

**PEOPLE OF THE PHILIPPINES, THE SECRETARY OF JUSTICE,
DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE, CHIEF
STATE PROSECUTOR JOVENCITO ZUÑO, STATE PROSECUTORS
PETER L. ONG AN...**

G.R. No. 149453. April 01, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is the petitioners' Motion for Reconsideration[1] of the Resolution[2] dated May 28, 2002, remanding this case to the Regional Trial Court (RTC) of Quezon City, Branch 81, for the determination of several factual issues relative to the application of Section 8 of Rule 117 of the Revised Rules of Criminal Procedure on the dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 filed against the respondent and his co-accused with the said court. In the aforesaid criminal cases, the respondent and his co-accused were charged with multiple murder for the shooting and killing of eleven male persons identified as Manuel Montero, a former Corporal of the Philippine Army, Rolando Siplon, Sherwin Abalora, who was 16 years old, Ray Abalora, who was 19 years old, Joel Amora, Jevy Redillas, Meleubren Sorronda, who was 14 years old,[3] Pacifico Montero, Jr., of the 44th Infantry Battalion of the Philippine Army, Welbor Elcamel, SPO1 Carlito Alap-ap of the Zamboanga PNP, and Alex Neri, former Corporal of the 44th Infantry Battalion of the Philippine Army, bandied as members of the Kuratong Baleleng Gang. The respondent opposed petitioners' motion for reconsideration.[4]

The Court ruled in the Resolution sought to be reconsidered that the provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 were with the express consent of the respondent as he himself moved for said provisional dismissal when he filed his motion for judicial determination of probable cause and for examination of witnesses. The Court also held therein that although Section 8, Rule 117 of the Revised Rules of Criminal Procedure could be given retroactive effect, there is still a need to determine whether the requirements for its application are attendant. The trial court was thus directed to resolve the following:

... (1) whether the provisional dismissal of the cases had the express consent of the accused; (2) whether it was ordered by the court after notice to the offended party; (3) whether the 2-year period to revive it has already lapsed; (4) whether there is any justification for the filing of the cases beyond the 2-year period; (5) whether notices to the offended parties were given before the cases of respondent Lacson were dismissed by then Judge Agnir; (6) whether there were affidavits of desistance executed by the relatives of the three (3) other victims; (7) whether the multiple murder cases against respondent Lacson are being revived within or beyond the 2-year bar.

The Court further held that the reckoning date of the two-year bar had to be first determined whether it shall be from the date of the order of then Judge Agnir, Jr. dismissing the cases, or from the dates of receipt thereof by the various offended parties, or from the date of effectivity of the new rule. According to the Court, if the cases were revived only after the two-year bar, the State must be given the opportunity to justify its failure to comply with the said time-bar. It emphasized that the new rule fixes a time-bar to penalize the State for its inexcusable delay in

prosecuting cases already filed in court. However, the State is not precluded from presenting compelling reasons to justify the revival of cases beyond the two-year bar.

In support of their Motion for Reconsideration, the petitioners contend that (a) Section 8, Rule 117 of the Revised Rules of Criminal Procedure is not applicable to Criminal Cases Nos. Q-99-81679 to Q-99-81689; and (b) the time-bar in said rule should not be applied retroactively.

The Court shall resolve the issues seriatim.

**I. SECTION 8, RULE 117 OF THE
REVISED RULES OF CRIMINAL
PROCEDURE IS NOT APPLICABLE
TO CRIMINAL CASES NOS.
Q-99-81679 TO Q-99-81689.**

The petitioners aver that Section 8, Rule 117 of the Revised Rules of Criminal Procedure is not applicable to Criminal Cases Nos. Q-99-81679 to Q-99-81689 because the essential requirements for its application were not present when Judge Agnir, Jr., issued his resolution of March 29, 1999. Disagreeing with the ruling of the Court, the petitioners maintain that the respondent did not give his express consent to the dismissal by Judge Agnir, Jr., of Criminal Cases Nos. Q-99-81679 to Q-99-81689. The respondent allegedly admitted in his pleadings filed with the Court of Appeals and during the hearing thereat that he did not file any motion to dismiss said cases, or even agree to a provisional dismissal thereof. Moreover, the heirs of the victims were allegedly not given prior notices of the dismissal of the said cases by Judge Agnir, Jr. According to the petitioners, the respondent's express consent to the provisional dismissal of the cases and the notice to all the heirs of the victims of the respondent's motion and the hearing thereon are conditions sine qua non to the application of the time-bar in the second paragraph of the new rule.

The petitioners further submit that it is not necessary that the case be remanded to the RTC to determine whether private complainants were notified of the March 22, 1999 hearing on the respondent's motion for judicial determination of the existence of probable cause. The records allegedly indicate clearly that only the handling city prosecutor was furnished a copy of the notice of hearing on said motion. There is allegedly no evidence that private prosecutor Atty. Godwin Valdez was properly retained and authorized by all the private complainants to represent them at said hearing. It is their contention that Atty. Valdez merely identified the purported affidavits of desistance and that he did not confirm the truth of the allegations therein.

The respondent, on the other hand, insists that, as found by the Court in its Resolution and Judge Agnir, Jr. in his resolution, the respondent himself moved for the provisional dismissal of the criminal cases. He cites the resolution of Judge Agnir, Jr. stating that the respondent and the other accused filed separate but identical motions for the dismissal of the criminal cases should the trial court find no probable cause for the issuance of warrants of arrest against them.

The respondent further asserts that the heirs of the victims, through the public and private prosecutors, were duly notified of said motion and the hearing thereof. He contends that it was sufficient that the public prosecutor was present during the March 22, 1999 hearing on the motion for judicial determination of the existence of probable cause because criminal actions are always prosecuted in the name of the People, and the private complainants merely prosecute the civil aspect thereof.

The Court has reviewed the records and has found the contention of the petitioners meritorious.

Section 8, Rule 117 of the Revised Rules of Criminal Procedure reads:

Sec. 8. Provisional dismissal. – A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

Having invoked said rule before the petitioners-panel of prosecutors and before the Court of Appeals, the respondent is burdened to establish the essential requisites of the first paragraph thereof, namely:

- the prosecution with the express conformity of the accused or the accused moves for a provisional (sin perjuicio) dismissal of the case; or both the prosecution and the accused move for a provisional dismissal of the case;
- the offended party is notified of the motion for a provisional dismissal of the case;
- the court issues an order granting the motion and dismissing the case provisionally;
- the public prosecutor is served with a copy of the order of provisional dismissal of the case.

The foregoing requirements are conditions sine qua non to the application of the time-bar in the second paragraph of the new rule. The *raison d'être* for the requirement of the express consent of the accused to a provisional dismissal of a criminal case is to bar him from subsequently asserting that the revival of the criminal case will place him in double jeopardy for the same offense or for an offense necessarily included therein.[5]

Although the second paragraph of the new rule states that the order of dismissal shall become permanent one year after the issuance thereof without the case having been revived, the provision should be construed to mean that the order of dismissal shall become permanent one year after service of the order of dismissal on the public prosecutor who has control of the prosecution[6] without the criminal case having been revived. The public prosecutor cannot be expected to comply with the timeline unless he is served with a copy of the order of dismissal.

Express consent to a provisional dismissal is given either *viva voce* or in writing. It is a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning.[7] Where the accused writes on the motion of a prosecutor for a provisional dismissal of the case No objection or With my conformity, the writing amounts to express consent of the accused to a provisional dismissal of the case.[8] The mere inaction or silence of the accused to a motion for a provisional dismissal of the case[9] or his failure to object to a provisional dismissal[10] does not amount to express consent.

A motion of the accused for a provisional dismissal of a case is an express consent to such provisional dismissal.[11] If a criminal case is provisionally dismissed with the express consent of the accused, the case may be revived only within the periods provided in the new rule. On the other hand, if a criminal case is provisionally dismissed without the express consent of the accused or over his objection, the new rule would not apply. The case may be revived or refiled even beyond the prescribed periods subject to the right of the accused to oppose the same on the ground of double jeopardy[12] or that such revival or refiling is barred by the statute of limitations.[13]

The case may be revived by the State within the time-bar either by the refiling of the Information or by the filing of a new Information for the same offense or an offense necessarily included therein. There would be no need of a new preliminary investigation.[14] However, in a case wherein after the provisional dismissal of a criminal case,

the original witnesses of the prosecution or some of them may have recanted their testimonies or may have died or may no longer be available and new witnesses for the State have emerged, a new preliminary investigation[15] must be conducted before an Information is refiled or a new Information is filed. A new preliminary investigation is also required if aside from the original accused, other persons are charged under a new criminal complaint for the same offense or necessarily included therein; or if under a new criminal complaint, the original charge has been upgraded; or if under a new criminal complaint, the criminal liability of the accused is upgraded from that as an accessory to that as a principal. The accused must be accorded the right to submit counter-affidavits and evidence. After all, “the fiscal is not called by the Rules of Court to wait in ambush; the role of a fiscal is not mainly to prosecute but essentially to do justice to every man and to assist the court in dispensing that justice.”[16]

In this case, the respondent has failed to prove that the first and second requisites of the first paragraph of the new rule were present when Judge Agnir, Jr. dismissed Criminal Cases Nos. Q-99-81679 to Q-99-81689. Irrefragably, the prosecution did not file any motion for the provisional dismissal of the said criminal cases. For his part, the respondent merely filed a motion for judicial determination of probable cause and for examination of prosecution witnesses alleging that under Article III, Section 2 of the Constitution and the decision of this Court in *Allado v. Diokno*,[17] among other cases, there was a need for the trial court to conduct a personal determination of probable cause for the issuance of a warrant of arrest against respondent and to have the prosecution’s witnesses summoned before the court for its examination. The respondent contended therein that until after the trial court shall have personally determined the presence of probable cause, no warrant of arrest should be issued against the respondent and if one had already been issued, the warrant should be recalled by the trial court. He then prayed therein that:

- 1) a judicial determination of probable cause pursuant to Section 2, Article III of the Constitution be conducted by this Honorable Court, and for this purpose, an order be issued directing the prosecution to present the private complainants and their witnesses at a hearing scheduled therefor; and
- 2) warrants for the arrest of the accused-movants be withheld, or, if issued, recalled in the meantime until the resolution of this incident.

Other equitable reliefs are also prayed for.[18]

The respondent did not pray for the dismissal, provisional or otherwise, of Criminal Cases Nos. Q-99-81679 to Q-99-81689. Neither did he ever agree, impliedly or expressly, to a mere provisional dismissal of the cases. In fact, in his reply filed with the Court of Appeals, respondent emphasized that:

... An examination of the Motion for Judicial Determination of Probable Cause and for Examination of Prosecution Witnesses filed by the petitioner and his other co-accused in the said criminal cases would show that the petitioner did not pray for the dismissal of the case. On the contrary, the reliefs prayed for therein by the petitioner are: (1) a judicial determination of probable cause pursuant to Section 2, Article III of the Constitution; and (2) that warrants for the arrest of the accused be withheld, or if issued, recalled in the meantime until the resolution of the motion. It cannot be said, therefore, that the dismissal of the case was made with the consent of the petitioner. A copy of the aforesaid motion is hereto attached and made integral part hereof as Annex “A.”[19]

During the hearing in the Court of Appeals on July 31, 2001, the respondent, through counsel, categorically, unequivocally, and definitely declared that he did not file any motion to dismiss the criminal cases nor did he agree to a provisional dismissal thereof, thus:

JUSTICE SALONGA:

And it is your stand that the dismissal made by the Court was provisional in nature?

ATTY. FORTUN:

It was in (sic) that the accused did not ask for it. What they wanted at the onset was simply a judicial determination of probable cause for warrants of arrest issued. Then Judge Agnir, upon the presentation by the parties of their witnesses, particularly those who had withdrawn their affidavits, made one further conclusion that not only was this case lacking in probable cause for purposes of the issuance of an arrest warrant but also it did not justify proceeding to trial.

JUSTICE SALONGA:

And it is expressly provided under Section 8 that a case shall not be provisionally dismissed except when it is with the express conformity of the accused.

ATTY. FORTUN:

That is correct, Your Honor.

JUSTICE SALONGA:

And with notice to the offended party.

ATTY. FORTUN:

That is correct, Your Honor.

JUSTICE SALONGA:

Was there an express conformity on the part of the accused?

ATTY. FORTUN:

There was none, Your Honor. We were not asked to sign any order, or any statement, which would normally be required by the Court on pre-trial or on other matters, including other provisional dismissal. My very limited practice in criminal courts, Your Honor, had taught me that a judge must be very careful on this matter of provisional dismissal. In fact they ask the accused to come forward, and the judge himself or herself explains the implications of a provisional dismissal. Pumapayag ka ba dito. Puwede bang pumirma ka?

JUSTICE ROSARIO:

You were present during the proceedings?

ATTY. FORTUN:

Yes, Your Honor.

JUSTICE ROSARIO:

You represented the petitioner in this case?

ATTY. FORTUN:

That is correct, Your Honor. And there was nothing of that sort which the good Judge Agnir, who is most knowledgeable in criminal law, had done in respect of provisional dismissal or the matter of Mr. Lacson agreeing to the provisional dismissal of the case.

JUSTICE GUERRERO:

Now, you filed a motion, the other accused then filed a motion for a judicial determination of probable cause?

ATTY. FORTUN:

Yes, Your Honor.

JUSTICE GUERRERO:

Did you make any alternative prayer in your motion that if there is no probable cause what should the Court do?

ATTY. FORTUN:

That the arrest warrants only be withheld. That was the only prayer that we asked. In fact, I have a copy of that particular motion, and if I may read my prayer before the Court, it said: "Wherefore, it is respectfully prayed that (1) a judicial determination of probable cause pursuant to Section 2, Article III of the Constitution be conducted, and for this purpose, an order be issued directing the prosecution to present the private complainants and their witnesses at the scheduled hearing for that purpose; and (2) the warrants for the arrest of the accused be withheld, or, if issued, recalled in the meantime until resolution of this incident.

JUSTICE GUERRERO:

There is no general prayer for any further relief?

ATTY. FORTUN:

There is but it simply says other equitable reliefs are prayed for.

JUSTICE GUERRERO:

Don't you surmise Judge Agnir, now a member of this Court, precisely addressed your prayer for just and equitable relief to dismiss the case because what would be the net effect of a situation where there is no warrant of arrest being issued without dismissing the case?

ATTY. FORTUN:

Yes, Your Honor. I will not second say (sic) yes the Good Justice, but what is plain is we did not agree to the provisional dismissal, neither were we asked to sign any assent to the provisional dismissal.

JUSTICE GUERRERO:

If you did not agree to the provisional dismissal did you not file any motion for reconsideration of the order of Judge Agnir that the case should be dismissed?

ATTY. FORTUN:

I did not, Your Honor, because I knew fully well at that time that my client had already been arraigned, and the arraignment was valid as far as I was concerned. So, the dismissal, Your Honor, by Judge Agnir operated to benefit me, and therefore I did not take any further step in addition to rocking the boat or clarifying the matter further because it probably could prejudice the interest of my client.

JUSTICE GUERRERO:

Continue.[20]

In his memorandum in lieu of the oral argument filed with the Court of Appeals, the respondent declared in no uncertain terms that:

Soon thereafter, the SC in early 1999 rendered a decision declaring the Sandiganbayan without jurisdiction over the cases. The records were remanded to the QC RTC: Upon raffle, the case was assigned to Branch 81. Petitioner and the others promptly filed a motion for judicial determination of probable cause (Annex B). He asked that warrants for his arrest not be issued. He did not move for the dismissal of the Informations, contrary to respondent OSG's claim.[21]

The respondent's admissions made in the course of the proceedings in the Court of Appeals are binding and conclusive on him. The respondent is barred from repudiating his admissions absent evidence of palpable mistake in making such admissions.[22]

To apply the new rule in Criminal Cases Nos. Q-99-81679 to Q-99-81689 would be to add to or make exceptions from the new rule which are not expressly or impliedly included therein. This the Court cannot and should not do.[23]

The Court also agrees with the petitioners' contention that no notice of any motion for the provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 or of the hearing thereon was served on the heirs of the victims at least three days before said hearing as mandated by Rule 15, Section 4 of the Rules of Court. It must be borne in mind that in crimes involving private interests, the new rule requires that the offended party or parties or the heirs of the victims must be given adequate a priori notice of any motion for the provisional dismissal of the criminal case. Such notice may be served on the offended party or the heirs of the victim through the private prosecutor, if there is one, or through the public prosecutor who in turn must relay the notice to the offended party or the heirs of the victim to enable them to confer with him before the hearing or appear in court during the hearing. The proof of such service must be shown during the hearing on the motion, otherwise, the requirement of the new rule will become illusory. Such notice will enable the offended party or the heirs of the victim the opportunity to seasonably and effectively comment on or object to the motion on valid grounds, including: (a) the collusion between the prosecution and the accused for the provisional dismissal of a criminal case thereby depriving the State of its right to due process; (b) attempts to make witnesses unavailable; or (c) the provisional dismissal of the case with the consequent release of the accused from detention would enable him to threaten and kill the offended party or the other prosecution witnesses or flee from Philippine jurisdiction, provide opportunity for the destruction or loss of the prosecution's physical and other evidence and prejudice the rights of the offended party to recover on the civil liability of the accused by his concealment or furtive disposition of his property or the consequent lifting of the writ of preliminary attachment against his property.

In the case at bar, even if the respondent's motion for a determination of probable cause and examination of witnesses may be considered for the nonce as his motion for a provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689, however, the heirs of the victims were not notified thereof prior to the hearing on said motion on March 22, 1999. It must be stressed that the respondent filed his motion only on March 17, 1999 and set it for hearing on March 22, 1999 or barely five days from the filing thereof. Although the public prosecutor was served with a copy of the motion, the records do not show that notices thereof were separately given to the heirs of the victims or that subpoenae were issued to and received by them, including those who executed their affidavits of desistance who were residents of Dipolog City or Piñan, Zamboanga del Norte or Palompon, Leyte.[24] There is as well no proof in the records that the public prosecutor notified the heirs of the victims of said motion or of the hearing thereof on March 22, 1999. Although Atty. Valdez entered his appearance as private prosecutor,[25] he did so only for some but not all the close kins of the victims, namely, Nenita Alap-ap, Imelda Montero, Margarita Redillas, Rufino Siplon, Carmelita Elcamel, Myrna Abalora, and Leonora Amora who (except for Rufino Siplon)[26] executed their respective affidavits of desistance.[27] There was no appearance for the heirs of Alex Neri, Pacifico Montero, Jr., and Meleubren Sorronda. There is no proof on record that all the heirs of the victims were served with copies of the resolution of Judge Agnir, Jr. dismissing the said

cases. In fine, there never was any attempt on the part of the trial court, the public prosecutor and/or the private prosecutor to notify all the heirs of the victims of the respondent's motion and the hearing thereon and of the resolution of Judge Agnir, Jr. dismissing said cases. The said heirs were thus deprived of their right to be heard on the respondent's motion and to protect their interests either in the trial court or in the appellate court.

Since the conditions sine qua non for the application of the new rule were not present when Judge Agnir, Jr. issued his resolution, the State is not barred by the time limit set forth in the second paragraph of Section 8 of Rule 117 of the Revised Rules of Criminal Procedure. The State can thus revive or refile Criminal Cases Nos. Q-99-81679 to Q-99-81689 or file new Informations for multiple murder against the respondent.

