

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. MAYOR EMILIANO CARUNCHO, JR., ALFONSO CORDOVA, CESAR CORPUZ, JACINTO GONZALES AND HON. ERIBERTO ESPIRITU, IN HIS CAPACITY AS JUDGE O...

G.R. No. 57804. January 23, 1984

Ponente: ABAD SANTOS, J: This case is a good example of the saying: "much ado about nothing." And it serves as a reminder of the suggestion that we should relax, take it easy and not get unduly excited. For these reasons, a little whimsy is not out of place. This case was originally assigned to Justice Ameurfina A. Melencio-Herrera who was an outstanding student of the Chief Justice. The facts which led to the filing of the case had attracted national attention so it was thought that Justice Melencio-Herrera would once again pen a significant opinion. Due solely to the vagaries of chance, according to the Chief Justice, the lady justice was writing the decisions in leading cases. At one time Justice Antonio P. Barredo remarked that despite his long service with the Court he had not penned a landmark case. But that was before the Federation of Free Farmers case (107 SCRA 352-490 [1981]) which competes with the McDougal and Feliciano tomes in their soporific effects. Justice Melencio-Herrera in fact already had a ponencia to which nine (9) other justices concurred: But alas, before it could be promulgated some of the brethren changed their minds. No, they did not exactly flip-flop; they merely flipped. Justice Melencio-Herrera has "threatened" to write a separate opinion and hopefully she will tell it all. It is now my task to write a "decision" which is a misnomer because this opinion will certainly not decide anything. The only function it can serve is that of a resolution to dismiss the petition which will be explained by the Chief Justice later. In the afternoon of June 16, 1981, which was an election day, Salvador F. Reyes who was a radio reporter for Radio Veritas, addressed certain questions relating to voting procedure to Mayor Emiliano R. Caruncho, Jr. of Pasig, Metro Manila. The good mayor must have had a trying day because instead of answering the questions, he questioned Reyes for questioning him. What happened next could have been settled easily but for the fact that it was televised nationally. Mayor Caruncho and some of his companions manhandled Salvador F. Reyes and the incident was on tape. Understandably, there was an outcry against Caruncho, et al. Understandably also, Reyes sought the assistance of the law so that on July 2, 1981, the City Fiscal of Quezon City filed an Information in the Municipal Court of Pasig, docketed as Criminal Case No. 35961 and which reads as follows: "The undersigned City Fiscal of Quezon City pursuant to the authority under Ministry Order No. 109, dated June 22, 1981, accuses Emiliano Caruncho, Jr., Alfonso Cordova, Cesar Corpuz, Jacinto Gonzales and John Doe whose true name and real identity has not as yet been ascertained, of the crime of SLIGHT PHYSICAL INJURIES. "That on or about the 16th day of June, 1981, in Pasig, Metro Manila, Philippines the above-named accused, conspiring together, confederating with and mutually helping one another, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of SALVADOR F. REYES, by then and there pulling his hair, strangling him and hitting him on the different parts of his body, thereby inflicting upon said Salvador F. Reyes physical injuries which have required medical attendance and/or incapacitated him from performing his nine (9) days, to the damage and prejudice of the said offended party in such amount as may be awarded to him under the provisions of the Civil Code of the Philippines." Municipal Judge Eriberto H. Espiritu fixed bail at P200.00 for each accused which was duly posted. The accused entered pleas of not guilty on July 16, 1981, and on July 23, 1981, they moved to dismiss on the ground that Reyes had executed an affidavit of desistance. In his affidavit Reyes said that the accused had no intention to physically injure, insult, dishonor or discredit him because the incident was "the result of our failure to understand each other." The motion was opposed by the City Fiscal. He said he had evidence other than the testimony of Reyes and such evidence was sufficient to convict. Judge Espiritu must have perceived that his action on the motion would attract a lot of attention for he had noted the "wide publicity" given to the incident. And so he carefully composed a 9-page Order

which dismissed the case on the ground that: "x x x the said affidavit of desistance is in complete consonance with the objective and intention of P.D. 1508 as supplemented by its pertinent letters of instructions and implementations. It leaves therefore, no alternative for this Court except to uphold said affidavit of desistance and to make a finding for all the accused." The dismissal of the case evoked criticisms from some sectors of the citizenry. Reyes was accused of betraying his profession. It was said that the freedom to gather information had suffered a set-back because of his action. Enter the Solicitor General in representation of the People of the Philippines. In his petition for certiorari and mandamus, the prayer is for the annulment of the order of dismissal and to order a trial on the merits "without further delay" on the ground "that the order of dismissal is void for it was issued with grave abuse of discretion amounting to lack of jurisdiction." In the light of the foregoing the issue is simple: Did Judge Espiritu commit a grave abuse of discretion in dismissing the case against Caruncho, et al. on the basis of the affidavit of desistance? It should be noted that the operative words are "grave abuse of discretion." Accordingly, even if there be an abuse of discretion, if it is not grave and does not inflict substantial harm, the issuance of the prerogative writ of certiorari will not be warranted. On this basis, the petition must fail. Long before this case was re-assigned to me, Justices Guerrero and de Castro and I had already filed dissenting opinions. Because Justice de Castro's dissent is more comprehensive, he was the logical heir to the case. Unfortunately, however, he was seriously injured in a vehicular accident. It will take sometime before Justice de Castro can work again. In acknowledgment of his contribution, Justice de Castro's opinion is quoted in full as follows: "I vote to dismiss the petition. I am of the opinion that the order sought to be annulled is perfectly legal. "As I see it, the petition is anchored on just two (2) grounds (1) the crime charged is not subject to compromise, and (2) even if it is, protagonists not being of the same barangay, or barangays in the same city or municipality nor of adjoining barangays, the barangay lupon cannot assume jurisdiction to effect a compromise under Presidential Decree No. 1508, commonly referred to as the Barangay Court Law. "In the oral argument, it was made clear that Mayor Caruncho was charged not as a public official, but as a private person. The information contains no allegation of respondent Caruncho being a holder of a public office, the very reason why the case was filed in the ordinary court, not in the Sandigan Bayan. The crime as charged against Mayor Caruncho may therefore be the subject of compromise, or amicably settled, under express provision of the aforementioned decree, (Section 2, par 3, PD No. 1508) as the Solicitor General readily admitted after this matter was clarified. "The only reason then left to support the petition, as the Solicitor General also had to admit, that the compromise or amicable settlement upon which the questioned order of the public respondent is based, is of no legal effect because under Presidential Decree No. 1508, only when the parties belong to the same barangay or neighboring barangays may they be brought under the jurisdiction of the Barangay Court for the arbitration proceedings intended to reach an out of court settlement of the case. It is precisely because the barangay court cannot acquire jurisdiction that the compromise cannot be effected therein; otherwise there would have been no case filed in the Municipal Court of Pasig. "The barangay justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the barangay courts which, according to the concept of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character. And to make it truly effective, it should also be compulsory. With this primary objective of the barangay justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508, and the policy behind it would be better served, if an out-of-court settlement of the case is reached voluntarily by the parties. At least, I find no legal obstacle, expressed or implied, in any existing law to the parties coming to an amicable settlement or compromise of their controversies. As the writer observed during the oral argument, this could even be more 'welcome,' because the compulsory proceedings also to effect just that kind of settlement, before the barangay court, which could result only in waste of time and expense, would be avoided. "In civil cases, amicable settlement or some form of voluntary arbitration obviously to ease up case congestion in the courts, by avoiding full-blown judicial proceedings which usually go all the way from the trial court to the highest appellate court, is encouraged by no less than a specific provision of law. (See Articles 2029 and 2030, New Civil Code.) But amicable settlement of cases, if made to depend on the voluntary will of the parties, is generally hard to come by. Hence, there was felt the need of a compulsory arbitration proceedings as a more effective means of bringing about the desired result, as is precisely the purpose and reason for Presidential Decree No. 1508. Advisely, because of the compulsory nature of the proceedings thereunder,

