. That the legal process moves ever so slowly, and meanwhile, I have already lost two (2) semesters of my college residence. And when the actual trial is held after all the preliminary issues are finally resolved, I anticipate a still indefinite suspension of my schooling to attend the hearings;

"4. That during the entire period since I filed the case, my family has lived a most abnormal life: my father and mother had to give up their jobs; my younger brother, who is in fourth grade, had to stop his schooling, like myself;

"5. That I do not blame anyone for the long, judicial process, I simply wish to stop and live elsewhere with my family, where we can start life anew, and live normally once again;

"6. That I pray that I be allowed to withdraw my complaint for rape and the other charge for child abuse wherein the Five-Man Investigating Panel of the Office of the State Prosecutor found a prima facie case although the information has not been filed, and that I will not at any time revive this, and related cases or file new cases, whether, criminal, civil, and/or administrative, here or anywhere in the Philippines;

"7. That I likewise realize that the execution of this Affidavit will put to doubt my credibility as a witness-complainant;

"8. That this is my final decision reached without fear or favor, premised on a corresponding commitment that there will be no reprisals in whatever form, against members of the police force or any other official or officer, my relatives and friends who extended assistance to me in whatever way, in my search for justice.

"WHEREOF, I affix my signature this 25 day of June, 1997, in Quezon City.

"(Sgd) JUVIE-LYN Y. PUNONGBAYAN

Complainant

"Assisted by:

(Sgd) ATTY. REMEDIOS C. BALBIN

Private Prosecutor

"In the presence of:

(Sgd) PABLO PUNONGBAYAN

Father

(Sgd) JULIE Y. PUNONGBAYAN

Mother

"SUBSCRIBED AND SWORN to before me this 25 day of June, 1997, in Quezon City.

"(Sgd) Illegible

Administering Officer"[2]

On 28 June 1997, Atty. Ramon C. Casino, on behalf of petitioners, moved to have the petition for change of venue dismissed on the ground that it had become moot in view of complainant's affidavit of desistance. On 22 August 1997, ACSP Guiyab filed his comment on the motion to dismiss. Guiyab asserted that he was not aware of the desistance of private complainant and opined that the desistance, in any case, would not produce any legal effect since it was the public prosecutor who had direction and control of the prosecution of the criminal action. He prayed for the denial of the motion to dismiss.

On 02 September 1997, this Court issued a Resolution (Administrative Matter No. 97-1-12-RTC), granting the petition for change of venue. The Court said:

"These affidavits give specific names, dates, and methods being used to abort, by coercion or corruption, the prosecution of Criminal Case No. 9619-B. It is thus incorrect for oppositors Alonte and Concepcion to contend that the fear of the petitioner, her private counsel and her witnesses are too generalized if not fabricated. Indeed, the probability that in desisting from pursuing her complaint for rape, petitioner, a minor, may have succumbed to some illicit influence and undue pressure. To prevent possible miscarriage of justice is a good excuse to grant the petition to transfer the venue of Criminal Case No. 9619-B from Biñan, Laguna to the City of Manila.

"IN VIEW WHEREOF, the Petition for Change of Venue from Biñan, Laguna to the City of Manila is granted. The Executive Judge of RTC Manila is ordered to raffle Crim. Case No. 9619-B to any of its branches. The judge to whom Crim. Case No. 9619-B shall be raffled shall resolve the petitioner's Motion to Resume Proceedings filed in Br. XXV of the RTC of Biñan, Laguna and determine the voluntariness and validity of petitioner's desistance in light of the opposition of the public prosecutor, Asst. Chief State Prosecutor Leonardo Guiyab. The branch clerk of court of Br. XXV of the RTC of Biñan, Laguna is ordered to personally deliver to the Executive Judge of Manila the complete records of Crim. Case No. 9619-B upon receipt of this Resolution."[3]

On 17 September 1997, the case, now re-docketed Criminal Case No. 97-159955 by the Clerk of Court of Manila, was assigned by raffle to Branch 53, RTC Manila, with respondent Judge Maximo A. Savellano, Jr., presiding.

On 07 October 1997, Juvie-lyn Punongbayan, through Attorney Balbin, submitted to the Manila court a "compliance" where she reiterated "her decision to abide by her Affidavit of Desistance."

In an Order, dated 09 October 1997, Judge Savellano found probable cause for the issuance of warrants for the arrest of petitioners Alonte and Concepcion "without prejudice to, and independent of, this Court's separate determination as the trier of facts, of the voluntariness and validity of the [private complainant's] desistance in the light of the opposition of the public prosecutor, Asst. Chief State Prosecutor Leonardo Guiyab."

On 02 November 1997, Alonte voluntarily surrendered himself to Director Santiago Toledo of the National Bureau of Investigation ("NBI"), while Concepcion, in his case, posted the recommended bail of P150,000.00.

On 07 November 1997, petitioners were arraigned and both pleaded "not guilty" to the charge. The parties manifested that they were waiving pre-trial. The proceedings forthwith went on. Per Judge Savellano, both parties agreed to proceed with the trial of the case on the merits.[4] According to Alonte, however, Judge Savellano allowed the prosecution to present evidence relative only to the question of the voluntariness and validity of the affidavit of desistance.[5]

It would appear that immediately following the arraignment, the prosecution presented private complainant

Juvie-lyn Punongbayan followed by her parents. During this hearing, Punongbayan affirmed the validity and voluntariness of her affidavit of desistance. She stated that she had no intention of giving positive testimony in support of the charges against Alonte and had no interest in further prosecuting the action. Punongbayan confirmed: (i) That she was compelled to desist because of the harassment she was experiencing from the media, (ii) that no pressures nor influence were exerted upon her to sign the affidavit of desistance, and (iii) that neither she nor her parents received a single centavo from anybody to secure the affidavit of desistance.

Assistant State Prosecutor Marilyn Campomanes then presented, in sequence: (i) Punongbayan's parents, who affirmed their signatures on the affidavit of desistance and their consent to their daughter's decision to desist from the case, and (ii) Assistant Provincial Prosecutor Alberto Nofuente, who attested that the affidavit of desistance was signed by Punongbayan and her parents in his presence and that he was satisfied that the same was executed freely and voluntarily. Finally, Campomanes manifested that in light of the decision of private complainant and her parents not to pursue the case, the State had no further evidence against the accused to prove the guilt of the accused. She, then, moved for the "dismissal of the case" against both Alonte and Concepcion.

Thereupon, respondent judge said that "the case was submitted for decision." [6]

On 10 November 1997, petitioner Alonte filed an "Urgent Motion to Admit to Bail." Assistant State Prosecutor Campomanes, in a Comment filed on the same date, stated that the State interposed "no objection to the granting of bail and in fact Justice and Equity dictates that it joins the accused in his prayer for the granting of bail."

Respondent judge did not act on the application for bail.

On 17 November 1997, Alonte filed anew an Urgent Plea to Resolve the Motion for Bail. On even date, ASP Campomanes filed a Manifestation deeming "it proper and in accord with justice and fair play to join the aforestated motion."

Again, the respondent judge did not act on the urgent motion.

The records would indicate that on the 25th November 1997, 1st December 1997, 8th December 1997 and 10th December 1997, petitioner Alonte filed a Second, Third, Fourth and Fifth Motion for Early Resolution, respectively, in respect of his application for bail. None of these motions were acted upon by Judge Savellano.

On 17 December 1997, Attorney Philip Sigfrid A. Fortun, the lead counsel for petitioner Alonte received a notice from the RTC Manila, Branch 53, notifying him of the schedule of promulgation, on 18 December 1997, of the decision on the case. The counsel for accused Concepcion denied having received any notice of the scheduled promulgation.

On 18 December 1997, after the case was called, Atty. Sigrid Fortun and Atty. Jose Flaminiano manifested that Alonte could not attend the promulgation of the decision because he was suffering from mild hypertension and was confined at the NBI clinic and that, upon the other hand, petitioner Concepcion and his counsel would appear not to have been notified of the proceedings. The promulgation, nevertheless, of the decision proceeded in absentia; the reading concluded:

"WHEREFORE, judgment is hereby rendered finding the two (2) accused Mayor Bayani Alonte and Buenaventura 'Wella' Concepcion guilty beyond reasonable doubt of the heinous crime of RAPE, as defined and penalized under Article 335(2) in relation to Article 27 of the Revised Penal Code, as amended by Republic Act No. 7659, for which each one of the them is hereby sentenced to suffer the indivisible penalty of RECLUSION PERPETUA or imprisonment for twenty (20) years and one (1) day to forty (40) years.

"In view thereof, the bail bond put up by the accused Buenaventura 'Wella' Concepcion for his provisional liberty is hereby cancelled and rendered without any further force and effect.

“SO ORDERED.”[7]

On the same day of 18th December 1997, petitioner Alonte filed a motion for reconsideration. Without waiting for its resolution, Alonte filed the instant "Ex Abundante Ad Cautelam" for "Certiorari, Prohibition, Habeas Corpus, Bail, Recusation of respondent Judge, and for Disciplinary Action against an RTC Judge." Petitioner Concepcion later filed his own petition for certiorari and mandamus with the Court.

Alonte submits the following grounds in support of his petition seeking to have the decision nullified and the case remanded for new trial; thus:

“The respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he rendered a Decision in the case a quo (Annex A) without affording the petitioner his Constitutional right to due process of law (Article III, § 1, Constitution).

“The respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he rendered a Decision in the case a quo in violation of the mandatory provisions of the Rules on Criminal Procedure, specifically, in the conduct and order of trial (Rule 119) prior to the promulgation of a judgment (Rule 120; Annex A).

“The respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when, in total disregard of the Revised Rules on Evidence and existing doctrinal jurisprudence, he rendered a Decision in the case a quo (Annex A) on the basis of two (2) affidavits (Punongbayan’s and Balbin’s) which were neither marked nor offered into evidence by the prosecution, nor without giving the petitioner an opportunity to cross-examine the affiants thereof, again in violation of petitioner’s right to due process (Article III, § 1, Constitution).

“The respondent Judge committed grave abuse of discretion amounting to lack or excess of jurisdiction when he rendered a Decision in the case a quo without conducting a trial on the facts which would establish that complainant was raped by petitioner (Rule 119, Article III, § 1, Constitution), thereby setting a dangerous precedent where heinous offenses can result in conviction without trial (then with more reason that simpler offenses could end up with the same result).”[8]

On the other hand, Concepcion relies on the following grounds in support of his own petition; thus:

“1. The decision of the respondent Judge rendered in the course of resolving the prosecution’s motion to dismiss the case is a patent nullity for having been rendered without jurisdiction, without the benefit of a trial and in total violation of the petitioner’s right to due process of law.

“2. There had been no valid promulgation of judgment at least as far as petitioner is concerned.

“3. The decision had been rendered in gross violation of the right of the accused to a fair trial by an impartial and neutral judge whose actuations and outlook of the case had been motivated by a sinister desire to ride on the crest of media hype that surrounded this case and use this case as a tool for his ambition for promotion to a higher court.

“4. The decision is patently contrary to law and the jurisprudence in so far as it convicts the petitioner as a principal even though he has been charged only as an accomplice in the information.”[9]

The petitions deserve some merit; the Court will disregard, in view of the case milieu, the prematurity of petitioners' invocation, i.e., even before the trial court could resolve Alonte's motion for reconsideration.

The Court must admit that it is puzzled by the somewhat strange way the case has proceeded below. Per Judge Savellano, after the waiver by the parties of the pre-trial stage, the trial of the case did proceed on the merits but that -

"The two (2) accused did not present any countervailing evidence during the trial. They did not take the witness stand to refute or deny under oath the truth of the contents of the private complainant's aforementioned affidavit which she expressly affirmed and confirmed in Court, but, instead, thru their respective lawyers, they rested and submitted the case for decision merely on the basis of the private complainant's so called 'desistance' which, to them, was sufficient enough for their purposes. They left everything to the so-called 'desistance' of the private complainant." [10]

According to petitioners, however, there was no such trial for what was conducted on 07 November 1997, aside from the arraignment of the accused, was merely a proceeding in conformity with the resolution of this Court in Administrative Case No. 97-1-12-RTC to determine the validity and voluntariness of the affidavit of desistance executed by Punongbayan.

It does seem to the Court that there has been undue precipitancy in the conduct of the proceedings. Perhaps the problem could have well been avoided had not the basic procedures been, to the Court's perception, taken lightly. And in this shortcoming, looking at the records of the case, the trial court certainly is not alone to blame.

Section 14, paragraphs (1) and (2), of Article III, of the Constitution provides the fundamentals.

"(1) No person shall be held to answer for a criminal offense without due process of law.

"(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

Jurisprudence [11] acknowledges that due process in criminal proceedings, in particular, require (a) that the court or tribunal trying the case is properly clothed with judicial power to hear and determine the matter before it; (b) that jurisdiction is lawfully acquired by it over the person of the accused; (c) that the accused is given an opportunity to be heard; and (d) that judgment is rendered only upon lawful hearing. [12]

The above constitutional and jurisprudential postulates, by now elementary and deeply imbedded in our own criminal justice system, are mandatory and indispensable. The principles find universal acceptance and are tersely expressed in the oft-quoted statement that procedural due process cannot possibly be met without a "law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." [13]

The order of trial in criminal cases is clearly spelled out in Section 3, Rule 119, of the Rules of Court; viz:

"Sec. 3. Order of trial. - The trial shall proceed in the following order:

"(a) The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.

