

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. BENJAMIN
“KOKOY” ROMUALDEZ, AND SANDIGANBAYAN,
RESPONDENT.**

G.R. No. 166510. April 29, 2009

Ponente: TINGA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-166510/>

TINGA, J.:

The relevant antecedent facts are stated in the Decision of the Court dated 23 July 2008[1]. We reproduce them, to wit:

The Office of the Ombudsman (Ombudsman) charged Romualdez before the Sandiganbayan with violation of Section 3 (e) of Republic Act No. 3019 (R.A. 3019), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The Information reads:

That on or about and during the period from 1976 to February 1986 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Benjamin "Kokoy" Romualdez, a public officer being then the Provincial Governor of the Province of Leyte, while in the performance of his official function, committing the offense in relation to his Office, did then and there willfully, unlawfully and criminally with evident bad faith, cause undue injury to the Government in the following manner: accused public officer being then the elected Provincial Governor of Leyte and without abandoning said position, and using his influence with his brother-in-law, then President Ferdinand E. Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment is in violation of the existing laws as the Office of the Ambassador or Chief of Mission is incompatible with his position as Governor of the Province of Leyte, thereby enabling himself to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte in the amount of Two Hundred Seventy-six Thousand Nine Hundred Eleven Dollars and 56/100 (US \$276,911.56), US Currency or its equivalent amount of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (P5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty-eight Pesos and 86/100 (P293,348.86) both Philippine Currencies, respectively, to the damage and prejudice of the Government in the aforementioned amount of P5,806,709.50.

CONTRARY TO LAW.

Romualdez moved to quash the information on two grounds, namely: (1) that the facts alleged in the information do not constitute the offense with which the accused was charged; and (2) that the criminal action or liability has been extinguished by prescription. He argued that the acts imputed against him do not constitute an offense because: (a) the cited provision of the law applies only to public officers charged with the grant of licenses, permits, or other concessions, and the act charged — receiving dual compensation — is absolutely irrelevant and unrelated to the act of granting licenses, permits, or other concessions; and (b) there can be no damage and prejudice to the Government considering that he actually rendered services for the dual positions of Provincial Governor of Leyte and Ambassador to foreign countries.

To support his prescription argument, Romualdez posited that the 15-year prescription under Section 11 of R.A. 3019 had lapsed since the preliminary investigation of the case for an offense committed on or about and during the period from 1976 to February 1986 commenced only in May 2001 after a Division of the Sandiganbayan referred the matter to the Office of the Ombudsman. He argued that there was no interruption of the prescriptive period for the offense because the proceedings undertaken under the 1987 complaint filed with the Presidential Commission on Good Government (PCGG) were null and void pursuant to the Supreme Court's ruling in *Cojuangco, Jr. v. PCGG and Cruz, Jr.* [sic]. He likewise argued that the Revised Penal Code provision that prescription does not run when the offender is absent from the Philippines should not apply to his case, as he was charged with an offense not covered by the Revised Penal Code; the law on the prescription of offenses punished under special laws (Republic Act No. 3326) does not contain any rule similar to that found in the Revised Penal Code.

The People opposed the motion to quash on the argument that Romualdez is misleading the court in asserting that Section 3 (e) of R.A. 3019 does not apply to him when Section 2 (b) of the law states that corrupt practices may be committed by public officers who include "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government." On the issue of prescription, the People argued that Section 15, Article XI of the Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel, and that prescription is a matter of technicality to which no one has a vested right. Romualdez filed a Reply to this Opposition.

The Sandiganbayan granted Romualdez' motion to quash in the first Resolution assailed in this petition. The Sandiganbayan stated:

We find that the allegation of damage and prejudice to the Government in the amount of P5,806,709.50 representing the accused's compensation is without basis, absent a showing that the accused did not actually render services for his two concurrent positions as Provincial Governor of the Province of Leyte and as Ambassador to the People's Republic of China, Kingdom of Saudi Arabia, and United States of America. The accused alleges in the subject Motion that he actually rendered services to the government. To receive compensation for actual services rendered would not come within the ambit of improper or illegal use of funds or properties of the government; nor would it constitute unjust enrichment tantamount to the damage and prejudice of the government.

Jurisprudence has established what "evident bad faith" and "gross negligence" entail, thus:

In order to be held guilty of violating Section 3 (e), R.A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. But bad faith per se is not enough for one to be held liable under the law, the "bad faith" must be "evident".

xxx xxx xxx

... "Gross negligence" is characterized by the want of even slight care, acting or omitting to act in a willful or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected. (Emphasis supplied)

The accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court quoted above. At most, any liability arising from the holding of both positions by the accused may be administrative in nature.

xxx xxx xxx

However, as discussed above, the Information does not sufficiently aver how the act of receiving dual

compensation resulted to undue injury to the government so as to make the accused liable for violation of Section 3 (e) of R.A. No. 3019.

The Sandiganbayan found no merit in Romualdez' prescription argument.

The People moved to reconsider this Resolution, citing "reversible errors" that the Sandiganbayan committed in its ruling. Romualdez opposed the People's motion, but also moved for a partial reconsideration of the Resolution's ruling on prescription. The People opposed Romualdez' motion for partial reconsideration.

Thereafter, the Sandiganbayan denied via the second assailed Resolution the People's motion for reconsideration under the following terms —

The Court held in its Resolution of June 22, 2004, and so maintains and sustains, that assuming the averments of the foregoing information are hypothetically admitted by the accused, it would not constitute the offense of violation of Section 3 (e) of R.A. 3019 as the elements of (a) causing undue injury to any party, including the government, by giving unwarranted benefits, advantage or preference to such parties, and (b) that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, are wanting.

As it is, a perusal of the information shows that pertinently, accused is being charged for: (a) having himself appointed as ambassador to various posts while serving as governor of the Province of Leyte and (b) for collecting dual compensation for said positions. As to the first, the Court finds that accused cannot be held criminally liable, whether or not he had himself appointed to the position of the ambassador while concurrently holding the position of provincial governor, because the act of appointment is something that can only be imputed to the appointing authority.

Even assuming that the appointee influenced the appointing authority, the appointee only makes a passive participation by entering into the appointment, unless it is alleged that he acted in conspiracy with his appointing authority, which, however, is not so claimed by the prosecution in the instant case. Thus, even if the accused's appointment was contrary to law or the constitution, it is the appointing authority that should be responsible therefor because it is the latter who is the doer of the alleged wrongful act. In fact, under the rules on payment of compensation, the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the appointment been lawful. As it is, the appointing authority herein, then President Ferdinand E. Marcos has been laid to rest, so it would be incongruous and illogical to hold his appointee, herein accused, liable for the appointment.