certain limitations have to be imposed not to subject the parties to undue expenses and inconvenience. Thus the territorial jurisdiction of the barangay courts is primarily based on the residence of the parties. The creation of these courts, however, could not have been intended to prevent voluntary settlement of cases being entered into without regard to the residence of the would-be litigants, which obviously, and in reality, is the more desirable mode of achieving the main objective of Presidential Decree No. 1508 - that of declogging court dockets. This is so because in a compulsory arbitration, there is no sure guaranty of the case not reaching the regular courts. On the other hand, where the amicable settlement is voluntary, the case would certainly no longer entail any court action, or, at least, a long-drawn one. "In the instant case, the affidavit of desistance of the complainant, Salvador Reyes, was made the basis of a motion to dismiss. This is not legally infeasible since the offense is admittedly subject to compromise under the law (PD No. 1508). Why should the parties undergo the compulsory arbitration proceedings under Presidential Decree No. 1508 where, acting on their own volition, they are willing to do exactly what the barangay court would wish or order them to do? Under the theory of the petitioner, this is precisely what would be unjustifiably required to be done. On ground of logic alone, it is hard to perceive any reason why it should be so. "Even following petitioner's theory, the petition should be dismissed, it appearing that both the offended party and the offender are now residents of the same barangay as manifested to this Court (p. 8, Majority Opinion). If this is so, a mere reiteration of the affidavit of desistance would result in the dismissal of the case since the objection of the Solicitor General to giving effect to said affidavit has already been removed. It would, therefore, serve the cause of a speedy administration of justice to dismiss the instant petition, so as to allow the dismissal of the case against respondents-accused to stand. "It is also contended by respondents that certiorari is not the proper remedy, citing the case *Of People vs. City Judge Villanueva*, G. R. No. 56443, December 19, 1981. A supposedly crucial distinction is however, drawn in the majority opinion, between the case cited and the instant case in that in the former, the period of appeal had lapsed before the certiorari petition was filed, while the instant Petition was filed well within the period of appeal. The distinction pointed out is to me of no consequence, as not to constitute a hindrance to the application of the ruling of the Villanueva case. This is so because if the period of appeal has not yet lapsed when the instant Petition was filed, the impropriety of certiorari would even be more pronounced, for it then cannot be said that 'there is no appeal,' which is an indispensable requirement for certiorari to be properly resorted to. I neither cannot agree that there was such a grave abuse of discretion amounting to lack or excess of jurisdiction as to justify certiorari despite the availability of an appeal as the proper remedy, the error if any, being actually one of judgment, not of jurisdiction. As demonstrated above, there was in fact no error at all." Justice Guerrero's opinion reads: "I beg to dissent from the majority opinion because I believe that the public policy enunciated by the decree in allowing amicable settlement in cases of light offenses in order to promote the speedy administration of justice, preserve and develop Filipino culture in accordance with the constitutional mandate, strengthen the family as a basic social institution and thereby help relieve the courts of docket congestion and enhance the quality of justice dispensed by the courts, should be the overriding consideration in resolving the petition at bar. I submit that his should be the functional attitude that the courts should take and consider the social justification of the decree, not through the purely legalistic, traditional and analytical solution of the problem at hand. "While it is conceded that the State has the sovereign right to prosecute criminal offenses and that the fiscal has the full control in public prosecution, P.D. No. 1508 itself stays the prosecuting arm of the government in cases of light offenses and allows the parties to settle their differences in the larger and greater interest of public peace and order. The objection that the settlement in the instant case is not effective because the parties reside in different barangays has, to my mind, been successfully overcome by the certification of the barangay captain that the complainant Reyes and respondent Caruncho now reside in the same street and within the same barangay in Pasig - at MRR Road, Barangay No. 6, Pasig, Metro Manila since July, 1981. "I do not agree that the principle of estoppel should be raised against such certification in order to thwart the utilitarian value of the decree. The parties themselves desire peace. The State is duty bound to preserve and maintain peace. The Judiciary should do no less." I share the views expressed by Justices de Castro and Guerrero above-quoted. Additionally, I must say that even if the light felony involving Caruncho, et al. is not covered by P.D. No. 1508, Judge Espiritu did not commit a grave abuse of discretion for: True it is that in criminal cases society is the ultimate aggrieved party for which reason the People of the Philippines is designated as the plaintiff. True it is also that except as provided in Article 344