"(b) The accused may present evidence to prove his defense, and damages, if any, arising from the issuance of any provisional remedy in the case.

"(c) The parties may then respectively present rebutting evidence only, unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.

"(d) Upon admission of the evidence, the case shall be deemed submitted for decision unless the court directs the parties to argue orally or to submit memoranda.

"(e) However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly."

In *Tabao vs. Espina*,^[14] the Court has underscored the need to adhere strictly to the above rules. It reminds that -

"x x x each step in the trial process serves a specific purpose. In the trial of criminal cases, the constitutional presumption of innocence in favor of an accused requires that an accused be given sufficient opportunity to present his defense. So, with the prosecution as to its evidence.

"Hence, any deviation from the regular course of trial should always take into consideration the rights of all the parties to the case, whether in the prosecution or defense. In the exercise of their discretion, judges are sworn not only to uphold the law but also to do what is fair and just. The judicial gavel should not be wielded by one who has an unsound and distorted sense of justice and fairness."^[15]

While Judge Savellano has claimed in his Comment that -

"Petitioners-accused were each represented during the hearing on 07 November 1997 with their respective counsel of choice. None of their counsel interposed an intention to cross-examine rape victim Juvilyn Punongbayan, even after she attested, in answer to respondent judge's clarificatory questions, the voluntariness and truth of her two affidavits - one detailing the rape and the other detailing the attempts to buy her desistance; the opportunity was missed/not used, hence waived. The rule of case law is that the right to confront and cross-examine a witness 'is a personal one and may be waived.'" (emphasis supplied) -

it should be pointed out, however, that the existence of the waiver must be positively demonstrated. The standard of waiver requires that it "not only must be voluntary, but must be knowing, intelligent, and done with sufficient awareness of the relevant circumstances and likely consequences."^[16] Mere silence of the holder of the right should not be so construed as a waiver of right, and the courts must indulge every reasonable presumption against waiver.^[17] The Solicitor General has aptly discerned a few of the deviations from what otherwise should have been the regular course of trial: (1) Petitioners have not been directed to present evidence to prove their defenses nor have dates therefor been scheduled for the purpose;^[18] (2) the parties have not been given the opportunity to present rebutting evidence nor have dates been set by respondent Judge for the purpose;^[19] and (3) petitioners have not admitted the act charged in the Information so as to justify any modification in the order of trial.^[20] There can be no short-cut to the legal process, and there can be no excuse for not affording an accused his full day in court. Due process, rightly occupying the first and foremost place of honor in our Bill of Rights, is an enshrined and invaluable right that cannot be denied even to the most undeserving.

This case, in fine, must be remanded for further proceedings. And, since the case would have to be sent back to the court a quo, this ponencia has carefully avoided making any statement or reference that might be misconstrued as prejudgment or as pre-empting the trial court in the proper disposition of the case. The Court likewise deems it appropriate that all related proceedings therein, including the petition for bail, should be subject to the proper disposition of the trial court.

Nevertheless, it is needful to stress a few observations on the affidavit of desistance executed by the complainant.

Firstly, the affidavit of desistance of Juvie-Lyn Punongbayan, hereinbefore quoted, does not contain any statement that disavows the veracity of her complaint against petitioners but merely seeks to "be allowed to withdraw" her complaint and to discontinue with the case for varied other reasons. On this subject, the case of *People vs. Junio*,^[21] should be instructive. The Court has there explained:

"The appellant's submission that the execution of an Affidavit of Desistance by complainant who was assisted by her mother supported the 'inherent incredibility of prosecution's evidence' is specious. We have said in so many cases that retractions are generally unreliable and are looked upon with considerable disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having accused-appellant arrested by the police, positively identifying him as the person

who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, Maryjane would suddenly turn around and declare that '[a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.'

"Thus, we have declared that at most the retraction is an afterthought which should not be given probative value. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who has given it later on changed his mind for one reason or another. Such a rule will make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable. [Flores vs. People, 211 SCRA 622, citing De Guzman vs. Intermediate Appellate Court, 184 SCRA 128; People vs. Galicia, 123 SCRA 550.][22]

The Junio rule is no different from ordinary criminal cases. For instance, in *People vs. Ballabare*,^[23] a murder case, the Court has ruled:

"The contention has no merit. To begin with, the Affidavit executed by eyewitness Tessie Asenita is not a recantation. To recant a prior statement is to renounce and withdraw it formally and publicly. [36 WORDS AND PHRASES 683, citing *Pradlik vs. State*, 41-A 2nd, 906, 907.] In her affidavit, Tessie Asenita did not really recant what she had said during the trial. She only said she wanted to withdraw her testimony because her father, Leonardo Tacadao, Sr., was no longer interested in prosecuting the case against accused-appellant. Thus, her affidavit stated:

"3. That inasmuch as my father, Leonardo Tacadao, Sr., the complainant therein, was no longer interested to prosecute the case as manifested in the Sworn Affidavit of Desistance before the Provincial Prosecutor, I do hereby WITHDRAW and/or REVOKE my testimony of record to confirm (sic) with my father's desire;

"It is absurd to disregard a testimony that has undergone trial and scrutiny by the court and the parties simply because an affidavit withdrawing the testimony is subsequently presented by the defense. In the first place, any recantation must be tested in a public trial with sufficient opportunity given to the party adversely affected by it to cross-examine the recanting witness. In this case, Tessie Asenita was not recalled to the witness stand to testify on her affidavit. Her affidavit is thus hearsay. It was her husband, Roque Asenita, who was presented and the matters he testified to did not even bear on the substance of Tessie's affidavit. He testified that accused-appellant was not involved in the perpetration of the crime.

"In the second place, to accept the new evidence uncritically would be to make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. [De Guzman vs. Intermediate Appellate Court, 184 SCRA 128, 134, citing *People vs. Morales*, 113 SCRA 683.] For even assuming that Tessie Asenita had made a retraction, this circumstance alone does not require the court to disregard her original testimony. A retraction does not necessarily negate an earlier declaration. [*People vs. Davatos*, 229 SCRA 647.] For this reason, courts look with disfavor upon retractions because they can easily be obtained from witnesses usually through intimidation or for monetary considerations. [*People vs. Clamor*, 198 SCRA 642.] Hence, when confronted with a situation where a witness recants his testimony, courts must not automatically exclude the original testimony solely on the basis of the recantation. They should determine which testimony should be given credence through a comparison of the original testimony and the new testimony, applying the general rules of evidence. [*Reano vs. Court of Appeals*, 165 SCRA 525.] In this case we think the trial court correctly ruled."^[24]

It may not be amiss to state that courts have the inherent power to compel the attendance of any person to testify in a case pending before it, and a party is not precluded from invoking that authority.^[25]

Secondly, an affidavit of desistance by itself, even when construed as a pardon in the so-called "private crimes," is

not a ground for the dismissal of the criminal case once the action has been instituted. The affidavit, nevertheless, may, as so earlier intimated, possibly constitute evidence whose weight or probative value, like any other piece of evidence, would be up to the court for proper evaluation. The decision in *Junio* went on to hold -

“While [t]he offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor in any case, if the offender has been expressly pardoned by the above named persons, as the case may be,’ [Third par. of Art. 344, The Revised Penal Code.] the pardon to justify the dismissal of the complaint should have been made prior to the institution of the criminal action. [People vs. Entes, 103 SCRA 162, cited by People vs. Soliao, 194 SCRA 250, which in turn is cited in People vs. Villoriente, 210 SCRA 647.] Here, the motion to dismiss to which the affidavit of desistance is attached was filed after the institution of the criminal case. And, affiant did not appear to be serious in ‘signifying (her) intention to refrain from testifying’ since she still completed her testimony notwithstanding her earlier affidavit of desistance. More, the affidavit is suspect considering that while it was dated ‘April 1992,’ it was only submitted sometime in August 1992, four (4) months after the Information was filed before the court a quo on 6 April 1992, perhaps dated as such to coincide with the actual filing of the case.”[26]

In *People vs. Miranda*,[27] applying the pertinent provisions of Article 344 of the Revised Penal Code which, in full, states -

"Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape, and acts of lasciviousness. The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

"The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

"The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

"In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the coprincipals, accomplices and accessories after the fact of the above-mentioned crimes." -

the Court said:

"Paragraph 3 of the legal provision above quoted prohibits a prosecution for seduction, abduction, rape, or acts of lasciviousness, except upon a complaint made by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above-named persons, as the case may be. It does not prohibit the continuance of a prosecution if the offended party pardons the offender after the cause has been instituted, nor does it order the dismissal of said cause. The only act that according to article 344 extinguishes the penal action and the penalty that may have been imposed is the marriage between the offended and the offender party.”[28]

In *People vs. Infante*,[29] decided just a little over a month before *Miranda*, the Court similarly held:

"In this court, after the case had been submitted, a motion to dismiss was filed on behalf of the appellant predicated on an affidavit executed by Manuel Artigas, Jr., in which he pardoned his guilty spouse for her infidelity. But this attempted pardon cannot prosper for two reasons. The second paragraph of article 344 of the Revised Penal Code which is in question reads: 'The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or

pardoned the offenders.' This provision means that the pardon afforded the offenders must come before the institution of the criminal prosecution, and means, further, that both the offenders must be pardoned by the offended party. To elucidate further, article 435 of the old Penal Code provided: 'The husband may at any time remit the penalty imposed upon his wife. In such case the penalty imposed upon the wife's paramour shall also be deemed to be remitted.' These provisions of the old Penal Code became inoperative after the passage of Act No. 1773, section 2, which had the effect of repealing the same. The Revised Penal Code thereafter expressly repealed the old Penal Code, and in so doing did not have the effect of reviving any of its provisions which were not in force. But with the incorporation of the second paragraph of article 344, the pardon given by the offended party again constitutes a bar to the prosecution for adultery. Once more, however, it must be emphasized that this pardon must come before the institution of the criminal prosecution and must be for both offenders to be effective - circumstances which do not concur in this case."^[30]

The decisions speak well for themselves, and the Court need not say more than what it has heretofore already held.

Relative to the prayer for the disqualification of Judge Savellano from further hearing the case, the Court is convinced that Judge Savellano should, given the circumstances, be best excused from the case. Possible animosity between the personalities here involved may not all be that unlikely. The pronouncement of this Court in the old case of *Luque vs. Kayanan*^[31] could again be said: All suitors are entitled to nothing short of the cold neutrality of an independent, wholly-free, disinterested and unbiased tribunal. Second only to the duty of rendering a just decision is the duty of doing it in a manner that will not arouse any suspicion as to the fairness and integrity of the Judge.^[32] It is not enough that a court is impartial, it must also be perceived as impartial.

The Court cannot end this ponencia without a simple reminder on the use of proper language before the courts. While the lawyer in promoting the cause of his client or defending his rights might do so with fervor, simple courtesy demands that it be done within the bounds of propriety and decency. The use of intemperate language and unkind ascriptions hardly can be justified nor can have a place in the dignity of judicial forum. Civility among members of the legal profession is a treasured tradition that must at no time be lost to it.

Finally, it may be opportune to say, once again, that prosecutors are expected not merely to discharge their duties with the highest degree of excellence, professionalism and skill but also to act each time with utmost devotion and dedication to duty.^[33] The Court is hopeful that the zeal which has been exhibited many times in the past, although regrettably a disappointment on few occasions, will not be wanting in the proceedings yet to follow.

WHEREFORE, conformably with all the foregoing, the Court hereby RULES that -

- (a) The submission of the "Affidavit of Desistance," executed by Juvie-Lyn Y. Punongbayan on 25 June 1997, having been filed AFTER the institution of Criminal Case No. 97-159935, DOES NOT WARRANT THE DISMISSAL of said criminal case;
- (b) For FAILURE OF DUE PROCESS, the assailed judgment, dated 12 December 1997, convicting petitioners is declared NULL AND VOID and thereby SET ASIDE; accordingly, the case is REMANDED to the trial court for further proceedings; and
- (c) Judge Maximo A. Savellano, Jr., presiding Judge of Branch 53 of the Regional Trial Court of Manila, is ENJOINED from further hearing Criminal Case No. 97-159935; instead, the case shall immediately be scheduled for raffle among the other branches of that court for proper disposition.

No special pronouncement on costs.

SO ORDERED.

Melo, Kapunan, Martinez, Quisumbing and Purisima, JJ., concur.

Narvasa, C.J., no part. Related to one of counsel.

Puno, J., see separate opinion.

Regalado, Davide, Jr., Romero, Mendoza and Panganiban, JJ., joins Justice Puno in his separate opinion.

[1] Rollo of G.R. No. 131728, pp. 20-21.

[2] Rollo of G.R. No. 131728, pp. 34-35.

[3] Rollo of G.R. No. 131652, pp. 72-73

[4] Rollo of G.R. No. 131652, p. 42.

[5] Rollo, p. 7.

[6] TSN, 07 November 1997, p. 70.