Further, the allegation in the information that the accused collected compensation in the amounts of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (P5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty Eight Pesos and 86/100 (P293,348.86) cannot sustain the theory of the prosecution that the accused caused damage and prejudice to the government, in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross inexcusable negligence. Besides receiving compensation is an incident of actual services rendered, hence it cannot be construed as injury or damage to the government.

It likewise found no merit in Romualdez' motion for partial reconsideration.[2]

Petitioner filed a Petition for Certiorari under Rule 65, imputing grave abuse of discretion on the part of the Sandiganbayan in quashing the subject information. Private respondent responded with a Motion to Dismiss with Comment Ad Cautelam, wherein he argued that the proper remedy to an order granting a motion to quash a criminal information is by way of appeal under Rule 45 since such order is a final order and not merely interlocutory. Private respondent likewise raised before this Court his argument that the criminal action or liability had already been extinguished by prescription, which argument was debunked by the Sandiganbayan.

The Court granted the petition in its 23 July 2008 Decision. While the Court acknowledged that the mode for review of a final ruling of the Sandiganbayan was by way of a Rule 45 petition, it nonetheless allowed the Rule 65 petition of petitioners, acceding that such remedy was available on the claim that grave abuse of discretion amounting to lack or excess of jurisdiction had been properly and substantially alleged. The Decision then proceeded to determine that the quashal of the information was indeed attended with grave abuse of discretion, the information having sufficiently alleged the elements of Section 3(e) of Rep. Act No. 3019, the offense with which private respondent was charged. The Decision concluded that the Sandiganbayan had committed grave abuse of discretion by premising its quashal of the information "on considerations that either not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial."

Private respondent filed a Motion for Reconsideration, placing renewed focus on his argument that the criminal charge against him had been extinguished on account of prescription. In a Minute Resolution dated 9 September 2008, the Court denied the Motion for Reconsideration. On the argument of prescription, the Resolution stated:

We did not rule on the issue of prescription because the Sandiganbayan's ruling on this point was not the subject of the People's petition for certiorari. While the private respondent asserted in his Motion to Dismiss *Ad Cautelam* filed with us that prescription had set in, he did not file his own petition to assail this aspect of the Sandiganbayan ruling, he is deemed to have accepted it; he cannot now assert that in the People's petition that sought the nullification of the Sandiganbayan ruling on some other ground, we should pass upon the issue of prescription he raised in his motion.

Hence this second motion for reconsideration, which reiterates the argument that the charges against private respondent have already prescribed. The Court required the parties to submit their respective memoranda on whether or not prescription lies in favor of respondent.

The matter of prescription is front and foremost before us. It has been raised that following our ruling in *Romualdez v. Marcelo*,^[3] the criminal charges against private respondent have been extinguished by prescription. The Court agrees and accordingly grants the instant motion.

Private respondent was charged with violations of Rep. Act No. 3019, or the Anti-Graft and Corrupt Practices Act, committed "on or about and during the period from 1976 to February 1986". However, the subject criminal cases were filed with the Sandiganbayan only on 5 November 2001, following a preliminary investigation that commenced only on 4 June 2001. The time span that elapsed from the alleged commission of the offense up to the filing of the subject cases is clearly beyond the fifteen (15) year prescriptive period provided under Section 11 of Rep. Act No. 3019.^[4]

Admittedly, the Presidential Commission on Good Government (PCGG) had attempted to file similar criminal cases against private respondent on 22 February 1989. However, said cases were quashed based on prevailing jurisprudence that informations filed by the PCGG and not the Office of the Special Prosecutor/Office of the Ombudsman are null and void for lack of authority on the part of the PCGG to file the same. This made it necessary for the Office of the Ombudsman as the competent office to conduct the required preliminary investigation to enable the filing of the present charges.

The initial filing of the complaint in 1989 or the preliminary investigation by the PCGG that preceded it could not have interrupted the fifteen (15)-year prescription period under Rep. Act No. 3019. As held in *Cruz, Jr. v. Sandiganbayan*,^[5] the investigatory power of the PCGG extended only to alleged ill-gotten wealth cases, absent previous authority from the President for the PCGG to investigate such graft and corruption cases involving the

Marcos cronies. Accordingly, the preliminary investigation conducted by the PCGG leading to the filing of the first information is void ab initio, and thus could not be considered as having tolled the fifteen (15)-year prescriptive period, notwithstanding the general rule that the commencement of preliminary investigation tolls the prescriptive period. After all, a void ab initio proceeding such as the first preliminary investigation by the PCGG could not be accorded any legal effect by this Court.

The rule is that for criminal violations of Rep. Act No. 3019, the prescriptive period is tolled only when the Office of the Ombudsman receives a complaint or otherwise initiates its investigation.[6] As such preliminary investigation was commenced more than fifteen (15) years after the imputed acts were committed, the offense had already prescribed as of such time.

Further, the flaw was so fatal that the information could not have been cured or resurrected by mere amendment, as a new preliminary investigation had to be undertaken, and evidence had again to be adduced before a new information could be filed. The rule may well be that the amendment of a criminal complaint retroacts to the time of the filing of the original complaint. Yet such rule will not apply when the original information is void ab initio, thus incurable by amendment.

The situation herein differs from that in the recent case of SEC v. Interport,[7] where the Court had occasion to reexamine the principles governing the prescription of offenses punishable under special laws. Therein, the Court found that the investigative proceedings conducted by the Securities and Exchange Commission had tolled the prescriptive period for violations of the Revised Securities Act, even if no subsequent criminal cases were instituted within the prescriptive period. The basic difference lies in the fact that no taint of invalidity had attached to the authority of the SEC to conduct such investigation, whereas the preliminary investigation conducted herein by the PCGG is simply void ab initio for want of authority.