of the Revised Penal Code a pardon by the private offended party does not extinguish criminal liability. And true it is further that the dropping of criminal cases by the execution of affidavits of desistance by complainants is not looked with favor. These are Hornbook doctrines. But what is actually done in our criminal justice system? First, there is plea bargaining between the prosecution and the defense. For instance, murder is charged but in exchange for a plea of guilty the charge is reduced to homicide and the accused is allowed to claim a number of mitigating circumstances. It is not uncommon for estafa, libel, physical injuries and even homicide cases to be dismissed because the complainant has lost interest or alleged that the complaint was filed as a result of a misunderstanding. A number of examples can be given and they can fill a book. In the instant case, Judge Eriberto H. Espiritu has presented an affidavit of desistance. In the light of contemporary practice the question which is raised in this petition for certiorari is whether or not he acted with grave abuse of discretion in dismissing the case. I submit that there was no grave abuse of discretion. Accordingly, the petition should be dismissed. As a footnote, it should be mentioned that Salvador F. Reyes transferred his residence from Fairview Park in Quezon City to Barangay Caniogan in Pasig where Caruncho also lives. On March 22, 1982, the two executed a verified amicable settlement before Barangay Captain Ruperto Concepcion. Commenting on this factual development the Solicitor General says: "The present case, we submit, falls within the spirit and purposes of P.D. 1508, particularly to promote the speedy administration of justice without judicial recourse and, thus, help re-lieve the courts of docket congestion (WHEREASES of the decree)." To be sure this applies only to Mayor Caruncho but not to the other private respondents. After I had written the foregoing, some "developments" took place and I feel that I must make the following statements but as mine alone only: Justice de Castro has returned from his extended sick leave. Since his dissenting opinion was more extensive than mine, I asked him if he wanted to write the "main" opinion but he demurred. Instead he signified his concurrence to my opinion. Justice Melencio-Berrera's separate opinion which is actually a second revision of her first separate opinion bewails the length of time it has taken to dispose of the case. She appears to attribute the blame mostly on the Chief Justice, a posture which I do not share. A reading of the third version of her separate opinion will readily reveal some of the causes for the delay which I believe cannot be blamed on the Chief Justice: Because some of the justices "flipped" it was necessary to re-agenda the case a number of times for further discussion. The Court after all is a deliberative body where opinions can and do change after debates which can sometimes be heated. Moreover, in between the different dates when the case was placed on the agenda the composition of the Court was changing. Justices Barredo and Vasquez, retired; Justice de Castro went on prolonged sick leave after his accident; Justices Teehankee and Gutierrez, Jr. went to Cairo to attend a conference and even Justice Melencio-Herrera went abroad. At any rate, I fail to see any compelling reason for deliberate haste in the disposition of the case. There would be reason enough to urge expeditious action on the petition if the Court had been consistently disposed to grant it but, alas, that is not so. The final action is to dismiss the petition. WHEREFORE, for lack of necessary votes to grant the petition the same is hereby dismissed without costs. SO ORDERED. Guerrero, Makasiar and Aquino, JJ., concur. Fernando, C.J., concurs, and, in addition, submits a separate opinion (1) to make clear that at no time had there been submitted to his office a ponencia of Justice Melencio-Herrera with seven other Justices concurring and (2) to express, in the broadest general terms, his perception of what for him is the evolving trend of more humanism in the administration of criminal justice, with its resulting benefits. Teehankee, J., concurs with the separate opinion of Madame Justice Melencio-Herrera. Concepcion, Jr., De Castro, Melencio-Herrera, Escolin, and Gutierrez, Jr., JJ., see separate opinion. Plana and Relova, JJ., vote to grant the petition. Please see separate opinion. Gutierrez, Jr., J., concurs but adding some views through a separate opinion. CONCURS and submits this SEPARATE OPINION FERNANDO, C.J.

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Municipal Judge Eriberto H. Espiritu fixed bail at P200.00 for each accused which was duly posted.

The accused entered pleas of not guilty on July 16, 1981, and on July 23, 1981, they moved to dismiss on the ground that Reyes had executed an affidavit of desistance. In his affidavit Reyes said that the accused had no intention to physically injure, insult, dishonor or discredit him because the incident was "the result of our failure to understand each other."

The motion was opposed by the City Fiscal. He said he had evidence other than the testimony of Reyes and such evidence was sufficient to convict.

Judge Espiritu must have perceived that his action on the motion would attract a lot of attention for he had noted the "wide publicity" given to the incident. And so he carefully composed a 9-page Order which dismissed the case

on the ground that:

"x x x the said affidavit of desistance is in complete consonance with the objective and intention of P.D. 1508 as supplemented by its pertinent letters of instructions and implementations. It leaves therefore, no alternative for this Court except to uphold said affidavit of desistance and to make a finding for all the accused."

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Enter the Solicitor General in representation of the People of the Philippines. In his petition for certiorari and mandamus, the prayer is for the annulment of the order of dismissal and to order a trial on the merits "without further delay" on the ground "that the order of dismissal is void for it was issued with grave abuse of discretion amounting to lack of jurisdiction."

In the light of the foregoing the issue is simple: Did Judge Espiritu commit a grave abuse of discretion in dismissing the case against Caruncho, et al. on the basis of the affidavit of desistance? It should be noted that the operative words are "grave abuse of discretion." Accordingly, even if there be an abuse of discretion, if it is not grave and does not inflict substantial harm, the issuance of the prerogative writ of certiorari will not be warranted. On this basis, the petition must fail.

Long before this case was re-assigned to me, Justices Guerrero and de Castro and I had already filed dissenting opinions. Because Justice de Castro's dissent is more comprehensive, he was the logical heir to the case. Unfortunately, however, he was seriously injured in a vehicular accident. It will take sometime before Justice de Castro can work again. In acknowledgment of his contribution, Justice de Castro's opinion is quoted in full as follows:

"I vote to dismiss the petition. I am of the opinion that the order sought to be annulled is perfectly legal.

"As I see it, the petition is anchored on just two (2) grounds (1) the crime charged is not subject to compromise, and (2) even if it is, protagonists not being of the same barangay, or barangays in the same city or municipality nor of adjoining barangays, the barangay lupon cannot assume jurisdiction to effect a compromise under Presidential Decree No. 1508, commonly referred to as the Barangay Court Law.

"In the oral argument, it was made clear that Mayor Caruncho was charged not as a public official, but as a private person. The information contains no allegation of respondent Caruncho being a holder of a public office, the very reason why the case was filed in the ordinary court, not in the Sandigan Bayan. The crime as charged against Mayor Caruncho may therefore be the subject of compromise, or amicably settled, under express provision of the aforementioned decree, (Section 2, par 3, PD No. 1508) as the Solicitor General readily admitted after this matter was clarified.

"The only reason then left to support the petition, as the Solicitor General also had to admit, that the compromise or amicable settlement upon which the questioned order of the public respondent is based, is of no legal effect because under Presidential Decree No. 1508, only when the parties belong to the same barangay or neighboring barangays may they be brought under the jurisdiction of the Barangay Court for the arbitration proceedings intended to reach an out of court settlement of the case. It is precisely because the barangay court

cannot acquire jurisdiction that the compromise cannot be effected therein; otherwise there would have been no case filed in the Municipal Court of Pasig.