[7] Rollo of G.R. No. 131652, pp. 65-66.

[8] Rollo of G.R. No. 131652, pp. 13-14.

[9] Rollo of G.R. No. 131728, p. 10.

[10] Rollo, p. 64.

[11] *People vs. Dapitan*, 197 SCRA 378.

[12] At p. 388.

[13] *Darmouth College vs. Woodward*, 4 Wheaton 518, citing Webster.

[14] 257 SCRA 298.

[15] At pp. 305-306.

[16] *Brady vs. United States*, 397 U.S. 742 (1970)

[17] *Aetna Insurance Co. vs. Kennedy*, 301 U.S. 389 (1937)

[18] Rules of Court, Rule 119, Sec. 3(b).

[19] *Ibid.*, Sec. 3(c).

[20] *Ibid.*, Sec. 3(e).

[21] 237 SCRA 826.

[22] At p. 834.

[23] 264 SCRA 350.

[24] At pp. 360-361.

[25] See Section 5(e), Rule 135, Rules of Court.

[26] 237 SCRA 826, 835.

[27] 57 Phil. 274.

[28] At p. 275.

[29] 57 Phil. 138.

[30] At pp. 139-140.

[31] 29 SCRA 165.

[32] Gutierrez vs. Santos, 30 May 1961. The excerpt was quoted in Austria vs. Masaquel, 31 August 1967.

[33] Section 4 (b), Republic Act No. 6713, entitled Code of Conduct and Ethical Standards for Public Officials and Employees.

Alonte vs Savellano Jr : 131652 : J. Puno's Opinion : March 9, 1998 85

[SEPARATE OPINION]**PUNO, J.:**

The facts are critical and need to be focused. Petitioners were charged with rape in Criminal Case No. 15993 which was raffled to br. 25 of the RTC of Binan, Laguna. The charge is principally based on the following affidavit dated October 31, 1996 of Ms. Juvie-Lyn Punongbayan, a 16-year old minor, viz:

REPLY AFFIDAVIT

(TUGON SA MGA SALAYSAY NILA MAYOR BAYANI ALONTE, WELLA CONCEPCION, RICARDO LACAYAN at JAIME MENDOZA)

Ako si JUVIE-LYN Y. PUNONGBAYAN, Filipino, walang asawa, 16 years old, at kasalukuyang nasa pangangalaga ng Department of Social Welfare and Development, matapos makapanumpa ayon sa batas, ay nagsasaad:

1. Wala pong katotohanan ang lahat nakasaad sa mga salaysay ni Mayor Bayani Alonte at Buenaventura “Wella” Concepcion, ng kanilang mga testigo na sila Ricardo (Ading) Lacayan y Aguilar at Jaime Bagtas Mendoza.

2. Ang totoo po ay inabuso ako ni Mayor nung September 12, 1996, katulad nga ng naihayag ko na sa aking sinumpaang salaysay. Ayon sa driver ng tricycle na nasakyan ko pagkatapos ng insidente, hindi lang po ako, kundi marami pa pong babae ang inabuso ni Mayor. Sabi pa nga ng driver ay naaawa siya sa akin, at lumaban daw ako. Tinawagan ko na rin po ang lahat ng mga babae na naging biktima ni Mayor; wag silang matakot, lumabas at ilahad ang pangaabuso ni Mayor.

Ang detalya nung panggagahasa

Ni Alonte at ang partisipasyon

Ni Wella Concepcion

3. Nakalahad po sa sumusunod na talata ang detalya ng pang-aabuso sa akin ni Mayor. Pinakikita rin dito kung

paano siya nakipagsabwatan kay Wella Concepcion. Sa pamamagitan nito ay mapapabulaanan na rin ang mga nakasaad na salaysay nila at ng mga testigo nila.

4. Nakilala ko si Wella Concepcion, dance instructor, nung bandang last week ng August 1996. Noon ay naghahanda ako para sa “Miss Education” beauty contest sa Perpetual Help College of Laguna. Doon ako nag-aaral. First year college ako, at education ang kursong pinili ko. Ang nasabing contest ay ginanap nung Sept. 20, 1996. Kapag nagkikita kami ni Wella para sa ensayo, nagkukuwentuhan din kami, at nabanggit niya na may kaibigan siyang bakla na nagdadala ng babae kay Mayor Alonte. Waway daw ang pangalan ng bakla. Hindi ko pa kilala si Waway noon.

5. Nung Sept. 7, niyaya ako ni Wella na sumali sa dance contest sa “Sang Linggo NAPO SILA” sa Channel 2, na itatanghal sa Sept. 11, 1996. Wala na daw po akong alalahanin. Siya daw ang bahala sa costume at transportation. Pumayag ang nanay ko, dahil wala na kaming gagastusin. Hindi ko tinanong kay Wella kung saan galing ang costume. Akala ko may ipapagamit lang siya sa akin.

6. Nung Sept. 8, pinakilala ni Wella si Waway sa akin. Si Waway ang nagturo sa aminng sayaw para sa TV contest. Mula nung araw na yon hanggang Sept. 10 ay nagsanay kami sa bahay ng kapatid ni Waway sa St. Francis Subdivision, Binan, Laguna. Tatlo kami dance-group: ako at ang dalawang lalaki na ipinakilala sa akin ni Waway: si Melchor at Darius.

7. Nagpunta kami sa studio sa Delta nung Sept. 11. Bago kami magsayaw, habang inaayos ni Wella yung damit ko, sinabi niya na dapat manalo kami dahil si Mayor Alonte daw ang nag-sponsor ng costume namin. Noon ko lang ito nalaman. Hindi kami nanalo sa contest, pero nagkaroon pa rin kami ng premyong P1,500.00 na pinaghatian namin.

8. Pagkatapos ng contest at nung nakapagpalit na ako ng damit, binabalik ko kay Wella ang costume ko. Sabi niya iuwi ko daw ito dahil gagamitin ko ito sa Miss Education contest, sa presentation ng mga candidates. Mula sa studio, nagpunta kaming lahat sa isang kainan sa tapat ng Delta at, pagkatapos naming kumain, humiwalay yung ibang kasama namin.

9. Dinala ako ni Wella sa isang department store at binili niya ako ng sandals. Inikot niya ako sa lugar na yon at binili niya ako ng pagkain. Tapos ay sumakay kami ng bus pauwi sa Laguna. Nung nasa bus kami, niyaya ako ni Wella na magpunta sa bahay ni Mayor para magpasalamat ng personal para sa costume namin. Pumayag ako at sabi ko kay Wella na sunduin niya ako sa bahay ng 10:00 a.m. sa susunod na araw, Sept. 12. Nakarating ako sa bahay ng 5:00 p.m. ng araw na yon, Sept. 11.

10. Nung Sept. 12, hinintay ko si Wella ng 10:00 a.m. Nung hindi siya dumating umalis kami ng Tita ko dahil sinamahan ko siya sa health center. Sumundo pala si Wella doon, pero hindi kami nagkita kasi saglit lang kami doon. Bumalik siya sa bahay, at doon na kami nagkita. Tapos ay umalis kami ni Wella papunta kay Mayor. Tumawid kami ng kalye, at pumara ako ng tricycle. Pero kahit marami na akong pinara, ayaw ni Wella na sumakay doon. Maya-maya may tricycle na dumating na hindi naman pinara ni Wella. Basta huminto na lang sa harap namin. Doon kami sumakay ni Wella. Si Wella ang nagturo sa driver kung saan kami pupunta. Nag-uusap sila ng driver habang papunta kami kay Mayor.

11. Bumaba kami sa tapat ng bahay na bukas ang gate. May swimming pool sa loob, alam na alam ni Wella ang pasikot-sikot ng bahay; tuloy-tuloy siya sa loob at sumunod naman ako. Wala kaming taong nakita, pero bukas pati yung pintuan ng bahay. Dinala ako ni Wella sa sala. Napakaganda ng loob ng bahay. Mayroong wallpaper na may design na leaves and flowers; may carpet sa sahig. May mahabang hagdan patungo sa dalawang pintuan.

12. Tinanong ko kay Wella kung nasaan si Mayor. Sabi niya ay nasa munisipyo daw; darating na daw maya-maya. Pagkaraan ng mga 15 minutes, dumating si Mayor na nakasakay sa green na kotse. Lumabas siya sa kaliwang pintuan sa harap ng kotse. Wala siyang kasama.

13. Pumasok si Mayor sa loob ng bahay. Naghubad siya ng sapatos. Sabi ni Wella: “Mayor, si Juvie; Juvie si Mayor.”

14. Umupo si Mayor sa tabi ko. Kinamayan niya ako at sinabi niya: “Hi, I’m Arthur” sabay hinalikan niya ako sa lips. Hindi ako naka-react dahil nagulat at kinabahan ako.

15. Nagmamadaling nagpaalam si Wella. Kinuha ni Mayor ang wallet sa bulsa sa likod ng kanyang pantalon. Dumukot siya ng P1,000 na buo. Iniabot niya ito kay Wella. Patayo na ako pero hinawakan ni Mayor ang braso ko. Wag daw akong sasama kay Wella. Sinabi ko kay Wella na wag niya akong iwanan, pero parang wala siyang narinig. Basta tuloy-tuloy siyang umalis.

16. Nung kami na lang ni Mayor ang natira, pinainom niya ako ng mineral water. Uminom ako dahil nauuhaw ako. Nanlabo ang paningin ko at nanghina ako.

17. Nawalan ako ng malay. Ang sumunod ko na lang na natatandaan ay nandoon na ako sa kwarto. Wala akong damit. Nakadagan si Mayor sa akin. May malaking salamin sa pader. Doon ko nakita na walang kadamit-damit si Mayor.

18. Hawak ako ni Mayor sa magkabilang braso. Pinipisil niya ito kaya nagkaroon ako ng pasa sa kaliwang braso (at ito ay nawala lang pagkatapos ng tatlong araw).

19. Naramdaman ko na pilit na pinasok ni Mayor ang ari niya sa aking ari. Nasaktan ako. Nagmakaawa ako. Umiiyak ako nung sinabi ko sa kanya na tigilan niya ako; nasasaktan ako; may anak rin siyang babae. Sabi niya wag daw akong maingay at i-embrace ko na lang daw siya. Lalo akong umiyak dahil nandidiri ako sa kanya, at sa ginagawa niya sa akin. Naghalo ang galit, pandidiri at takot. Wala akong magawa kunid magmakaawa. Hindi ko siya maitulak dahil nanghihina ako, nakadagan siya sa akin, mataba siya, at hawak-hawak niya ang braso ko. Pero kahit nagmamakaawa ako, tinuloy pa rin niya at pinasok niya ulit ang ari niya sa aking ari.

20. Maya-maya ay tumigil siya. Tumayo siya at sabi niya: “ang panty mo, nasa tabi mo.” Kinuha ko ang panty ko, tumayo ako at sinuot ko ito. Hinanap ko ang damit ko, at nakita ko ang walking shorts, bra at t-shirt ko sa sahig. Pinulot ko ito at sinuot ko. Habang sinusuot ko, umiiyak pa rin ako. Pagkatapos kong magbihis, umupo ako sa mahabang upuan sa may gilid ng kama.

20. Samantala, pagkatapos sabihin ni Mayor na nasa tabi ko ang panty ko, nagpunta siya sa banyo na transparent ang pinto. Wala siyang suot pagpunta niya doon. Paglabas niya, nakasuot na siya ng checkered brief na kulay black and white. Pumunta siya sa kabilang gilid ng kama. Kinuha niya ang damit niya na nakahanger sa pader. Sinuot niya ito. Lumabas siya ng kwarto. Hindi nagtagal ay pumasok siya ulit at sinabi niya na nandiyan na daw ang sundo ko.

20. Tumayo ako. Sinabi ko na aalis na ako. Nung papunta na ako sa pintuan, lumapit si Mayor sa akin. May hawak-hawak siyang dalawang pirasong P1,000. Tiniklop niya ito; binaba niya yung neckline ng t-shirt ko, at pinasok niya ang pera sa aking bra. Nagalit ako. Kinuha ko ang pera at tinapon ko ito sa kanya. Sabi ko hindi ako bayarang babae. Nagalit siya at pinagbantaang ako. Sabi niya: “Pag nagsalita ka, alam mo na kung ano ang mangyayari sa iyo.” Tiningnan ko siya, at umalis ako pababa.

20. Mayroon tricycle na nakaabang sa labas. Sumunod si Mayor. Lumapit siya sa driver at binigyan niya ito ng P100. Tapos ay umalis na kami.

24. Umiiyak pa rin ako nung nasa tricycle. Sabi ko sa driver na ginahasa ako ni Mayor. Sabi niya masuwerte daw ako at maaga akong pinauwi dahil yung mga ibang babae daw na dinadala kay Mayor ay pinauwi ng madaling-araw o hating-gabi. Minsan, dalawa o tatlo pa nga daw ang dinadala doon, at yung iba ay naka-uniform pa. Naaaawa daw siya sa akin, kaya magsumbong daw ako. Nakokonsensiya daw siya dahil isa siya sa dalawang tricycle driver na naghahatid ng mga babae doon. Sabi pa nga niya, babae din daw ang ina

niya, kaya din siya nakokonsensiya. Dinagdag pa niya na kung may kasiyahan kina Mayor, isang van ng mga babae ang nandoon. Pagdating namin sa bahay ng Lola ko, sabi niya bago siya umalis: “Lumaban ka.”