Indeed the Court in 2006 had the opportunity to favorably rule on the same issue of prescription on similar premises raised by the same respondent. In Romualdez v. Marcelo[8], as in this case, the original preliminary investigation was conducted by the PCGG, which then acted as complainant in the complaint filed with the Sandiganbayan. Given that it had been settled that such investigation and information filed by the PCGG was null and void, the Court proceeded to rule that "[i]n contemplation of the law, no proceedings exist that could have merited the suspension of the prescriptive periods." As explained by Justice Ynares-Santiago:

Besides, the only proceeding that could interrupt the running of prescription is that which is filed or initiated by the offended party before the appropriate body or office. Thus, in the case of *People v. Maravilla*, this Court ruled that the filing of the complaint with the municipal mayor for purposes of preliminary investigation had the effect of suspending the period of prescription. Similarly, in the case of *Llenes v. Dicedican*, this Court held that the filing of a complaint against a public officer with the Ombudsman tolled the running of the period of prescription.

In the case at bar, however, the complaint was filed with the wrong body, the PCGG. Thus, the same could not have interrupted the running of the prescriptive periods.[9]

Clearly, following stare decisis, private respondent's claim of prescription has merit, similar in premises as it is to the situation in Marcelo. Unfortunately, such argument had not received serious consideration from this Court. The Sandiganbayan had apparently rejected the claim of prescription, but instead quashed the information on a different ground relating to the elements of the offense. It was on that point which the Court, in its 23 July 2008 Decision, understandably focused. However, given the reality that the arguments raised after the promulgation of the Decision have highlighted the matter of prescription as well as the precedent set in Marcelo, the earlier quashal of the information is, ultimately, the correct result still.

It would be specious to fault private respondent for failing to challenge the Sandiganbayan's pronouncement that prescription had not arisen in his favor. The Sandiganbayan quashed the information against respondent, the very same relief he had sought as he invoked the prescription argument. Why would the private respondent challenge such ruling favorable to him on motion for reconsideration or in a separate petition before a higher court? Imagine, for example, that the People did not anymore challenge the Sandiganbayan rulings anymore. The dissent implies that respondent in that instance should nonetheless appeal the Sandiganbayan's rulings because it ruled differently on the issue of prescription. No lawyer would conceivably give such advise to his client. Had respondent indeed challenged the Sandiganbayan's ruling on that point, what enforceable relief could he have obtained other than that already granted by the Anti-Graft Court?

Our 2004 ruling in *Romualdez v. Sandiganbayan*[10] cannot be cited against the position of private respondent's. The Sandiganbayan in that case denied the Motion to Quash filed based on prescription, and so it was incumbent on petitioner therein to file an appropriate remedial action to reverse that ruling and cause the quashal of the information. Herein, even as the Sandiganbayan disagreed with the prescription argument, it nonetheless granted the Motion to Quash, and it would be ridiculous for the petitioner to object to such action.

Notably, private respondent had already raised the issue of prescription in the very first responsive pleading he filed before the Court - the Motion to Dismiss with Comment *Ad Cautelam*[11] dated 14 April 2005. The claim that private respondent should be deemed as having accepted the Sandiganbayan's ruling on prescription would have been on firmer ground had private respondent remained silent on that point at the first opportunity he had before the Court.

The fact that prescription lies in favor of private respondent posed an additional burden on the petitioner, which had opted to file a Rule 65 petition for certiorari instead of the normal recourse to a Rule 45. Prescription would have been considered in favor of private respondent whether this matter was raised before us in a Rule 45 or a Rule 65 petition. Yet the bar for petitioner is markedly higher under Rule 65 than under Rule 45, and its option to resort to Rule 65 instead in the end appears needlessly burdensome for its part, a burden not helped by the fact that prescription avails in favor of private respondent.

WHEREFORE, the Second Motion for Reconsideration is GRANTED. The Decision dated 23 July 2008 and the Resolution dated 9 September 2008 in the instant case are REVERSED and SET ASIDE. The Petition is HEREBY DISMISSED. No pronouncements as to costs.

Puno, C.J., Ynares-Santiago, Austria-Martinez, Velasco, Jr., Nachura, and Bersamin, JJ., concur.

Quisumbing, J., on official business.

Carpio, J., see dissenting opinion.

Brion, J., see dissenting opinion.

Carpio-Morales, and Chico-Nazario, JJ., join Justice Brion and J. Carpio in their dissent.

Corona, J., in the result.

Leonardo-De Castro, and Peralta, JJ., no part.

[1] See *People v. Romualdez*, G.R. No. 166510, 23 July 2008, 559 SCRA 492.

[2] *Id.* at 496-500.

[3] G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89.

[4] "Prescription of offenses. - All offenses punishable under this Act shall prescribe in fifteen years."

Applying *People v. Pacificador*, G.R. No. 139405, 13 March 2001, 354 SCRA 310, any offenses involving violation of Rep. Act No. 3019 which respondent might have committed from 1976 to 1982, the latter year being that prescribed in 10 years under the law in effect at the time. In 1982, the law was amended by setting the period of prescription at 15 years but the new period only applies to offenses committed after 1982. Nonetheless, this point is moot in this case since the preliminary investigation by the Ombudsman commenced more than fifteen years after February, 1986.

[5] G.R. No. 94595, 26 February 1991, 194 SCRA 474.

[6] See *Salvador v. Desierto*, G.R. No. 135249, 16 January 2004.

[7] G.R. No. 135808, 6 October 2008.

[8] G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89.

[9] *Id.*, at 104.

[10] G.R. No. 152259, 29 July 2004.

[11] *Rollo*, pp. 174-197.

DISSENTING OPINION

CARPIO, J.:

I dissent. I reiterate my view on the matter of prescription, as expressed in my dissenting opinion in *Romualdez v. Marcelo*.^[1]

Private respondent cannot claim that prescription has set in in his favor despite his voluntary absence from this jurisdiction from 1986 to April 2000 or for a period of nearly fourteen (14) years. A person who commits a crime cannot simply flee from this jurisdiction, wait out for the prescriptive period to expire, then come back to move for the dismissal of the charge against him on the ground of prescription.

First, there is a law, Article 91 of the Revised Penal Code (RPC), which clearly provides that "[t]he term of prescription shall not run when the offender is absent from the Philippine Archipelago."

Both *Romualdez v. Marcelo* and the present case involve a violation of a special law, i.e., Republic Act No. 3019 (RA 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act." Section 11 of RA 3019 provides that, "All offenses punishable under this Act shall prescribe in fifteen years." This special law, however, does not specifically provide for a procedure for computing the prescriptive period.

In *People v. Pacificador*,^[2] the Court held that Section 2 of Act No. 3326^[3] governs the computation of prescriptive period of offenses defined and penalized by special laws. Accordingly, in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,^[4] the Court ruled that since the law involved, RA 3019, is a special law, the applicable rule in the computation of the prescriptive period is that provided in Section 2 of Act No. 3326, to wit:

Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin

to run again if the proceedings are dismissed for reasons not constituting jeopardy.