"The barangay justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the barangay courts which, according to the concept of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character. And to make it truly effective, it should also be compulsory. With this primary objective of the barangay justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508, and the policy behind it would be better served, if an out-of-court settlement of the case is reached voluntarily by the parties. At least, I find no legal obstacle, expressed or implied, in any existing law to the parties coming to an amicable settlement or compromise of their controversies. As the writer observed during the oral argument, this could even be more 'welcome,' because the compulsory proceedings also to effect just that kind of settlement, before the barangay court, which could result only in waste of time and expense, would be avoided.

"In civil cases, amicable settlement or some form of voluntary arbitration obviously to ease up case congestion in the courts, by avoiding full-blown judicial proceedings which usually go all the way from the trial court to the highest appellate court, is encouraged by no less than a specific provision of law. (See Articles 2029 and 2030, New Civil Code.) But amicable settlement of cases, if made to depend on the voluntary will of the parties, is generally hard to come by. Hence, there was felt the need of a compulsory arbitration proceedings as a more effective means of bringing about the desired result, as is precisely the purpose and reason for Presidential Decree No. 1508. Advisely, because of the compulsory nature of the proceedings thereunder, certain limitations have to be imposed not to subject the parties to undue expenses and inconvenience. Thus the territorial jurisdiction of the barangay courts is primarily based on the residence of the parties. The creation of these courts, however, could not have been intended to prevent voluntary settlement of cases being entered into without regard to the residence of the would-be litigants, which obviously, and in reality, is the more desirable mode of achieving the main objective of Presidential Decree No. 1508 - that of declogging court dockets. This is so because in a compulsory arbitration, there is no sure guaranty of the case not reaching the regular courts. On the other hand, where the amicable settlement is voluntary, the case would certainly no longer entail any court action, or, at least, a long-drawn one.

"In the instant case, the affidavit of desistance of the complainant, Salvador Reyes, was made the basis of a motion to dismiss. This is not legally infeasible since the offense is admittedly subject to compromise under the law (PD No. 1508). Why should the parties undergo the compulsory arbitration proceedings under Presidential Decree No. 1508 where, acting on their own volition, they are willing to do exactly what the barangay court would wish or order them to do? Under the theory of the petitioner, this is precisely what would be unjustifiably required to be done. On ground of logic alone, it is hard to perceive any reason why it should be so.

"Even following petitioner's theory, the petition should be dismissed, it appearing that both the offended party and the offender are now residents of the same barangay as manifested to this Court (p. 8, Majority Opinion). If this is so, a mere reiteration of the affidavit of desistance would result in the dismissal of the case since the objection of the Solicitor General to giving effect to said affidavit has already been removed. It would, therefore, serve the cause of a speedy administration of justice to dismiss the instant petition, so as to allow the dismissal of the case against respondents-accused to stand.

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Justice Guerrero's opinion reads:

"I beg to dissent from the majority opinion because I believe that the public policy enunciated by the decree in allowing amicable settlement in cases of light offenses in order to promote the speedy administration of justice, preserve and develop Filipino culture in accordance with the constitutional mandate, strengthen the family as a basic social institution and thereby help relieve the courts of docket congestion and enhance the quality of justice dispensed by the courts, should be the overriding consideration in resolving the petition at bar. I submit that this should be the functional attitude that the courts should take and consider the social justification of the decree, not through the purely legalistic, traditional and analytical solution of the problem at hand.

"While it is conceded that the State has the sovereign right to prosecute criminal offenses and that the fiscal has the full control in public prosecution, P.D. No. 1508 itself stays the prosecuting arm of the government in cases of light offenses and allows the parties to settle their differences in the larger and greater interest of public peace and order. The objection that the settlement in the instant case is not effective because the parties reside in different barangays has, to my mind, been successfully overcome by the certification of the barangay captain that the complainant Reyes and respondent Caruncho now reside in the same street and within the same barangay in Pasig - at MRR Road, Barangay No. 6, Pasig, Metro Manila since July, 1981.

"I do not agree that the principle of estoppel should be raised against such certification in order to thwart the utilitarian value of the decree. The parties themselves desire peace. The State is duty bound to preserve and maintain peace. The Judiciary should do no less."

I share the views expressed by Justices de Castro and Guerrero above-quoted. Additionally, I must say that even if the light felony involving Caruncho, et al. is not covered by P.D. No. 1508, Judge Espiritu did not commit a grave abuse of discretion for: True it is that in criminal cases society is the ultimate aggrieved party for which reason the People of the Philippines is designated as the plaintiff. True it is also that except as provided in Article 344 of the Revised Penal Code a pardon by the private offended party does not extinguish criminal liability. And true it is further that the dropping of criminal cases by the execution of affidavits of desistance by complainants is not looked with favor. These are Hornbook doctrines. But what is actually done in our criminal justice system? First, there is plea bargaining between the prosecution and the defense. For instance, murder is charged but in exchange for a plea of guilty the charge is reduced to homicide and the accused is allowed to claim a number of mitigating circumstances. It is not uncommon for estafa, libel, physical injuries and even homicide cases to be dismissed because the complainant has lost interest or alleged that the complaint was filed as a result of a misunderstanding. A number of examples can be given and they can fill a book.

In the instant case, Judge Eriberto H. Espiritu has presented an affidavit of desistance. In the light of contemporary practice the question which is raised in this petition for certiorari is whether or not he acted with grave abuse of discretion in dismissing the case. I submit that there was no grave abuse of discretion. Accordingly, the petition should be dismissed.

As a footnote, it should be mentioned that Salvador F. Reyes transferred his residence from Fairview Park in Quezon City to Barangay Caniogan in Pasig where Caruncho also lives. On March 22, 1982, the two executed a verified amicable settlement before Barangay Captain Ruperto Concepcion. Commenting on this factual development the Solicitor General says: "The present case, we submit, falls within the spirit and purposes of P.D. 1508, particularly to promote the speedy administration of justice without judicial recourse and, thus, help re-lieve the courts of docket congestion (WHEREASES of the decree)." To be sure this applies only to Mayor Caruncho but not to the other private respondents.

After I had written the foregoing, some "developments" took place and I feel that I must make the following statements but as mine alone only:

Justice de Castro has returned from his extended sick leave. Since his dissenting opinion was more extensive than mine, I asked him if he wanted to write the "main" opinion but he demurred. Instead he signi-fied his concurrence to my opinion.