On December 13, 1996, the private complainant thru her counsel, Atty. Remedios C. Balbin and Asst. Chief State Prosecutor Leonardo Guiab, Jr., of the Department of Justice petitioned this Court for a change of venue. They cited as ground the “great danger to the lives of both the private complainant, the immediate members of her family, and their witnesses as they openly defy the principal accused, Mayor Alonte who is acknowledged as a powerful political figure and almost an institution in Biñan, Laguna x x x.”

On March 31, 1997, the private complainant, thru the then Secretary of Justice, the Honorable Teofisto Guingona and Chief State Prosecutor Jovencio Zuno filed a Manifestation and Motion for the early resolution of the petition for change of venue. They submitted the affidavits of the private complainant, her counsel Atty. Remedios C. Balbin, Dolores Mercado-Yambao, Bienvenido Salandanan and Evelyn Celso to prove their allegation that they “are exposed to kidnapping, harassment, veiled threats and tempting offers of bribe money – all intended to extract an ‘affidavit of desistance’ from the private complainant.” Worth bright lining are the two (2) affidavits of Atty. Remedios C. Balbin, counsel for the private complainant, relating the fantastic amount of P10M bribe money allegedly offered to her. The first affidavit dated February 24, 1997 states:

I, Remedios C. Balbin, of legal age, Filipino, married, with residence at #5 Uranus Street, Congressional Avenue Subdivision, Quezon City, after having duly sworn in accordance with law, depose and say:

1. That I am the Private Prosecutor in Criminal Case No. 96-19-B for rape, filed with the Biñan RTC, Branch 25, entitled ‘People of the Philippines vs. Bayani Arthur Alonte, et al.;

2. That as Private Prosecutor, it is my avowed duty to be faithful to the interests of my client, Ms. Juvie-Lyn Punongbayan;

3. That on several occasions, I was visited at my Office at the Quezon City Hall Compound, by a lawyer who introduced himself as Atty. Leo C. Romero, representing the Accused Mayor Bayani Arthur Alonte;

4. That my calendar at the People’s Bureau, Quezon City Hall, shows that he came to see me about eight (8) times, but we talked only about three (3) times because I was always busy attending to the problems of Quezon City’s urban poor and the landowners of private properties illegally occupied by them;

5. That in two (2) occasions, Atty. Romero conveyed to me the message of Mayor Alonte, namely, to drop the rape case against him, and that he would give a consideration of Ten Million Pesos (P10 Million) to be apportioned as follows:

Five Million Pesos (P5 M) - for the Private Complainant

Three Million Pesos (P3M) - for me as Private Prosecutor

Two Million Pesos (P2M) - for him as the mediator

6. That I explained to Atty. Romero that money does not matter at all to the Complainant and her family even if they have very modest means; that they want justice, which means a conviction for the charge of rape;

7. That I also explained to Atty. Romero that the money he was offering me was of no consequence to me because I had access to the resources of my two (2) daughters, both of whom are in the medical field abroad, and of Mr. Filomeno Balbin, Labor Attache then assigned in Riyadh;

8. That I told him that I cannot be tempted with his offer because spiritual consideration are more important to me than the material. Also, that I usually handle cases pro bono (at abunado pa) where the litigant is in dire need of legal assistance but cannot afford to pay for the lawyer’s fees, as in Juvie-Lyn’s case;

9. That I gave Atty. Romero a copy of the decision of the Supreme Court promulgated December 10, 1996, entitled "People of the Philippines vs. Robert Cloud" (G.R. No.119359: Crim. Case No. Q-90-12660) for parricide involving the death of a 2 ½ year old boy. I wrote on page one of the xerox copy of the decision: 'To Atty. Leo Romero – so you will understand,' and to which I affixed my signature.

10. That I told him explicitly: 'we cannot simplify the entire proceedings. You advise Mayor Alonte to surrender (one mitigating circumstance) , plead guilty (another mitigating circumstance), get a conviction and suffer the corresponding penalty. Otherwise, we have nothing to talk about.'

11. That I emphasized that his suggestion for Mayor Alonte to plead guilty to 'act of lasciviousness' merely was ridiculous;

12. That when the Complainant's Affidavit on the offer of Ms. Emily Vasquez for a valuable consideration in exchange for an affidavit of desistance in the rape was exposed by media, Atty. Romero came to see me and thanked me for not exposing him in similar fashion. I assured him that he will not be an exception and that I was just too busy then to execute an affidavit on the matter, as I do now;

13. That I have not received other similar offers of valuable material consideration from any other person, whether private party or government official. However, I have been separately advised by several concerned persons that I was placing my personal safety at great risk. The victim's family will have great difficulty in finding another lawyer to 'adopt' them in the way I did, which gives them strength to pursue their case with confidence and the accused Mayor is aware that I am the obstacle to an out-of-court settlement of the case. Also, that I had my hands full, as it is, as the Head of the QC People's Bureau, Housing Development Center, and Special Task Force on Squatting and Resettlement, and the numerous cases filed by me or against me, connected with my performance of official duties, and I should not add more legal problems despite my authority to engage in private law practice.

14. That this affidavit is executed in order to put on record the attempt to influence me directly, in exchange for valuable consideration to drop the rape charge against Mayor Bayani Arthur Alonte.

February 24, 1997, City of Manila.

SGD. REMEDIOS C. BALBIN

REMEDIOS C. BALBIN

SUBSCRIBED AND SWORN to before me this 26[TH] day of March, 1997, Metro Manila.

Community Tax Certificate – 5208733

Date Issue 2-10-97

Quezon City

NOTARY PUBLIC

SGD. JUANITO L. GARCIA

ATTY. JUANITO L. GARCIA

NOTARY PUBLIC

UNTIL Dec. 31, 1997

PTR No. 63-T-033457

ISSUED AT MLA. ON 1-2-97

TAN-161-570-81

Doc. No. 950;

Page No. 170;

Series of 1997.”

In her second Affidavit dated March 26, 1997, Atty. Balbin declared in no uncertain language that the bribe offer for private complainant to make a desistance was increased from P10,000,000.00 to P20,000,000.00, viz:

“REPUBLIC OF THE PHILIPPINES)

CITY OF MANILA) s.s.

“AFFIDAVIT

“I., REMEDIOS C. BALBIN, of legal age, Filipino, married, and with postal address at No. 5 Uranus Street, Congressional Avenue Subdivision, Quezon City, after having duly sworn in accordance with law, depose and say:

“1. That I am the Private Prosecutor in the rape case filed by the minor Juvie-lyn Punongbayan against Mayor Bayani Arthur Alonte of Biñan, Laguna.

“2. That earlier, I reported to Secretary Teofisto Guingona, State Prosecutor Jovencio R. Zuno, Asst. Chief State Prosecutor Leonardo Guiyab, Jr., and Director Jude Romano of the Witness Protection Program, the instances of offers of substantial amounts amounting to several millions, to my client, to her relatives, including her maternal grandmother, and to myself;

“3. That despite the published declaration by the Department of Justice of its determination to prosecute those who offered the bribes, new emissaries of Mayor Alonte persist in making offers, as follows:

“a. On Thursday, March 6, 1997, at about 3:15 o’clock in the afternoon, Atty. Dionisio S. Daga came to see me at my office at the People’s Bureau, Office of the Mayor, of Squatting case which I filed against his clients;

“b. That after a brief exchange on the status of the case, he confided to me his real purpose;

“c. That he started off by saying that he was the legal counsel of the gambling lords of Malabon for which he gets a monthly retainer of fifteen thousand pesos (P15,000.00), exclusive of transportation expenses, etc.;

“d. That he also stated that the network of gambling lords throughout the country is quite strong and unified;

“e. That I then asked him: ‘What do you mean – is Alonte into gambling too? That he is part of the network you speak of?’

“f. That Atty. Daga did not reply but instead said: ‘they are prepared to double the offer made to you by Atty. Romero which was published in the newspapers’ at P10 Million;

“g. That I told him that all the money in the world will not make me change my position against my client’s executing a desistance, and that only Alonte’s voluntary surrender, plea of guilty in rape, conviction and the imposition of the corresponding penalty will satisfy the ends of justice;

“h. That I told him that my client’s case is not isolated, there being five (5) other minors similarly placed; and Alonte should be stopped from doing more harm;

“i. That Atty. Daga then told me in Pilipino ‘if you do not accede to a desistance, then, they will be forced to . . .’

"j. That because he did not complete his sentence, I asked him directly: 'What do you mean? What do you intend to do? And he replied: Go on with the case; Buy the Judge.'

"k. That unbelieving, I reacted, saying; 'but they have already done so, Judge Francisco at Biñan suddenly changed his attitude towards the Prosecution. Perhaps, you are referring to the next judge when the petition for change of venue is finally granted?'

"l. That Atty. Daga did not reply, and he reiterated that his principals, referring to them again as 'gambling lords,' want a desistance, after which he excused himself and left.

"4. That I execute this Affidavit to attest to the truth of the incident with Atty. Dionisio S. Daga which occurred in the afternoon of March 6, 1997, at my Office, stressing herein my surprise over his daring in making yet another monetary offer to me in exchange for my client's desistance, and my feeling of fear for the first time since I started 'handling; this case against Alonte;

"5. That despite what I perceived as veiled threats of Atty. Daga, I will seek justice in behalf of Juvie-lyn Punongbayan , with the indispensable initiatives, participation and support of the Department of Justice under Secretary Teofisto Guingona.

"FURTHER AFFIANT SAYETH NAUGHT.

SGD. REMEDIOS C. BALBIN

ATTY. REMEDIOS C. BALBIN

Affiant

REPUBLIC OF THE PHILIPPINES)

CITY OF MANILA) S.S.

SUBSCRIBED AND SWORN TO BEFORE ME this 26[TH] day of March, 1997.

Community Tax Certificate – 5208733

Date Issued 2-10-97

Quezon City

Notary Public

SGD. JUANITO L. GARCIA

ATTY. JUANITO L. GARCIA

NOTARY PUBLIC

UNTIL DEC. 31, 1997

PTR NO. 63-T-033457

ISSUED AT MLA. ON 1-2-97

TAN-161-570-81

Doc. No. 948;

Book No. 190;

Page No. XLIII;

Series of 1997.”

After the alleged bribe money was increased from P10M to P20M the complexion of the case changed swiftly.

On June 25, 1997, Atty. Balbin filed a Motion to Resume Proceedings in Br. 25 of the RTC of Biñan, Laguna. Attached to the Motion was the Affidavit of Desistance of the private complainant which states:

“I, Juvie-lyn Yambao Punongbayan, 17 years of age, a resident of No. 5 Uranus Street, Congressional Avenue Subdivision, Quezon City, duly assisted by private legal counsel and my parents, after having duly sworn in accordance with law, depose and say:

“1. That I am the Complainant in the rape case filed against Mayor Bayani “Arthur” Alonte of Biñan, Laguna, with the RTC-Branch 25 of Biñan, Laguna;

“2. That the case has been pending for some time, on preliminary issues, specifically, (a) change of venue, filed with the Supreme Court; (b) propriety of the appeal to the Court of Appeals, and after its denial by said court, brought to the Office of the President, on the veracity of the findings of the Five-Man Investigating Panel of the State Prosecutor’s Office, and the Secretary of Justice, and (c) a hold-departure order filed with the Biñan Court;

“3. That the legal process moves ever so slowly, and meanwhile, I have already lost two (2) semesters of my college residence. And when the actual trial is held after all the preliminary issues are finally resolved, I anticipate a still indefinite suspension of my schooling to attend the hearings;

“4. That during the entire period since I filed the case, my family has lived a most abnormal life: my father and mother had to give up their jobs; my younger brother, who is in fourth grade, had to stop his schooling, like myself;

“5. That I do not blame anyone for the long, judicial process; I simply wish to stop and live elsewhere with my family, where we can start life anew, and live normally once again;

“6. That I pray that I be allowed to withdraw my complaint for rape and the other charge for child abuse wherein the Five-Man Investigating Panel of the Office of the State Prosecutor found a prima facie case although the Information has not been filed, and that I will not at any time revive this, and related cases or file new cases, whether, criminal, civil and/or administrative, here or anywhere in the Philippines;

“7. That I likewise realize that the execution of this Affidavit will put to doubt my credibility as a witness-complainant;

“8. That this is my final decision reached without fear or favor, premised on a corresponding commitment that there will be no reprisals in whatever form, against members of the police force or any other official or officer, my relatives and friends who extended assistance to me in whatever way, in my search for justice.

“WHEREOF, I affix my signature, this 25[TH]day of June, 1997, in Quezon City.

SGD. JUVIE-LYN Y. PUNONGBAYAN

JUVIE-LYN Y. PUNONGBAYAN

Assisted by:

SGD. REMEDIOS C. BALBIN

ATTY. REMEDIOS C. BALBIN

Private Prosecutor

In the presence of:

SGD. PABLO PUNONGBAYAN

PABLO PUNONGBAYAN

Father

SGD. JULIE Y. PUNONGBAYAN

JULIE Y. PUNONGBAYAN

Mother

“SUBSRIBED AND SWORN to before me this 25[TH] day of June, 1997, in Quezon City.