II. THE TIME-BAR IN SECTION 8, RULE 117 OF THE REVISED RULES OF CRIMINAL PROCEDURE SHOULD NOT BE APPLIED RETROACTIVELY.

The petitioners contend that even on the assumption that the respondent expressly consented to a provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 and all the heirs of the victims were notified of the respondent's motion before the hearing thereon and were served with copies of the resolution of Judge Agnir, Jr. dismissing the eleven cases, the two-year bar in Section 8 of Rule 117 of the Revised Rules of Criminal Procedure should be applied prospectively and not retroactively against the State. To apply the time limit retroactively to the criminal cases against the respondent and his co-accused would violate the right of the People to due process, and unduly impair, reduce, and diminish the State's substantive right to prosecute the accused for multiple murder. They posit that under Article 90 of the Revised Penal Code, the State had twenty years within which to file the criminal complaints against the accused. However, under the new rule, the State only had two years from notice of the public prosecutor of the order of dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 within which to revive the said cases. When the new rule took effect on December 1, 2000, the State only had one year and three months within which to revive the cases or refile the Informations. The period for the State to charge respondent for multiple murder under Article 90 of the Revised Penal Code was considerably and arbitrarily reduced. They submit that in case of conflict between the Revised Penal Code and the new rule, the former should prevail. They also insist that the State had consistently relied on the prescriptive periods under Article 90 of the Revised Penal Code. It was not accorded a fair warning that it would forever be barred beyond the two-year period by a retroactive application of the new rule.[28] Petitioners thus pray to the Court to set aside its Resolution of May 28, 2002.

For his part, the respondent asserts that the new rule under Section 8 of Rule 117 of the Revised Rules of Criminal Procedure may be applied retroactively since there is no substantive right of the State that may be impaired by its application to the criminal cases in question since '[t]he State's witnesses were ready, willing and able to provide their testimony but the prosecution failed to act on these cases until it became politically expedient in April 2001 for them to do so.'[29] According to the respondent, penal laws, either procedural or substantive, may be retroactively applied so long as they favor the accused.[30] He asserts that the two-year period commenced to run on March 29, 1999 and lapsed two years thereafter was more than reasonable opportunity for the State to fairly indict him.[31] In any event, the State is given the right under the Court's assailed Resolution to justify the filing of the Information in Criminal Cases Nos. 01-101102 to 01-101112 beyond the time-bar under the new rule.

The respondent insists that Section 8 of Rule 117 of the Revised Rules of Criminal Procedure does not broaden the substantive right of double jeopardy to the prejudice of the State because the prohibition against the revival of the cases within the one-year or two-year periods provided therein is a legal concept distinct from the prohibition

against the revival of a provisionally dismissed case within the periods stated in Section 8 of Rule 117. Moreover, he claims that the effects of a provisional dismissal under said rule do not modify or negate the operation of the prescriptive period under Article 90 of the Revised Penal Code. Prescription under the Revised Penal Code simply becomes irrelevant upon the application of Section 8, Rule 117 because a complaint or information has already been filed against the accused, which filing tolls the running of the prescriptive period under Article 90.[32]

The Court agrees with the respondent that the new rule is not a statute of limitations. Statutes of limitations are construed as acts of grace, and a surrender by the sovereign of its right to prosecute or of its right to prosecute at its discretion. Such statutes are considered as equivalent to acts of amnesty founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary for the protection of the accused have by sheer lapse of time passed beyond availability.[33] The periods fixed under such statutes are jurisdictional and are essential elements of the offenses covered.[34]

On the other hand, the time-bar under Section 8 of Rule 117 is akin to a special procedural limitation qualifying the right of the State to prosecute making the time-bar an essence of the given right or as an inherent part thereof, so that the lapse of the time-bar operates to extinguish the right of the State to prosecute the accused.[35]

The time-bar under the new rule does not reduce the periods under Article 90 of the Revised Penal Code, a substantive law.[36] It is but a limitation of the right of the State to revive a criminal case against the accused after the Information had been filed but subsequently provisionally dismissed with the express consent of the accused. Upon the lapse of the timeline under the new rule, the State is presumed, albeit disputably, to have abandoned or waived its right to revive the case and prosecute the accused. The dismissal becomes ipso facto permanent. He can no longer be charged anew for the same crime or another crime necessarily included therein.[37] He is spared from the anguish and anxiety as well as the expenses in any new indictments.[38] The State may revive a criminal case beyond the one-year or two-year periods provided that there is a justifiable necessity for the delay.[39] By the same token, if a criminal case is dismissed on motion of the accused because the trial is not concluded within the period therefor, the prescriptive periods under the Revised Penal Code are not thereby diminished.[40] But whether or not the prosecution of the accused is barred by the statute of limitations or by the lapse of the time-line under the new rule, the effect is basically the same. As the State Supreme Court of Illinois held:

... This, in effect, enacts that when the specified period shall have arrived, the right of the state to prosecute shall be gone, and the liability of the offender to be punished—to be deprived of his liberty—shall cease. Its terms not only strike down the right of action which the state had acquired by the offense, but also remove the flaw which the crime had created in the offender's title to liberty. In this respect, its language goes deeper than statutes barring civil remedies usually do. They expressly take away only the remedy by suit, and that inferentially is held to abate the right which such remedy would enforce, and perfect the title which such remedy would invade; but this statute is aimed directly at the very right which the state has against the offender—the right to punish, as the only liability which the offender has incurred, and declares that this right and this liability are at an end. ...[41]

The Court agrees with the respondent that procedural laws may be applied retroactively. As applied to criminal law, procedural law provides or regulates the steps by which one who has committed a crime is to be punished. In *Tan, Jr. v. Court of Appeals*,^[42] this Court held that:

Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent. The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected. Nor is the retroactive application of procedural statutes

constitutionally objectionable. The reason is that as a general rule no vested right may attach to, nor arise from, procedural laws. It has been held that “a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure.

It further ruled therein that a procedural law may not be applied retroactively if to do so would work injustice or would involve intricate problems of due process or impair the independence of the Court. In a per curiam decision in *Cipriano v. City of Houma*,^[43] the United States Supreme Court ruled that where a decision of the court would produce substantial inequitable results if applied retroactively, there is ample basis for avoiding “the injustice of hardship” by a holding of nonretroactivity.^[44] A construction of which a statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, and injurious consequences.^[45] This Court should not adopt an interpretation of a statute which produces absurd, unreasonable, unjust, or oppressive results if such interpretation could be avoided.^[46] Time and again, this Court has decreed that statutes are to be construed in light of the purposes to be achieved and the evils sought to be remedied. In construing a statute, the reason for the enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose.^[47]

Remedial legislation, or procedural rule, or doctrine of the Court designed to enhance and implement the constitutional rights of parties in criminal proceedings may be applied retroactively or prospectively depending upon several factors, such as the history of the new rule, its purpose and effect, and whether the retrospective application will further its operation, the particular conduct sought to be remedied and the effect thereon in the administration of justice and of criminal laws in particular.^[48] In a per curiam decision in *Stefano v. Woods*,^[49] the United States Supreme Court catalogued the factors in determining whether a new rule or doctrine enunciated by the High Court should be given retrospective or prospective effect:

“(a) the purpose to be served by the new standards, (b) the extent of the reliance by law enforcement authorities on the old standards, and (c) the effect on the administration of justice of a retroactive application of the new standards.”

In this case, the Court agrees with the petitioners that the time-bar of two years under the new rule should not be applied retroactively against the State.

In the new rule in question, as now construed by the Court, it has fixed a time-bar of one year or two years for the revival of criminal cases provisionally dismissed with the express consent of the accused and with a priori notice to the offended party. The time-bar may appear, on first impression, unreasonable compared to the periods under Article 90 of the Revised Penal Code. However, in fixing the time-bar, the Court balanced the societal interests and those of the accused for the orderly and speedy disposition of criminal cases with minimum prejudice to the State and the accused. It took into account the substantial rights of both the State and of the accused to due process. The Court believed that the time limit is a reasonable period for the State to revive provisionally dismissed cases with the consent of the accused and notice to the offended parties. The time-bar fixed by the Court must be respected unless it is shown that the period is manifestly short or insufficient that the rule becomes a denial of justice.^[50] The petitioners failed to show a manifest shortness or insufficiency of the time-bar.

The new rule was conceptualized by the Committee on the Revision of the Rules and approved by the Court en banc primarily to enhance the administration of the criminal justice system and the rights to due process of the State and the accused by eliminating the deleterious practice of trial courts of provisionally dismissing criminal cases on motion of either the prosecution or the accused or jointly, either with no time-bar for the revival thereof or with a specific or definite period for such revival by the public prosecutor. There were times when such criminal cases were no longer revived or refiled due to causes beyond the control of the public prosecutor or

because of the indolence, apathy or the lackadaisical attitude of public prosecutors to the prejudice of the State and the accused despite the mandate to public prosecutors and trial judges to expedite criminal proceedings.[51]

It is almost a universal experience that the accused welcomes delay as it usually operates in his favor,[52] especially if he greatly fears the consequences of his trial and conviction. He is hesitant to disturb the hushed inaction by which dominant cases have been known to expire.[53]

The inordinate delay in the revival or refiling of criminal cases may impair or reduce the capacity of the State to prove its case with the disappearance or nonavailability of its witnesses. Physical evidence may have been lost. Memories of witnesses may have grown dim or have faded. Passage of time makes proof of any fact more difficult.[54] The accused may become a fugitive from justice or commit another crime. The longer the lapse of time from the dismissal of the case to the revival thereof, the more difficult it is to prove the crime.

On the other side of the fulcrum, a mere provisional dismissal of a criminal case does not terminate a criminal case. The possibility that the case may be revived at any time may disrupt or reduce, if not derail, the chances of the accused for employment, curtail his association, subject him to public obloquy and create anxiety in him and his family. He is unable to lead a normal life because of community suspicion and his own anxiety. He continues to suffer those penalties and disabilities incompatible with the presumption of innocence.[55] He may also lose his witnesses or their memories may fade with the passage of time. In the long run, it may diminish his capacity to defend himself and thus eschew the fairness of the entire criminal justice system.[56]

The time-bar under the new rule was fixed by the Court to excise the malaise that plagued the administration of the criminal justice system for the benefit of the State and the accused; not for the accused only.

The Court agrees with the petitioners that to apply the time-bar retroactively so that the two-year period commenced to run on March 31, 1999 when the public prosecutor received his copy of the resolution of Judge Agnir, Jr. dismissing the criminal cases is inconsistent with the intendment of the new rule. Instead of giving the State two years to revive provisionally dismissed cases, the State had considerably less than two years to do so. Thus, Judge Agnir, Jr. dismissed Criminal Cases Nos. Q-99-81679 to Q-99-81689 on March 29, 1999. The new rule took effect on December 1, 2000. If the Court applied the new time-bar retroactively, the State would have only one year and three months or until March 31, 2001 within which to revive these criminal cases. The period is short of the two-year period fixed under the new rule. On the other hand, if the time limit is applied prospectively, the State would have two years from December 1, 2000 or until December 1, 2002 within which to revive the cases. This is in consonance with the intendment of the new rule in fixing the time-bar and thus prevent injustice to the State and avoid absurd, unreasonable, oppressive, injurious, and wrongful results in the administration of justice.

The period from April 1, 1999 to November 30, 1999 should be excluded in the computation of the two-year period because the rule prescribing it was not yet in effect at the time and the State could not be expected to comply with the time-bar. It cannot even be argued that the State waived its right to revive the criminal cases against respondent or that it was negligent for not reviving them within the two-year period under the new rule. As the United States Supreme Court said, per Justice Felix Frankfurter, in *Griffin v. People*:[57]

We should not indulge in the fiction that the law now announced has always been the law and, therefore, that those who did not avail themselves of it waived their rights

The two-year period fixed in the new rule is for the benefit of both the State and the accused. It should not be emasculated and reduced by an inordinate retroactive application of the time-bar therein provided merely to benefit the accused. For to do so would cause an “injustice of hardship” to the State and adversely affect the administration of justice in general and of criminal laws in particular.

To require the State to give a valid justification as a condition sine qua non to the revival of a case provisionally dismissed with the express consent of the accused before the effective date of the new rule is to assume that the State is obliged to comply with the time-bar under the new rule before it took effect. This would be a rank denial of justice. The State must be given a period of one year or two years as the case may be from December 1, 2000 to revive the criminal case without requiring the State to make a valid justification for not reviving the case before the effective date of the new rule. Although in criminal cases, the accused is entitled to justice and fairness, so is the State. As the United States Supreme Court said, per Mr. Justice Benjamin Cardozo, in *Snyder v. State of Massachusetts*,^[58] “the concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.” In *Dimatulac v. Villon*,^[59] this Court emphasized that “the judge’s action must not impair the substantial rights of the accused nor the right of the State and offended party to due process of law. This Court further said:

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.

In this case, the eleven Informations in Criminal Cases Nos. 01-101102 to 01-101112 were filed with the Regional Trial Court on June 6, 2001 well within the two-year period.

In sum, this Court finds the motion for reconsideration of petitioners meritorious.

IN THE LIGHT OF ALL THE FOREGOING, the petitioners’ Motion for Reconsideration is GRANTED. The Resolution of this Court, dated May 28, 2002, is SET ASIDE. The Decision of the Court of Appeals, dated August 24, 2001, in CA-G.R. SP No. 65034 is REVERSED. The Petition of the Respondent with the Regional Trial Court in Civil Case No. 01-100933 is DISMISSED for being moot and academic. The Regional Trial Court of Quezon City, Branch 81, is DIRECTED to forthwith proceed with Criminal Cases Nos. 01-101102 to 01-101112 with deliberate dispatch.

No pronouncements as to costs.

SO ORDERED.

Davide, Jr., C.J., Mendoza, Panganiban, Austria-Martinez, Corona, Carpio Morales, and Azcuna, JJ., concur. Bellosillo, J., see separate concurring opinion.

Quisumbing, J., in the result, concur with J. Bellosillo’s opinion.

Puno, Vitug, and Sandoval-Gutierrez, JJ., see separate dissenting opinions.

Ynares-Santiago, J., join the dissent of JJ. Puno and Sandoval-Gutierrez.

Carpio, J., no part.

[1] Rollo, Vol. II, pp. 1203-1228.

[2] Id. at 1183-1200.

[3] NBI Report, pp. 309 and 311.

[4] Rollo, Vol. II, pp. 1237-1267.

[5] Regalado, Remedial Law Compendium, Vol. II, 9th Revised Edition, p. 442; *People v. Bellosillo*, 9 SCRA

835 (1963).

[6] Section 5, Rule 112 of the Revised Rules of Criminal Procedure.

[7] *People v. Hon. Vergara*, 221 SCRA 561 (1993).

[8] *People v. Hinaut*, 105 Phil. 303 (1959).

[9] *Pendatum v. Aragon*, 93 Phil. 798 (1953); *Caes v. Intermediate Appellate Court*, 179 SCRA 54 (1989).

[10] *People v. Ylagan*, 58 Phil. 851 (1933).

[11] *Baesa v. Provincial Fiscal of Camarines Sur*, 37 SCRA 437 (1971).

[12] Rule 117, Section 3(i) of the Revised Rules of Criminal Procedure.

[13] *Benes v. United States of America*, 276 F.2d 99 (1960).

[14] *Sy v. Court of Appeals*, 113 SCRA 335 (1982); *Lava v. Gonzales*, 11 SCRA 650 (1964); *Bandiala v. CFI of Misamis Occidental*, 35 SCRA 237 (1970); *Luciano v. Mariano*, 40 SCRA 187 (1971); *Teehankee v. Madayag*, 207 SCRA 134 (1992).

[15] SECTION 1. Preliminary investigation defined; when required. – Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in Section 7 of this Rule, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine. (Section 1, Rule 112, 2000 Rules of Criminal Procedure).

[16] *Bandiala v. Court*, *supra*.

[17] 232 SCRA 192 (1994).

[18] RTC Records, Vol. 10, p. 232.

[19] CA Rollo, p. 355.

[20] TSN, CA-G.R. SP No. 65034, July 31, 2001, pp. 13-18 (*italics ours*).

[21] CA Rollo, p. 378 (*italics by respondent*).

[22] Section 4, Rule 129 of the Revised Rules on Evidence.

[23] *Vari v. Food Fair Stores*, 13 A.L.R.3d 844 (1964).

[24] Victims Address (per Medico Legal Report)

Manuel Montero Piñan, Zamboanga del Norte

Rolando Siplon Miputak, Dipolog City

Sherwin Abalora Miputak, Dipolog City

Ray Abalora Miputak, Dipolog City

Joel Amora Osmina St., Dipolog City

Jevy Redillas Piñan, Zamboanga del Norte

Welbor Elcamel Bgy. Barra, Dipolog City

Carlito Alap-ap Piñan, Zamboanga del Norte

Pacifico Montero, Jr. Bo. Tinago, Palumpon, Leyte

Meleubren Sorronda Miputak, Dipolog City

Alex Neri No address

(Unidentified Male in
Medico Legal Report)

[25] RTC Records, Vol. IX, p. 9.

[26] Rufino Siplon did not affix his signature on the Joint Affidavit of Desistance.

[27] Affiants Address (per Affidavit of Desistance)

Myra Abalora

(Mother of Sherwin Abalora
and Ray Abalora)

UST Abono Estaca, Dipolog City

Leonora Amora

(Mother of Joel Amora)

Bgy. Sentral, Dipolog City

Nenita Alap-ap

(Wife of Carlito Alap-ap)

338 Sagin St. cor. Amaga St., Poblacio Santa,
Piñan, Zamboanga del Norte

Imelda Montero

(Wife of Manuel Montero)

Poblacion Norte, Piñan, Zamboanga del Norte

Carmelita Elcamel

(Wife of Welbor Elcamel)

Upper Dicayas, Dipolog City

Margarita Redillas

(Mother of Jevy Redillas)

Bgy. Poblacion South, Piñan, Zamboanga del Norte

[28] Rollo, Vol. 2, pp. 1205-1214.

[29] Id. at 1240.

[30] Id. at 1241-1247.

[31] Id.

[32] Id. at 1250-1251.

[33] 22 C.J.S., Criminal Law, § 223, p. 574; United States v. Eliopoulos, 45 F. Supp. 777 (1942).

[34] People v. Allen, 118 P.2d 927, 47 C.A.2d. 735.

[35] Carpenter v. Cox, 182 So. 813 (1939).

[36] ART. 90. Prescription of crime.—Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second, and third paragraph of this article.

[37] People v. Allen, 14 NE2d 397; State v. Crawford, 98 SE 615.

[38] Republic v. Agoncillo, 40 SCRA 579 (1971).

[39] State of Kansas v. Ransom, 39 ALR 4th 892.

[40] 22 C.J.S., supra. at 575, citing People v. Di Franco, 184 N.Y.S.2d, p. 974, 17 Misc.2d 177.

[41] People v. Ross, 156 N.E. 303 (1927).

[42] G.R. No. 136368, January 16, 2002, p. 13.

[43] 395 U.S. 701 (1969).

[44] Id.

[45] Ursua v. Court of Appeals, 256 SCRA 147 (1996).

[46] City and County of Denver v. Holmes, 400 P.2d 1 (1965).

[47] Paat v. Court of Appeals, 266 SCRA 167 (1997).

[48] Linkletter v. Victor Walker, 381 U.S. 618 (1965).

[49] 393 U.S. 630 (1968).

[50] *Glen Livestock Company v. Colwell*, 185 U.S. 54 (1902).

[51] *United States v. Mann*, 201 F. Supp. 208 (1968); *Barker v. Wingo*, 407 U.S. 514 (1972).

[52] *United States v. Fay*, 313 F.2d 620 (1963).

[53] *United States v. Mann*, *supra*.

[54] *Dickey v. State of Florida*, 398 U.S. 30 (1970).

[55] *Ibid*.

[56] *Barker v. Winggo*, *supra*.