In this connection, although the Revised Penal Code (RPC) expressly states in Article 10 thereof that "[o]ffenses which are or in the future may be punishable under special laws are not subject to the provisions of [the RPC]," it likewise provides that the RPC "shall be supplementary to such laws, unless the latter should specially provide the contrary." Verily, in a long line of court decisions,[5] provisions of the RPC have been applied suppletorily to resolve cases where special laws are silent on the matters in issue. The law on the applicability of Article 10 of the RPC is thus well-settled.

In computing the prescription of offenses, Article 91 of the RPC provides:

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 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. (Emphasis supplied)

Applying Article 10 of the RPC, the provisions of Article 91 may be applied suppletorily to cases involving violations of special laws where the latter are silent on the matters in issue. The only exception supplied by Article 10 is "unless the [special laws] should specially provide the contrary."

As can be gleaned from Section 2 of Act No. 3326, said provision is "silent" as to whether the absence of the offender from the Philippines bars the running of the prescriptive period fixed in the special law, RA 3019 in this case. This silence has been interpreted by the majority in *Romualdez v. Marcelo* to mean that Section 2 of Act No. 3326 did not intend an interruption of the prescription by the absence of the offender from Philippine soil, unlike the explicit mandate of Article 91 of the RPC. Further, the majority concluded that "the legislature, in enacting Act No. 3326, did not consider the absence of the accused from the Philippines as a hindrance to the running of the prescriptive period. Expressio unius est exclusio alterius. x x x Had the legislature intended to include the accused's absence from the Philippines as a ground for the interruption of the prescriptive period in special laws, the same could have been expressly provided in Act No. 3326."

I cannot subscribe to this view.

It is conceded that both RA 3019 and Act No. 3326 are silent on whether the absence of the offender from the Philippines bar the running of the prescriptive period. Ineluctably, this silence calls for the suppletory application of related provisions of the RPC, pursuant to Article 10 thereof. Article 10 is clear: "This Code (RPC) shall be supplementary to such laws (special laws), unless the latter should specially provide the contrary." Thus, RPC provisions which are applicable shall supplement or supply what is lacking in the special law unless prohibited by the latter. In this regard, it must be emphasized that nothing in RA 3019 or in Act No. 3326 prohibits the suppletory application of Article 91 of the RPC. Hence, there is no bar to the application to these special laws of Article 91 regarding the tolling of the prescriptive period during the absence of the offender from Philippine jurisdiction.

The "silence" of Act No. 3326 should not be interpreted as that law restricting itself to its own provisions in determining when the prescriptive period should be considered interrupted. The rule of *expressio unius est exclusio alterius*[6] is no more than an auxiliary rule of interpretation which may be ignored where other circumstances indicate that the enumeration was not intended to be exclusive.[7] This maxim may be disregarded

if adherence thereto would cause inconvenience, hardship, and injury to public interest.[8] Certainly, to consider the absence of an offender from the Philippine jurisdiction as not a bar to the running of prescriptive period would inevitably cause injury to public interest, and thus, warrants a disregard of this auxiliary rule.

I believe that more befitting in this case is the rule that where an interpretation of law would endanger or sacrifice great public interest, such interpretation should be avoided.[9] The courts should presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.[10]

Second, the accused should not have the sole discretion of preventing his own prosecution by the simple expedient of fleeing from the State's jurisdiction.

The majority opinion in *Romualdez v. Marcelo* cited the 1923 case of *People v. Moran*,[11] which in turn quoted from Wharton's 1889 *Criminal Pleading and Practice*, to justify its "liberal interpretation of the law on prescription in criminal cases." The majority emphasized this excerpt from the *Moran* ruling:

x x x The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offence; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out.[12]

This Court's position was soundly rejected by the legislature when it enacted the Revised Penal Code in 1930. A more exacting rule on prescription was embodied in the Code, Article 91 of which was plain and categorical: "The term of prescription shall not run when the offender is absent from the Philippine Archipelago." Besides, it must be noted that even the cases involving liberal interpretation of the statute of limitations in favor of the accused relate only to the following issues: (1) retroactive[13] or prospective[14] application of laws providing or extending the prescriptive period; (2) the determination of the nature of the felony committed vis a vis the applicable prescriptive period;[15] and (3) the reckoning of when the prescriptive period runs.[16] Thus, contrary to the opinion of the majority in *Romualdez*, these cases are no authority to support the conclusion that the prescriptive period in a special law runs while the accused is abroad.

I reiterate my dissenting opinion in the *Romualdez* case:

There is good reason for the rule freezing the prescriptive period while the accused is abroad. The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from the State's jurisdiction. This should be the rule even in the absence of a law tolling the running of the prescriptive period while the accused is abroad and beyond the State's jurisdiction. An accused cannot acquire legal immunity by being a fugitive from the State's jurisdiction. In this case, there is even a law - Article 91 of the RPC, which Article 10 of the RPC expressly makes applicable to special laws like RA 3019 - tolling the running of the prescriptive period while the accused is abroad.

To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes. In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period. The majority opinion unfortunately chooses to lay the basis for such anomalous practice. (Emphasis supplied)

I maintain that an accused cannot acquire legal immunity by fleeing from the State's jurisdiction. To allow such a loophole will make a mockery of our criminal laws. Contrary to private respondent's claim, prescription has not set in.

Accordingly, I vote to DENY the motion for reconsideration.

[1] G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89.

[2] 406 Phil. 774 (2001).

[3] An Act To Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and To Provide When Prescription Shall Begin To Run.

[4] 415 Phil. 723, 729 (2001).