“SGD. ILLEGIBLE

Administering Officer

RTC Branch 94

Quezon City”

Obviously, the Motion to Resume Proceedings was intended to get the trial court’s approval for the dismissal of the rape case against the petitioners.

Indeed, three days thereafter or on June 28, 1997, Atty. Ramon C. Casino moved in behalf of the petitioners to dismiss the petition for change of venue then pending in this Court citing the affidavit of desistance of the private complainant. On August 22, 1997, however, Asst. Chief State Prosecutor Guiyab opposed the motion. He alleged that he has control of the prosecution of the rape case and that he was not aware of the desistance of the private complainant.

The legal maneuvers to dismiss the rape case against the petitioners on the basis of the alleged affidavit of desistance of the private complainant did not find the favor of this Court. On September 2, 1997, this Court unanimously granted the petition for change of venue, ruling among others, viz:

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“These affidavits give specific names, dates and methods being used to abort, by coercion or corruption, the prosecution of Criminal Case No. 9619-B. It is thus incorrect for oppositors Alonte and Concepcion to contend that the fear of the petitioner, her private counsel and her witnesses are too generalized if not fabricated. Indeed, the probability that in desisting from pursuing her complaint for rape, petitioner, a minor, may have succumbed to some illicit influence and undue pressure. To prevent possible miscarriage of justice is a good excuse to grant the petition to transfer the venue of Criminal Case No. 9619-B from Biñan, Laguna to the City of Manila.

“IN VIEW WHEREOF, the Petition for Change of Venue from Biñan, Laguna to the City of Manila is granted. The Executive Judge of RTC Manila is ordered to raffle Crim. Case No. 9619-B to any of its branches. The judge to whom Crim. Case No. 9619-B shall be raffled shall resolve the petitioner’s Motion to Resume Proceedings filed in Br. XXV of the RTC of Biñan, Laguna and determine the voluntariness and validity of petitioner’s desistance in light of the opposition of the public prosecutor, Asst. Chief State Prosecutor Leonardo Guiyab. The branch clerk of court of Br. XXV of the RTC of Biñan, Laguna is ordered to personally deliver to the Executive Judge of Manila the complete records of Crim. Case No. 9619-B upon receipt of this Resolution.”

On September 17, 1997, Criminal Case No. 9619-B (re-docketed by the Clerk of Court of Manila as Crim. Case No. 97-159955) was raffled to Br. 53 of the RTC of Manila, presided by the respondent judge, the Honorable Maximo A. Savellano.

On October 9, 1997, the respondent judge issued warrants of arrest against the petitioners after a finding of probable cause.

On October 28, 1997, an Administrative Order of the DOJ was issued empowering First Assistant City Prosecutor Marilyn R.O. Campomanes to prosecute the case at bar. Asst. Chief State Prosecutor Leonardo Guiyab, Jr., who opposed the affidavit of desistance was relieved from the case. The reason given in the Administrative Order was “. . .in the interest of public service.” Prosecutor Campomanes was authorized “to move for its (case) dismissal if the evidence on record so warrant...”[1]

The arraignment of the petitioners took place on November 7, 1997. The State was represented by prosecutor Marilyn Campomanes. Petitioner Alonte was represented by Atty. Jose Flaminiano and Atty. Sigfrid A. Fortun. Petitioner Concepcion was represented by Atty. Ramon C. Casano. Atty Remedios C. Balbin who had previously exposed under oath the threats to the life of the private complainant and her witnesses and the repeated attempts to buy complainant’s desistance was absent.[2]

Petitioners pled not guilty to the charge of rape upon their arraignment.-[3] Pre-trial was then waived by both the prosecution and the defense. The proceedings continued and Prosecutor Campomanes presented the private complainant, Ms. Punongbayan who testified on her affidavit of desistance. She declared that her desistance was her “personal” decision with the consent of her parents.[4] She said she was neither paid nor pressured to desist. On questions by the respondent judge, however, she affirmed the truth of her affidavit dated October 31, 1996 that she was raped by petitioner Alonte. Prosecutor Campomanes marked and offered her affidavit of desistance as Exhibit “A”.[5] She called on other witnesses to testify on the voluntariness of the affidavit of desistance. The parents of the complainant – Pablo[6] and Julie[7] Punongbayan – declared that they did not receive any monetary consideration for the desistance of their minor daughter. Neither were they pressured to give their consent to the desistance. Fourth Asst. Provincial Prosecutor Alberto Nofuente averred that the affidavit of desistance was signed and sworn to before him in the presence of the complainant’s parents and private counsel, Atty. Balbin. He said he explained the affidavit to them and that the complainant voluntarily signed the same.[8]

After their testimonies, Prosecutor Campomanes made the manifestation that “with the presentation of our witnesses and the marking of our documents (sic) we are now closing the case and that we are praying for the dismissal of the case.”[9] The respondent judge ruled “the case is submitted for decision.”[10] Atty. Flaminiano orally prayed that petitioner Alonte be granted bail and Prosecutor Campomanes offered no objection.[11]

On November 10, 1997, petitioner Alonte filed an Urgent Motion to Admit to Bail.[12] In her comment, Prosecutor Campomanes agreed and averred, viz.: [13]

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1. That she received a copy of the Petition for Bail.
2. That on the hearing of the instant case on November 7, 1997, the Prosecution presented its witnesses who vehemently signified their intention not to further prosecute the case in Court, and there being no other witnesses to present, the undersigned is left with no alternative but to seek the dismissal of the instant case considering that without the testimony of said witnesses this case has nothing to stand on in Court.
3. That for the aforestated reason, the People interposes no objection to the granting of Bail and in fact justice and equity dictate that it joins the accused in his prayer for the granting of bail in the amount of P150,000

(ONE HUNDRED FIFTY THOUSAND PESOS).

4. That for the aforementioned bases, the People hereby manifests its position that the cases be immediately dismissed or at least the accused be granted bail since the record proves that there is no more evidence to sustain the charge against him such that the granting of bail is proper and in order.

5. That as a general rule, a hearing on the petition for bail is necessary to prove that the guilt is not strong but in this particular case there is no need for hearing since the prosecution cannot prove its case against the accused as it has no other evidence or witnesses to be presented.

On November 17, 1997, petitioner Alonte, thru counsel, filed an Urgent Plea to Resolve the Motion for Bail.[14] On the same date, Prosecutor Campomanes manifested that “she deems it proper and in accord with justice and fair play to join the aforestated motion.”[15]

On November 25, 1997, December 1, 1997, December 8, 1997 and December 10, 1997, petitioner Alonte filed a Second, Third, Fourth, and Fifth Motion for early resolution of his petition for bail.[16] In all these motions, Atty. Fortun, counsel of petitioner Alonte, alleged that copy of the motion “x x x could not be served in person upon the private prosecutor” (Atty. Balbin) in light of the distance between their offices.[17] He relied on section 13, Rule 11 of the 1997 Rules on Civil Procedure. The motions were not resolved by the respondent judge.

On December 18, 1997, the respondent judge promulgated his Decision convicting the petitioners and sentencing them to reclusion perpetua. On whether of the affidavit of desistance can be a ground for dismissal of the rape case against the petitioners, the respondent judge held:

“The first issue to be determined and resolved is the ‘voluntariness and validity of petitioner’s desistance in the light of the opposition of the public prosecutor Asst. Chief State Prosecutor Leonardo Guiab.’ (p. 7, SC Resolution En Banc, dated September 2, 1997; [Rollo, p. 253]) It is appropriate to quote again a portion of the 7-page Resolution En Banc of the highest tribunal, to wit: ‘Indeed, the probability (exists) that in desisting from pursuing her complaint for rape, petitioner, a minor, may have succumbed to some illicit influence and undue pressure. To prevent possible miscarriage of justice is a good excuse to grant the petition for change of venue x x x.’ (Rollo, p. 202).

The Court shall narrate the facts leading to the desistance of the private complainant which are embodied in the two (2) affidavits of her lawyer, Atty. Remedios C. Balbin, with whom the private complainant lives at No. 5 Uranus Street, Congressional Avenue Subdivision, Quezon City. One affidavit is dated May 24, 1997, (sic) while the other one is dated March 26, 1997. The said affidavits are attached as exhibits to the aforementioned Manifestation and Motion for the Resolution of Petition for Change of Venue filed by the private complainant Juvie-lyn Y. Punongbayan. Exh. “C”, dated May 24, 1997, (Rollo, pp. 216-219) is hereby quoted as follows:

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It clearly appears in the abovequoted affidavit that repeated bribe offers from a lawyer representing the accused Mayor Bayani Arthur Alonte in the total amount of Ten Million Pesos (P10,000,000.00) were made to Atty. Balbin, allocated as follows: (1) Five Million Pesos (P5,000,000.00) for the private complainant Juvie-lyn Y. Punongbayan; (2) Three Million Pesos (P3,000,000.00) for her (Atty. Balbin); and (3) Two Million Pesos (P2,000,000.00) for the mediator.

In the subsequent affidavit, dated March 26, 1997, executed by Atty. Remedios C. Balbin (Exh. F, Rollo, pp. 224-225) she narrated in detail the continuing veiled threats and the very tempting and escalating offer to increase the amount of the bribe money offered to her and the private complainant after her first affidavit, by

doubling the first offer of Ten Million Pesos (P10,000,000.00) to Twenty Million Pesos (P20,000,000.00), in exchange for client's desistance, but also accompanied with veiled threats, if refused. Said affidavit is quoted, as follows:

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The Court underscores paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l). particularly paragraphs (i), (j) and specially paragraph (k) of the abovequoted affidavit of Atty. Balbin which insinuates that the presiding Judge of the RTC Biñan, Laguna, had already been bought, and that accused Alonte, thru his numerous emissaries, will also buy or bribe the 'the next judge when the petition for change of venue is finally granted.' In view of this insinuation, the undersigned presiding Judge is very careful in deciding this case, lest he be placed under suspicion that he is also receiving blood money that continues to flow. The Court wants to have internal peace – the peace which money cannot buy. Money is not everything. It is said that money is the root of all evil. The Holy Scriptures also remind judges and jurists: 'You shall not act dishonestly in rendering judgment, show neither partiality to the weak nor deterrence to the mighty, but judge your fellow men justly.' (Leviticus 19:15). The Scriptures further say: 'What does it profit a man if he gains the whole world but suffers the loss of his soul?' (Mt. 16:26) and 'No one can serve two (2) masters. x x x You cannot serve God and mammon.' (Mt. 6:24, Luke 16:13). It is not out of place to quote the Holy Scriptures because the Honorable Supreme Court has been doing so in its quest for truth and justice. Thus, *People vs. Garcia*, 209 SCRA 164, 174, the highest tribunal, in ruling that the flight of an accused is evidence of guilt on his part, quoted the old Testament, as follows:

"It was written in the literature of Old Testament several centuries ago that:

'The wicked man fleeth though no man pursueth, but the righteous are as bold as a lion.'

(Proverbs, 28:1)'

Subsequently, on June 25, 1997, the private complainant and her lawyer suddenly somersaulted or changed their common positions or attitudes in the prosecution of this case. Evidently, veiled threats and money had replaced the 'spiritual consideration' which earlier, to them were 'more important than the material' to quote Atty. Balbin in her first affidavit (Rollo, p. 217), and her reply to Atty. Dionisio S. Daga that 'all the money in the world will not make me change my position against my client's executing a desistance, and that only Alonte's voluntary surrender, plea of guilty to rape, conviction and the imposition of the corresponding penalty will satisfy the ends of justice.

On June 26, 1997, the private complainant, thru her counsel, Atty. Remedios C. Balbin, filed a Motion to Resume Proceedings, dated June 25, 1997, (Rollo, pp. 238-244) praying therein that the RTC, Biñan, Laguna, where this case was still pending, vacate its Order to Suspend Hearings, to enable it to act on all incidents including private Complainant's Affidavit of Desistance attached thereto. (Rollo, pp. 240-241) which affidavit of desistance is quoted hereunder as follows:

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This Court, as the trier of facts, is tasked by the highest tribunal to find out if the private complainant, a minor 'may have succumbed to some illicit influence and undue pressure, in order to prevent a possible miscarriage of justice.' Evidently, the veiled threats and acceptance of the bribe money in allocated amounts which was

subsequently raised to the irresistible amount of at least P20,000,000.00, compelled, impelled and/or tempted the private complainant, her father Pablo Punongbayan, and her mother Jule Y. Punongbayan, and her lawyer and private prosecutor Remedios C. Balbin, who did not appear in Court on November 7, 1997, despite notice, to execute the said 'Affidavit of Desistance' which was the ultimate goal of the accused. It is very obvious that the private complainant, a minor, 'succumbed to some illicit influence and undue pressure,' to borrow the language of the Honorable Supreme Court En Banc. It would be the height of extreme naivete or gullibility for any normal individual to conclude otherwise. The Court does not believe that the private complainant, her lawyer, and her parents did not receive a single centavo when they executed and signed the said affidavit of desistance. The private complainant was definitely lying and/or somebody taught her to lie when she testified in Court on November 7, 1997 that she has 'not received any single cent.'