[57] 351 U.S. 12 (1956).**[58] 291 U.S. 97 (1933).****[59] 297 SCRA 679 (1998).**

SEPARATE OPINION, CONCURRING

BELLOSILLO, J.:

If we make a mistake, we can only pray that their ghosts will not haunt us for the rest of our days . . .

“Amen!” I say to the clear and concise ponencia of our colleague, Mr. Justice Romeo J. Callejo Sr., who touched the issues head on and resolved them with the calm deliberation of a dedicated jurist. Let me just add a few more thoughts in the effort to reveal and rectify the hazards and uncertainties ordinarily concealed by the glib use of formal illogic.

This case springs from the brutal slaughter of suspected members of the Kuratong Baleleng Gang on 18 May 1995. Eleven (11) restless souls - who perished in a shroud of mystery - remain shackled for more than half a decade by the bondage of popular apathy and neglect, and condemned to an ignominious fall by their infamy. Stigmatized and denounced, their demise must have been hailed by many as the triumph of retributive justice –

x x x x Gifted with the liberty they know not how to use; with a power and energy they know not how to apply; with a life whose purpose and aim they comprehend not; they drag through their useless and convulsed existence. Byron destroys them one after the other, as if he were the executioner of a sentence decreed in heaven. They fall unwept, like a withered leaf into the stream of time x x x x They die, as they have lived, alone; and a popular malediction hovers round their solitary tombs.[1]

The dictates of prudence however would counsel us at this time to reserve judgment on their sins and transgressions. The overriding consideration is the need to unveil the truth, for truth alone is the veritable touchstone of justice. The rights of the eleven (11) victims, as much as those of the respondent and his co-accused, deserve full recognition and protection. Only then can we say that we are truly civilized - a breed apart from savages.

But the manner by which the carnage of 18 May 1995 was carried out sparked a public indignation that prompted the Senate Committees on Justice and Human Rights, Crimes and National Defense and Security to conduct a

joint investigation on possible human rights violations involving police officers. The inquiry focused on the issue of whether the death of the eleven (11) victims was the result of a “rub-out” or summary killing, or a “shoot-out” or with exchange of gunfire, between the victims and the police considering that the principal antagonists were policemen and civilians. On 21 June 1995 the aforesaid Senate Committees, in Joint Committee Report No. 1021, found thus -

There is no clarity as to whether the bodies were handcuffed or hogtied with ropes when they were killed. The evidence, however, establishes that those who died were defenseless and that except for Soronda, none of them fired a gun. The forensic report and testimonies of De los Santos and De la Cruz show that eleven (11) persons were killed in coldblood while in the custody of the law enforcers in the early morning of May 18 in Commonwealth Avenue, Quezon City (*italics supplied*),

concluded that the killings were done in cold blood and recommended the filing of the appropriate charges against the police officers.[2]

Thereafter multiple murder charges were filed by the Ombudsman before the Sandiganbayan against respondent and twenty-five (25) other police officers, docketed as Crim. Cases Nos. 23047-23057. On motion of the accused, the Ombudsman conducted a reinvestigation of the cases resulting in the filing of Amended Informations, this time charging respondent, among other officers, as a mere accessory after-the-fact. Arraignment followed and respondent entered a plea of not guilty.

Respondent challenged the jurisdiction of the Sandiganbayan contending in the main that the highest ranking principal accused under the Amended Informations held the position of Chief Inspector with a salary below that for Grade 27, for which reason, jurisdiction properly belonged to the Regional Trial Court and not the Sandiganbayan. The issue of jurisdiction eventually reached the Supreme Court, which ordered the transfer of the cases to the Regional Trial Court of Quezon City not because the highest ranking principal accused was receiving a salary below Grade 27 but because the Amended Informations did not show that the offenses charged were committed in relation to, or in the discharge of, official functions of the accused.

The criminal cases were docketed as Crim. Cases Nos. Q-99-81679 to Q-99-81689, and raffled to RTC-Br. 81 then presided over by Judge Wenceslao Agnir, Jr. Respondent and the other accused filed separate but identical motions praying for a judicial determination of probable cause, to hold in abeyance the issuance of warrants of arrest in the meantime, and to dismiss the cases should the court find no probable cause.

During the hearing on the motions, the seven (7) or eight (8) victims’ next of kin executed affidavits of desistance while others recanted their affidavit-complaints. With this development, the trial court in its Resolution of 29 March 1999 dismissed the cases for lack of probable cause to hold the accused for trial, holding that “there is no more evidence to show that the crime(s) have been committed and that the accused are probably guilty thereof.”[3]

Two (2) years later, or on 29 March 2001, Secretary Hernando B. Perez of the Department of Justice received a letter from PNP Director General Leandro R. Mendoza indorsing for preliminary investigation the sworn affidavits of two (2) new witnesses relative to the Kuratong Baleleng incident. Secretary Perez constituted a panel of State Prosecutors to investigate the matter. The panel issued several subpoenas to all the accused in Crim. Cases Nos. Q-99-81679 to Q-99-81689, including respondent Lacson, requiring them to submit their counter-affidavits and to appear at the preliminary conference.

Consequently, on 28 May 2001, respondent and several of his co-accused filed a petition for prohibition with application for a temporary restraining order and/or preliminary injunction with the RTC-Manila, seeking to enjoin the Secretary of Justice and the State Prosecutors from further conducting a preliminary investigation. The

prohibition case was raffled to RTC-Br. 40, Manila, presided over by Judge Herminia V. Pasamba. The filing of this petition notwithstanding, the Panel of State Prosecutors proceeded to issue a Resolution finding probable cause to hold respondent and his co-accused for trial, for eleven (11) counts of murder. Accordingly, Informations were filed before the RTC, Quezon City, and docketed as Crim. Cases Nos. 01-101102 to 01-101112.

Deviating from the normal procedure, the Executive Judge, Vice-Executive Judges and Presiding Judges of Quezon City dispensed with the customary raffle; instead, assigned the cases to Judge Ma. Theresa L. Yadao of RTC-Br. 81, Quezon City, presumably as the successor of Judge Agnir in the same branch.

Meanwhile, in the prohibition case before RTC-Br. 40, Manila, Judge Pasamba denied the prayer for the issuance of a temporary restraining order thus-

After a study, this Court submits that the dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689 is not one on the merits and without any recorded arraignment and entered plea on the part of the herein petitioners. The dismissal was a direct consequence of the finding of the Quezon City Regional Trial Court that no probable cause exists for the issuance of warrants of arrest against petitioner herein and to hold them for trial. The arraignment had with the Sandiganbayan does not put the case in a different perspective since the Sandiganbayan was adjudged to be without any jurisdiction to try the cases.[4]

Dissatisfied, respondent elevated the case on a petition for certiorari to the Court of Appeals which thereafter rendered the assailed Decision of 24 August 2001 granting the petition, declaring null and void all the proceedings conducted by the State Prosecutors, and ordering all the criminal Informations dismissed -

The present controversy, being one involving “provisional dismissal” and revival of criminal cases, falls within the purview of the prescriptive period provided under Section 8, Rule 117 of the 2000 Revised Rules on Criminal Procedure. The second paragraph of the said provision is couched in clear, simple and categorical words. It mandates that for offenses punishable by imprisonment of more than six (6) years, as the subject criminal cases, their provisional dismissal shall become permanent two (2) years after the issuance of the order without the case having been revived. It should be noted that the revival of the subject criminal cases x x x was commenced only on April 19, 2001, that is, more than two (2) years after the issuance, on March 29, 1999, of RTC-Quezon City’s Resolution x x x x[5]

Hence, the present recourse. The bone of contention, which crystallizes all the arguments of the parties into a single point of inquiry, bears upon the nature and effects of a provisional dismissal which has become permanent after the lapse of the periods provided in Sec. 8, Rule 117, 2000 Revised Rules on Criminal Procedure. For facility of reference, the controversial provision of Sec. 8 quoted hereunder -

Sec. 8. Provisional dismissal. - A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

The provisional dismissal of offenses punishable by imprisonment x x x of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived (*italics supplied*).

Assuming that Sec. 8, Rule 117, is available to respondent although it is my position that it is not, the question that should be asked is: Does the provisional dismissal of a criminal case which has become permanent under Sec. 8 effectively foreclose the right of the State to prosecute an accused? I have taken great pains analyzing the position of respondent; regretfully, I am unable to agree for my conscience shivers at its debilitating, crippling if not crushing, impact upon our criminal justice system.

The basic substantive laws on prescription of offenses are Arts. 90 and 91 of The Revised Penal Code, which are quoted hereunder -

Art. 90. Prescription of crimes. - Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years. Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The offenses of oral defamation and slander by deed shall prescribe in six months.

Light offenses shall prescribe in two months

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article.

Art. 91. Computation of prescription of offenses. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

Evidently, respondent's concept of a provisional dismissal that has become permanent under Sec. 8, Rule 117, emasculates and renders illusory its very purpose. It effectively obliterates the different prescriptive periods under Art. 90, which are fixed on the basis of the gravity of the penalty prescribed for the offense, and supplants it with a uniform period of one (1) year or two (2) years, as the case may be. It likewise substantially modifies the manner of computing the period of prescription in Art. 91 since the reckoning of the one (1) or two (2)-year prescriptive period under Sec. 8 is constant and invariable, and without regard to the number of interruptions. Regardless of the number of times the case against an accused is provisionally dismissed, the prosecution would always have a full grace period of two (2) years within which to revive the case; much unlike Art. 91 wherein the period consumed prior to the filing of the complaint or information is tacked to the period consumed after the dismissal of the case for purposes of determining whether the crime has prescribed.

Interestingly, a dividing line is drawn in the application of Arts. 90 and 91 of The Revised Penal Code, and Sec. 8, Rule 117, of the 2000 Revised Rules on Criminal Procedure, obviously in an attempt to lend a delusive semblance of plausibility to its construction of Sec. 8. It is posited that Art. 91 and Sec. 8 operate on "different planes," so to speak, the vital distinction being that Sec. 8, Rule 117, contemplates a situation where a case had already been filed and was provisionally dismissed.

I do not agree. Article 91 of The Revised Penal Code distinctly speaks of "prescription x x x shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or unjustifiably stopped for any reason not imputable to him." It can readily be seen therefore that the concept of a provisional dismissal is subsumed in Art. 91 since in a provisional dismissal, proceedings necessarily terminate without the accused being convicted or acquitted. Thus, to construe and apply Sec. 8 in the manner suggested above would undeniably result in a direct and irreconcilable conflict with Art. 91.

In a provisional dismissal, the prosecution, the defense and the offended party, in effect, enter into a tacit agreement for a temporary cessation of hostilities, i.e., to momentarily hold in abeyance the prosecution of the

accused. Paragraph 1 of Sec. 8 prescribes the requirements thereto: (a) consent of the accused, and (b) notice to the offended party. It must be remembered however that permanent dismissal of a case is but an offshoot of its previous provisional dismissal and the subsequent failure to revive within the time frames set forth in Sec. 8. But does the permanent dismissal of the case arising from a provisional dismissal affect the right of the State to prosecute within the periods provided in Art. 90 of The Revised Penal Code? Certainly not, for the prescriptive periods prescribed by law cannot be affected directly or indirectly by any agreement or consent of the parties, much less be held hostage to any procedural limitations. Verily, in matters of public crimes which have a direct bearing on public interest, no agreements or personal arrangements should be brought to bear upon the penal action.

Courts cannot - by an act of judicial legislation - abridge, amend, alter, or nullify statutes. We do not sit as councils of revision, empowered to judicially reform or fashion legislation in accordance with our own notions of prudent public policy. Certainly, lest we are prepared to ride roughshod over this prerogative of Congress, we cannot interfere with the power of the legislature to surrender, as an act of grace, the right of the State to prosecute and to declare the offense no longer subject to prosecution after certain periods of time as expressed in the statute.

Furthermore, the right of the State to prosecute criminals is a substantive, nay, inherent right. To unduly limit the exercise of such right for a short period of one (1) or two (2) years through the expedient of a procedural rule is unconstitutional, considering the limitation in our fundamental law on the rule-making power of this Court, that is, its rules must not “diminish, increase or modify substantive rights.”[6]

Another decisive factor which militates heavily against the foregoing thesis that Art. 91 and Sec. 8 operate on “different planes,” is the fact that the phrase “amounts to an acquittal,” which appeared in the original draft of what is now Sec. 8, Rule 117, was judiciously rejected by the Supreme Court when it approved the final draft of the 2000 Revised Rules on Criminal Procedure -

JUSTICE PANGANIBAN: You know that prior to the wordings at present of Sec. 8, Rule 117, there was a final committee draft that said and I quote: “the corresponding order shall state that the provisional dismissal shall become permanent and amount to an acquittal one year after the issuance without the case having been revived.” What I am trying to point out is that, as originally worded, Section 8 expressly stated that the dismissal would amount to an acquittal. But the final wording eliminated the words “amount to an acquittal,” isn’t it?

ATTY. FORTUN: I would not know that, Your Honor. I have not seen that revised (interrupted) x x x.

JUSTICE PANGANIBAN: Well, that is true that those words were eliminated precisely because we wanted to avoid making invocation of that rule equivalent to an acquittal. All right, (interrupted) x x x.[7]

Had the intention been to confer on Sec. 8 the effect of acquittal, the Court should have retained the express provision to that effect in the final draft. Obviously, the conspicuous absence therein of the phrase “amounts to an acquittal,” or its equivalent, forecloses a speculative approach to the meaning of Sec. 8. Virtually crossed out, such clause cannot now be incised from the original draft and grafted into the approved draft of the revised rules, without doing violence to its intent.

It must be stressed that Sec. 8 is nothing more than a rule of procedure. As part of the adjective law, it is only a means to an end - an aid to substantive law - and should accordingly be interpreted and applied in that concept. It was never meant to modify the settled provisions of law on the matter of prescription of offenses; or to unduly curtail the right of the State to bring offenders before the bar of justice. These matters are best left to the wisdom and sound judgment of the legislature.

Section 8 is very limited in scope and application. Justice Oscar M. Herrera, Consultant, Committee on Revision

of the Rules, in his Treatise on Historical Development and Highlights of Amendments of Rules on Criminal Procedure (Rationale of Amendments of the Revised Rules on Criminal Procedure), made the following commentaries on the import of the provision -

There had been so many instances where the National Bureau of Investigation or other police agencies have refused to issue clearances for purposes of employment or travel abroad, to persons who have pending cases, on the ground that the dismissal of their cases by the court was merely provisional, notwithstanding the fact that such provisional dismissals, more often than not, had been done five or ten years ago. This causes prejudice to the persons concerned. Accordingly, a rule was provided that the provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.[8]

Clearly, the feverishly contested provision is purely administrative or regulatory in character. The policy embodied therein is simply to grant the accused momentary relief from administrative restrictions occasioned by the filing of a criminal case against him. He is freed in the meantime of the dire consequences of his having been charged with a crime, and temporarily restored to his immunities as a citizen, solely for purposes of government clearances. Section 8 imports no intricate nor ornate legal signification that we need not discern from it a meaning that too far deviates from what it actually purports to convey.

Indeed, were we to adhere to the thesis equating permanent dismissal with “finality” and “acquittal,” we would be ascribing meaning to the provision which is not only at war with the demands of reason but also contrary to the clear intention of the rule. The disastrous effect of respondent’s interpretation of Sec. 8 upon our criminal justice system is not difficult to imagine. So construed, it would afford an accused, endowed with a fertile imagination and creativeness, a plethora of opportunities to rig his prosecution by silencing witnesses and suppressing evidence then letting the case hibernate for a much shorter period of one (1) or two (2) years. To be sure, our procedural laws could not have intended to sanction such a result. “A system of procedure,” intoned Justice Cardozo, “is perverted from its proper function when it multiplies impediments to justice without the warrant of a clear necessity.”[9]

Respondent conjures up the ingenious hypothesis that although Sec. 8 of Rule 117 and the “double jeopardy” principle have different requisites, they are nonetheless cognate rules since Sec. 8 of Rule 117 affords the accused benefits analogous to that bestowed under the “double jeopardy” principle.[10] Implacable and unyielding is he in the position that a provisional dismissal that attains the character of permanency produces the effect of a *sui generis* acquittal. In this respect, according to him, Sec. 8 of Rule 117 is not in that Sec. 17 (Discharge of Accused to be State Witness) unique and Sec. 18 (Discharge of Accused Operates as Acquittal) of Rule 119 of the 2000 Revised Rules on Criminal Procedure is also invested with the benefits of double jeopardy when it grants the accused state witness a discharge tantamount to an acquittal. In both instances, the absence of any or all of the essential requisites of double jeopardy does not preclude the discharge of the accused state witness or one whose case has attained permanent dismissal.

It bears recalling that since Anglo-Saxon jurisprudence on double jeopardy was swept into the shores of Philippine constitutional and statutory history, our concept of double jeopardy has faithfully adhered to the pronouncements first made by *Kepner v. United States*[11] that “. . . (I)t is then the settled law of this court that former jeopardy includes one who has been acquitted by a verdict duly rendered, although no judgment be entered on the verdict, and it was found upon a defective indictment. The protection is not . . . against the peril of second punishment, but against being tried again for the second offense.” The fundamental philosophy that underlies the finality of an acquittal is the recognition of the fact that the state with its infinite resources and power should not

be allowed to make repeated attempts to convict an individual and expose him to a state of perpetual anxiety and embarrassment as well as enhancing the possibility that although innocent, he may be found guilty.

Presently, the 2000 Revised Rules on Criminal Procedure is explicit in its prescription of the requisites for the invocation of double jeopardy and the resultant effect thereon on acquittals. Section 7, Rule 117, states -

Sec. 7. Former conviction or acquittal; double jeopardy. - When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Ensclosed in the foregoing procedural tenet are the imperatives for invoking double jeopardy: (a) a valid complaint or information; (b) before a court of competent jurisdiction; (c) the defendant had pleaded to the charge; and, (d) the defendant was acquitted or convicted or the case against him dismissed or otherwise terminated without his express consent.

In contrast, provisional dismissal under Sec. 8 of Rule 117 requires only the twin requirements of consent of the accused and notice to the offended party. When a criminal case is provisionally dismissed upon the express application of the defendant, the dismissal is not a bar to another prosecution for the same offense because his action in having the case dismissed is a waiver of his constitutional prerogative of double jeopardy as he, in a manner of speaking, throws a monkey wrench to the judicial process and prevents the court from rendering a judgment of conviction against him. Jurisprudence has emphatically enunciated that double jeopardy cannot be properly invoked where the case was dismissed with the express conformity of the accused. This much is given as one of the requisites of double jeopardy, i.e., where the accused is acquitted or convicted, or the case against him dismissed or otherwise terminated without his express consent. This assent by the accused to the dismissal is the operative act that precludes the effects of double jeopardy from setting in, so that despite the permanency of the dismissal due to the lapse of the periods set forth in Sec. 8 of Rule 117, the refiling of a case under a new information does not trample upon this venerable doctrine.

The permanence of the dismissal should not be understood as the harbinger of final and absolute liberation of the accused from future prosecution. It merely augurs the demise of the unrevived cases but it does not prevent the state from exercising the right to re-prosecute the accused within the prescriptive period provided in Art. 90 of the Revised Penal Code. With more weighty reason can we not accommodate respondent in his plea to avail of the graces afforded by the doctrine since the records would show that he has yet to enter his plea to the charges or that the trial on the merits has as yet to commence.