[5] In *People v. Parel* [44 Phil. 437 (1923)], Article 22 of the RPC, which concerns the retroactive effect of penal laws if they favor the accused, was applied suppletorily by the Court to violations of Act No. 3030, the Election Law; In *U.S. v. Ponte* [20 Phil. 379 (1911)], Article 17 of the RPC, regarding the participation of principals in the commission of a crime, was applied suppletorily in the case of misappropriation of public funds as defined and penalized under Act No. 1740; In *U.S. v. Bruhez* [28 Phil. 305 (1914)], Article 45 of the RPC, which concerns the confiscation of the instruments used in a crime, was applied in the case for violation of Act No. 1461, the Opium Law; In *People v. Moreno* [60 Phil. 712 (1934)], the Court applied suppletorily Article 39 of the RPC on subsidiary penalty to cases of violations of Act No. 3992, or the "Revised Motor Vehicle Law;" In *People v. Li Wai Cheung* [G.R. Nos. 90440-42, 13 October 1992, 214 SCRA 504], the Court applied suppletorily the rules on the service of sentences provided in Article 70 of the RPC in favor of the accused who was found guilty of multiple violations of R.A. No. 6425, or the "Dangerous Drugs Act of 1972;" In *People v. Chowdury* [382 Phil. 459 (2000)], the Court applied suppletorily Articles 17, 18 and 19 of the RPC to define the words "principal," "accomplices" and "accessories" under R.A. No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995," because said words were not defined therein, although the special law referred to the same terms in enumerating the persons liable for the crime of illegal recruitment; In *Yu v. People* [G.R. No. 134172, 20 September 2004, 438 SCRA 431], the Court applied suppletorily the provisions on subsidiary imprisonment under Article 39 of the RPC to Batas Pambansa (B.P.) Blg. 22, otherwise known as the "Bouncing Checks Law;" In *Ladonga v. People* [G.R. No. 141066, 17 February 2005, 451 SCRA 673], the Court applied suppletorily the principle of conspiracy under Article 8 of the RPC to B.P. Blg. 22 in the absence of a contrary provision therein; In the more recent case of *Go-Tan v. Tan* [G.R. No. 168852, 30 September 2008], the principle of conspiracy under Article 8 of the RPC was applied suppletorily to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004."

[6] The express mention of one person, thing or consequence implies the exclusion of all others.

[7] *Escribano v. Avila*, 174 Phil. 490 (1978), citing *Manabat v. De Aquino*, 92 Phil. 1025, 1027 (1953).

[8] *Javellano v. Tayo*, G.R. No. L-18919, 29 December 1962, 6 SCRA 1042, 1050.

[9] *Co Kim Cham v. Valdez Tan Keh*, 75 Phil. 113, 134 (1945).

[10] *Id.*

[11] 44 Phil. 387 (1923).

[12] *Id.* at 405.

[13] *People v. Parel*, *supra* note 5.

[14] *People v. Pacificador*, *supra* note 2.

[15] *People v. Yu Hai*, 99 Phil. 725 (1956).

[16] *People v. Reyes*, G.R. Nos. 74226-27, 27 July 1989, 175 SCRA 597.

DISSENTING OPINION

BRION, J.:

I vote to deny the admission of the respondent's (Benjamin "Kokoy" T. Romualdez) second motion for reconsideration of our Decision dated July 23, 2008 on the following grounds -

- The Court has no jurisdiction to rule on the issue of prescription.
- The issue of prescription is irrelevant and outside this Court's authority to rule upon as it was not an issue raised in the Rule 65 petition for certiorari that the People of the Philippines filed.
- The respondent's comment on the petition for certiorari is not legally sufficient to vest jurisdiction on this Court over the issue of prescription.
- The Sandiganbayan ruling on the issue of prescription is an interlocutory order that, under the present circumstances, is within the authority of the Sandiganbayan, not of this Court, to rule upon.
- A second motion for reconsideration, under the combined application of Section 2, Rule 52 and Section 2, Rule 56 of the Rules of Court, is a prohibited pleading that this Court could and should not have entertained.
- There is absolutely no basis, either legal or factual, to suspend the operation of the express and categorical prohibition against a second motion for reconsideration.
- The suspension is doubly objectionable since it opened the way for the disregard of rules on jurisdiction - a substantive law that Court cannot disregard and is outside of the Court's competence to suspend.
- The Court's admission and grant of the prohibited second motion for reconsideration gnaw at basic principles on which effective administration of justice depends.

I. Background

The present case involves the petition for certiorari filed under Rule 65 of the Rules of Court by the People of the Philippines. The petition seeks to nullify - on jurisdictional grounds - the Sandiganbayan's rulings (dated June 22, 2004 and November 23, 2004 in *Crim. Case No. 26916[1]*) on the respondent's motion to quash the information, insofar as this ruling ordered the quashal of the information on the ground that the facts alleged do not constitute the offense charged. The other component of the assailed Sandiganbayan ruling is the denial of the respondent's motion to quash on the ground of prescription. This component was never questioned before this Court, either by way of appeal under Rule 45 or via a Rule 65 petition for certiorari, under the Rules of Court.

II. The Court's Certiorari Jurisdiction

Our Decision of July 23, 2008 has painstakingly explained why we admitted the petitioner's Rule 65 petition. We admitted the petitioner's Rule 65 petition in light of the grave abuse of discretion we found and in the interest of substantial justice, taking into account that we have a DUTY - not merely a power - to intervene under Article VIII, Section 1, paragraph 2 of the Constitution where grave abuse of discretion exists. No directive in addressing grave abuse of discretion can rise higher than this constitutional command, and this Court has to act if we are to be true to our constitutional duty. Thus, the authority of this Court is granted under, and at the same time circumscribed by, the Constitution as implemented by Rule 65 of the Rules of Court.

To be sure, we pointedly admitted in our Decision that the recourse provided in the Rules of Court from the assailed ruling of the Sandiganbayan was a Rule 45 petition for review on certiorari. We allowed a Rule 65 petition for certiorari for the following quoted reason:

[I]f the Sandiganbayan merely legally erred while acting within the confines of its jurisdiction, then its ruling, even if erroneous, is properly the subject of a petition for review on certiorari under Rule 45, and any Rule 65 petition subsequently filed will be for naught. The Rule 65 petition brought under these circumstances is then being used as a substitute for lost appeal. If on the other hand, the Sandiganbayan ruling is attended by grave abuse of discretion amounting to lack or excess of jurisdiction, then this ruling is fatally defective on jurisdictional ground and we should allow it to be questioned within the period for filing a petition for certiorari under Rule 65, notwithstanding the lapse of the period of appeal under Rule 45. To reiterate, the ruling's jurisdictional defect and the demands of substantial justice that we believe should receive primacy over the strict application of rules of procedure, require that we so act.

To reiterate, grave abuse of discretion is a fatal defect that renders a ruling void. No Sandiganbayan ruling on the quashal of the Information, therefore, lapsed to finality.

A. The Limits of our Certiorari Jurisdiction;

Who Invoked and What Provoked our Certiorari Jurisdiction;

Consequence of the majority's present ruling.