Justice Melencio-Berrera's separate opinion which is actually a second revision of her first separate opinion bewails the length of time it has taken to dispose of the case. She appears to attribute the blame mostly on the Chief Justice, a posture which I do not share. A reading of the third version of her separate opinion will readily reveal some of the causes for the delay which I believe cannot be blamed on the Chief Justice:

Because some of the justices "flipped" it was necessary to re-agenda the case a number of times for further discussion. The Court after all is a deliberative body where opinions can and do change after debates which can sometimes be heated. Moreover, in between the different dates when the case was placed on the agenda the composition of the Court was changing. Justices Barredo and Vasquez, retired; Justice de Castro went on prolonged sick leave after his accident; Justices Teehankee and Gutierrez, Jr. went to Cairo to attend a conference and even Justice Melencio-Herrera went abroad.

At any rate, I fail to see any compelling reason for deliberate haste in the disposition of the case. There would be reason enough to urge expeditious action on the petition if the Court had been consistently disposed to grant it but, alas, that is not so. The final action is to dismiss the petition.

WHEREFORE, for lack of necessary votes to grant the petition the same is hereby dismissed without costs.

SO ORDERED.

Guerrero, Makasiar and Aquino, JJ., concur.

Fernando, C.J., concurs, and, in addition, submits a separate opinion (1) to make clear that at no time had there been submitted to his office a ponencia of Justice Melencio-Herrera with seven other Justices concurring and (2) to express, in the broadest general terms, his perception of what for him is the evolving trend of more humanism in the administration of criminal justice, with its resulting benefits.

Teehankee, J., concurs with the separate opinion of Madame Justice Melencio-Herrera. Concepcion, Jr., De Castro, Melencio-Herrera, Escolin, and Gutierrez, Jr., JJ., see separate opinion.

Plana and Relova, JJ., vote to grant the petition. Please see separate opinion.

Gutierrez, Jr., J., concurs but adding some views through a separate opinion.

CONCURS and submits this SEPARATE OPINION

FERNANDO, C.J.:

I yield my concurrence to the plurality opinion of Justice Vicente Abad Santos, written - and this is not typical of him - in a rather light vein. It is understandable why. As emphasized by him, this case "is a good example of the saying 'much ado about nothing.' " I am not prepared though to go along with him in his characterization of the reaction that could arise from the well-known exhaustive and comprehensive treatment that retired Justice Barredo and Professors McDougal and Feliciano usually accord any subject on which they write. I must likewise qualify my concurrence to his observation that "justice Melencio-Herrera in fact already had a ponencia to which nine (9) other Justices concurred." I must state for the record that at no time had I even been shown an opinion by her to which nine other Justices concurred. The ponencia submitted by her on September 30, 1982 to the Office of the Chief Justice, was concurred in by six other Justices.[1] There were even then already five dissenters.[2] Two justices did not take part.[3] Her ponencia was thus one vote shy of the indispensable eight votes necessary for a Supreme Court decision. In letter to me accompanying such opinion, she stated: "The case is now ready for [my] action." [4]

Attached to her letter is the handwritten note of Justice de Castro, reading as follows: "I have circulated copies of my dissent. However, I have not signed yet, intending to do so after I have known the reaction to my dissent. If the majority 'dissents' against it, I may go along, or just sign as the lone dissenter if no one agrees with me. Thanks, (Signed) Pacifico de Castro P.S. In the meantime, the draft decision may be circulated, not to lose time. Same." [5]

It was during the session of the Court on March 25, 1982 that Justice Melencio-Herrera was asked to prepare the "draft decision" referred to by Justice de Castro in his letter. Apparently, she was able to get the conformity of nine other members of the Court to such a draft. Thus she could assert in the above letter that on September 20, 1982, there were enough votes for her to write, not a mere draft, but a decision of the Court. It can be deduced from the tenor thereof that in the space of ten days, the efforts of Justice de Castro to persuade other members to his-way of thinking, bore fruit. Thus on September 30, when she submitted her ponencia, there were only six Justices who concurred with her, with five dissenters there was though the possibility that the eight decisive vote could still be forthcoming.

It is true I could have voted with her, thus making her ponencia the decision of the Court. She could have been under the impression that I would do so. Of course, had I done so, there would not be any need for the seven separate opinions, excluding mine, and the plurality opinion of Justice Vicente Abad Santos. I am the first to admit that her ponencia is not lacking in merit. The "inarticulate major premise "to borrow from Holmes, is, in the terminology of Professor Packer, the crime control model in the criminal process.[6] Its primary concern is on efficiency, the stress on a high rate of apprehension and conviction conformably to "the dominant role [of society] in repressing crime." [7]

On the other hand, as may be inferred from my opinions these past sixteen years, I am quite partial to the due process model, to adopt anew Professor Packer's terminology. The concern is for "the primacy of the individual and the complementary concept of limitation of power." [8] Thus the stress on the presumption of innocence and the insistence upon the state's duty to insure that an accused could rely effectively on his constitutional rights. I have desisted from applying with unmitigated rigor the full force of our penal law. If, therefore, a lower court judge, in the exercise of his sound judgment, could decide that a prosecution be dismissed and there was nothing

arbitrary or whimsical in his order, I would find it extremely difficult to reverse him on the ground that there was a grave abuse of discretion. For me, then, the opinions of Justices Guerrero, Abad Santos and De Castro, labeled dissents to her ponencia, were more persuasive. They manifest, to my mind, fealty to such an approach. Hence, my inability to concur with her.

As my vote, would thus be indecisive, I waited for later developments. They were not long in coming. On November 18, 1982, there was a pleading from respondents attaching a certification by the Barrio Captain of Caniogan, Pasig, Metro Manila to the effect that as far back as March 22, 1982, Salvador F. Reyes, the complainant, and respondent Caruncho, Jr., both residing in his barangay, appeared before him to manifest that they had amicably settled their differences regarding the incident of June 16, 1981, the subject of a criminal case then pending with the Municipal Court of Pasig, Metro Manila. Comment was required from petitioner. When filed on January 27, 1983, it simply stated that there was no objection to the motion for leave to file such certification. Thereafter, on February 4, 1983, respondents, relying on the Katarungang Pambarangay law, Presidential Decree No. 1508, and stating that there was an amicable settlement, sought the dismissal of the petition for being moot and academic. Once again, comment was required from petitioner. In such Comment, submitted on February 28, 1983, the Solicitor General interposed no objection.

As of that date then, the petition had, to all intents and purposes, become moot and academic. There was no longer any petitioner. That could be the explanation why Justice Melencio-Herrera, in her separate opinion, did not take kindly to the Comment of Solicitor General Mendoza in effect agreeing to the petition being dismissed.