Respondent also fires a shot in the dark when he suggests that there exists no marked difference between revival and refiling of a criminal case as in fact, according to him, the two (2) concepts are synonymous and interchangeable. A survey of jurisprudential antecedents reveal the distinction between the revival and refiling of a new information. The authorities are unanimous in their recognition of the fact that a provisionally dismissed case can be revived as it does not call for the operation of the rule on double jeopardy and that cases can also be refiled under a new complaint or information for the same offense. [12]

While I agree however that the filing of Crim. Cases Nos. 01-101102 - 01-101112 is NOT a revival of the earlier dismissed cases, I wish to emphasize, lest I be misconstrued, that the "New Informations" in the subsequently refiled cases are new not because the respondent is charged thereunder as a co-principal, instead of as a mere

accessory, or that the number of the accused has been increased from 26 to 34; rather, the new Informations which are the bases for the prosecution of the respondent again under the same offense, are new for the singular reason that they are separate and distinct from those in the previously dismissed cases. Simply stated, it is not of consequence whether the allegations in the two (2) sets of Informations are quintessentially identical or different in form and substance insofar as concerns the right of the state to prosecute the respondent anew after the provisional dismissal became permanent.

A question may be asked: Suppose that the new information is a verbatim reproduction of the information in the permanently dismissed case, can we not now say that the newly filed case is a mere revival of the case previously dismissed? After all, stripped of semantic finery, their being identical would lead to the impression, although erroneous, that one is but a revival of the other. On the surface one may see no apparent difference between the two (2) sets of Informations, but a subtle yet significant functional distinction in fact exists. Once a case is permanently dismissed after the lapse of the prescriptive periods set forth in Sec. 8, the case is dead and, for all intents and purposes, beyond resuscitation. All the on-going proceedings and those still to be had, e.g., preliminary investigation, arraignment, trial, etc., shall cease and be terminated. In the event however that the accused is prosecuted anew with the same offense, albeit under an identical information, the previously terminated proceedings will not be reactivated, the previous case having been set at rest; instead, new proceedings will be conducted as if the accused has been charged afresh. To my mind, the foregoing interpretation of Sec. 8, Rule 117 has in its favor the soundest policy considerations based no less on the fundamental objectives of procedural rules.

Incidentally, I find it particularly disturbing that the Informations in Crim. Cases Nos. Q-99-81679 to Q-99-81689 were dismissed by the trial judge without complying with one of the requirements of the first paragraph of Sec. 8, i.e., the dismissal must be with notice to the offended party. There is nothing in the records which would show that all the offended parties were ever notified that the cases against respondent and his co-accused would be dismissed. Even if we proceed on the assumption that the filing of affidavits of desistance by the offended parties may be considered a substantial equivalent of notice, still the dismissal appears to be procedurally infirm since only seven (7) of the offended parties representing eight (8) of the eleven (11) victims, executed affidavits of desistance.^[13] No similar affidavits were submitted for the three (3) remaining victims.^[14] Cannot the next of kin of these three (3) remaining victims, who were not even notified of the provisional dismissal of the cases, prosecute those responsible for killing them within the prescriptive period provided in Art. 90 of The Revised Penal Code? Are they now without any remedy in law if witnesses belatedly surface, they who cowered in fear at the time because of the positions of power held by those perceived to be responsible therefor?

Significantly also, I am at a loss as to why the Court of Appeals reckoned the two (2)-year period from 29 March 1999 as the date of issuance of the resolution of dismissal. When Sec. 8 speaks of "issuance" it should be construed not with reference to the date as appearing in the resolution of dismissal but on the date it was actually delivered to the proper person and received by him. Otherwise, how would the offended parties know that such resolution was issued as to reckon with the two (2)-year period after which the provisional dismissal would be considered permanent?

In the instant case, the records do not clearly identify who the offended parties are, or whether they were all notified of Judge Agnir's order of dismissal dated 29 March 1999 as they do not even appear to have been properly named. In the absence of such evidence, the reckoning point for computing the two (2)-year period under Sec. 8 becomes indeterminable. Assuming that Sec. 8 is available to respondent, to which we do not even agree, still respondent has failed to discharge his burden of proving that the two (2)-year period has indeed elapsed to make the provisional dismissal permanent.

These circumstances cast a heavy pall of doubt on whether the dismissal of the eleven (11) Informations has indeed attained the status of permanence as to prevent the prosecution from refileing them. The notice requirement in the first paragraph of Sec. 8 as well as the notice of the order of dismissal are by no means trivial formalities; they are meaningful and significant. The offended parties, seeking justice and vindication for the wrong done, would naturally be keenly interested in the progress and outcome of the criminal prosecution. Hence, it is but proper that all of them be notified of the termination of the cases and given an equal opportunity to object to the dismissal.

A view has been expressed that respondent's rights to speedy trial and to speedy disposition of his cases were violated; this despite the fact that the right was not invoked by respondent before us. Accordingly, the twenty-six (26) month delay in the refileing of cases relative to the Kuratong Baleleng killings is claimed to be vexatious, capricious and oppressive, and hence sufficient to activate the protection of the Bill of Rights, specifically, on the rights to speedy trial and to speedy disposition of his cases. Sections 14 (2) and 16, Art. III, of the 1987 Constitution respectively provides -

Sec. 14. x x x (2) In all criminal prosecutions, the accused x x x shall enjoy the right x x x to have a speedy, impartial and public trial x x x.

Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

These provisions uphold the time-honored tradition of speedy justice for, as stated in the oft-repeated dictum, "justice delayed is justice denied." Their express inclusion in the present Constitution was in response to the common charge against perennial delays in the administration of justice which have plagued our judicial system.[15]

The right to speedy trial under Sec. 14 and the right to speedy disposition of cases in Sec. 16, both of Art. III, of the 1987 Constitution, are kindred constitutional norms similar in nature and legal effects, sharing common operational principles, and subject to the same test for purposes of determining violations thereof. Thus, the cornerstone of both rights is to prevent delays in the administration of justice by requiring tribunals to proceed with reasonable dispatch in the trial and disposition of cases.

Speedy disposition of cases, like the constitutional guarantee of speedy trial, is necessarily relative. It is consistent with delays and depends upon the circumstances of a particular case.[16] Verily, these rights are more indistinct concepts than other constitutional rights. It is, for example, impossible to determine with precision when the rights have been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, these rights cannot be quantified into a specified number of days or months. There is no fixed point in the proceeding when a party may exercise or be deemed to have waived these rights. Finally, the amorphous quality of the rights sometimes lead to the drastic remedy of dismissal of a case when the rights have been infringed. This is indeed a serious consequence because it means that an accused who may be guilty of a grave offense will go scot-free without being tried and held responsible therefor. Such a remedy is more radical than an exclusionary rule or a reversal for a new trial.

At any rate, the framers of the Constitution recognized the right to speedy disposition of cases distinctly from the right to speedy trial in criminal cases. It should be noted that Sec. 16 covers all phases before, during and after trial, and extends protection to all parties in all types of cases: civil, criminal and administrative. In this respect, it affords a broader protection than Sec. 14 (2) which guarantees merely the right to a speedy trial in criminal cases.[17]

Against this backdrop, I turn to inquire into the parameters of the right to speedy disposition of cases. Just how

broad is its mantle of protection as applied in criminal cases? When does the right attach during the criminal process, and when may it be properly asserted by a party? A criminal prosecution has many stages, and delay may occur during or between any of them. As applied in the instant case, it appears that the speedy disposition guarantee of the Bill of Rights is asserted to include the period of delay from the provisional dismissal of the case to its revival or refile since “respondent is as much entitled to a speedy reinvestigation and refile of the provisionally dismissed cases against him.”[18]

Such interpretation, however, does not seem to be in consonance with the unmistakable language, nor by the obvious intent, of Sec. 16. The provision speaks of “speedy disposition of cases before all judicial, quasi-judicial, or administrative bodies.” It clearly and logically contemplates a situation wherein there exists an outstanding case, proceeding or some incident upon which the assertion of the right may be predicated. Evidently, it would be idle, not to say anomalous, to speak of “speedy disposition of cases” in the absence of anything to dispose of in the first place.

A review of pertinent jurisprudence attests abundantly to the indispensable requirement of a “pending case, proceeding or some incident,” as sine qua non before the constitutional right to speedy disposition of cases may be invoked. Thus, in *Tatad v. Sandiganbayan*[19] we held that the long delay of three (3) years in the termination of the preliminary investigation by the Tanodbayan was violative of the Constitutional right of speedy disposition of cases because political motivations played a vital role in activating and propelling the prosecutorial process in this case. Similarly in *Duterte v. Sandiganbayan*[20] involving an inordinate delay in the conduct of preliminary investigation, we ruled that such unjustified delay infringes upon the right to speedy disposition of cases.

In *Binay v. Sandiganbayan*[21] we ruled out any violation of petitioner’s right to speedy disposition of cases despite a six-year delay from the filing of the charges in the Office of the Ombudsman to the time the Informations were filed in the Sandiganbayan. Then in *Dansal v. Fernandez, Sr.*[22] we rejected the allegation of inordinate delay in terminating the preliminary investigation. Finally, in *Cervantes v. Sandiganbayan*[23] we held that the inordinate delay of six (6) years by the Special Prosecutor (succeeding the Tanodbayan) in the filing of the initiatory complaint before he decided to file an Information for the offense with the Sandiganbayan violated petitioner’s constitutional guaranty to speedy disposition of the case.

Invariably, the foregoing cases demonstrate that the broad protective cloak of the constitutional right to speedy disposition of cases becomes available only in instances where preliminary proceedings have been initiated, or a case has already been filed or any other incident pertaining thereto already had. As we succinctly stated in *Binay v. Sandiganbayan*[24] -

The right to a speedy disposition of a case, like the right to speedy trial, is deemed violated only when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or unjustifiable motive a long period of time is allowed to elapse without the party having his case tried (*italics supplied*).

It goes without saying therefore that the right to speedy disposition of cases is unavailing in the absence of any proceedings conducted before, during, or after, trial. Significantly, there is no precedent, for indeed there is none, to support the novel conclusion that even after the dismissal of the cases, an accused may still invoke the constitutional guarantee.

In the case before us, nothing was left to be done after the issuance of the 29 March 1999 Order of Judge Agnir dismissing all criminal charges against respondent relative to the Kuratong Baleleng incident. During the hiatus following the dismissal of the criminal charges, no formal proceeding remained outstanding. Not even court processes were issued to restrain respondent’s liberty or subject him to any form of public accusation; he was free

to go about his affairs, to practice his profession, and to continue on with his life. Respondent was legally and constitutionally in the same posture as though no charges had been made. Hence, it was only at the time when he was subjected to another pre-indictment investigation and accused anew that respondent may invoke his right to speedy disposition of his cases. The delay after the charges against him were dismissed, like any delay before those charges were filed, should not be included in reckoning the time and determining whether he was denied his right to a speedy disposition of his cases.

The provisional nature of the dismissal of the original criminal cases is quite immaterial. The fact that the cases were dismissed conditionally or “without prejudice” to the subsequent filing of new cases, does not make the order of dismissal any less a disposition of the cases. Although provisional, it nonetheless terminated all proceedings against respondent such that there remained in the meantime no pending case which the court could act upon and resolve, and which could be made the basis for the application of the right to speedy disposition of respondent's cases.[25]

Clearly, we would be reinventing the wheel, so to speak, if we are to include within the protective shield of the right to speedy disposition of cases the reinvestigation and refiling of the provisionally dismissed cases. The matter of reinvestigation and refiling of cases at some future time are not by themselves “pending incidents related to the dismissed cases;” they are mere possibilities or expectancies. The State has no definite decision yet on whether to really commence a reinvestigation and refiling of the cases, and only indicates, at the most, a probable action at some future time. Until such time that the State decided to exercise these rights, they cannot ripen into a pending case, proceeding or incident for purposes of the speedy disposition safeguard.

Certainly, the constitutional pledge mandates merely the swift resolution or termination of a pending case or proceeding, and not the initiation or institution of a new case or proceeding. It has no application to inexistent proceedings but only to those currently being undertaken. Were we to hold otherwise, we would in effect be granting to every accused an unbridled license to impose his will upon the State and demand that he be immediately reinvestigated and a case filed against him. The determination of whether to file or when to file a case lies within the sole discretion of the prosecution depending upon the availability of his evidence and provided that it is filed within the prescriptive period. As American Jurisprudence would hold -

It requires no extended argument to establish that prosecutors do not deviate from “fundamental conceptions of justice” when they defer seeking indictments until they have probable cause to believe an accused is guilty; indeed it is unprofessional conduct for a prosecutor to recommend an indictment on less than probable cause. It should be equally obvious that prosecutors are under no duty to file charges as soon as probable cause exists but before they are satisfied they will be able to establish the suspect's guilt beyond a reasonable doubt. To impose such a duty “would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself.” From the perspective of potential defendants, requiring prosecutions to commence when probable cause is established is undesirable because it would increase the likelihood of unwarranted charges being filed, and would add to the time during which defendants stand accused but untried x x x. From the perspective of law enforcement officials, a requirement of immediate prosecution upon probable cause is equally unacceptable because it could make obtaining proof of guilt beyond reasonable doubt impossible by causing potentially fruitful sources of information to evaporate before they are fully exploited. And from the standpoint of the courts, such a requirement is unwise because it would cause scarce resources to be consumed on cases that prove to be insubstantial, or that involve only some of the responsible parties or some of the criminal acts.[26]

To reiterate, respondent's right to speedy disposition of his criminal cases attached only at that precise moment the Department of Justice constituted a panel of prosecutors and conducted a new preliminary investigation. Even then, the conduct of the prosecutors cannot be assailed as violative of the speedy disposition guarantee. As shown

by the records, the government can hardly be accused of foot-dragging for, in fact, they lost no time in commencing the new preliminary investigation and thereafter filing the corresponding Informations in court upon the appearance of new witnesses against respondent and his co-accused. The expeditious action of the government in the instant case certainly cannot be viewed with suspicion.

In fairness to petitioners, they cannot be faulted in demonstrating alacrity in performing their mandate, nor can they be castigated for the so-called “unusual haste” in reopening the cases against respondent. No impure motive should be imputed to them other than the fact that they regularly performed their duty in their apparent desire to unravel the Kuratong Baleleng mystery.

For the petitioners, this is a classic case of “damn-if-you-do-and-damn-if-you-don’t” situation. Petitioners are being put to task for their alleged negligence and delay in reviving the cases, but then again, they are also being pilloried for persecuting the respondent because of the supposed “unusual haste” and “uncharacteristic vigor” in pursuing the criminal cases against him and his co-accused.

For the reasons stated, I decline to extend to respondent the protection guaranteed by Sec. 16. Plain common sense dictates that the provision cannot be applied to situations not contemplated by it. Verily, we cannot expand the letter and spirit of the provision and read into it a meaning that is not there.

This does not, of course, mean that respondent is utterly unprotected in this regard. On the contrary, there are other constitutional and statutory mechanisms to guard against possible and actual prejudice to the accused, resulting from the passage of time. Primarily, the statute of limitations under Art. 90 of The Revised Penal Code is the principal safeguard against prosecuting overly stale criminal charges. The statute represents legislative assessments of relative interests of the State and the defendant in administering and receiving justice; it protects not only the accused from prejudice to his defense, but also balances his interest in repose against society's interest in the apprehension and punishment of criminals.[27] This statute provides predictability by specifying a limit beyond which there is an irrefutable presumption that the rights of an accused to a fair trial would be prejudiced.[28]

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.[29]

Moreover, the sweeping command of the Due Process Clause always protects defendants against fundamentally unfair treatment by the government in criminal proceedings. Procedural fairness required by due process decrees the dismissal of an indictment if it be shown that delay caused substantial prejudice to the rights of an accused to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused.

But even if we proceed on the assumption that respondent may rightfully invoke the speedy disposition clause for the respondent, still I find that the circumstances of this case fail to measure up to the criteria set forth under the Balancing Test.

In *Caballero v. Alfonso*[30] we adopted a four-factor Balancing Test to determine whether an accused has been denied the constitutional right to speedy disposition of his case, i.e., (a) length of the delay, (b) reason for the delay, (c) assertion of the right or failure to assert it, and, (d) prejudice caused by the delay.

With these relevant factors, the otherwise abstract concept of speedy disposition of cases is provided with at least

a modicum of structure. The Balancing Test, in which the conduct of both the prosecution and the defense are considered, prescribes flexible standards based on practical considerations. It necessarily compels courts to approach speedy disposition cases on an ad hoc basis. No single factor in the Balancing Test is definitive because all four (4) must be weighed against the others in determining whether a violation of the right to speedy disposition of cases occurred. In other words, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out in full recognition of the accused's interest in the speedy disposition of his case as specifically affirmed in the Constitution.[31]

I proceed to consider the four (4) factors in the Balancing Test in seriatim. The length of delay is to some extent a triggering mechanism. Until it is shown that the delay has crossed the threshold dividing ordinary delay from presumptively prejudicial delay, there is no necessity for inquiry into the other factors that go into the balance.[32] Considering the serious nature of the charges against respondent, and more importantly, the criminal cases sought to be filed being deeply impressed with public interest, involving as they do high ranking police officers, I am of the view that the claimed two (2) years and three (3) months lag between the provisional dismissal of the first criminal cases on 29 March 1999 and the filing of new Informations on 6 June 2001 sketches below the bare minimum needed to provoke such an inquiry. At any rate, I will assume, without conceding, that it is sufficiently long for purposes of triggering a full analysis under the three (3) remaining factors.

The banner the litigants seek to capture is the second factor - the reason the government assigns to justify the delay. Here too, different weights should be assigned to different reasons. For instance, a deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighed less heavily. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.[33]

I find it hard to accept that in the criminal cases against respondent the government is on the wrong side of the divide between acceptable and unacceptable reasons for delaying the prosecution of respondent. It simplistically and unrealistically assumes that the availability of witnesses Yu and Enad prior to 2001 renders the seeming lethargy of the government unjustifiable. It completely disregards other considerations affecting the decision of the government to stay its entire prosecutorial machinery.

The government may delay for a variety of reasons such as to gain time in which to strengthen and document its case. The government may also delay, not with the view of ensuring conviction of the accused, but because the government lacks sufficient resources to move quickly. The species of governmental delay that are anathema to the right to speedy disposition of cases are those which are purposely or negligently employed to harm or gain impermissible advantage over the accused at the trial. The reason is that, in such circumstance, the fair administration of justice is imperiled.

In the present recourse, there is nothing to demonstrate that the delay in reviving the cases against respondent was deliberately availed of for an impermissible purpose. It was not explained what improper tactical advantage was gained or sought by the government; nor can I discern any such advantage from the records. To be sure, if as claimed by respondent this whole mess is nothing more than a pure and simple political vendetta, carried out by a posse bent on lynching him politically and personally - which I am not inclined to acknowledge at this stage - the government could have moved against respondent with deliberate haste, for delay is not exactly to its best interest.

Neither can we safely conclude that the public prosecutors are guilty of negligent omission. Insufficiency of evidence is a legitimate reason for delay. The government is naturally not expected to go forward with the trial and incur costs unless it is convinced it has an iron-clad case to make a worthwhile indictment. Verily, it needs

time to gather evidence, track down and collect witnesses, as well as document its case. As to how much time it needs depends on such other factors as the availability of witnesses and resources to enable it to move quickly. In *U.S. v. Lovasco*[34] it was held -

x x x investigative delay is fundamentally unlike delay under taken by the Government solely “to gain tactical advantage over the accused,” precisely because investigative delay is not so one-sided. Rather than deviating from elementary standards of “fair play and decency,” a prosecutor abides by them if he refuses to seek indictments until he is completely satisfied that he should prosecute and will be able to promptly to establish guilt beyond a reasonable doubt. Penalizing prosecutors who defer action for these reasons would subordinate the goal of “orderly expedition” to that of “mere speed.

In no mean measure, the many constitutional and procedural safeguards provided an accused can also present obstacles. It is doubly difficult in this particular case considering the recantation and disappearance of all available vital witnesses for the prosecution.