A Rule 65 petition is a very narrow and focused remedy that solely addresses cases involving lack or want of jurisdiction.[2] In the present case, the lack of jurisdiction is based on the grave abuse of discretion that attended the Sandiganbayan's grant of the private respondent's motion to quash. The petition we ruled upon was not a Rule 45 petition for review on certiorari - an appeal that would have opened up the whole case for review.[3] Hence, we touched only on the grave abuse of discretion that attended the Sandiganbayan's assailed ruling.

The only aspect of the Sandiganbayan ruling properly before us -under our narrowly focused and inflexible certiorari jurisdiction - is the quashal of the information on the ground that the facts alleged therein do not constitute an offense. We could not have ruled on the issue of prescription in our Decision for jurisdictional reasons; had we done so, that aspect of our ruling would have been void for want or excess of jurisdiction.

In this regard, what the majority should not have forgotten is that jurisdiction is conferred by the Constitution and by law,[4] not by mere acquiescence of this Court,[5] nor by the subjectively-held notions of justice of its individual members.[6] Our jurisdiction to issue a writ of certiorari is conferred by Article VIII, Section 5(2) of the Constitution[7] whose full details are provided under Rule 65 of the Rules of Court.[8] This is a limited grant that is very precise in its terms; it applies only in cases involving lack or excess of jurisdiction. Negatively stated, it does not refer to a mere error of law committed after jurisdiction had been lawfully acquired.

Related to our certiorari jurisdiction is the duty imposed on us by Article VIII, Section 1 of the Constitution "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." This provision fully rounds off the grant of jurisdiction to this Court under Article VIII, Section 5(2) and the procedural methodology and details that Rule 65 of the Rules of Court provides, by stressing that - separately from the grant of authority under Article VIII of the Constitution - there is a duty that this Court must discharge. Collectively, these provisions show that "certiorari" and "grave abuse of discretion" are firmly established concepts that this Court should fully respect and enforce if only because of their constitutional moorings.

Under these clear terms, we have no jurisdiction over the issue of prescription because it was never even brought to us on a petition for certiorari; it was an issue that was never alleged before this Court to have been attended by

grave abuse of discretion amounting to lack or excess of jurisdiction. Its mere allegation, by way of comment to a properly-brought petition, never amounted to the required allegation of grave abuse of discretion and, hence, does not sufficiently confer jurisdiction to this Court over the issue. It is basic procedural law that what determines the nature of the action, as well as the court which has jurisdiction over the case, is the allegation made by the plaintiff in the complaint.[9] The defenses asserted in the answer or in the motion to dismiss are not to be considered in resolving the issue of jurisdiction, otherwise the question of jurisdiction could depend entirely upon the defendant.[10] This is particularly true in a special civil action for certiorari where the grounds - lack or excess of jurisdiction - are specific and circumscribed by the Constitution and the Rules of Court.

In ruling on this limited issue, we found that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of discretion (not merely an error of law), because it grossly violated the basic rules for evaluating a motion to quash, namely: that the decision maker should only consider the facts alleged in the Information, as matters aliunde cannot be alleged; and that these facts, hypothetically admitted, should establish the essential elements of the offense as defined by law.

As shown and discussed in our Decision of July 23, 2008, the Sandiganbayan's "conclusions are based on considerations that either are not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial." These are amply demonstrated in our unanimous Decision,[11] and cannot be simply negated by a plain claim that they do not meet the higher bar for review of grave abuse of discretion under Rule 65 (compared to the standard of review for a reversible error under Rule 45).[12]

A significant point to note in reading and analyzing the majority Resolution of April 30, 2009, is that - despite the above observation in the Resolution regarding the standard of review - it has not at all challenged the unanimous finding of grave abuse of discretion in our July 23, 2008 Decision. The majority ruling, in fact, sidestepped the issue and proceeded to rule on the issue of prescription - a matter outside our jurisdiction in the present petition.

In so doing, the majority accepted that the petition before us is indeed a Rule 65 petition for certiorari, but at the same time proceeded to rule on an issue that is not appropriate, for jurisdictional reasons, for a Rule 65 petition to consider and rule upon. This is a fatal infirmity, affecting as it does our core authority to rule, and is a defect that necessarily renders the majority's ruling void.[13] For this reason, our Decision of July 23, 2008 and its supporting Resolution of September 8, 2008, should stand.

B. Unlike the People, the respondent failed to invoke our certiorari jurisdiction

The majority ruling turns a blind eye to the fact that the respondent failed to invoke our certiorari jurisdiction by simply saying that -

It would be specious to fault private respondent for failing to challenge the Sandiganbayan's pronouncement that prescription had not arisen in his favour. The Sandiganbayan quashed the Information against respondent, the very same relief he had sought as he invoked the prescription argument. Why would the private respondent challenge such ruling favourable to him on motion for reconsideration or in a separate petition before a higher court? Imagine, for example, that the People did not anymore challenge the Sandiganbayan rulings anymore. The dissent implies that respondent in that instance should nonetheless appeal the Sandiganbayan's rulings because it ruled differently on the issue of prescription. No lawyer would conceivably give such advice to his client. Had respondent indeed challenged the Sandiganbayan's ruling on that point, what enforceable relief could he have obtained other than that already granted by the Anti-Graft Court?

To be sure, what the majority says is not untrue as a practical matter. But we are here concerned with actual legal reality, not with any practical what could have been, nor with the advice that the respondent's counsel could have given. The legal reality we have to live with, for jurisdictional purposes, is that the respondent did not question the Sandiganbayan ruling before us; thus, the prescription issue is beyond our jurisdiction to rule upon in the present petition for certiorari.

Another legal reality that the respondent does not appear to have appreciated is that the prescription issue is not a dead issue; it is simply an issue that is not before us and, hence, one that we cannot rule upon. The Sandiganbayan's denial of the respondent's claim of prescription was an interlocutory ruling that did not fully and finally settle the issue of prescription (unlike the grant of a motion to quash which assumes a character of finality because of the termination of the proceeding that follows a grant).[14] With the option of filing its own petition for certiorari gone, the respondent thus has to fall back on its next recourse - to resurrect the prescription issue when and if the Sandiganbayan's quashal of the Information is reversed, since the Sandiganbayan ruling is interlocutory. If the private respondent misread the legal situation, he has only himself and his counsel to blame, and should not transfer to this Court the burden of freeing him from whatever mistake he and his counsel might have committed.