This Court cannot close its eyes to the realities in this case. It cannot play the role of blind, deaf and dumb or one who has eyes but cannot see or refuses to see. It cannot live in a world of make believe or let us say pretend. The 'Affidavit of Desistance' executed by the private complainant, assisted by her lawyer and signed by her parents, was and is undoubtedly, heavily tainted with acceptance of bribe money which together with the continuing veiled threats accompanying the same, invalidated the said affidavit. The rule of law, and not the roll of money and threats, should and must prevail."

On December 19, 1997, petitioner Alonte filed a Motion for Reconsideration. Petitioner assailed his conviction without due process of law and the refusal of the respondent judge to dismiss the case in light of the desistance of the private complainant. He argued:

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"In *People vs. Caruncho*, L-57804, January 23, 1984, 127 SCRA 16, the Supreme Court made ineluctably clear that it is the right of an offended party to withdraw the further prosecution of a grievance especially where, as in this case, a personal offense is the subject thereof:

'... True it is, that in criminal cases society is the ultimate aggrieved party for which reason the People of the Philippines is designated as the plaintiff. True it is also that except as provided in Article 344 of the Revised Penal Code, a pardon by the private offended party does not extinguish criminal liability. And true it is further that the dropping of criminal cases by the execution of affidavits of desistance by complainants is not looked with favor. These are Hornbook doctrines. But what is actually done in our criminal justice system?" First, there is a plea bargaining between the prosecution and the defense. For instance, murder is charged but in exchange for a plea of guilty the charge is reduced to homicide and the accused is allowed to claim a number of mitigating circumstances. It is not uncommon for estafa, libel, physical injuries and even homicide cases to be dismissed because the complainant has lost interest or alleged that the complaint was filed as a result of a misunderstanding. A number of examples can be given and they can fill a book.'

Again, in *People vs. Evangelista*, L-45089, April 27, 1982, 113 SCRA 713, 720, the Supreme Court further declared:

'It may be noted that the crimes in question (forcible abduction with rape) are among those enumerated in Article 344 of the Revised Penal Code, which crimes cannot be prosecuted de officio. In other words, the crimes of abduction and rape are in the nature of private offense, inasmuch as the law has reposed 'the right to institute such proceedings exclusively and successively in the offended person, her parents, grandparents or guardian'. . . Accordingly, if after filing the complaint the offended party in the case at bar decided that she was unable to face the scandal of public trial, or, if for some private reason she preferred to suffer the outrage in silence, then, corollary to her right to institute the proceedings, she should have been allowed to withdraw the complaint and desist from prosecuting the case (Emphasis supplied)."

Petitioner Concepcion did not submit any motion for reconsideration. Without waiting for the resolution of his

motion for reconsideration, petitioner Alonte repaired to this Court. So did petitioner Concepcion.

Without doubt, the petitions at bar raise two (2) fulcrum issues: (1) the correctness of the ruling of the respondent judge that the desistance of the complainant is not a ground to dismiss the rape charge against the petitioners, and (2) the invalidity of petitioners' conviction on the ground of denial of due process.

I agree with the learned disquisition of Mr. Justice Vitug that we should set aside the conviction of the petitioners for patent violation of their right to due process of law. I write this Separate Opinion to highlight the erroneousness of the shocking stance of the State Prosecutor that the rape charge should be dismissed in view of the desistance of the private complainant. But our ruling giving no effect on the affidavit of desistance should not be based on the reason that it was procured by threat or intimidation or any payment of money as the respondent judge opined in his Decision. The respondent judge arrived at this conclusion on the basis of the affidavits of Atty. Balbin, the counsel of the private complainant. This is erroneous for Atty. Balbin was never called to the witness stand to testify on the truth of her affidavits. Her affidavits therefore are hearsay evidence and should not have been relied upon by the respondent judge. The affidavit of desistance cannot abort the rape charge against petitioners on the simple ground that it did not state that the private complainant-affiant was not raped by petitioner Alonte. In truth, the private complainant affirmed her earlier Reply-Affidavit where she narrated in detail how petitioner Alonte raped her. Moreover, the rape charge has been filed in Court and it is not anymore the absolute privilege of the complainant to desist from continuing with the case.

This separate opinion unequivocally addresses the issue of whether the desistance of the victim can stop the further prosecution of the petitioners.

I

In Philippine jurisprudence, desistance has been equated with recantation or retraction.

To "recant" means "to withdraw or repudiate formally and publicly;"[18] "to renounce or withdraw a prior statement." [19] To "retract" means "to take back;" "to retract an offer is to withdraw it before acceptance." [20] A recantation usually applies to a repudiation by a complainant or a witness, either for the prosecution or the defense, who has previously given an extra-judicial statement [21] or testimony in court. [22] Repudiation may be made in writing, i.e., by sworn statement, [23] or by testifying on the witness stand. [24]

Mere retraction by a witness or by complainant of his or her testimony does not necessarily vitiate the original testimony or statement, if incredible. [25] The general rule is that courts look with disfavor upon retractions of testimonies previously given in court. [26] This rule applies to crimes, [27] offenses [28] as well as to administrative offenses. [29] The reason is because affidavits of retraction can easily be secured from poor and ignorant witnesses, usually through intimidation or for monetary consideration. [30] Moreover, there is always the probability that they will later be repudiated [31] and there would never be an end to criminal litigation. [32] It would also be a dangerous rule for courts to reject testimonies solemnly taken before courts of justice simply because the witnesses who had given them later on changed their minds for one reason or another. This would make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. [33]

The general rule notwithstanding, the affidavit should not be peremptorily dismissed as a useless scrap of paper. There are instances when a recantation may create serious doubts as to the guilt of the accused. [34] A retracted statement or testimony must be subject to scrupulous examination. The previous statement or testimony and the subsequent one must be carefully scrutinized. The veracity of each statement or testimony must be tested by the credibility of the witness which is left for the judge to decide. [35] In short, only where there exists special circumstances in the case which when coupled with the retraction raise doubts as to the truth of the testimony or

statement given, can a retraction be considered and upheld.[36]

A survey of our jurisprudence reveals that the same rule has been applied to affidavits of desistance.[37] An affidavit of desistance is understood to be a sworn statement executed by a complainant in a criminal or administrative case that he or she is discontinuing the action filed upon his or her complaint for whatever reason he or she may cite. The court attaches no persuasive value to a desistance especially when executed as an afterthought.[38] However, as in retractions, an affidavit of desistance calls for a reexamination of the records of the case.[39]

In private crimes, an affidavit of desistance filed by a private complainant is also frowned upon by the courts. Although such affidavit may deserve a second look at the case, there is hardly an instance when this Court upheld it in private crimes and dismissed the case on the sole basis thereof. Indeed, a case is not dismissed upon mere affidavit of desistance of the complainant. Particularly where there exist special circumstances that raise doubts as to the reliability of the affidavit.[40]

Usually in private crimes, an affidavit of desistance is executed by the private complainant after pardoning and forgiving the offender. In this instance, the court treats the affidavit as an express pardon.[41] It does not ipso facto dismiss the case but determines the timeliness and validity thereof.

Private crimes are crimes against chastity such as adultery and concubinage, seduction, abduction, rape and acts of lasciviousness. Their institution, prosecution and extinction are governed by Article 344 of the Revised Penal Code, viz:

“Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness. - - The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape, or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor in any case, the offender has been expressly pardoned by the above-named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.”

Private crimes cannot be prosecuted except upon complaint filed by the offended party. In adultery and concubinage, the offended party must implead both the guilty parties and must not have consented or pardoned the offenders. In seduction, abduction, rape and acts of lasciviousness, the complaint must be filed by the offended party or her parents, grandparents or guardian. The complainant must not have expressly pardoned the offender.

Article 344 also provides for the extinction of criminal liability in private crimes. It mentions two modes: pardon and marriage, which when validly and timely made, result in the total extinction of criminal liability of the offender.[42] The pardon in private crimes must be made before the institution of the criminal action.[43] In adultery and concubinage, the pardon may be express or implied while in seduction, abduction, rape and acts of lasciviousness, the pardon must be express. In all cases, the pardon must come prior to the institution of the criminal action. After the case has been filed in the court, any pardon made by the private complainant, whether

by sworn statement or on the witness stand, cannot extinguish criminal liability. The only act that extinguishes the penal action and the penalty that may have been imposed is the marriage between the offender and the offended party.[44]

As this Court declared in the case of *Donio-Teves v. Vamenta, Jr.*:[45]

“The term “private crimes” in reference to felonies which cannot be prosecuted except upon complaint filed by the aggrieved party, is misleading. Far from what it implies, it is not only the aggrieved party who is offended in such crimes but also the State. Every violation of penal laws results in the disturbance of public order and safety which the State is committed to uphold and protect. If the law imposes the condition that private crimes like adultery shall not be prosecuted except upon complaint filed by the offended party, it is, as herein pointed earlier “out of consideration for the aggrieved party who might prefer to suffer the outrage in silence rather than go through the scandal of a public trial.” Once a complaint is filed, the will of the offended party is ascertained and the action proceeds just as in any other crime. This is shown by the fact that after filing a complaint, any pardon given by the complainant to the offender would be unavailing. It is true, the institution of the action in so-called private crimes is at the option of the aggrieved party. But it is equally true that once the choice is made manifest, the law will be applied in full force beyond the control of, and in spite of the complainant, his death notwithstanding.”

The filing of a complaint in private crimes is merely condition precedent to the exercise by the proper authorities of the power to prosecute the guilty parties.[46] It is the complaint that starts the prosecutory proceeding without which the fiscal and the court cannot exercise jurisdiction over the case.[47] Once the complaint is filed, the action proceeds just as in any other crime.

We follow the postulate that a criminal offense is an outrage to the sovereign state[48] and the right of prosecution for a crime is one of the attributes of the sovereign power.[49] Thus, criminal actions are usually commenced by the State, through the People of the Philippines, and the offended party is merely a complaining witness.[50] In private crimes, however, or those which cannot be prosecuted *de officio*, the offended party assumes a more predominant role since the right to commence the action or refrain therefrom, is a matter exclusively within his power and option.[51] The sovereign state deems it the wiser policy, in private crimes, to let the aggrieved party and her family decide whether to expose to public view the vices, faults and disgraceful acts occurring in the family.[52] But once the offended party files the complaint, her will is ascertained and the action proceeds just as in any other crime. The decision of the complainant to undergo the scandal of a public trial necessarily connotes the willingness to face the scandal.[53] The private complainant is deemed to have shed off her privacy and the crime ceases to be “private” and become “public.” The State, through the fiscal, takes over the prosecution of the case and the victim’s change of heart and mind will not affect the State’s right to vindicate the outrage against the violation of its law.[54]

This is the reason why pardon in crimes of chastity must come before the institution of the criminal action. Pardon by the offended party extinguishes criminal liability when made while the crime is still “private” and within the control of the offended party. But once the case is filed in court, the pardon cannot *ipso facto* operate to dismiss the case. After the institution of the criminal action, any pardon given by the complainant to the offender would be unavailing,[55] except of course when the offender validly marries the offended party.[56] The offended party’s pardon of the offender in a seduction case after the criminal action had been instituted constitutes no bar to said action.[57] A pardon given in a rape case after the filing of the action in court “comes too late to hide the shameful occurrence from public notice.”[58]

Even the death of the offended party cannot extinguish the case once it is filed in court.[59] If the offended party dies immediately after filing the complaint but before the institution of the criminal action, his death is not a

ground to dismiss the case.[60] Clearly, the will and participation of the offended party is necessary only to determine whether to file the complaint or not. Thereafter, the will of the State prevails.

Article 344 does not include desistance of the offended party from prosecuting the case as a ground for extinction of criminal liability whether total[61] or partial.[62] Hence, only when the desistance is grounded on forgiveness and pardon and is made before the institution of the criminal action, can it extinguish criminal liability. Desistance, per se, is not equivalent to pardon.

In the case at bar, the “Affidavit of Desistance” of Juvielyn is not an express pardon of the accused and the crime committed. Private complainant desisted from prosecuting the case against the petitioners because she wished “to start life anew and live normally again.” She reiterated this reason on the witness stand. She complained that members of the media were bothering and harassing her and that she wanted to go back to her normal life. She never said that she forgave the petitioners. She did not absolve them from their culpability. She did not give any exculpatory fact that would raise doubts about her rape. She did not say that she consented to petitioner Alonte’s acts. Moreover, the rape case is already in court and it is no longer her right to decide whether or not the charge should be continued. As we held in *Crespo v. Mogul*: [63]

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“The rule in this jurisdiction is that once a complaint or information is filed in court any disposition of the case as to its dismissal or conviction or acquittal of the accused rests in the sound discretion of the court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.”

II

The next issue is the validity of the conviction of petitioners. Petitioners contend that they were convicted without undergoing any trial. Respondent judge insists otherwise. He claims that petitioners submitted the case on the merits and relied principally on the Affidavit of Desistance. He recounts the events that took place before the presentation of private complainant as revealed by the transcripts of November 7, 1997, viz:

“Prosecutor Campomanes

Your Honor, the complaining witness/private complainant Juvielyn Punongbayan is present here in Court, and a while ago, I was given a copy of her Affidavit of Desistance, so I would like to present her in order to attest to the veracity of her Affidavit of Desistance, your Honor, and for the Court to her testimony.