If we were to turn the tables against the respondent, we say that the unavailability of the witnesses for the prosecution may be attributed to the conventional tendency of our people never to antagonize the powerful and the influential. We are not insinuating that respondent had a hand in the recantation or desistance of the complainants, or the non-appearance or the shortage of witnesses for the prosecution; what we are simply saying is that accusing an individual of respondent's stature naturally engenders fear of physical harm, real or imagined, and can intimidate even the most stout-hearted and temerarious individuals. This circumstance should have been given weight in resolving the present controversy.

The third factor - the extent to which respondent has asserted his right to speedy disposition of his case - further weakens his position. When and how a defendant asserts his right should be given strong evidentiary weight in determining whether the accused is being deprived of the right. The more serious the deprivation, the more likely an accused is to complain. But the failure to invoke the right will make it difficult for an accused to prove that he was denied thereof.[35]

I do not think that the vigor with which respondent defended himself in the original cases against him, and the vigilance with which he assailed the filing of the new Informations now subject of the instant petition, is the equivalent to an assertion of his right to speedy disposition. The trouble with this observation is that every accused in a criminal case has the intense desire to seek acquittal, or at least to see the swift end of the accusation against him. To this end, it is natural for him to exert every effort within his capacity to resist prosecution. But is it correct to assume that, in every instance, the accused in resisting his criminal prosecution is also asserting his right to speedy disposition?

Respondent's reliance on Sec. 8, Rule 117, of the 2000 Revised Rules on Criminal Procedure, which some have said is based on the constitutional right to speedy disposition of cases, cannot be equated with a positive assertion of the right to speedy disposition. A perusal of the records would reveal that the issue of applicability of Sec. 8, Rule 117, was raised by respondent for the first time before the Court of Appeals, in his Second Amended Petition - undoubtedly a mere afterthought. It was not his original position before the trial court, which centered on the “lack of valid ‘complaints’ to justify a preliminary investigation of cases which had long been dismissed.” It was not even his initial position in the early stages of the proceedings before the Court of Appeals. Within the context of the Balancing Test, respondent's tardy, inexplicit and vague invocation of this right makes it seriously difficult for him to prove the denial thereof.

Finally, the fourth factor is prejudice to the accused. Prejudice, of course, should be assessed in the light of the interests of accused which the speedy disposition right as well as the speedy trial right are designed to protect.

There are three (3) of such interests: (a) to prevent oppressive pretrial incarceration; (b) to minimize anxiety and concern of the accused; and, (c) to limit the possibility that the defense will be impaired.[36] Of the three (3), the most significant is the last because the inability of the defendant to adequately prepare his case skews the fairness of the entire system.[37]

Needless to say, respondent was never arrested or taken into custody, or otherwise deprived of his liberty in any manner. These render the first criterion inapplicable. Thus, the only conceivable harm to respondent from the lapse of time may arise from anxiety and the potential prejudice to his ability to defend his case. Even then, the harm suffered by respondent occasioned by the filing of the criminal cases against him is too minimal and insubstantial to tip the scales in his favor.

Concededly, anxiety typically accompanies a criminal charge. But not every claim of anxiety affords the accused a ground to decry a violation of the rights to speedy disposition of cases and to speedy trial. The anxiety must be of such nature and degree that it becomes oppressive, unnecessary and notoriously disproportionate to the nature of the criminal charge. To illustrate, a prosecution for the serious crime of multiple murder naturally generates greater degree of anxiety, than an indictment for, say, simple estafa. The anxiety and the tarnished “reputation and image of respondent who is, after all, presently and newly elected member of the Senate,” does not amount to that degree that would justify a nullification of the appropriate and regular steps that must be taken to assure that while the innocent should go unpunished, those guilty must expiate for their offense. Verily, they pale in importance to the gravity of the charges and the paramount considerations of seeking justice for the victims as well as redeeming the sullied integrity and reputation of the Philippine National Police for their alleged involvement in the perpetration of the ghastly crimes.

We cannot therefore hold, on the facts before us, that the delay in the reinvestigation and refiling of the criminal cases weighed sufficiently in support of the view that respondent’s right to speedy disposition of his cases has been violated. The delay simply does not justify the severe remedy of dismissing the indictments.

Consistent with the views expressed above, I hold that no constitutional, statutory and procedural impediments exist against the subsequent re-indictment of respondent. Although we are dealing here with alleged members of the notorious Kuratong Baleleng Gang, against whom society must be protected, we must bear in mind that they too were human beings with human rights. Indeed, life is so precious that its loss cannot simply be consigned to oblivion in so short a time. Withal, the seriousness of the accusations against respondent and other high-ranking officers of the PNP goes into the very foundation of our law enforcement institutions. We must ferret out the truth: Is the Philippine National Police so contaminated to the core with corrupt and murderous police officers, worse than the criminal elements they are trained to exterminate? Let us give the courts a chance to find out - and more importantly - to absolve respondent and erase any taint in his name, if innocent. Injustice anywhere is a threat to justice everywhere.

I vote to GRANT the Motion for Reconsideration.

[1] Giuseppe Mazzini, “Byron and Goethe.”

[2] P/C Supts. Jewel F. Canson, herein respondent Panfilo Lacson, and Romeo Acop, P/Sr. Supt. Francisco Subia, Romulo Sales, Supts. Almario Hilario, Luizo Ticman, Zozorabel Laureles, P/C Insp. Michael Ray Aquino, Gil Meneses, Cesar Mancao, Jose Erwin Villacorte, P/Sr. Insp. Rolando Anduyan, Glenn Dumlao, Sotero Ramos, P/Insp. Ricardo Dandan, SPO4 Vicente Arnado, SPO1 Wilfredo Cuantero and SPO1 Wilfredo Angeles.

[3] See Annex “A” of the Petition.

[4] Order dated 5 June 2001.

[5] Decision penned by Associate Justice Eriberto U. Rosario, Jr., concurred in by Associate Justices Conrado M. Vasquez, Jr., Hilarion L. Aquino, and Josefina Guevara-Salonga. Associate Justice Buenaventura J. Guerrero, dissenting.

[6] Art. VIII, 5(5) of the 1987 Constitution provides that the Supreme Court shall have the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights x x x x

[7] TSN, 19 February 2002, pp. 292-293; see also, Minutes of the Revision Committee Meetings, 11 October 1999, 2:30 pm; id., 8 November 1999, 2:00 pm.

[8] See also Herrera, Remedial Law, Vol. IV, 2001 Ed., at 660.

[9] Reed v. Allen, 286 U.S. 191, 209 (1932).

[10] See Respondents Memorandum, at pp. 49-53.

[11] 195 US 100.

[12] One of the earliest declarations by this Court on the matter is enshrined in Republic v. Agoncillo (L-27257, 31 August 1971, 40 SCRA 579.) where Chief Justice Fernando, then an Associate Justice of the Court, articulated the doctrine that the institution of a case after having been dismissed without prejudice cannot be the basis of the claim of twice being put in jeopardy. Citing the case of Jaca v. Blanco (86 Phil. 452 [1950]) Agoncillo unequivocally pointed out that "x x x (I)n the absence of any statutory provision to the contrary, we find no reason why the court may not, in the interest of justice, dismiss a case provisionally, i.e., without prejudice to reinstating it before the order becomes final or to the subsequent filing of a new information for the same offense." Ortigas & Company Limited Partnership v. Velasco (G.R. No. 109645, 25 July 1994, 234 SCRA 455) made the clarification that a dismissal of a case, even if made without prejudice, and the lapse of the reglementary period within which to set aside the dismissal operates to remove the case from the Court's docket; in which event, the case can no longer be reinstated by mere motion in the original docket action, but only by the filing of a new complaint. This ruling was reiterated in Banares II v. Balising (G.R. No. 132624, 13 March 2000, 328 SCRA 36) which declared that since a final order of dismissal is beyond the power of the court to modify or alter, a party who wishes to reinstate the case has no other option but to file a new complaint.

[13] The following executed affidavits of desistance: Myrna Abalora, mother of victims Sherwin Abalora and Rey Abalora; Rufino Siplon, father of victim Rolando Siplon; Carmelita Elcamel, wife of victim Wilbur Elcamel; Leonora Soronda Amora, mother of victim Joel Soronda Amora; Nenita Alap-ap, wife of victim Carlito Alap-ap; Imelda Montero, wife of victim Manuel Montero; and Margarita Redillas, mother of victim Hilario Jevy Redillas.

[14] Namely, Meleubren Soronda, Pacifico Montero, Jr., and Alex Neri.

[15] De Leon, Philippine Constitutional Law, Vol. 1, 1999 Ed., at p. 877.

[16] Caballero v. Alfonso, G.R. No. L-45647, 21 August 1987, 153 SCRA 153.

[17] See Abadia v. Court of Appeals, G.R. No. 105597, 23 September 1994, 236 SCRA 676.

[18] Decision, at p. 14

[19] G.R. Nos. 72335-39, 21 March 1988, 159 SCRA 70.

[20] G.R. No. 130191, 27 April 1998, 289 SCRA 725.

[21] G.R. Nos. 120681-83, 1 October 1999, 316 SCRA 65.

[22] G.R. No. 126814, 2 March 2000, 327 SCRA 145.

[23] G.R. No. 108595, 18 May 1999, 302 SCRA 149.

[24] *Supra*.

[25] See also *Bañares v. Balising*, G.R. No. 132624, 13 March 2000, 328 SCRA 36, citing *Olympia International v. Court of Appeals*, No. L-43236, 20 December 1989, 180 SCRA 353, 361, wherein we held "that dismissal without prejudice of a complaint does not however mean that the dismissal order was any less final. Such order of dismissal is complete in all details, and though without prejudice, nonetheless finally disposed of the matter. It was not merely an interlocutory order but a final disposition of the complaint." And in *Ortigas & Company, Ltd. v. Velasco*, G.R. No. 109645, 25 July 1995, 234 SCRA 455, 486, "the dismissal of the case, and the lapse of the reglementary period to reconsider and set aside the dismissal, effectively operated to remove the case from the Court's docket." These doctrinal principles may be applied to provisional dismissals in criminal cases.

[26] *United States v. Lovasco*, 431 U.S. 783, 97 (1977).

[27] *United States v. Marion*, 404 U.S. 307 (1971).

[28] *Ibid*.

[29] *Toussie v. United States*, 397 U.S. 112, 114-115 (1970).

[30] *Supra*. See also *Binay v. Sandiganbayan*, G.R. Nos. 120681-83, 1 October 1999; *Dansal v. Fernandez*, G.R. No. 126814, 2 March 2000, 327 SCRA 145; and, *Socrates v. Sandiganbayan*, G.R. Nos. 116259-60, 253 SCRA 773. In all these cases, the Court applied the four factors in the Balancing Test for purposes of determining whether the accused was deprived of his right to speedy disposition of cases.

[31] *Barker v. Wingo*, 407 U.S. 514 (1972).

[32] *Ibid*.

[33] *Ibid*.

[34] See Note 28.

[35] *Ibid*.

[36] *Smith v. Hooey*, 393 U.S. 374 (1969).

[37] *Barker v. Wingo*, *supra*.

DISSENTING OPINION

PUNO, J.:

I

PRECIS

Our Resolution of May 28, 2002 was the result of a long and exhaustive, nay, exhausting discussion of the meaning of Section 8, Rule 117 of the Revised Rules of Criminal Procedure. As summed up in the new ponencia of Mr. Justice Callejo, the Court ruled that Section 8, Rule 117 is applicable to the case at bar. Nonetheless evidence has to be adduced by the parties to prove certain facts which shall determine whether said section can be beneficially invoked by respondent Lacson. These vital facts, to quote the new ponencia, are (1) whether the provisional dismissal of the cases had the express consent of the accused; (2) whether notices to the offended parties were given before the cases of respondent Lacson were dismissed by then Judge Agnir, Jr.; (3) whether there were affidavits of desistance executed by the relatives of the three (3) other victims; (4) whether the 2-year period to revive the cases has already lapsed; (5) whether there is any justification for the re-filing of the cases beyond the 2-year period; (6) whether the reckoning date of the 2-year bar shall be from the date of the order of then Judge Agnir, Jr. dismissing the cases, or from the dates of receipt thereof by the various offended parties, or from the date of effectivity of the new rule; and (7) if the cases were revived only after the 2-year bar, the State must justify its failure to comply with the said time-bar. Thus, the case at bar was remanded to the RTC-Quezon City, Branch 81 to enable the parties to adduce evidence on these factual issues. On the basis of the evidence to be presented, the trial court will rule on the applicability of Section 8, Rule 117 to respondent Lacson.

It is noteworthy that except for JJ. Melo and Carpio, who inhibited themselves, the resolution was a unanimous one. The new ponencia now seeks to reverse the unanimous resolution of this Court. The Court has four new members and the passage of time has put a mist on some of the themes and sub-themes considered in the discussion of Section 8, Rule 117. I wish therefore to restate my humble understanding of Section 8, Rule 117, as chairman of the Committee on Revision of the Rules of Court that drafted the said rule.

I start with the statement that the Committee was confronted with the following problem:

- A complaint or information has been filed with a court of competent jurisdiction;
- The prosecution after a number of settings cannot proceed with the case for some reasons but usually due to the unavailability of the complainant or witnesses to testify;
- The accused is ready to proceed but cannot move to dismiss the case and invoke his right to speedy trial because the delay of the prosecution is not yet unreasonable;
- As a half-way measure and to relieve himself of the heavy burden of a pending criminal case, the accused agrees to a provisional dismissal of the complaint or information against him;
- Under the rules and case-law prior to year 2000, the provisional dismissal of a criminal case is open-ended. The case can be revived by the prosecution without any time limit except when it is already barred by prescription. It is not unusual for the case to be frozen for an unreasonable length of time. It remains in the docket of the court and contributes to its clogging. Worse, it hangs like a sword of Damocles over the head of the accused. It can fall principally depending on the predilection and prejudice of the prosecutor.

First. It was this undesirable situation that the Committee on Revision of the Rules of Court addressed when it designed Section 8, Rule 117 of the 2000 Revised Rules of Criminal Procedure. The Court en banc found no difficulty appreciating the rationale of the new rule for it approved the rule with but a minor amendment. The amendment lengthened the time within which the prosecution can revive the provisionally dismissed case in offenses punishable by more than six (6) years of imprisonment. The time to revive was stretched to two (2) years after a survey was made of offenses punishable by imprisonment of six (6) years or more and a study of its

probable adverse impact on the government campaign against crimes. In promulgating the new rule, the Court en banc struck a fine balance between the sovereign right of the State to prosecute crimes and the inherent right of the accused to be protected from the unnecessary burdens of criminal litigation. The timeline within which provisionally dismissed cases can be revived forms the crux of the delicate balance.

Second. Section 8, Rule 117 is a rule that gives an accused a new right that is distinct from, among others, the right to speedy trial and the right against double jeopardy. The resistance to recognize this new right and the effort to unnecessarily link it with other rights of the accused are the main causes of its misunderstanding. Thus, Section 8, Rule 117 should not be confused with Rule 119[1] which is the rule of procedure that implements the constitutional right of an accused to speedy trial. The confusion can obliterate the difference in the time requirements in the two rules. The right to speedy trial is determined by a flexible time standard. We resolve claims of denial of the right to speedy trial by balancing the following factors: (1) the duration of the delay, (2) the reason thereof, (3) the assertion of the right or failure to assert it by the accused, and (4) the prejudice caused by such delay. On the other hand, the timeline that restricts the right of the State to revive a case in a Section 8, Rule 117 situation is inflexible if it is shown that it has slept on its right without reason. Section 8, Rule 117 should not also be confused with Section 3(i), Rule 117 which is the rule of procedure that protects the constitutional right of an accused against double jeopardy. Again, the two rules are distinct, hence, it is not proper to require the element of prior plea in double jeopardy cases in a Section 8, Rule 117 situation. In fine, Section 8, Rule 117 is a new rule that is complete by itself and should not be construed in light of rules implementing other rights of an accused.

Third. The provisional dismissal under Section 8 of Rule 119 becomes permanent after the lapse of one or two years depending on the gravity of the offense involved. There can be no hedging on the meaning of the word permanent for the new rule used the word without a bit of embroidery. To be emphatic, the lapse of the one (1) or two (2) years time puts a period to the provisionally dismissed case and not a mere comma. It is true that during the deliberations of the Committee, the provision was originally worded as follows: "The corresponding order shall state that the provisional dismissal shall become permanent and amount to acquittal one (1) year after its issuance without the case having been revived." In the final version of the provision, however, the phrase "amount to acquittal" was deleted. The deletion was dictated by the belief that the phrase was a redundancy in light of the clear and unequivocal import of the word "permanent." The deletion cannot be distorted to mean that a case permanently dismissed can still be revived. For if that were the intent, the rule could have easily stated that the accused whose case has been permanently dismissed could nevertheless be prosecuted for the same offense.

Fourth. The permanent dismissal of an unrevived case under Section 8, Rule 117 does not unduly shorten the prescriptive period of offenses provided for in Articles 90 and 91 of the Revised Penal Code. The new rule merely regulates the conduct of the prosecution of an offense once the case is filed in court. It cannot be doubted that after a case is filed in court, its conduct by the prosecution can be regulated by rules of procedure which are within the exclusive power of this Court to promulgate. More specifically, the new rule regulates the time when the State must complete the prosecution of a pending case after its provisional dismissal. It provides the consequence when the State sleeps on its duty to revive a provisionally dismissed case. If the State loses the right to continue the prosecution of an offense already filed in court, it is not because the rule has amended the prescriptive period of the crime provided by our substantive law. Rather, it is a simple case where the State forfeited its right to prosecute by its own inaction, an inaction that unless justified cannot be allowed to further impair the rights of an accused.

Fifth. The permanent dismissal under Section 8, Rule 117 precludes the prosecution of the accused for the same offense under a new information. Again, it is true that we have rulings to the effect that a trial court may, in the interest of justice, dismiss a case provisionally but without prejudice to reinstating it before the order of dismissal

becomes final or without prejudice to the subsequent filing of a new information for the same offense. But note should be taken of the important fact that these rulings were handed down before section 8, Rule 117 came into being. Section 8, Rule 117 changed the old rule that dismissals which are provisional in character lack the imprimatur of finality, hence, they do not bar the revival of the offense charged or the filing of a new information for the same offense. The old rule was precisely jettisoned by the Committee and by this Court because of its unfairness to the accused. Again, I respectfully submit that the new rule would be useless if it would leave unfettered the discretion of the prosecutor in reviving the same offense under the fig leaf of a new information.

Sixth. I do not share the thesis that the re-filing of Criminal Cases Nos. Q-01-101102 to Q-01-101112 is not a revival of Criminal Cases Nos. Q-99-81679 to Q-99-81689. There cannot be any dispute on the meaning of the word revival in Section 8, Rule 117. Revival means reanimating or renewing the case that has become dormant because of its provisional dismissal. The cases that were provisionally dismissed for lack of probable cause refer to the eleven (11) Informations for murder filed against the respondent, et al., allegedly for the summary execution of some members of the Kuratong Baleleng gang. Without doubt, these are the same cases re-filed against the respondent after another preliminary investigation with the principal difference that respondent is now charged as a principal and no longer as an accessory.