II. The Respondent's Second Motion for Reconsideration is a Prohibited Pleading

The present case is now before this Court on a Second Motion for Reconsideration. Section 2, Rule 52 (made applicable to original actions in the Supreme Court pursuant to Section 2, Rule 56) of the Rules of Court provides that the filing of a second motion for reconsideration cannot be entertained and, in this sense, is a prohibited pleading. To quote the rule:

Sec. 2. Second Motion for Reconsideration. No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The majority ruling disregarded this rule and chose to rule on the respondent's Second Motion for Reconsideration without even rendering a separate specific ruling on the respondent's prior Motion for Leave to Admit Second Motion for Reconsideration. In its present ruling, the majority after reciting how the case came to the Second Motion for Reconsideration stage, merely stated:

Hence, this second motion for reconsideration which reiterates the argument that the charges against private respondent have already prescribed. The Court required the parties to submit their respective memoranda on whether or not prescription lies in favor of respondent.

The matter of prescription is front and foremost before us. It has been raised that following our ruling in *Romualdez v. Marcelo*, the criminal charges against private respondent have been extinguished by prescription. The Court agrees and accordingly grants the instant motion.[15]

At page 10 of its Resolution, the majority added that:[16]

Clearly, following *stare decisis*, private respondent's claim of prescription has merit, similar in premises as it is to the situation of *Marcelo*. Unfortunately, such argument had not received serious consideration from this Court. The Sandiganbayan had apparently rejected the claim of prescription, but instead quashed the information on a different ground relating to the elements of the offense. It was on that point which the Court in its 23 July 2008 Decision, understandably focused. However, given the reality that the arguments raised after the promulgation of the Decision have highlighted the matter of prescription as well as the other precedents set in *Marcelo*, the earlier quashal of the information is, ultimately, the correct result still. [Italics supplied].

Based on these justifications, the majority then proceeded to grant the motion to admit the second motion for reconsideration and to dismiss the petition. In this manner, the majority - after twice considering the petition and the issue of prescription, and deciding that this is a matter for the Sandiganbayan to rule upon - saw it fit to reverse itself and recognize that "the criminal charges against private respondent have been extinguished by prescription."

Submerged in this majority ruling is the jurisdictional question earlier raised: even assuming that a suspension of the prohibition was proper, what happened to the jurisdictional rules affecting the issues the Court can rule upon in a petition for certiorari? To the majority, the bare claim of stare decisis and the mere allegation of prescription in "the arguments raised after the promulgation of the Decision"[17] appeared to be enough justification for the Court to rule on the prescription issue. They glossed over the fact that stare decisis is a consideration on the merits that is appropriate to make only when the issue to which it applies is properly before the Court. Apparently, too, the rules on second motions for reconsideration and the jurisdictional rules have been confused with one another and intermingled, and then conveniently jettisoned overboard based solely on the individual sentiments of the members of the majority, as expressed in their conclusion that "the earlier quashal of the information is, ultimately, the correct result still." [18] Very revealing in this majority statement is the sentiment that at the end of the day (i.e., ultimately), the respondent will anyway prevail because of prescription. Because of this, the majority, in the meanwhile, forgot and overlooked other existing and applicable laws and rules. This is how shallow and rash the justifications have been for the suspension of the prohibition on second motions for reconsideration and the consequent use of prescription as the reason for the denial of the People's petition. The majority ruling, in short, has not shown any valid reason for admitting a prohibited second motion for reconsideration, much less any compelling reason explaining how and why it ruled on an issue not legitimately encompassed by the petition for certiorari before us.

If indeed the majority considered the ultimate result of the issue of prescription, then it must have engaged - without expressly saying so - in a weighing of values in reconsidering its decision and immediately recognizing that prescription had set it. My fear in this regard is that the majority may have considered the wrong values and preferred them at the expense of the rule of law and the basic principles on which effective judicial operations depend. The majority may have even placed at risk the integrity of this Court.

In a weighing exercise in this case, a value that can easily be confused and thought to be at risk is the liberty of the individual. The question in this case, however, is not whether the right to liberty shall be granted or denied to the accused. The case is far from the stage where guilt or innocence is to be decided. The present question is only on the validity of the Sandiganbayan's quashal of the Information on the issue of its sufficiency and cannot be addressed with a concern for individual liberty.

A second important point to consider is that the issue of prescription, admittedly one that can be brought even at the motion to quash stage, as Rule 117 of the Rules of Court clearly provides, is not a dead issue. Under the unique circumstances of this case, the Court has simply not been placed in the position to rule on this issue; it has not been properly presented this issue as a matter that had been ruled upon with grave abuse of discretion. Thus, prescription is an issue that will be resolved if needed and at the proper time, not immediately and not in the abbreviated but extra-jurisdictional manner the majority undertook.

A third and a very weighty point to consider is the effect of an arbitrary admission of a prohibited second motion for consideration and of the disregard of jurisdictional rules. I cannot speculate on this point and for now can only point out the concerns discussed below. But, on the whole, I believe that, as against the values embodied by rule of law and the principles on which judicial power and effectiveness depend, any preference for the immediate recognition of prescription at this stage of the case is misplaced, and is a ruling that can exact a heavy toll on the

Court, on the rule of law, and on the principles on which the exercise of judicial power are anchored.

A glaring feature of the majority's ruling that cannot simply be dismissed is that the majority ruled in favor of an exception to a prohibition against a Second Motion for Reconsideration. The prohibition is an express rule in the Rules of Court, not one that has been derived from another rule by implication. Basic fairness alone demands that exceptions from the prohibition should likewise be express, not merely implied. Any exception that is merely implied and without the benefit of any specific standard is tantamount to an exception at will that is prone to abuse and even to an attack on substantive due process grounds. This case and its short-cut in ruling on the prescription issue is the best example of the application of an exception at will. To repeat a statement already made above, the majority ruling does not clearly show how and why the exception to the prohibition against second motions for reconsideration was allowed.

A separate problematic area in the suspension of the rules is the Court's approach of suspending the prohibition against a second motion for reconsideration on a case-to-case basis - a potential ground for a substantive due process objection by the party aggrieved by the suspension of the rules. Given what we discussed above about the lack of clear standards and the resulting exception at will situation, the litigating public may ask: is the Court's declaration of the suspension of the rules an infallible *ex cathedra* determination that a litigant has to live with simply because the Highest Court in the land said so? Without doubt, it cannot be debatable that the due process that the Constitution guarantees can be invoked even against this Court; we cannot also be immune from the grave abuse of discretion that Section 1, Article VIII speaks of, despite being named as the entity with the power to inquire into the existence of this abuse.