March 1983, on the whole, was a period devoted to the discussion of two significant habeas corpus petitions, *Garcia-Padilla v. Ponce Enrile*[9] and *Morales v. Ponce Enrile*.^[10] The former was not decided until April 20, 1983 and the latter on the 26th of the same month. There were, of course, other important cases discussed and decided during that time. From May 2 to 18, I was abroad to honor an invitation to pay a second visit to the French Cour de Cassation, during which trip I was able likewise to confer with jurists from the United Kingdom, the President of the Supreme Court of the Netherlands, and the President of the International Court of Justice. It was not then until the latter part of June, June 23, 1983 to be exact, that the Court voted anew on this petition. From October 1982 to June 23, 1983, the Court en banc acted on 3,230 items in the agenda, with 130 new petitions, 19 of which were applications for habeas corpus and held 38 hearings, 21 of which dealt with habeas corpus petitions. The Court, either through extended opinions or minute resolutions, decided 2,702 cases. The priority to be accorded a petition that has become moot and academic is hardly discernible. So I did assume. Considering the views of my brethren, as expressed in their opinions, except for Justices Teehankee and Melencio-Herrera, such an assumption cannot, with reason, be stigmatized as purely conjectural.

In the voting on June 23, 1983, a day before Justice Melencio-Herrera's official trip abroad, only Justices Teehankee, Escolin, and Relova voted with her to grant the petition. Seven members of the Court, Justices Concepcion Jr., Guerrero, Abad Santos, De Castro, Vasquez, Gutierrez, Jr., and I voted to dismiss the petition. Justices Makasiar and Aquino did not take part, and Justice Plana was absent. On June 27, 1983, in her absence, her separate opinion was received in the Office of the Chief Justice. On September 27, 1983, the Court voted for the last time. Justice Plana was at that time present. His vote was to grant the petition. Justice Vasquez had by then retired.

On July 1, 1983, Justice De Castro was the victim of an accident and had to be on sick leave until November of 1983. Thus, it fell to Justice Abad Santos to be the spokesman of the members of the Court voting for the dismissal of the petition. Living up to his well-deserved reputation of being "fast on the draw," he circulated his opinion on October 7, 1983. On December 16, 1983, a Friday, he submitted the original version of his "decision" with an addendum. On Monday, December 19, I suggested that perhaps such addendum should be incorporated in

the Resolution. The result is this Resolution submitted on January 9, with Justices De Castro and Gutierrez, Jr., concurring but submitting separate opinions, and with Justice Concepcion Jr., concurring in the dismissal only as to respondent Caruncho, likewise filing his own opinion. So did Justices Plana, Escolin, and Relova, all of whom voted to grant the petition. Thus only Justice Teehankee concurred in the separate opinion of Justice Melencio-Herrera.

The explanation, it occurs to me, considering that from her standpoint the discussion of the legal issues appears to be quite adequate, is that in her separate opinion, there is a reference to the Justices who changed their stand. After the voting on September 27, 1983, there was added in her separate opinion an expression of concern for what she saw as a delay in the final disposition of the case.

Justices Concepcion Jr., De Castro, and Gutierrez, Jr., in their separate opinions stress that in a collegiate court modification or even reversal of opinion is to be expected as the deliberations are likely to produce a clash of ideas. The conclusion finally arrived at then may differ from that originally entertained. Justice Escolin, who was with her as to the petition being granted, was of a different mind when it came to a Justice "adopting" an opinion different from that originally entertained by him. Thus: "That the final votation turned out the way it did is but a simple case of some justices changing their minds, after thorough and assiduous deliberation, for what they believed should be the correct disposition of the issue involved." Justice Relova who likewise voted to grant the petition had this to say: "There were differences of opinion which is not unusual in a collegiate court and because the issue has to be weighed and reweighed carefully, initial opinions at times changed."

It would be less than gracious on my part if I do not express my appreciation for these kind words of Justice Gutierrez, Jr. in his separate opinion: "Regarding Justice Melencio-Herrera's concern about delays in the resolution of cases, there is no member of this Court who does not share an equal concern. From the moment I joined this Court, I have seen the Chief Justice continuously appeal to all of us to give appropriate priority to death penalty and life imprisonment cases, to see how all labor cases may be expedited, to look for older cases that may have become moot so they can be dismissed in minute resolutions, and to otherwise press for early resolution of pending cases and, at the same time, unfailingly congratulate his Court whenever statistics on decided cases show that a little back patting is warranted." [11]

He was equally cognizant of the role invariably played by Justice Teehankee, - not that he is the only one - in the at times tedious-process of arriving at decisions. Thus: "However, as expressed every now and then by Senior Associate Justice Claudio Teehankee, our concern for expedited action should not result in cutting short deliberations on any petition until the views of all the Justices desiring to document have been fully heard. The Supreme Court is a collegiate court and full and free deliberations are the index of collegiality." [12] The Court has been benefited. It has thereby been more confident that decisions reached with greater care and foresight can stand the test of scrutiny. Whatever delay is thus incurred is compensated by the feeling of a task performed in a most judicious manner. There is this added benefit. In the process, a member may be strengthened in the validity of his conclusion or may be persuaded by the opposing view.

This is as good an opportunity as any for me to acknowledge that my brethren have been most cooperative in the collective effort of the Court to terminate cases with promptness and dispatch, but after due deliberation. So it has been since my assumption of office on July 2, 1979. In 1979, the Court decided 2,411 cases, 2,487 in 1980, 2,934 in 1981, 3,616 in 1982, and 3,522 in 1983. Previously, only at one time had the number of decisions been above 2,500. That was in 1976 when there were 2,784 cases decided.

I could very well understand the feeling that prompted my esteemed colleague to lay bare her deep disappointment of this turn of events. Her ponencia, fashioned with commendable craftsmanship failed to carry

the day. Perhaps I should have voted with her when six other members of the Court had signed it. Then that would have been a decision of the Court. If I could, I would have done so. Her motivation was of the purest. Crime, if committed, must be penalized. The wrongdoer must feel the full force of the criminal law. For me, however, while agreeing on general principle, it would suffice if the offended party would be satisfied with exacting the civil liability. I could not look with disfavor then on an affidavit of desistance, especially so, where, as in this case, the matter could be handled by a barangay tribunal. If the alleged offender is a public official, there could be in addition, the imposition of an administrative sanction.