I respectfully submit that the test to determine whether a case can be revived is not whether a new preliminary investigation has been conducted by the prosecution. That test, if allowed, would torture out of context the intent of Section 8, Rule 117. The new rule speaks of “case” and “offenses.” It clearly prohibits the revival of the case against an accused which has been provisionally dismissed for failure of the State to continue its prosecution without any justification. I like to underscore that the prohibition against revival is not a free gift by the State to an accused. The right against revival is the result of a trade-off of valuable rights for the accused can exercise it only if he surrenders his right to an early permanent dismissal of the case against him due to the inability of the State to prosecute. In so doing, the accused suffers a detriment for he gives the State one to two years to revive a case which has already been frozen for failure to prosecute. During this waiting period, the accused cannot move to dismiss the charge against him while the State can locate its missing witnesses, secure them if they are threatened and even gather new evidence. In exchange for this period of grace given to the State, the rule sets a timeline for the prosecutors to revive the case against the accused. The timeline is fixed for the accused has suffered an indubitable detriment and the trade-off for this detriment is the duty imposed on the prosecution either to continue or discontinue with the case within the 1 or 2-year grace period. We cannot allow the undue extension of this detriment unless the State can show compelling reasons to justify its failure to prosecute. The open-ended practice under the old rule which makes provisional dismissal permanently provisional is precisely the evil sought to be extirpated by Section 8, Rule 117.

Seventh, I wish to stress the bigger reason for Section 8, Rule 117. The new rule does enhance the constitutional rights of an accused to speedy trial and speedy disposition of the case(s) against him but it is much more than that. More broadly, the new rule was designed to achieve one of the end-goals of the criminal process - - - to minimize the burdens of accusation and litigation. This end-goal is well explained by La Fave and Israel, conceded authorities in Criminal Procedure, viz:[2]

“(d) Minimizing the Burdens of Accusation and Litigation. Even though eventually acquitted, an innocent person charged with a crime suffers substantial burdens. The accusation casts a doubt on the person’s reputation that is not easily erased. Frequently, the public remembers the accusation and still suspects guilt even after an acquittal. Moreover, even where an acquittal is accepted as fully vindicating the accused, it hardly remedies other costs suffered in the course of gaining that verdict. The period spent by the accused awaiting trial commonly is filled with a substantial degree of anxiety and insecurity that disrupts the daily flow of his life. That disruption is, of course, even greater if he is incarcerated pending trial. The accused also must

bear the expense and ordeal of the litigation process itself.”

This end-goal is by no means novel. We have various rules of criminal procedure to minimize the burdens of litigation. Our rules on bail, venue, double jeopardy, speedy trial, speedy disposition of cases, etc., are among them. In fine, we have been promulgating rules to minimize the burdens of litigation for a long, long time.

Let me also underscore that Section 8, Rule 117 was promulgated in the exercise of the expanded power of this Court to enact rules of procedure under Section 5(5) of the 1987 Constitution, viz:

“SEC. 5. The Supreme Court shall have the following powers:

xxx xxx xxx

(5)

Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

This provision[3] expanded the rule making power of this Court for (1) it extended its power not only to cover pleading, practice and procedure in all courts, admission to the practice of law and the integration of the Bar but also to encompass the protection and enforcement of constitutional rights and legal assistance to the underprivileged, and (2) it no longer contained the restriction that said rules “may be repealed, altered or supplemented by the Batasang Pambansa.”[4] As aforesaid, Section 8, Rule 117 was designed to diminish the burdens of litigation by fixing a timeline on provisional dismissal of cases beyond which they cannot be revived. The regulation of the conduct of a criminal case once filed in court, including the time within which it must be terminated, is inherent in judicial power. Section 8, Rule 117 is an exercise of this power, a power that this Court has exercised without any question since the 1935 Constitution.

II

The dismissal of the cases against

respondent Lacson bears his express consent

This Court did not err when it ruled “that the provisional dismissal of the case against respondent Lacson bears his express consent.”

The records will show that respondent Lacson filed before then Judge Agnir, Jr. who was to try Criminal Cases Nos. Q-99-81679 to Q-99-81689, a motion for judicial determination of probable cause. The motion contained the following prayer:

“x x x x x x x x x

(1) a judicial determination of probable cause pursuant to Section 2, Article III of the Constitution be conducted by this Honorable Court, and for this purpose, an order be issued directing the prosecution to present the private complainants and their witnesses at a hearing scheduled therefore; and

(2) warrants for the arrest of the accused-movants be withheld, or, if issued recalled in the meantime until the resolution of this incident.

Other equitable reliefs are also prayed for.”[5]

In ruling that the dismissal of the cases against respondent Lacson did not bear his consent, the ponencia states that “x x x respondent merely filed a motion for judicial determination of probable cause x x x.”[6] It emphasizes that no motion for provisional dismissal of the cases was filed. With due respect, the effort to distinguish the two motions is futile for it is seeking a distinction when there is no difference. The essence of both motions is the lack of probable cause of the Informations. If the motions succeed, there is only one course of action for the judge to take --- to dismiss the Informations. For all intents and purposes, a motion for judicial determination of probable cause can be treated as a motion to dismiss for lack of probable cause. Thus, Judge Agnir, Jr. prefaced the resolution of respondent Lacson’s motion in this wise:

“Before the Court are five (5) separate but identical motions filed thru their respective counsel by the twenty-six (26) accused in the above numbered cases, praying the Court to (1) make a judicial determination of the existence of probable cause for the issuance of warrants of arrest, (2) to hold in abeyance the issuance of warrants in the meantime, and (3) to dismiss the cases should the court find lack of probable cause.”

Prescinding from this understanding, then Judge Agnir, Jr. issued his Resolution dismissing Criminal Cases Nos. Q-99-81679 to Q-99-81689, viz:

“As already seen, the documents attached to the Informations in support thereof have been rendered meaningless, if not absurd, with the recantation of the principal prosecution witnesses and the desistance of the private complainants. There is no more evidence to show that a crime has been committed and that the accused are probably guilty thereof. Following the doctrine above-cited, there is no more reason to hold the accused for trial and further expose them to an open and public accusation. It is time to write finis to these cases and lay to rest the ghost of the incident of May 18, 1995 so that all those involved --- the accused, the prosecution witnesses and the private complainants alike --- may get on with their lives.

The Court is not unmindful of the admonition in the recent case of *People vs. Court of Appeals* (G.R. No. 126005, January 21, 1999) where the Supreme Court said that the general rule is that ‘if the Information is valid on its face and there is no showing of manifest error, grave abuse of discretion or prejudice on the part of the public prosecutor, courts should not dismiss it for want of evidence, because evidentiary matters should be presented and heard during the trial’, and that the ruling in *Allado vs. Diokno* ‘is an exception to the general rule and may be invoked only if similar circumstances are clearly shown to exist.’

This Court holds that the circumstances in the case at bench clearly make an exception to the general rule.

WHEREFORE, in view of the foregoing, the Court finds no probable cause for the issuance of the warrants of arrest against the accused or to hold them for trial. Accordingly, the Informations in the above-numbered cases are hereby ordered dismissed.”

SO ORDERED.” (*italics supplied*)

To justify his ruling, the ponente insists that “respondent did not pray for the dismissal, provisional or otherwise, of Criminal Cases Nos. Q-99-81679 to Q-99-81689, neither did he ever agree, impliedly or expressly, to a mere provisional dismissal of the case.”[7] With due respect, the specific prayer demanded by the ponente is unnecessary. Under Rule 112, Section 6 of the 2000 Rules of Criminal Procedure, the judge may “immediately dismiss the case if the evidence on record clearly fails to establish probable cause.” Likewise, the motion for judicial determination of probable cause prayed for “other equitable reliefs.” Similarly, there need not be any agreement on the provisional character of the dismissal of the said cases. The cases were dismissed not on the merits but for lack of probable cause and before the arraignment of respondent Lacson. Their dismissal was provisional by operation of our rules.

The ponencia then cites certain judicial “admissions” by the counsel of respondent Lacson to the effect that they did not move to dismiss the Informations against said respondent nor agree to their provisional dismissal. Again

with due respect, these so called “admissions” should be taken in their proper context. These “admissions” were made in the course of the proceedings before the Court of Appeals. The parties then were arguing that the re-filing of the cases will violate the rule on double jeopardy. Naturally, respondent Lacson took the position that his right against double jeopardy would be violated, hence, he was insisting that the dismissal of the cases was without his express consent. Naturally too, the petitioner took the opposite view that the rule on double jeopardy would not be breached because respondent consented to their dismissal. If the ponencia will hold respondent Lacson to his “admission” that he did not consent to the dismissal of his cases, it should similarly hold petitioner to its “admission” that respondent consented to the dismissal of the cases against him. In truth, the evidentiary rule on admission governs the act, declaration or omission of a party as to a relevant fact and should not be applied on arguments of parties. The issue in the case at bar is the nature and effect of a motion for judicial determination of probable cause- - i.e., whether or not it can be treated by a motion to dismiss on the ground of lack of probable cause. The issue is basically legal, and should be resolved in accordance with our laws and not on the basis of the arguments of parties which are often twisted to serve their peculiar interests.

III

It is not clear whether the offended parties
had knowledge of the dismissal
of their Informations against respondent Lacson

In our resolution under reconsideration, we explained why there is uncertainty on the factual issue of whether notices were sent to the offended parties, viz:

“x x x x x x x x

The records of the case, however, do not reveal with conclusiveness whether notices to the offended parties were given before the cases against the respondent Lacson were dismissed by Judge Agnir. It appears from the resolution of Judge Agnir that the relatives of the victims who desisted did not appear during the hearing. Their affidavits of desistance were only presented by Atty. Godwin Valdez who testified that he assisted the private complainants in preparing their affidavits and he signed them as a witness. It also appears that only seven (7) persons submitted their affidavits of desistance, namely:

a.

Myrna Abalora, mother of the victims Sherwin Abalora and Rey Abalora;

b.

Carmelita Elcamel, wife of Wilbur Elcamel;

c.

Leonora Amora, mother of victim Joel Amora;

d.

Nenita Alap-ap, wife of victim Carlito Alap-ap;

e.

Imelda Montero, wife of victim Manuel Montero;

f.

Margarita Redillas, mother of victim Hilario Jevy Redillas; and

g.

Rolando Siplon

From the records of the case before us, it cannot be determined whether there were affidavits of desistance executed by the relatives of the three (3) other victims, namely: Meleubren Soronda, Pacifico Montero, Jr., and Alex Neri. The same records do not show whether they were notified of the hearing or had knowledge thereof. To be sure, it is not fair to expect the element of notice to be litigated before then Judge Agnir for Section 8, Rule 117 was yet inexistent at that time.

The fact of notice to the offended parties was not raised either in the petition for prohibition with application for temporary restraining order or writ of preliminary injunction filed by respondent Lacson in the RTC of Manila, presided by Judge Pasamba, to enjoin the prosecutors from reinvestigating the said cases against him. The only question raised in said petition is whether the reinvestigation will violate the right of respondent Lacson against double jeopardy. Thus, the issue of whether or not the reinvestigation is barred by Section 8, Rule 117 was not tackled by the litigants.

Nor was the fact of notice to the offended parties the subject of proof after the eleven (11) informations for murder against respondent Lacson and company were revived in the RTC of Quezon City presided by Judge Yadao. There was hardly any proceeding conducted in the case for respondent Lacson immediately filed a petition for certiorari in the appellate court challenging, among others, the authority of Judge Yadao to entertain the revived informations for multiple murder against him.

This is not to be wondered at. The applicability of Section 8, Rule 117 was never considered in the trial court. It was in the Court of Appeals where respondent Lacson raised for the first time the argument that Section 8, Rule 117 bars the revival of the multiple murder cases against him. But even then, the appellate court did not require the parties to elucidate the crucial issue of whether notices were given to the offended parties before Judge Agnir ordered the dismissal of the cases against respondent Lacson and company. To be sure, there is a statement in the Decision of the appellate court to the effect that “records show that the prosecution and the private offended parties were notified of the hearing x x x.” It is doubtful whether this finding is supported by the records of the case. It appears to be contrary to Judge Agnir’s finding that only seven (7) of the complainants submitted affidavits of desistance.” (italics supplied)

The ponencia will reverse this ruling on the following ratiocination:

“In the case at bar, even if the respondent’s motion for a determination of probable cause and examination of witnesses may be considered for the nonce, as his motion for a provisional dismissal of Criminal Cases Nos. Q-99-81679 to Q-99-81689, however, the heirs of the victims were not notified thereof prior to the hearing on said motion on May 22, 1999. It must be stressed that the respondent filed his motion only on May 17, 1999 and set it for hearing on May 22, 1999 or barely five days from the filing thereof. Although the public prosecutor was served with a copy of the motion, the records do not show that notices thereof were separately given to the heirs of the victims or that subpoenae were issued to and received by them including those who executed their affidavits of desistance who were residents of Dipolog City or Piñan, Zamboanga del Norte or Palompon, Leyte. There is as well no proof in the records that the public prosecutor notified the heirs of the victims of said motion or of the hearing thereof on May 22, 1999. Although Atty. Valdez entered his appearance as private prosecutor, he did so only for some but not all the close kins of the victims, namely, Nenita Alap-ap, Imelda Montero, Margarita Redillas, Rufino Siplon, Carmelita Elcamel, Myrna Abalora, and Leonora Amora who (except for Rufino Siplon) executed their respective affidavits of desistance. There was no appearance for the heirs of Alex Neri, Pacifico Montero, Jr. and Meleubren Soronda. In fine, there never was any attempt on the part of the trial court, the public prosecutor and/or the private prosecutor to notify all the heirs of the victims of the respondent’s motion and the hearing thereon. The said heirs were thus deprived of their right to be heard on the respondent’s motion and to protect their interests.” (italics supplied)

Again, I beg to disagree. The ponencia cites the records of the cases to justify its conclusion that notices were not sent to the offended parties. I cannot be as dogmatic as the ponente. As stated in our Resolution, Section 8, Rule 117 was not yet in existence when then Judge Agnir, Jr. resolved respondent Lacson's motion for judicial determination of probable cause. It is, therefore, unrealistic to look only at the records of the cases to determine compliance with yet an inexistent rule. To my mind, what ought to be done is to determine whether the offended parties had knowledge of respondent Lacson's motion for judicial determination of probable cause. They may have such knowledge despite lack of formal notice from the court or notice from the public and private prosecutors. It ought to be beyond argument that such a formal notice is only one source of knowledge of the offended parties. Moreover, there is the unresolved question of who are the "offended" parties in the case at bar. It will be noted that in some of the criminal cases dismissed by then Judge Agnir, Jr., those who executed affidavits of desistance were the wives, or the mothers of the victims. Are they the only "offended" parties or should the other "heirs" be included? Should all of them be notified? These and other questions should first be resolved by the trial court, hence, our resolution to remand.

IV

Section 8, Rule 117 of the
Rules of Criminal Procedure
applies retroactively

The ponencia correctly holds that Section 8, Rule 117 of the 2000 Rules of Criminal Procedure is not a statute of limitations. As postulated in the précis, the one-year or two-year bar is a special procedural rule qualifying the right of the State to prosecute cases already filed in court. The time-bar under the new rule does not curtail the periods under Article 90 of the Revised Penal Code. The State retains the full period under Article 90 of the Revised Penal Code within which to secure the necessary evidence and file the appropriate criminal cases against the accused. But once the State files a criminal case and involves the courts, the constitutional power of this Court to set the rules of procedure for the prosecution of cases cannot be doubted. The power belongs to this Court alone and there are no uncertain umbras and penumbras in its parameters which other branches of the government can claim.

To emphasize, the time-bar for the revival of provisionally dismissed cases was adopted for the purpose, among others, of (1) discouraging hasty and baseless filing of criminal cases; and (2) penalizing the State for its inexcusable delay in prosecuting cases already filed in court. The non-revival of provisionally dismissed cases after the lapse of the one-year or two-year period creates a disputable presumption of inexcusable delay on the part of the State in prosecuting the case. But this does not mean that the mere passage of the one-year or two-year period bars the State from reviving the provisionally dismissed cases. The State has the right to present compelling reasons to justify the revival of the cases beyond the one-year or two-year time bar. The reservation of this right should remove any charge of unfairness to the State.

Regrettably, the ponencia concedes that Section 8, Rule 117 of the 2000 Rules of Criminal Procedure is a procedural rule but holds that it could not be applied retroactively. It is unreasonably struck by the fear that its retroactive application would cause "injustice or hardship to the State and adversely affect the administration of justice in general and of criminal laws in particular." It contends that the period from March 30, 1999 to November 30, 1999 should be excluded in the computation of the two-year period because the new rule prescribing it was then not yet in effect.

Again, I beg to disagree. Jurisprudence that has resisted the tempest of time teaches us that statutes and rules should be construed in the light of the purposes to be achieved and the evils sought to be remedied. The unerring principle that ought to guide any attempt to construe them should be their intended scope and purpose.[8] In the

case at bar, it is crystal clear that the new rule is intended to apply to all provisionally dismissed cases before its passage. It is a remedial measure to check the continuing inaction on the part of the State to prosecute pending cases in court. Its purpose is to press the State to act on cases it has inexcusably put in deep slumber in our courts of justice. It provides relief to the accused who are prejudiced when the cases filed in court against them remain dormant for an unreasonable length of time. In fine, the new rule is a remedial rule that looks back even as it looks forward. It reaches both the past and the future. It is both retrospective and prospective.

To be sure, there is nothing novel in the new rule when it reaches the past. Under the ruling case law, statutes regulating the procedure of courts are applicable to actions pending and undetermined at the time of its passage.[9] The retroactive application of procedural rules cannot be challenged as violative of any right of a person who may feel that he is adversely affected. The reason is that as a general rule, no vested right may attach to, nor give rise from, procedural laws.[10]

The only conceivable exception to this general rule is if the retroactive application of the procedural rule “would not be feasible or would work injustice.”[11] As amply demonstrated, however, the new rule will not impair the right of the State to prosecute criminals. The State is not prejudiced by the time-bar if it can justify its delay in the prosecution of cases. If it cannot justify its delay, it cannot complain of unfairness. No government can claim the right to prosecute at its perpetual pleasure. It cannot file a criminal case and sleep on it. It is self-evident that inexcusable delays in the prosecution of a case deny an accused the right to a fair trial.

With due respect, I submit that the ponencia sends a wrong message in batting only for the prospective application of the new rule. To hold that the State could not be faulted for not reviving the case within two years simply because the new rule was not yet in effect implies that this Court sanctions delays in the prosecution of cases, however inexcusable the delays were. Pushed to the extreme, the majority in effect bars the application of the new rule to cases provisionally dismissed five or ten years ago on the simple reason that during the interregnum, the new rule was not yet in effect. Let us not half pause in applying the new rule for it addresses inexcusable delays in the prosecution of cases already filed in court. Devoid of legalese, it tells the State not to sleep on its job. If we cannot tell the prosecution to do its job within a reasonable time frame, we might as well close shop.

IN VIEW OF THE FOREGOING, I vote to DENY petitioners’ Motion for Reconsideration.

[1] Rule 119 was taken from RA No. 8493 entitled “An Act to Insure a Speedy Trial of All Criminal Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court” which became effective on September 15, 1998.

[2] Criminal Procedure, Hornbook Series, p. 27, 1988 edition.

[3] Section 5 (5) of The 1973 Constitution provides:

“x x x

(5) Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the Batasang Pambansa. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.”

[4] Commenting on the change, author Nollado observed:

“The rule-making power of the Supreme Court has been made exclusive to it. The power of the Congress to alter the rules promulgated by the Highest Court has been removed. For the Congress to interfere with the Supreme

Court promulgated within the competence of the Highest Tribunal is unconstitutional and now violative of the separation of powers. Even the jurisdiction of the Supreme Court cannot be enlarged without the consent of the latter.”

(The New Constitution of the Philippines
Annotated 690 [1990])

[5] RTC Records, Vol. X, p. 232.

[6] Resolution, p. 8.

[7] Id. at 9.

[8] *Paat v. Court of Appeals*, 266 SCRA 167 (1997).

[9] *Tan, Jr. v. Court of Appeals*, G.R. No. 136368, January 16, 2002.

[10] *Billones v. Court of Industrial Relations*, 14 SCRA 674, 681 (1965).