Court

We will have a separate trial, this involved a heinous offense and that there is not even any plea-bargaining in this case.

Prosecutor Campomanes

Yes, your Honor, I understand that.

Court

So you have to mark now your documentary evidence in preparation for trial.

Prosecutor Campomanes

Yes, your Honor.

Court

There are many documentary evidence mentioned by the Supreme Court in its seven (7) page . . . (may I see the record) seven (7) page resolution, dated September 2, 1997, and that this case was assigned to this Court as the trial Judge. This Court has already arraigned the accused and he pleaded not guilty, and so the next step is pre-trial. The Order of the Supreme Court is to direct this Court not only to determine the voluntariness but also the validity of the Affidavit of Desistance mentioned by the Court which was also brought to the attention of the Supreme Court.

Prosecutor Campomanes

And to the Department of Justice likewise your Honor.

Court

And that's why the Supreme Court instead of resolving it sent the records to this Court to determine the voluntariness and the validity of the Desistance, but they must be determined after trial on the merits.

Prosecutor Campomanes

Your Honor please, representing the people. Its events now will prove that there is no more need for the prosecution to go on trial of this case, considering that the private complainant herself had already furnished the Department of Justice a copy of her Affidavit of Desistance.

Court

What does it say there?

Prosecutor Campomanes

That she is no longer interested in further prosecuting this case, and that she is now desisting in going to full blown trial, and considering your Honor, further that this is a private offense, then, the Department of Justice feels that it can not be more popish than the Pope.

Court

That is the stand of the Department of Justice. But the Supreme Court belongs to a different Department, I am governed by the Supreme Court, because I am a Judge, I am not from the Department of Justice.

Prosecutor Campomanes

We are all aware your Honor, that we will just be prolonging the agony, in fairness to everybody, considering that we are representing the people, but we are not representing only . . . the Department of Justice is not only representing the complainant in this case but we are also for justice to be rendered to the respondent as well.

Court

I am rendering fair justice to everyone. That is the sense of this Court. That is the perception of this Court with respect to the Supreme Court resolution, in the first place, that Affidavit does not negate the commission of the crime. You want us to dismiss this case when the Affidavit does not negate the commission of the crime?

Prosecutor Campomanes

That's why we will be presenting her in Open Court, your Honor.

Court

Just to affirm that?

Prosecutor Campomanes

No to prove. . .

Court

What happened... how about the Prosecution Department, they have control of the prosecution, and the offended party herself, has not negated the commission of the crime, is there anything there to show that she did not. . . that the accused . . . did not commit the crime charged?

Prosecutor Campomanes

That's why we will be presenting her in Court, whatever is not here will be clarified.

Court

So, we will go to a trial on the merits you present that affidavit, that's a part of your evidence.

Prosecutor Campomanes

The people is ready to present that. . . the complaining witness.

Court

We will have a trial on the merits.

Prosecutor Campomanes

Your Honor please, being a woman, I have extensively discussed this matter with the complaining witness and she intimated to this representation that she can not bear another day of coming here, with all these people staring at her with everybody looking at her as if she is something. . . .

Court

On December 13, 1996, petitioner Punongbayan through private counsel, Atty. Remedios C. Balbin and the Assistant State Prosecutor Guiab, Jr. who is not here both were relieved and changed with a new lady prosecutor, prayed that the case be tried by the Regional Trial Court of Manila, they cited the following grounds: 'THE GREAT DANGER TO THE LIVES OF BOTH PRIVATE COMPLAINANT AND THE IMMEDIATE MEMBERS OF HER FAMILY AND THEIR WITNESSES AS THEY OPENLY IDENTIFIED THE PRINCIPAL ACCUSED MAYOR ALONTE WHO IS ACKNOWLEDGED AS A POWERFUL POLITICAL FIGURE AND ALMOST AN INSTITUTION IN BIÑAN LAGUNA AND [THE] GREAT DANGERS TO THE LIVES OF WITNESSES WHO OTHERWISE WISH TO COME OUT IN THE OPEN AND TESTIFY ON THE MORAL AND CRIMINAL ACTIVITIES OF BOTH ACCUSED PERPETRATED UPON VERY YOUNG GIRLS STUDENTS OF BIÑAN LAGUNA THAT WILL NOT DO SO IN THE TERMS OF THE ACCUSED MAYOR" that is why it was the prayer of the offended party and the Supreme Court granted the Motion for Change of Venue, and we are now on a new venue, where the danger to the lives of the witness is no longer present, on January 7, 1997, Alonte filed an Opposition thereto, and on April 23, 1997, the petitioner, the offended party through the Honorable Secretary of Justice Teofisto Guingona and Chief State Prosecutor Jovencio Zuno filed a Manifestation and Motion for Resolution for the Petition For the Change of Venue. Attached to the motion of the Honorable Secretary of Justice Guingona and Chief State Prosecutor Jovencito Zuño were the affidavits of the petitioner, her lawyer, Atty. Remedios Balbin, Dolores

Yambao, Bienvenido Salandanan and Evelyn Celso with their contention that the prosecution witnesses and the private counsel of petitioner are exposed to kidnapping, harassment, grave threats and tempting offers of bribe money, that was the stand of your department . . . And then later on June 28, 1997 . . . we have to review this case because this involves public interest . . . On June 23, 1997, Atty. Casano in behalf of the oppositors, two (2) oppositors, filed a motion to dismiss the petition for change of venue in the Supreme Court on the ground that it has become moot, he alleges that the petitioner despite the motion to resume the proceedings in criminal case no. 96-19-B in said motion, the petitioner informed the court that she is desisting . . . informed the Supreme Court that she is desisting from proceeding with the case, it is the same affidavit she prayed that the trial Court, on her affidavit of desistance . . . Atty. Casano also submitted to this Court, to the Supreme Court the manifestation of the petitioner joining the oppositor's prayer to dismiss her petition to a change of venue, the manifestation was also signed by Atty. Remedios Balbin as private prosecutor, the Supreme Court required Assistant Chief State Prosecutor Leonardo Guiab to comment on the motion to dismiss filed by Atty. Casano which involve the same affidavit that you have just read. On August 22, 1997, assistant Chief State Prosecutor Guiab filed his comment, he alleged that he is not aware of the desistance of the petitioner in criminal case no 96-19-B, and in said desistance there is two (2) legal effect, [that] the public prosecutor has the control and direction of the prosecution in criminal action, he prayed for the denial of the Motion to Dismiss and reiterated his petition for change of venue, the Supreme Court granted the change of venue and in granting the change of venue the highest tribunal which we are all subordinates, says: for the record, in their manifestation and motion for the resolution of petition to a change of venue the Secretary of Justice and Chief State Prosecutor submitted various affidavits in support of their allegations that prosecution witnesses and private legal counsel are exposed to KIDNAPPING, HARASSMENT, GRAVE THREATS, AND TEMPTING OFFERS OF BRIBE MONEY all intended to extract an affidavit of desistance from the private complainant, this is now the affidavit of desistance in her affidavit dated December 16, 1996, the petitioner the offended party, the herein offended party Juvielyn Punongbayan alleged etc . . . etc . . . in support of her petition and then she alleged that during the last week of February, 1997, she was visited by one Lourdes Salaysay, she stated that Mrs. Salaysay told her that Mrs. Alonte, wife of Mayor Alonte requested her to settle Alonte's case, she was informed that Mrs. Alonte was offering P10,000,000.00, will send her to school and give her house and send her parents abroad, Atty. Remedios C. Balbin is not here now, I am just quoting the Supreme Court, counsel, private counsel of petitioner also executed an affidavit dated February 1997, quote, the Supreme Court quote to them: to put on record the attempting, influence, directly, in exchange of valuable consideration, that the Rape charge against Mayor Bayani Arthur Alonte, she alleged that in two (2) occasions Atty. Romero conveyed to me the message of Mayor Alonte, namely: to drop the rape case against him, and that he would give a consideration of P10,000,000.00 to be apportioned as follows: P5,000,000.00, for the private complainant, your client and the prosecutor P3,000,000.00 for me as private prosecutor, that is why Atty. Balbin said, P4,000,000.00 for her, the mediator, so there seems to be a liberal flow of blood money, that is why the Supreme Court ordered the Court to determine the validity, and there is another, dated March 19, 1997. I have to remind everybody about what happened, this thing did not come from me, I am not fabricating anything this comes from the highest tribunal jurat, to whom I am responsible, another affidavit of Atty. Balbin, she narrated the continuing attempts to bribe her and threatened her, so there were continuing events, they alleged, the People's Bureau, Office of the Mayor of Quezon City, extensively discuss the squatting case with against his client, that after a brief exchange on the status of the case, they confided to me his real purpose, that it started of by saying he was the legal counsel of the gambling lords of Malabon for which he get a monthly retainer of P15,000.00 exclusive of transportation expenses, but he also stated that he knows all the network of the gambling lord throughout the country, which is quite strong and unified, that I then ask him "what do you mean?" "Is Alonte into gambling too, that he is part of the network you speak of?", that Atty. Daga did not reply, but instead said, they are prepared to double the offer made to by Atty. Romero which was published in the newspaper at P10,000,000.00, so, its double, double your money, so its P20,000,000.00, that I told him, its Atty. Balbin, that all the money in the world, all the money in the world will not make me change my position against my client executing a desistance and that Alonte's voluntary surrender plea of guilty to rape, conviction, and all the imposition of the corresponding penalty will satisfy the ends of justice, but I told

him, that my client's case is not isolated, there being five (5) other minors similarly placed and Alonte's will be stopped from doing more harm than that Atty. Daga, then told me in Filipino if you do not accede to a desistance, then they will be forced to but because he did not [complete] the sentence I asked him directly, what do you mean, what do you intend to do, and he replied, go on with the case, [buy] the judge, [buy] the judge, that I am believing, and I reacted saying, but they have already done so, Judge Francisco Binan, Judge Francisco Binan suddenly change his attitude towards the prosecution, perhaps you are referring to the next judge when the petition for change of venue is finally granted that Atty. Daga did not reply, and he reiterated that his principal, referring to them again as gambling lords, wanted desistance, after which he excused himself and left, that I execute this affidavit, as Atty. Balbin attests to the truth of the incident with Atty. Dionisio Daga which occurred in the afternoon of March 6, 1997 at my office, starting . . . (JUDGE READING THE RECORDS OF THE CASE)

Court

Then, the Supreme Court said, these affidavits, the one attached gave specific names, dates and methods . . . a coercion of corruption, the prosecution of Criminal Case No. 96-19-B 9JUDGE CONTINUED READING THE RECORDS OF THE CASE) that is desisting for pursuing her complaint for Rape petitioner a minor, they have . . . illicit influence and due pressure to prevent . . . Criminal Case No. 96-19-B to any of its Branch, just to call the Criminal Case No. 96-19-B shall be raffled, shall result the petitioner's motion, to resume proceedings, filed in Branch 26, in the RTC of Laguna, to determine the voluntariness and validity of petitioner's desistance in the light of the position of the public prosecutor, Assistant Chief Prosecutor Leonardo Guiab . . . I don't know what will be the outcome . . . you may contend that because of that affidavit of the desistance there is reasonable doubt . . . etc . . . but still, that will be placing the cart before the horse . . . you have to go to a regular trial on the merits . . . because this is a heinous offense which cannot . . . and during the pre-trial cannot be subject to a plea-bargaining, and with respect to its new law which took effect in 1993, that is a new one, it was placed to the category of a heinous offense x x x

Prosecutor Campomanes

So we go on trial your Honor, and we will present the complaining witness, and let the Court decide on the basis of the complainants testimony . . . private complainants testimony, before this Honorable Court . . .

xxx

Prosecutor Campomanes

That's why we are presenting the private complainant, the principal witness, the mother who is also a signatory to this affidavit of desistance, they have already signed these affidavit of desistance.

Court

And we also have the affidavits mentioned by the Supreme Court, because I was . . . all of those documents in the determination of whether that affidavit is valid.

Prosecutor Campomanes

Yes, your Honor.

Court

We . . . the Court cannot close his eyes to the other affidavits . . . because . . . that's why precisely the Supreme Court ordered me to hear this case.

Prosecutor Campomanes

We understand that your Honor.

Court

There are any conflicting matters to be solve . . . conflicting matters to be tackled in this case.

Prosecutor Campomanes

May we present the private complainant, your Honor . . .”[64]

The records show that the hearing of November 7, 1997 was set for arraignment of the petitioners[65] After the counsels made their respective appearances, Prosecutor Campomanes presented her authority to appear as prosecutor in lieu of Asst. Chief State Prosecutor Guiyab, Jr. Both petitioners pleaded not guilty to the charge. Respondent judge then set the case for pretrial which the parties, however, waived. The proceedings continued and Prosecutor Campomanes manifested there was no need for the prosecution to go to trial in view of the Affidavit of Desistance of the private complainant. Respondent judge, however, observed that private complainant did not negate the commission of the crime in her Affidavit of Desistance. Respondent judge expressed his misgivings on the validity of the Affidavit of Desistance because of the September 2, 1997 Resolution of this Court citing affidavits where allegations of bribery were made to extract said affidavit from complainant. Prosecutor Campomanes then offered to present the private complainant to attest to the voluntariness and veracity of her Affidavit of Desistance. Respondent judge averred whether the court should proceed to a trial on the merits. Prosecutor Campomanes declared that they could go on trial and let the court decide the merits of the case on the basis of the testimony of private complainant and the other witnesses. It was then that private complainant was presented as a witness.