In light of the plain terms of Rule 52, Section 2, of the Rules of Court, the litigating public can legitimately rephrase its question and ask: what is to control the discretion of the Supreme Court when it decides to act contrary to the plain terms of the prohibition against second motions for reconsideration? If we in this Court are the guardians of the Constitution with the power to inquire into grave abuse of discretion in Government, the litigating public may ask as a follow-up question: are the guardians also subject to the rules on grave abuse of discretion that they are empowered to inquire into; if so, who will guard the guardians?

The ideal short and quick answer is: the rule of law. But for now, in the absence of any clearcut exception to the prohibition against a second motion for reconsideration, the guardians can only police themselves and tell the litigating public: trust us. In this sense, the burden is on this Court to ensure that any action in derogation of the express prohibition against a second motion for reconsideration is a legitimate and completely defensible action that will not lessen the litigating public's trust in this Court and the whole judiciary as guardians of the Constitution. Have we discharged this burden in the present case? After our previous unanimous rulings and under the terms of the present majority's ruling, I sadly conclude that we have not.

Hand in hand with the prohibition on second motion for reconsideration and underlying it, is the bedrock principle of immutability of judgments. The judiciary contributes to the harmony and well-being of society by sitting in judgment over all controversies, and by rendering rulings that the whole society - by law, practice and convention - accepts as the final word settling a disputed matter. The Rules of Court express and reinforce this arrangement by ensuring that at some point all litigation must cease: a party is given one and only one chance to ask for a reconsideration; thereafter, the decision becomes final, unchangeable and must be enforced.

The majority's ruling, sad to state, gnawed at this sensible and indispensable rule when it lifted the prohibition on second motions for reconsideration without fully explaining its grounding in reason, in jurisprudence and in the law. It rendered uncertain the state of final decisions of this Court if only because exceptions at will may now be possible and one has in fact been applied to the present case. Thus, we cannot blame an adversely affected litigant

who asks: why was Benjamin "Kokoy" Romualdez given an exceptional treatment when I was not? Lest the issues be enlarged in the public's mind to encompass the very integrity of this Court, we owe it to the litigating public to explain why or why not; the majority did not.

For these reasons, I dissent from the majority's resolution that dismisses, to the People's prejudice, the Rule 65 petition for certiorari before this Court.

[1] Entitled People of the Philippines versus Benjamin "Kokoy" Romualdez, for violation of Section 3 (e) of Republic Act No. 3019 (RA 3019), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

[2] See Section 1, Rule 65 of the Rules of Court; see also *Heirs of Hinog v. Melicor*, G.R. No. 140954, April 12, 2005, 455 SCRA 460 (citing *Land Bank of the Philippines v. Court of Appeals*, 409 SCRA 455, 479 [2003]); *San Miguel Foods, Inc.-Cebu B-Meg Feed Plant v. Laguesma*, 263 SCRA 68, 84-85 [1996]) which describes certiorari under Rule 65 as a remedy narrow in scope and inflexible in character; that it is not a general utility tool in the legal workshop.

[3] See *People v. Court of Appeals*, G.R. No. 144332, June 10, 2004, 431 SCRA 610, which explained the interplay between a Rule 65 and a Rule 45 petition as review modes.

[4] *Victorias Milling Corporation v. Intermediate Appellate Court*, G.R. No. 66880, August 2, 1991, 200 SCRA 1; *Municipality of Sogod v. Rosal*, G.R. No. 38204, September 24, 1991, 201 SCRA 632.

[5] *De Jesus v. Garcia*, G.R. No. L-26816, February 28, 1967, 19 SCRA 554, citing *Molina v. de la Riva*, 6 Phil. 12, and *Manila Railroad Company v. Attorney-General*, 20 Phil. 523; see also Concurring opinion of Justice Pablo in Resolution on Motion for Reconsideration in *Avelino v. Cuenco*, 83 Phil. 17, 74 (1949); *Squillantini v. Republic*, 88 Phil. 135, 137 (1951); *Cruzcosa v. Concepcion*, 101 Phil. 146, 150 (1957); *Lumpay v. Moscoso*, 105 Phil. 968 (1959); *Espiritu v. David*, 2 SCRA 350.

[6] See in this regard *Furman v. Georgia*, 408 U.S. 308 (1972), where the US Supreme Court ruled on the issue of the constitutionality of death penalty, and where Justice Harry Blackmun struggled between his personal belief that the death penalty should not be imposed and what the Constitution itself provides with respect to death penalty (Becoming Justice Blackmun by Linda Greenhouse, 2005).

[7] Section 5. The Supreme Court shall have the following powers:

xxx xxx xxx

- Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
- All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
- All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
- All cases in which the jurisdiction of any lower court is in issue.
- All criminal cases in which the penalty imposed is reclusion perpetua or higher.
- All cases in which only an error or question of law is involved. [Emphasis supplied.]

[8] Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial

functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

[9]See O. Herrera, Remedial Law Annotated, 2000 Ed., Volume I, p. 62; Cadimas v. Carrion, G.R. No. 180394, September 29, 2008.

[10] Serrano v Munoz Motors, Inc., G.R. No. L-25547, November 27, 1967, citing Perez Cardenas vs, Camus, 5 SCRA 639 (1962).

[11]See: pages 17 to 21 of our Decision of July 23, 2008.

[12] See: page 12 of the majority Resolution of April 30, 2009.

[13]Roces v. House of Representatives Electoral Tribunal, G.R. No. 167499, September 15, 2005, 469 SCRA 681.

[14] See Santos v. People of the Philippines, G.R. No. 173176, August 26, 2008 and Tan, Jr. v. Sandiganbayan, G.R. No. 128764, July 10, 1998, 292 SCRA 452; for authority to the effect that a grant of a motion to quash terminates the criminal proceedings, see People v. Sandiganbayan, G.R. No. 156394, January 21, 2005, 449 SCRA 205, 216, citing People v. Sandiganbayan, 408 SCRA 672, 674 (2003) and Africa v. Sandiganbayan 287 SCRA 408, 417 (1998).

[15] Resolution of April 30, 2009, p. 7.

[16] Id., p.10.

[17]Ibid.

[18]Ibid.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.