[11] *Greogoria v. CA*, 26 SCRA 229 (1968).

SEPARATE OPINION

VITUG, J.:

Petitioners argue that while Section 8, Rule 117, of the Rules of Criminal Procedure bars the revival of a case upon the lapse of the one-year period or the two-year period, as the case may be, after its provisional dismissal, the rule, however, does not contain any proscription against the filing of a new information involving the same incident so long as it is done within prescriptive period of the offense provided in Article 90 and Article 91 of the Revised Penal Code or such as may otherwise be expressed by statute.

Prescription of crimes pertains to the loss or waiver by the State of its right to prosecute an act prohibited and punished by law.[1] It is the policy of the law that prosecutions should be prompt and that statutes enforcing that promptitude should be maintained, these provisions being not merely acts of grace but checks imposed by the State upon itself “to exact vigilant activity from its subalterns and to secure for criminal trials the best evidence that can be obtained.”[2] Once a criminal case is instituted, the issue on prescription is addressed and the rule on prescription as a substantive provision would have then so served its purpose. Thenceforth, assuming the timely filing of the case, the rules of procedure promulgated by the Supreme Court must govern. In fine, while Article 90 and Article 91 of the Revised Penal Code fix the period when the State must file a case against an accused after the discovery of the crime by the offended party, Section 8, Rule 117, of the Rules of Criminal Procedure, however, applies once an action has been instituted. The substantive provisions govern the institution of the case; the procedural rules steps in thereafter. The Supreme Court is vested by the Constitution with the power to “promulgate rules concerning x x x pleading, practice, and procedure in all courts.”[3] The 1987 Charter not only has deleted the authority of the legislature to repeal, alter or supplement the rules promulgated by the Court but it also expanded the Court’s rule-making power to cover the protection and enforcement of constitutional rights.[4] Pursuant to this Constitutional mandate, the Supreme Court has incorporated Section 8, Rule 117, in the Rules of Criminal Procedure, viz:

“SEC. 8. Provisional dismissal. – A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

“The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any

amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.”

In this regard, I share the conclusions reached by my esteemed colleague, Justice Reynato S. Puno, that there are yet a number of factors that must first be established and considered mainly evidentiary, before this Court can appropriately rule on the applicability of Section 8, Rule 117, of the Rules of Criminal Procedure.

[1] *People vs. Montenegro*, 68 Phil 659; *People vs. Moran*, 44 Phil 405.

[2] *Wharton on Criminal Pleading and Practice*, 9[th] ed., 1889, sec. 316, p. 215, cited in *People vs. Moran*, *supra*.

[3] Section 5, par. 5, 1987 Constitution.

“SEC. 5. The Supreme Court shall have the following powers:

x x x x x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

[4] *Id.*

DISSENTING OPINION

SANDOVAL-GUTIERREZ, J.:

I find petitioners’ motion for reconsideration of our Resolution dated May 28, 2002 bereft of merit. The cases filed against respondent Senator Panfilo M. Lacson should be DISMISSED on the grounds that his constitutional right to speedy trial and speedy disposition of cases has been violated and that the filing of new Informations against him constitutes persecution.

Also, I maintain that Section 8, Rule 117 of the 2000 Revised Rules of Criminal Procedure, an implementing Rule of the right to speedy trial and speedy disposition of cases, applies to respondent’s cases upon a showing before the trial court that its requirements have been complied with.

I.

Respondent’s constitutional
right to speedy trial and
speedy disposition of his cases
has been violated.

Statutes cannot be effective to place any limitation on a person’s constitutional right,[1] and therefore they should not be regarded as a definition of the constitutional provision.[2] It is thus conceivable that the constitutional provision is violated although its implementing statute is not.[3] This is because constitutions are not adopted to control the rights and procedures of the moment but to establish broad principles of justice and fair play for all

time.[4]

The present controversy brings into focus the novel provision, Section 8, Rule 117 of the 2000 Revised Rules of Criminal Procedure, which reads:

“Sec. 8. Provisional Dismissal. – A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.

“The provisional dismissal of offenses punishable by imprisonment not exceeding six (6) years or a fine of any amount, or both shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two years after issuance of the order without the case having been revived.”(Emphasis supplied)

In our Resolution now being challenged by petitioners in their Motion for Reconsideration, we held that the above Rule is inapplicable to the cases of respondent because the records fail to show that its requirements have been complied with. These requirements as applied to his cases are: the provisional dismissal by the Regional Trial Court, Branch 81, Quezon City of Criminal Cases Nos. Q-99-81679 to 89 against respondent must have been with his express consent and with notice to the offended parties; and the reckoning date of the two-year period within which to revive the cases should have been properly determined. Consequently, in the same Resolution, we remanded the case at bar to the trial court to enable the parties to adduce evidence on whether the said requirements have been complied with on the basis of which the trial court should rule on whether the newly filed Criminal Cases Nos. 01-101102 to 01-101112 against respondent should be dismissed or not.

In petitioners’ Motion for Reconsideration, they contend that the retroactive application of Section 8, Rule 117 violates the people’s right to due process; and that for lack of express consent of respondent and prior notice to the offended parties, the Rule does not apply to his cases.

The novelty of Section 8, Rule 117 somehow shades the more important issue of whether respondent’s constitutional right to speedy trial and disposition of cases has been violated.

Section 8 of Rule 117 was promulgated pursuant to the constitutional guarantee of speedy trial and speedy disposition of cases. Clearly, there can be no automatic inference that because Section 8 was found to be inapplicable, as claimed by petitioners, respondent’s right to speedy trial and speedy disposition of his cases was not violated. Lest we miss the forest for the trees, extreme caution should be exercised so that the general terms of the constitutional guarantee would not be lost in the specific and detailed provisions of the rules promulgated for its enforcement.

Speedy trial is said to constitute not a privilege,[5] but a right, one that is recognized as fundamental. It is one of the most basic and inviolable rights.[6] Thus, enshrined in our Constitution is the mandate that “in all criminal prosecution, the accused shall enjoy the right to a speedy trial.”[7] To expedite not only the trial stage but also the disposition of the case itself, the framers of our Constitution saw the need to further provide that “all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.”[8]

The crusade towards a speedy justice did not stop in the Constitution. To supplement it and to render its guarantee more effective, Congress enacted Republic Act No. 8493 (Speedy Trial Act of 1998) which aims to ensure a speedy trial of all criminal cases before the Sandiganbayan, Regional Trial Courts, Metropolitan Trial Courts and Municipal Circuit Trial Courts. For its part, this Court promulgated Circular No. 39-98 for the purpose of implementing the provisions of RA 8493. And when the 2000 Revised Rules of Criminal Procedure was drafted, substantial portions of RA 8493 and Circular No. 39-98 were included therein, thus:

Section 1 (g) of Rule 116 – Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency or a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period.

Section 1 of Rule 119 – After a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. The trial shall commence within thirty (30) days from receipt of the pre-trial order.

Section 2 of Rule 119 -- Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause.

The Court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court.

And still, to achieve speedy trial and speedy disposition of cases, this Court promulgated Section 8, Rule 117.

The foregoing laws and rules are merely tools to enforce the constitutional guarantee. They do not constitute its “definition.” It bears reiterating that just because Section 8, Rule 117 is found to be inapplicable does not ipso facto indicate that there is no violation of the right to speedy trial and speedy disposition of cases. The laws and rules, which are just legislative construction or application of the pervasive constitutional guarantee must be construed fairly in view of the right they seek to enforce. They cannot be considered to have a limiting effect on the constitutional guarantee. Significantly, the 2000 Revised Rules of Criminal Procedure is not silent on the matter. Section 10, Rule 119 specifically states:

SEC. 10. Law on speedy trial not a bar to provision on speedy trial in the Constitution. – No provision of law on speedy trial and no rule implementing the same shall be interpreted as a bar to any charge of denial of the right to speedy trial guaranteed by section 14 (2), Article III, of the 1987 Constitution.

Ultimately, whether the constitutional guarantee of speedy trial has been complied with is still a judicial question to be answered in the light of the circumstances of each particular case and guided by the principle that the proceedings were free from vexatious, capricious and oppressive delays.[9] Our case law is rich with doctrines setting the parameters of the right to speedy trial and the right to speedy disposition of cases. In the recent case of *People vs. Leviste*,[10] we reiterated our ruling that the right to speedy trial is violated only where there is an unreasonable, vexatious and oppressive delay without the participation or fault of the accused, or when unjustified postponements are sought which prolong the trial for unreasonable length of time.

On the other hand, in *Caballero vs. Alfonso, Jr.*[11] we laid down the guidelines in determining the applicability of the “speedy disposition” formula. There, we held that speedy disposition of cases is a relative term. Just like the constitutional guarantee of “speedy trial,” “speedy disposition of cases” is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory.

Years of serious deliberation yield certain factors to be considered in the determination of whether or not the right to a speedy trial and speedy disposition of cases has been violated. These are: 1) length of delay; 2) reason for the delay; 3) assertion of the right or failure to assert it; and 4) prejudice caused by the delay.[12] These factors are effective in balancing the interest of the State and the accused.

Records show that the period between the dismissal of Criminal Cases Nos. Q-99-81679 to 89 and the refile of the new Informations docketed as Criminal Cases Nos. 01-101102 to 01-101112, is two (2) years and two (2)

months. It may be recalled that Criminal Cases Nos. Q-99-81679 to 89 were dismissed on March 29, 1999.[13] The Department of Justice (DOJ) re-investigated the cases only upon its receipt on March 29, 2001 of General Leandro Mendoza's letter indorsing the affidavits of P/S Ins. Abelardo Ramos and P/ Ins. Ysmael Yu. On June 6, 2001, new Informations were filed against respondent. Petitioners justify the belated re-investigation on the ground that prior to the appearance of Ramos and Yu, the government had no evidence to sustain the refiling of the cases.[14] They also claim that due to respondent's close association with Former President Joseph Estrada and his position then as PNP Chief, the witnesses were deterred from coming out with the truth.[15]

The justifications raised by petitioners are contrary to the records. As early as July 1999, Yu executed an affidavit attesting to the very same facts contained in his March 24, 2001 affidavit.[16] Another witness, Mario Enad, also executed his affidavit as early as August 8, 1995.[17] Petitioners have never claimed that these two were unwilling to testify on earlier dates. Also, nowhere in their affidavits is a statement that they were afraid of testifying against respondent because he is a friend of the Former President or was a PNP Chief. The two even mentioned the names of other witnesses whom petitioners could have utilized in an earlier re-investigation. Clearly, what glares from the records is that from the time of the dismissal of Criminal Cases Nos. Q-99-81679 to 89, there was an unjustified interval of inactivity of more than two (2) years on the part of the prosecution.

Petitioners cannot argue that respondent failed to assert his right to speedy trial and speedy disposition of cases. While we have ruled that if an accused wants to exercise his constitutional right to a speedy trial, he should ask, not for the dismissal, but for the trial of the case,[18] however, the same cannot be expected of respondent. It would be ludicrous for him to ask for the trial of his cases when the same had already been dismissed. During the interval, there were no incidents that would prompt him to invoke the right. Indeed, the delay could only be attributed to the inaction on the part of the investigating officials.[19]

Neither can petitioners argue that the right to speedy trial is inapplicable since the charges have been dismissed. As explained by Justice Marshall, the anxiety brought by public prosecution does not disappear simply because the initial charges are temporarily dismissed. After all, the government has revealed the seriousness of its threat of prosecution by initially bringing charges.[20] Consequently, when the government has already investigated and charged an accused, it is in a much better position and properly shoulders a greater responsibility to reinvestigate and re-prosecute him with reasonable promptness. Sadly, this was not done in this case. In *Cervantes vs. Sandiganbayan*,[21] we upheld the accused's right to speedy disposition of his case notwithstanding his alleged failure to take any step to assert his right, thus:

“We cannot accept the Special Prosecutor's ratiocination. It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.”

Generally, the question of how much lapse of time is consistent with the constitutional guarantee of speedy trial and speedy disposition of cases varies with the particular circumstances. There is no constitutional basis for holding that the right to a speedy trial can be quantified into a specified number of days and months.[22] The mere passage of time is not sufficient to establish a denial of a right to a speedy trial, but a lengthy delay, which is presumptively prejudicial, triggers the examination of other factors to determine whether rights have been violated.[23] In a case, it has been held that a delay of more than one (1) year is presumptively prejudicial and shifts the burden to the government to justify the delay.[24] Certainly, the two-year delay here is prejudicial to respondent and it should be taken against petitioners, they having failed to show any good cause or reason for such delay.

Another factor to be considered in determining whether respondent's right to a speedy trial and disposition of cases has been violated is the prejudice to him. In his comment, he states:

“x x x (i) he had every reason to believe that the sword of Damocles which had hang atop his head by virtue of the filing of the original charges in 1995 had been obliterated by their dismissal in 1999 as he has the right to Due Process and to be rid of the paranoia of being harassed for charges by the Republic and to indict him for heinous offenses and subject him to a non-bailable action disenfranchises eight (8) Million or so voters who had put him in office as their representative, (ii) it smacks of oppression as petitioner DOJ Secretary had filed or instigated new cases against him for an undisclosed political agenda, (iii) his detractors, including petitioner DOJ Secretary, have the capacity to influence the litigation including the investigation and prosecution thereof, (iv) it is plainly a vindictive action perpetrated by a PNP Senior Superintendent whom petitioner had accused of kidnapping for which he was punished and sent to the National Penitentiary until he was recently released and re-assumed a post as Intelligence Chief under the current administration, and (v) respondent is now the subject of persecution and not prosecution.”[25]

There is no denying that the filing of new Informations against respondent had caused him undue prejudice. Almost eight (8) years have elapsed since November 21, 1995,[26] the date the original Informations were filed, and more than three (3) years have passed since Criminal Cases Nos. Q-99-81679 to 89 were dismissed on March 29, 1999. It is therefore reasonable for respondent to expect that by this time, petitioners would finally give him peace of mind. In *Licaros vs. Sandiganbayan*,[27] we ruled that the delay in the disposition of the case had caused “much prejudice, distress and anxiety to petitioner whose career as bank executive and businessman has suffered the stigma of being shackled to an unresolved criminal prosecution, virtually hanging like a Damocles’ sword over his head for more than a decade.” There, we stressed the consequences and problems inherent in protracted litigation which include, among others, the stagnant professional growth, hampered travel opportunities and a besmirched reputation. It cannot be said that respondent does not suffer the same consequences now.

Prejudice does not only consist of impairment of the accused’s ability to defend himself, it may also include other sufferings, such as anxiety and stigma.[28] Respondent is not an ordinary citizen. He is a Senator who has a reputation to protect. The publicity caused by the refiling of new Informations undoubtedly tainted his name. Moreover, he has to defend himself constantly from the nagging accusations that interfere in the performance of his duties as a Senator.

I believe that the prosecution now of respondent is tantamount to persecution.

While it is the policy of this Court not to interfere in the exercise of the prosecutors’ discretion, however, it cannot tolerate a refiling of new Informations, as in this case, at the impulse of the officials in command. The prosecution of an accused must not be made to depend on who is perceived as an enemy by those who sit in power but on the sacrosanct duty of prosecutors to bring to justice those believed to be offenders of the law while ensuring that their rights under the Constitution remain inviolable.

The sudden over-eagerness of petitioners to prosecute respondent, to my mind, is not really an indicum of competence, it is a clear example of persecution. This was not overlooked by the Court of Appeals which held:

“x x x Apparently, hints of persecution are manifest in the case of petitioner. For one, though earlier accused as an accessory in the original multiple murder cases, petitioner is now charged as a principal in the recent revival of the criminal cases – obviously to preclude any opportunity on his part to evade incarceration by seeking bail. Persecution is likewise apparent in the hurried pace at which the preliminary investigation of the subject criminal cases was completed by respondent prosecutors and in the immediate and abrupt filing of the Informations against petitioners in only a matter of days after the original petition had been filed in this Court.”[29]

Petitioners ought to be reminded of the caveat in *Tatad vs. Sandiganbayan*[30] that “prosecutors should not allow and should avoid giving the impression that their noble office is being used or prostituted, wittingly or

unwittingly, for political ends or other purposes alien to, or subversive of, the basic and fundamental objective of serving the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty.” Their undue haste in conducting the preliminary investigation of the 26 accused and their inordinate interest to re-file the cases hurriedly raise a quizzical eyebrow.

Not to be glossed over is the fact that the preliminary investigation which resulted in the filing of new Informations was initiated only by the letter dated March 27, 2001 of PNP Chief General Mendoza to then DOJ Secretary Hernando B. Perez. I do not think that the said letter could qualify as a complaint under Section 3, Rule 112 of the 2000 Revised Rules of Criminal Procedure,[31] the basis for a preliminary investigation. The procedure adopted is a departure from the usual mode. Again, in *Tatad vs. Sandiganbayan*,[32] we held:

“A painstaking review of the facts cannot but leave the impression that political motivations played a vital role in activating and propelling the prosecutorial process in this case. Firstly, the complaint came to life, as it were, only after Tatad had a falling out with President Marcos. Secondly, departing from established procedures prescribed by law for preliminary investigation, which require the submission of affidavits and counter-affidavits by the complainant and the respondent and their witnesses, the Tanodbayan referred the complaint to the Presidential Security Command for fact-finding investigation and report.”

Indeed, the circumstances surrounding the filing of the new Informations against respondent are indicative of persecution and not prosecution.

One thing for which this Court must guard itself against is to be used as an instrument of political manipulation. As the last bulwark of the defenseless and the accused, our duty is to uphold the law and no other. Certainly, in the hierarchy of rights, the Bill of Rights takes precedence over the right of the State to prosecute, and when weighed against each other, the scales of justice tilt towards the former.[33]

II.

Section 8, Rule 117 applies to respondent’s cases upon compliance with its requirements.

Going back to Section 8, Rule 117, the remand of this case to the trial court for the determination of whether or not the requirements of this provision have been complied with is imperative.

I am not convinced that the dismissal of Criminal Cases Nos. Q-99-81679 to 89 was without the consent of respondent and that the offended parties were not notified. It appears from the Resolution[34] dated March 29, 1999 of the trial court that respondent’s prayer was for that court to “(1) make a judicial determination of the existence of probable cause for the issuance of warrants of arrest; (2) hold in abeyance the issuance of warrants in the meantime; and (3) dismiss the cases should the court find probable cause.” Clearly, this third plea is a manifestation that the dismissal of the cases was with respondent’s consent. While it is true that what he filed is a mere motion for the judicial determination of probable cause and for examination of prosecution witnesses, the same was anchored on the case of *Allado vs. Diokno*. [35] There, we ruled that “[I]f upon the filing of the information in court, the trial judge, after reviewing the information and the document attached thereto, finds that no probable cause exists, he must either call for the complainant and the witnesses themselves or simply dismiss the case. There is no reason to hold the accused for trial and further expose him to an open and public accusation of the crime when no probable cause exists.” With this as respondent’s premise, I believe it is safe to conclude that the dismissal was with his express consent.

At any rate, considering the view that there is doubt on whether respondent gave his express consent to the dismissal of the cases, as expressed in our challenged Resolution, this incident should be determined by the trial court. With respect to the requirement of notice to the offended parties, again the same should be addressed to the trial court which can hear the parties thereon. We must maintain a hands-off stance on these matters for a different approach might lead us astray into the field of factual conflict where our legal pronouncements would not rest on solid grounds. Time and again we have ruled that this Court is not a trier of facts.[36]

The petitioners maintain that Section 8, Rule 117 cannot be applied retroactively for to do so would work injustice to the People. Settled in our jurisprudence is the principle that when a new law will be advantageous to the accused, the same may be given retroactive effect.[37] This is more particularly so when the law is merely procedural. In several cases, we applied the provisions of the 2000 Rules of Criminal Procedure retroactively.[38] We should take the same action on Section 8, Rule 117 considering that it is a reinforcement of a person's constitutional right to speedy trial and speedy disposition of cases.