My reading of some recent writings on criminology reveals that originally it was the offended party that must exact retribution for the wrongdoing until the State intervened. In Common Law parlance, the King's Peace must be maintained. Thus, as in the United Kingdom, a prosecution is in the name of the reigning, Rex or, if the monarch be a female, Regina. Here it is the People of the Philippines. My perception is that there is a trend towards adopting anew the practice followed in the early times. Leave it to the offended party. He enjoys a greater discretion to decide whether or not he would prosecute. This is so especially where the offense imputed is of a light character or a misdemeanor. I must leave it at that. This opinion, at it is, is lengthy enough. I must bide the time until the proper occasion presents itself, if ever, for a fuller treatment.

May I reiterate the lingering feeling of regret at my inability to affix my signature to her ponencia and thus avoid all this - and here I use a favorite word of Justice Abad Santos - "brouhaha."

[1] Justices Teehankee, Aquino, Plana, Escolin, Relova, Gutierrez, Jr.

[2] Justices Concepcion, Jr., Guerrero, Abad Santos, De Castro, Vasquez.

[3] Justices Barredo and Makasiar.

[4] Letter, 1.

[5] Handwritten note of Justice de Castro to Justice Melencio-Herrera dated August 6, 1982.

[6] Packer, *The Limits of the Criminal Sanction*, 154 (1968).

[7] *Ibid*, 162.

[8] *Ibid*, 165.

[9] G.R. No. 61388, 121 SCRA 472.

[10] G.R. No. 61016, 121 SCRA 538.

[11] Separate opinion of Justice Gutierrez, Jr., 3. Like Justice Melencio-Herrera, Justice Gutierrez, Jr. was also an outstanding former student. So that Justice Efren Plana would not feel ignored, may I add that he likewise belongs to that category.

[12] *Ibid*.

SEPARATE OPINION

CONCEPCION JR., J.:

The dismissal of the petition is proper. But, only insofar as the respondent Emiliano Caruncho, Jr. is concerned, in view of the amicable settlement of his dispute with Salvador Reyes, entered into on March 22, 1982 before the Barangay Captain, pursuant to P.D. No. 1508. The said settlement reads as follows:

"CERTIFICATION

"TO WHOM IT MAY CONCERN:

"The undersigned Barangay Captain of Barangay Caniogan, Pasig, Metro-Manila, hereby certifies that today, March 22, 1982, SALVADOR F. REYES and MAYOR EMILIANO R. CARUNCHO, JR., both residing in my Barangay, appeared before me and jointly manifested that they have amicably settled their differences regarding the incident of June 16, 1981 which is the subject of Criminal Case #35961 filed with the Municipal Court of Pasig, Metro-Manila.

"Salvador F. Reyes likewise manifested before me that he has withdrawn and have executed an Affidavit of Desistance in order to secure the dismissal of the aforesaid Criminal Case against Mayor Emiliano R. Caruncho, Jr. stating that the incident arose out of a simple misunderstanding and that insofar as Salvador F. Reyes is concerned, he specifically stated before that Mayor Emiliano R. Caruncho, Jr. should not be held liable.

"This certification is issued at the instance of both Salvador F. Reyes and Mayor Emiliano R. Caruncho, Jr. whose signatures appear hereunder.

"Pasig, Metro-Manila, March 22, 1982.

"RUPERTO CONCEPCION

Barangay Captain

"SALVADOR F. REYES

Complainant

"EMILIANO R. CARUNCHO, JR.

Respondent"

Commenting on this amicable settlement, the Solicitor General states:

"COMMENT

"COME NOW undersigned counsel for petitioner People of the Philippines, and complying with resolution dated February 10, 1983, to this Honorable Court respectfully submit this COMMENT to the 'Manifestation and Motion' dated February 2, 1983 of counsel for respondent Emiliano Caruncho.

"1. With the recent development in the case that herein accused-respondent Emiliano R. Caruncho, and complainant Salvador F. Reyes have been residing in the same barangay in Pasig, Metro Manila, for an appreciable length of time now, the latter having continuously resided therein since July, 1981; and that they have appeared before the proper Lupon Official and reaffirmed the amicable settlement of their dispute regarding the June 16, 1981 incident, they submit that the dispute, or more precisely the crime of slight physical injuries, which is a light offense, is one that is subject to amicable settlement under P.D. 1508, and that the manner of its settlement by the parties substantially complies with the requirement of said law.

"2 The amicable settlement of said dispute is in the nature of a compromise which, under general principles, would not extinguish the liability of respondent Caruncho. For the 'repression and punishment of public offenses x x x is a matter of interest to society and one of public policy'. (U.S. v. Mendezona, 2 Phil. 353). But P.D. No. 1508 has excepted from that principle such crimes as are not punishable by imprisonment exceeding 30 days, or a fine exceeding P200.00 (See Section 2 (3) of the decree), Light offenses, such as the crime imputed to respondent Caruncho, is clearly a proper subject for amicable settlement under the Decree.

"3. It is worthy of note that P.D. 1508 is silent as to whether parties may still settle their dispute amicably once an action is filed in court. It is also to be observed that P.D. 1508 treats all disputes concilable under it alike, whether they are civil or criminal in nature. Considering that even under our Rules of Court, courts of justice are required to call the parties to a pre-trial to consider the possibility of an amicable settlement of the case, it is our view that parties to a dispute which is concilable under P.D. 1508 should be allowed to settle their dispute amicably even after an action has been filed in court, provided they are actually residing in the same barangay, city or municipality or in adjoining barangays.

"4. The amicable settlement machinery under P.D. 1508 is not like that of a regular court. The principle then that the jurisdiction of the Lupon is to be determined at the time the cause of action accrues should not be rigidly applied to the case at bar. The context of the decree does not explicitly state, nor even clearly imply, that the disputants should be actual residents of the same barangay, city or municipality at the time the dispute arose. All it states is that 'disputes between or among persons actually residing in the same barangay shall be brought for settlement before the Lupon of said barangay.' It is enough that the parties to the dispute, as in this case, are actual residents at the time they settle their dispute. The present case, we submit, falls within the spirit and purposes of P.D. 1508, particularly to promote the speedy administration of justice without judicial recourse and, thus, help relieve the courts of docket congestion (WHEREASES of the decree).

"IN VIEW OF THE FOREGOING, undersigned counsel interpose no objection to the motion under consideration."

The dismissal of the case against the said Emiliano Caruncho, Jr., based upon their compromise agreement, is an adjudication of the case on the merits which amounts to an acquittal, so that the revival of the criminal case against the said Emiliano Caruncho, Jr. would violate the latter's constitutional right against double jeopardy.