From the garbled transcripts of the hearing on November 7, 1997, it is not clear what both respondent judge and the public prosecutor intended the proceedings to be. Respondent judge repeatedly declared that the proceedings before him was to be a trial on the merits. The private prosecutor agreed to go trial, but at the same time moved to present private complainant and her witness to testify on the voluntariness of her Affidavit of Desistance. Respondent judge and the public prosecutor were, obviously, not tuned in to each other.

I agree with the majority that the November 7, 1997 proceedings could not have been a trial on the merits. First of all, the proceedings did not conform with the procedure for trial as provided in the 1985 Rules on Criminal Procedure. Section 3 of Rule 119 provides:

“Sec. 3. Order of Trial. - - The trial shall proceed in the following order:

- (a) The prosecution shall present evidence to prove the charge and, in the proper case, the civil liability.
- (b) The accused may present evidence to prove his defense, and damages, if any, arising from the issuance of any provisional remedy in the case.
- (c) The parties may then respectively present rebutting evidence only, unless the court, in furtherance of justice, permits them to present additional evidence bearing upon the main issue.
- (d) Upon admission of the evidence, the case shall be deemed submitted for decision unless the court directs the parties to argue orally or to submit memoranda.
- (e) However, when the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified accordingly.”

In the case at bar, petitioners were never instructed to present evidence to prove their defenses. The parties were never given the opportunity to present their respective evidence rebutting the testimony of private complainant. There was no admission by petitioners of the charge in the information as to justify a change in the order of trial.[66]

Our criminal rules of procedure strictly provide the step by step procedure to be followed by courts in cases punishable by death.[67] This rule also applies to all other criminal cases, particularly where the imposable penalty is reclusion perpetua. The reason for this is to assure that the State makes no mistake in taking life and liberty except that of the guilty.[68] Thus:

“Judges should be reminded that each step in the trial process serves a specific purpose. In the trial of criminal cases, the constitutional presumption of innocence in favor of the accused requires that an accused be given sufficient opportunity to present his defense. So with the prosecution as to its evidence.

Hence, any deviation from the regular course of trial should always take into consideration the rights of all the parties to the case, whether the prosecution or defense.”[69]

Second, the admission of private complainant’s affidavit of October 21, 1996 was made solely in response to respondent judge’s own questioning.[70] It was this affidavit which respondent judge used to convict the petitioners. This affidavit, however, was not marked nor was it formally offered before the court. The Revised Rules on Evidence clearly and expressly provide that “[t]he court shall consider no evidence which has not been formally offered.”[71] Evidence not formally offered in court will not be taken into consideration by the court in disposing of the issues of the case. Any evidence which a party desires to submit for the consideration of the court must formally be offered by him,[72] otherwise it is excluded and rejected.[73]

Third, where there is a doubt as to the nature of the criminal proceedings before the court, this doubt must be resolved in favor of the accused who must be given the widest latitude of action to prove his innocence.[74] It is in petitioners’ favor that the proceedings of November 7, 1997 be treated as a hearing on the motion to dismiss, not a trial on the merits. To rule otherwise will effectively deny petitioners due process and all the other rights of an accused under the Bill of Rights and our Rules in Criminal Procedure.

Indeed, following respondent judge’s finding and assuming that the November 7, 1997 hearing was already a trial on the merits, petitioners were never afforded their right to confront and cross-examine the witness. The court did not, at the very least, inquire as to whether the petitioners wanted to cross-examine private complainant with respect to her affidavit of October 21, 1996. No opportunity to cross-examine was afforded petitioners and their counsels such that they cannot be deemed to have waived said right by inaction.[75]

[1] TSN, November 7, 1997, p. 3.

[2] TSN, op. cit., p. 1.

[3] Ibid., p. 5.

[4] Ibid., p. 40.

[5] Ibid., p. 29.

[6] Ibid., p. 46-55.

[7] Ibid., p. 56-63.

[8] Ibid., p. 64-70.

[9] Ibid., p. 70.

[10] Ibid.

- [11] Ibid.
- [12] Annex “G”, Petition of Alonte.
- [13] Annex “H”, Petition of Alonte.
- [14] Annex “I,” Petition of Alonte.
- [15] Annex “J,” Petition of Alonte.
- [16] Annexes “K,” “K-1,” “L,” and “M,” Petition of Alonte.
- [17] The Office of Atty. Fortun is in Makati while the Office of Atty. Balbin is only in Quezon City.
- [18] “Recant,” Black’s Law Dictionary, 6[TH] ed. [1990].
- [19] “Recant.” Words and Phrases Vol. 36 citing Llanes-Senarillos v. U.S. C.A. Cal. 177 F. 2d, 164, 166.
- [20] A retraction also is “[i]n law of defamation, a formal recanting of the defamatory material; in probate practice, a withdrawal of a renunciation” (“Retraction,” Black’s Law Dictionary 6[TH] ed. [1990]).
- [21] People v. del Pilar, 188 SCRA 37 [1990]; People v. Aldeguer, See del Pilar footnote.
- [22] People v. Davatos, 229 SCRA 647, 651 [1994]; People v. De Leon, 245 SCRA 538, 544 [1995]; People v. Joya, 227 SCRA 9, 26-27 [1993].
- [23] People v. del Pilar, supra; People v. Joya, supra; People v. de Leon, supra; People v. Liwag, 225 SCRA 46, 52 [1993].
- [24] People v. Davatos, supra, at 650; People v. Ubina, 97 Phil. 515 [1955].
- [25] Lopez v. Court of Appeals, 239 SCRA 562, 565 [1994]; People v. Dulay, 217 SCRA 103 [1993].
- [26] See Reano v. Court of Appeals, 165 SCRA 525, 530 [1988] for other citations. A retraction or recantation by a witness or complainant has often been resorted to as a ground for new trial. The court has consistently ruled against the grant of a new trial on the basis of a retraction by a witness.
- [27] People v. de Leon, 245 SCRA 538, 546 [1995]; People v. Detalla, 170 SCRA 522, 529 [1989]; People v. Genilla, 18 SCRA 12, 16 [1966] - - all on murder. Alonzo v. Intermediate Appellate Court, 151 SCRA 552, 562 [1987] - - on falsification of public document. People v. Ibal, 143 SCRA 317, 325 [1986] - - on rape.
- [28] Lopez v. Court of Appeals, 239 SCRA 562, 565 [1994] - - a violation of the Anti-Carnapping Law of 1972; People v. Romero, 224 SCRA 749 [1993] - - on illegal recruitment ; People v. del Pilar, 188 SCRA 37 [1990] - - on violation of the Dangerous Dugs Act of 1972.
- [29] Celis v. Marquez, 138 SCRA 256, 259 [1985]; Bais v. Tugaoen, 89 SCRA 101, 109 [1979]; Sotero v. Bautista, 78 SCRA 75, 77, [1977].
- [30] People v. Liwag, supra; People v. Joya, supra; Reano v. Court of Appeals, supra.
- [31] Lopez v. Court of Appeals, supra, at 565; People v. Clamor, 198 SCRA 642 [1991]; Reano v. Court of Appeals, supra, see also United States v. Acacio, 37 Phil. 70, 71 [1917] - - where the defendant made nine (9) conflicting confessions and statements.
- [32] Gomez v. Intermediate Appellate Court, 135 SCRA 621, 631 [1985]; People v. Pimentel, 118 SCRA 695, 704 [1982]; Reyes vs. People, 71 Phil. 598, 599 [1941].

[33] *People v. Joya*, supra, at 26-27; *People v. Davatos*, supra, at 651; *People v. Galicia*, 123 SCRA 550, 556 [1983]; *People v. Ubina*, 97 Phil. 515, 526 [1955].

[34] *Gomez v. Intermediate Appellate Court*, 135 SCRA 620, 631 [1985]; *People v. Pimentel*, 118 SCRA 695, 704 [1982].

[35] With respect to sworn statements - - *People v. Del Pilar*, 188 SCRA 37, 44-45 [1990]; with respect to testimonies in court - - *Lopez v. Court of Appeals*, supra, at 565; *Reano v. Court of Appeals*, supra, at 530-531; *People v. Ubina*, supra.

[36] *Gomez v. Court of Appeals*, supra; *People v. Pimentel*, supra.

[37] *People v. Romero*, supra, at 757; *People v. Junio*, 237 SCRA 826, 834 [1994]; *People v. Lim*, 190 SCRA 706, 715 [1990]; *Gomez v. Intermediate Appellate Court*, supra, at 631; *People v. Pimentel*, supra, at 702-704.

[38] *People v. Romero*, 224 SCRA 749, 757 [1993].

[39] *Gomez v. Intermediate Appellate Court*, supra; *People v. Pimentel*, supra.

[40] *People v. Junio*, supra, at 834; *People v. Lor*, 132 SCRA 41, 47 [1984]; *People v. Avila*, 192 SCRA 635, 642-643 [1990].

[41] *People v. Entes*, 103 SCRA 162, 166-167 [1981]; *People v. Junio*, supra, at 834-835; *People v. Avila*, supra, at 642-643; *People v. Lor*, supra, at 47-48.

[42][See Article 89, Revised Penal Code.]

[43] *People v. Entes*, supra, at 167 - - on rape; *People v. Miranda*, 57 Phil. 274 [1932] - - qualified seduction.

[44] *People v. Miranda*, supra, at 275.

[45] 133 SCRA 616, 625 [1984].

[46] *Valdepenas v. People*, 16 SCRA 871, 876-877 [1966].

[47] *Id.*, *People v. Babasa*, 97 SCRA 672, 680 [1980]; *Pilapil v. Ibay-Somera*, 174 SCRA 653, 660 [1988].

[48][*People vs. Romero*, 224 SCRA 749, 757 [1993].]

[49] *United States v. Pablo*, 35 Phil. 94, 100 [1916].

[50] *Pilapil v. Ibay-Somera*, supra at 661 [1989].

[51] *Id.*

[52] *United States v. Bautista*, 40 Phil. 735, 743 [1920].

[53] *Valdepenas v. People*, supra, at 877.

[54] *People v. Romero*, supra, 754-758.

[55] *People v. Avila*, 192 SCRA 635, 643 [1990].

[56] Article 344, Paragraph 4, Revised Penal Code; *Laceste v. Santos*, 56 Phil. 472 [1932]; *People v. Vicente Mariano*, 50 Phil. 587 [1927].

[57] *People v. Miranda*, supra; also cited in *Francisco, R.*, *Criminal Procedure*, Rules 110-127, p. 47 [1996].

[58] *People v. Lualhati*, 171 SCRA 277, 283 [1989].

[59] *Donio-Teves v. Vamenta, Jr.*, *supra*.

[60] *People v. Ilarde*, 125 SCRA 11, 17-18 [1983].

[61] Article 89 of the Revised Penal Code provides:

“Art. 89. How criminal liability is totally extinguished.- Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
2. By service of sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.”

[62] Article 94 of the Revised Penal Code provides:

“Art. 94. Partial extinction of criminal liability. - Criminal liability is extinguished partially:

1. By conditional pardon;
2. By commutation of sentence; and
3. For good conduct allowances which the culprit may earn while he is serving his sentence.”

[63] 151 SCRA 462, 471 [1987].

[64] Comment of Respondent Judge Savellano, pp. 14-23, citing portions of the TSN of November 7, 1997.

[65] Notice of Hearing, Annex “3” to the Comment of Respondent Judge Savellano.

[66] Consolidated Comment of the Solicitor General, p. 41.

[67] *People v. Diaz*, 254 SCRA 734, 742 [1996].

[68] *Id.*

[69] *Tabao v. Espina*, 257 SCRA 298, 305 [1996].

[70] TSN of Nov. 7, 1997, pp. 18, 21.

[71] Sec. 34, Rule 132 C, Revised Rules on Evidence; *Veran v. Court of Appeals*, 157 SCRA 438, 446 [1988].

[72] *De Castro v. Court of Appeals*, 75 Phil. 824, 834 [1946]; see also Francisco, *Handbook on Evidence*, p. 390 [1984].

[73] Martin, *Revised Rules on Evidence*, pp. 593-594 [1989]; Moran, *Comments on the Rules of Court*, vol. 6, p. 124 [1980].

[74] See *People v. Mahinay*, 246 SCRA 451, 459 [1995]; *People v. Mamacol*, 81 Phil. 543, 545 [1948].

[75] *De la Paz v. Intermediate Appellate Court*, 154 SCRA 5, 71-73 [1987]; *People v. Caparas*, 102 SCRA 781, 790 [1981]; *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, 62 SCRA 258, 263-267 [1975]; also cited in *Herrera*, Remedial law, vol. 4, pp. 343-344 [1992].

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