Moreover, it has been held that the constitutional provision barring the passage of retroactive laws protects only the rights of citizens. Hence, a state may constitutionally pass a retroactive law that impairs its own rights.[39] Only private, and not public, rights may become vested in a constitutional sense.[40] Otherwise stated, there is a distinction between the effect to be given a retroactive statute when it relates to private rights and when it relates to public rights. Public rights may always be modified or annulled by subsequent legislation without contravening the Due Process Clause.[41]

While I concurred in our challenged Resolution that this case should be remanded to the trial court to enable it to determine whether the requirements of Section 8, Rule 117 have been complied with, however, I still believe that we should settle now once and for all the most crucial issue, i.e., whether or not the provisional dismissal contemplated in the Rule shall become permanent two years after the issuance of the order and thus constitutes a bar to a subsequent prosecution for the same offense. To evade it now is to delay the day of reckoning and to put the legal community in a quandary.

The principle adhered to by petitioners is that the rule "prohibits only a revival of a criminal case after the lapse of the periods prescribed therein and does not impinge on the right of the State to prosecute an offender for the same offense under a new Information." [42] Thus, there arises the distinction between "revival" and "filing of a new Information."

Section 8 of Rule 117 is a new provision. To reiterate, it draws its life from the constitutional guarantees of speedy trial[43] and speedy disposition of cases. Its mandate is explicit, i.e., a provisional dismissal of an offense becomes "permanent" if not revive within the prescribed periods (or two years in respondent's cases). To say that this "permanent" dismissal prohibits only the "revival" of the case but not the "filing" of new Information, is to render the provision ineffectual, providing only lip service to the accused's constitutional right it seeks to enforce. Indeed, what difference will the provision make if after the lapse of two years, the State can still prosecute the accused for the same offense by merely "filing" a new Information? With the interpretation given, the dismissal cannot really be considered "permanent." After two years, all the prosecution has to do is to file a new Information. Thus, whether by "revival" or by "filing a new Information," the effect is the same, i.e., the prosecution of the accused for the same offense continues. What is overlooked is that, in the interim, he continues to suffer all the prejudices that come with the failure of the prosecution to put a real end to his case. We might as well take heed of the warning against "allowing doctrinaire concepts... to submerge the practical demands of the constitutional right to a speedy trial." [44]

What price does the State have to pay for its lethargy or negligence to prosecute? If I am to follow petitioners'

position, then I can say that the only sanction for the violation of the periods prescribed in Section 8 is that the State should conduct the corresponding new preliminary investigation before it can file a new information. It seems to me that the new preliminary investigation is the only difference between “filing a new information” and “revival.” To my mind, conducting a preliminary investigation is hardly a sanction for the prosecution’s negligence. While a new preliminary investigation causes intense inconvenience to the prosecution, the accused suffers as well. Indeed, considering the additional delay the prosecution incurs in bringing the case to a conclusion as a result of the filing of a new information and the anxiety on the part of the accused by a threat of a new prosecution, the interpretation accorded to Section 8, Rule 117 has not advanced its real purpose.

Let it be stressed that Section 8 was introduced not so much for the interest of the State but precisely for the protection of the accused against protracted prosecution. The measure of protection consistent with its language is the treatment of the “permanent” dismissal as a bar to another prosecution for the same offense.

The discharge of an accused for failure of the prosecution to bring him to trial within the prescribed period is not an entirely new concept. Even prior to the introduction of Section 8, there were already provisions of similar import in other jurisdictions. Under certain statutes implementing the constitutional right of an accused to speedy trial, a discharge granted pursuant to the statute is held to be a bar to subsequent prosecution, whether under the same or new indictment. This view has been defended on the ground that any other construction would open the way for complete evasion of the statute and that the constitutional provision can only be given its legitimate effect by holding that a person once discharged is entitled to immunity from further prosecution for the same offense.[45]

In *State vs. Crawford*,[46] the Supreme Court of Appeals of West Virginia entered a judgment forever discharging the accused from prosecution for the offense on the basis of a rule requiring that “every person charged with felony, and remanded to a circuit court for trial, shall be forever discharged from prosecution for the offense, if there be three regular terms of such court, after the indictment is found against him without a trial.” The discharge was decreed notwithstanding the fact that it was within the third term that the State entered a *nolle prosequi* and at the same time reindict for the same offense. The court ratiocinated:

“When a prisoner has stood ready for trial through two full terms and substantially through the third one, and, no doubt, until the jury has been discharged and the opportunity for trial at that term annihilated, he has substantially performed all the statutory conditions required to his right of discharge. Although such a discharge is not the moral equivalent of an acquittal, and he may be guilty, his constitutional right to have his guilt or innocence determined by a trial within a reasonable time cannot be frittered away upon purely technical and unsubstantial ground. Nor is the legislative act designed to enforce such right to be interpreted otherwise than in accordance with the recognized rules of construction. To permit the state to enter a *nolle prosequi* within the third term and reindict for the same offense, and thus deprive the prisoner of the terms fully elapsed as well as the term about to end, would make it possible to keep the prisoner in custody or under recognizance for an indefinite period of time, on charges of a single offense, unless perhaps, he could enforce a trial by the writ of mandamus. Such a construction as substantially tends to the defeat or undue limitation of the purpose of a statute is not permissible in any jurisdiction.

“[4] That statutes shall be so construed as to effectuate the legislative purpose, not defeat it, is fundamental and all-pervasive in statutory construction. The remedy given by law for failure to accord a prompt trial to one charged with felony is right to be discharged, not mandamus to obtain such trial. x x x.”

In *People vs. Allen*,[47] the Supreme Court of Illinois held that a discharge of the accused for failure of the prosecution to try him within four months after written demand, renders him immune from trial for the same offense whether under the same or a new indictment. In *Newlin vs. People*,[48] the same court ruled that where a defendant, indicted and committed for crime, is entitled, under the statute, to a discharge for delay in not bringing

him to trial while being held under the indictment, the fact that a second indictment is found for the same offense and a nolle prosequi entered as to the first indictment, does not defeat his right to be discharged. Again, in *People vs. Heider*[49] the same court held that an accused who has obtained his discharge owing to the failure of the People to bring his case to trial within the time prescribed by the statute enacted to carry into effect the constitutional guaranty of the right to a speedy trial, cannot be committed or held for the same offense under a new indictment.

Clearly, there is a catena of jurisprudence supporting the principle that the first discharge of the accused under a statute implementing the constitutional right to speedy trial constitutes a bar to a subsequent prosecution for the same offense. I see no reason why we cannot adopt the same principle.

To reiterate, Section 8, Rule 117 seeks to implement the constitutional guarantees that a) in all criminal prosecution, the accused shall enjoy the right to have a speedy trial,[50] and b) that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.[51] The importance of these rights cannot be overemphasized. They are necessary and vital because a person should not have to face continued anxiety under a prolonged threat of criminal prosecution. Postponement of trial for a long time will ordinarily handicap an accused through the disappearance of necessary witnesses and loss of documentary evidence. Furthermore, after many months or years, the memory of those witnesses who are available will likely be impaired by the passage of time. These rights are protections too against the harassment of being subjected to accusation, with its harmful effect on the accused's reputation and business affairs.[52] As aptly observed in a case, "unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including 'oppressive pre-trial incarceration,' 'anxiety and concern of the accused,' and the 'possibility that the accused's defense will be impaired' by dimming memories and loss of exculpatory evidence." Of these forms of prejudice, the most serious is the last because the inability of the accused to prepare his case skews the fairness of the system.[53]

The high regard attributed by this Court to the accused's right to a speedy trial and to a speedy disposition of his case is evident from the tradition established by our case law that the dismissal of a criminal case based on the denial of the accused's right to speedy trial amounts to an acquittal and constitutes a bar to another prosecution for the same offense. [54] It is on the same light that we should view Section 8.

A rule with the force of law should be construed in the light of the object to be achieved and the evil or mischief to be suppressed.[55] It should be given such a construction as will advance the object and secure the benefits intended.[56] This Court's Committee on Revision of the Rules of Court surely saw the prejudice to the rights of the accused caused by a suspended provisional dismissal of his case. Apparently, Section 8 was introduced owing to the many instances where police agencies have refused to issue clearances, for purposes of employment or travel abroad, to persons having pending cases, on the ground that the dismissal of such cases by the court was merely provisional, notwithstanding the fact that such provisional dismissal, more often than not, had been done five or ten years ago.[57]

In addition to the prejudice on the part of the accused, perceived by the Committee, we cannot disregard the anxiety that he suffers because of a public accusation.

Petitioners attempt to create a conflict between the law on prescription of crimes and the rule on provisional dismissal. They argue that substantive law should override or prevail over procedural law. The conflict is non-existent. The law on prescription of crimes refers to the period during which criminal charges must be filed.[58] Section 8 of Rule 117 refers to the period when a provisional dismissal ceases to be temporary and becomes permanent, thus, no longer subject to be set aside by the revival of criminal charges. This rule comes into

play only after the State has commenced the prosecution.

The twenty-year prescriptive period for a case punishable by death under Section 90 of the Revised Penal Code is intended to give law enforcers ample time to apprehend criminals who go into hiding. It also enables prosecutors to better prepare their cases, look for witnesses, and insure that correct procedure has been followed. On the other hand, the two-year period under Section 8, Rule 117 is intended to warn the State that once it filed a case, it must have the readiness and tenacity to bring it to a conclusion. The purpose of the period is to encourage promptness in prosecuting cases.

Prejudice to the rights of the accused intensifies over time. While it is true that a mere mathematical reckoning of the time involved is insufficient to determine a violation of an accused's right to speedy trial, we cannot disregard the reality that after the lapse of a certain period, the reliability of a trial is compromised in ways that neither party can prove or, for that matter, identify. It bears stressing that the mere passage of time impairs memories, causes evidence to be lost, deprives the accused of witnesses, and interferes with his ability to defend himself. Now, these nuisances may be avoided if we are to give full effect to Section 8 and consider the "permanent" dismissal contemplated therein as a bar to a subsequent prosecution of the accused for the same offense. Not only will it be in consonant with the cardinal principle of justice and fairness, it will also provide force to the rule.

Let it be stated anew that this Court cannot and will not allow itself to be made an instrument of politics nor be privy to any attempt at the perpetration of injustice.[59]

In resumé, I reiterate that petitioners' undue delay in conducting a new preliminary investigation and refiling of new Informations against respondent violated his constitutional right to a speedy trial and speedy disposition of his cases. Respondent correctly invoked the implementing Rule, Section 8, Rule 117. But as we held in our questioned Resolution, it must first be shown before the trial court that its requirements have been complied with. And I venture to add that should the trial court find that these requirements have been complied with, then the provisional dismissal of Criminal Cases Nos. Q-99-81679 to 89 becomes permanent and thus constitutes a bar to a subsequent prosecution of respondent for the same crimes.

As a final word, punishment should be imposed on the accused only if he violated the law. However, his constitutional privileges and immunities must be protected against the State's arbitrary assertions of power. Obviously, its filing of new Informations against respondent for the same crimes after the lapse of two years contravenes no less than the universal principle of justice and fairness, the bedrock of every Constitution, law and rule.

WHEREFORE, I vote to DENY petitioners' motion for reconsideration.

[1] 21 Am Jur 2d § 1031 citing *Ex parte State ex rel. Atty. Gen.*, 255 Ala. 443, 52 So. 2d 158 (1951); *Hicks vs. People*, 148 Colo. 26, 364 P. 2d 877 (1961); *State vs. Strong*, 8 Kan. App. 2d 589, 663 P. 2d 668 (1983); *State vs. Stimson*, 41 Was. App. 385, 704 P. 2d 1220 (Div. 3 1985).

[2] *State vs. Kuhnhausen*, 201 Or. 478, 272 P. 2d 225 (1954).

[3] *Barela vs. People*, 826 P. 2d 1249 (Colo.1992) *State vs. Russel*, 108 Idaho 58, 696 P. 2d 909 (1985); *State vs. Strong*, *supra*.

[4] *State vs. Kuhnhausen*, *supra*.

[5] *State vs. Brockelman*, 173 Kan. 469, 249 P. 2d 692 (1952).

- [6] State vs. Strong, *supra*.
- [7] Section 14 (2), Article III.
- [8] Section 16, Article III.
- [9] State vs. Kuhnhausen, 272 P. 2d 225 (1954).
- [10] G.R. No. 104386, March 28, 1996, 255 SCRA 238 (1996), citing *People vs. Tampal*, 314 Phil. 35 (1995).
- [11] G.R. No. L-45647, August 21, 1987, 153 SCRA 153 (1987).
- [12] *Guerrero vs. Court of Appeals*, G.R. No. 107211, June 28, 1996, 257 SCRA 703; *Cojuangco, Jr., vs. Sandiganbayan*, G.R. No. 134307, December 21, 1998, 300 SCRA 367.
- [13] Rollo at 93-102.
- [14] *Id.* at 62.
- [15] *Id.* at 1082.
- [16] *Id.* at 626.
- [17] *Id.* at 389.
- [18] *Esmena vs. Pogoy*, G.R. No. 54110, February 20, 1981, 102 SCRA 861; *People vs. Diaz*, 94 Phil. 714 (1954).
- [19] See *Lopez vs. Office of the Ombudsman*, G.R. No. 140529, September 6, 2001.
- [20] *United States vs. Macdonald*, 456 U.S. 1 (1982), see Dissenting Opinion.
- [21] G.R. No. 108595, May 18, 1999, 307 SCRA 149.
- [22] 21A Am Jur 2d § 1036.
- [23] *U.S. vs. Vilete*, 688 F. Supp. 777 (D. Mer 1988); *Hutchison vs. Marshall*, 573 f. Supp. 496, 9 Media l. Rep. BNA) 2443 (S.D. Ohio 1983), judgment aff'd, 744 F. 2d 44 (6[th] Cir. 1984); *Dykes vs. State*, 452 So. 2d 1377 (Ala. Crim. App. 1984); *State vs. Johnson*, 190 Conn. 541, 461 A. 2d 981 (1983) (16-month delay triggers judicial scrutiny); *State vs. Johnson*, 564 A. 2d 364 (Del. Super.Ct. 1989); *State vs. Russel*, *supra* (23-month delay triggers judicial scrutiny); *State vs. Strong*, *supra*; *Skaggs vs. State*, 676 So. 2d 897 (Miss. 1996) (delay of eight months or more is presumptively prejudicial); *State vs. Powers*, 612 S.W. 2d 8 (Mo. Ct. App. S.D. 1980); *State vs. Sanderson*, 214 Mont. 437, 692 P. 2d 479 (1985) (390 day delay triggers speedy trial inquiry).
- [24] *Graves vs. U.S.*, 490 A 2d 1086 (D.C. 1984).
- [25] Rollo at 504.
- [26] *Id.* at 96.
- [27] G.R. No. 145851, November 22, 2001.
- [28] In *U.S. vs. Dreyer*, it was held that the factor of prejudice is not limited impairment of defense, it includes mental suffering.
- [29] Rollo at 159.
- [30] *Supra*.

[31] “(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two copies for the official file. The Affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public; each of whom must certify that he is personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.”

[32] Supra.

[33] Allado vs. Diokno, G.R. No.113630, May 5, 1994, 232 SCRA 192.

[34] Rollo at 93-103.

[35] Supra.

[36] La Suerte Cigar and Cigarette Factory vs. Director of the Bureau of Labor Relations, 208 Phil. 597 (1983); National Food Authority vs. Court of Appeals, G.R. No. 96453, August 4, 1999, 311 SCRA 700.

[37] Article 22, Revised Penal Code.

[38] People vs. Arrojado, G.R. No. 130492, January 31, 2001, 350 SCRA 679.

[39] 16B Am Jur 2d §697 citing Rousselle vs. Plaquemines Parish School Bd., 633 So. 2d 1235, 90 Ed. Law Rep. 519 (La. 1994) reh’g denied, (Apr. 21, 1994); Town of Nottingham vs. Harvey, 120 N.H. 889, 424 A 2d 1125 (1980).

[40] Bradford vs. Suffolk County, 257 A.D. 777 15 N.Y. S. 2d 353 (2d Dep’t 1939), judgment affirmed as modified, 283 N.Y. 503, 28 N.E. 2d 932 (1940).

[41] Holen vs. Minneapolis-St. Apul Metropolitan Airports Commission, 250 Minn.

[42] Decision at 33.

[43] While there are jurisprudence to the effect that once charges are dismissed, the speedy trial guarantee is no longer applicable, (State vs. Marion, 404 U.S. 307; Dillingham vs. United States, 423 U.S. 64; Barker vs. Wingo, 407 U.S. 514), however, I am convinced that the peculiar facts of the present case render said jurisprudence inappropriate. On its face, the Constitutional provision seems to apply to one who has been publicly accused, has obtained dismissal of those charges, and has then been charged once again with the same crime by the same sovereign. Nothing therein suggests that an accused must be continuously charged in order to obtain the benefits of the speedy trial right. A natural reading of the language is that the Speedy Trial Clause continues to protect one who has been accused of a crime until the government has completed its attempts to try him for that crime. In Klopfer vs. North Carolina, 386 U.S. 213, the prosecutor entered a “nolle prosequi with leave” after the first trial ended in a mistrial. Under that procedure, the defendant was discharged from custody and subjected to no obligation to report to the court. It was held that the indefinite postponement of the prosecution, over defendant’s objection “clearly” denied the defendant the right to a speedy trial. The Court reasoned that the defendant “may be denied an opportunity to exonerate himself in the discretion of the solicitor and held subject to trial, over his objection, throughout the unlimited period in which the solicitor may restore the case to the calendar. During that period, there is no means by which he can obtain a dismissal or have the case restored to the calendar trial. The prosecutor was required to take affirmative steps to reinstate the prosecution; no charges were “actively” pending against Klopfer, nevertheless, the court held that the speedy trial right applied.

[44] Smith vs. Hooey, 393 U.S. 374 (1969).

[45] 21 A Am Jur 2d §1053.

[46] 98 S.E. 615.

[47] 14 N.E. 2d 397.

[48] 221 Ill. 166, 77 N.E. 529.

[49] 225 Ill. 347, 80 N.E. 291.

[50] Section 14 (2), Article III, 1987 Constitution.

[51] Section 16, Article III, 1987 Constitution.

[52] Antieau, Modern Constitutional Law, Vol. 1, 1969 at 336.

[53] Doggett vs. United States, 505 U.S. 647 (1992).

[54] People vs. Abano, 97 Phil. 28 (1955); People vs. Tacneng, 105 Phil. 1298 (1959); People vs. Robles, 105 Phil. 1016 (1959); Salcedo vs. Mendoza, G.R. No. L-49375, February 28, 1979, 88 SCRA 811.

[55] Agpalo, Statutory Construction at 100 to 101, citing LVN Pictures vs. Philippine Mucisian's Guild, 110 Phil. 225 (1961); People vs. Purisima, G.R. No. L-42050, November 20, 1978, 86 SCRA 542; Commissioner of Internal Revenue vs. Filipinas Compania de Seguros, 107 Phil. 1055 (1960).

[56] Rivera vs. Campbell, 34 Phil. 348 (1916).

[57] Herrera, Remedial Law, Vol. IV, 2001 Ed. at 660.

[58] Under Article 90, the Revised Penal Code, crimes punishable by death, reclusion perpetua, or reclusion temporal shall prescribe in twenty (20) years.

[59] Constantino vs. Desierto, G.R. No. 127457, April 13, 1998, 288 SCRA 654.

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