Under Section 2 of P.D. 1508, the barangay Lupon has the authority to bring together the parties actually residing in the same city or municipality for the amicable settlement of all disputes except:

- (1) Where one party is the government, or any subdivision or instrumentality thereof;
- (2) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

- (3) Offenses punishable by imprisonment exceeding 30 days, or a fine exceeding P200.00;
- (4) Offenses where there is no private offended party;
- (5) Such other classes of disputes which the Prime Minister may in the Interest of justice determine, upon recommendation of the Minister of Justice and the Minister of Local Government.

Slight physical injuries which shall incapacitate the offended party for labor from one to nine days or shall require medical attendance during the same period is punishable by arresto menor (Part 1, Art. 266, Revised Penal Code), the duration of which is from one to thirty days. (Art. 27, Revised Penal Code) Since the impossible penalty does not exceed thirty days, the offense is within the cognizance of the barangay courts.

Section 11 of P.D. No. 1508 and Sec. 13 of Rule VI of the Katarungang Pambarangay Rules both provide that the amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof unless repudiation of the settlement has been made or a petition for nullification of the award has been filed before the proper city or municipal court. Hence, the acquittal of the accused Emiliano Carancho Jr, pursuant to P.D. No. 1508 of slight physical injuries constitutes a bar to another information presented with the municipal court charging him with the same offense based on the same act for which he had been previously charged and acquitted.

No significance can be attached or need be attached to any changes of opinion of Justices in the course of deliberations of cases before the Court. Precisely, deliberations in a collegiate court have for their purpose to bring out the best opinion after a clash of ideas. Necessarily, there will be modifications or reversals of Previous opinions.

SEPARATE OPINION

DE CASTRO, J.:

This separate opinion is by way of saying a few words on the supposed delay in the release of the decision which understandably, Justice Herrera has reason to deplore because, if her original draft granting the petition had at one time already 10 votes, but in the end, due to change of mind of some justices, went down to only 7, lacking one vote to make it the prevailing decision, the delay had something to do with it. What happened is three members wrote separate "dissenting" opinions to her original draft, and some of those who had already given their votes to Justice Herrera, upon reading the three separate "dissenting" opinions, changed their minds to join the "dissenters". One more reasons why the dissenters finally prevailed is the Solicitor General himself, on motion, agreed to the dismissal of his own petition. With the counsel of petitioner himself agreeing to the dismissal of his own petition, on a ground that later arose, but which the Solicitor General did-not foresee, it is not strange that there would be changing of minds by some of those who wanted at first to grant the petition. The process of changing one's mind on legal issues that are novel involves no simple matter, but a long analysis and careful study. With the Solicitor General himself agreeing to the dismissal of the petition, there should be no regrets or rancor to the dismissal of the petition-even if at first, the "draft" of Justice Herrera had obtained 10 votes, and much less should the delay, and what happened during it, as seems how she looks at it, take the blame for the dismissal of the petition. Neither should the Chief Justice then, on finally getting hold of the separate opinions and the records, be blamed if, following his usual practice, as indeed of others in his function, he gives himself a few days to state his own views.

SEPARATE OPINION

MELENCIO-HERRERA, J.:

It has taken all of a year and four months to what, I hope, will see the final disposition of this case, notwithstanding periodic reminders for an earlier resolution. It is this delay that has caused me a great deal of concern. It is, to me, a crying example of justice delayed and is by no means "much ado about nothing"[*] Nor is the question involved "none too important".[**] The bone of contention is whether or not a criminal complaint, which is an offense against the State, may be dismissed on the basis of an amicable settlement between the complainant and the accused, who is a public officer.

As assigned initially, I was to prepare the opinion of the Court. My original "ponencia", annulling the Order of respondent Municipal Judge Eriberto H. Espiritu dismissing the criminal case against respondent Mayor Emiliano Caruncho, granting the petitioner for Certiorari and Mandamus, and ordering respondent Municipal Judge to reinstate and proceed with the trial on the merits of the criminal case against respondent Mayor without further delay, was circulated beginning July 30, 1982.

On September 30, 1982, I wrote the Chief Justice the following letter:

"September 30, 1982

"Re: G.R. No. L-57804

People vs. Mayor Caruncho

"Dear Chief:

I started circulating this case on July 30, 1982.

On August 6, 1982, Justice de Castro returned the Decision to me with his dissent and his note of August 6, 1982, herewith attached.***

After the case had made the complete rounds (with J. de Castro's dissent attached), I sent it back on September 20, 1982 to Justice de Castro for his final action per his note of August 6, 1982. The voting, as of September 20, 1982, was as follows:

Concurring Dissenting No part

(Grant Petition) (Dismiss Petition)

1. Teehankee, 1. Abad Santos, 1. Barredo

2. Aquino, 2. de-Castro, JJ. 2. Makasiar, JJ.
3. Concepcion, Jr.,
4. Guerrero,
5. Plana,
6. Escolin,
7. Vasquez,
8. Relova,
9. Gutierrez, Jr.,
10. Herrera (ponente.), JJ.

Today, (September 30, 1982) I received the case from Justice Relova, who was asked by Justice de Castro to return it to me. The voting is now as follows:

Concurring Dissenting No part

(Grant Petition) (Dismiss Petition)

1. Teehankee,
1. Concepcion, Jr.
1. Barredo
2. Aquino, 2. Guerrero, 2. Makasiar, JJ.
3. Plana, 3. Abad Santos
4. Escolin, 4. de Castro,
5. Relova, 5. Vasquez, JJ.
6. Gutierrez, Jr.,
7. Herrera (ponente), JJ.

The case is now ready for your action.

Thank you very much.

Respectfully,

(SGD.) A. M. HERRERA"

(Words in parentheses supplied)

The Chief Justice took no action. The case remained' in "suspended animation".

On November 18, 1982, I asked for the re-calendaring of the case in the agenda of the Court en banc, "for report". Action was deferred to November 23, 1982.

On the latter date, the Court also took up private respondent Emiliano R. Caruncho's Motion dated November 18, 1982 for leave to file a Certification of the Barangay Captain of Caniogan, Pasig, Metro Manila, to the effect that he and Salvador F. Reyes, the complainant, had amicably settled their differences regarding the incident of June 18, 1981, duly signed by the mentioned parties. The Court resolved to require the Solicitor General to comment. On January 26, 1983, the Solicitor General interposed no objection to its admission, which the Court "Noted" in its Resolution of February 3, 1983.

On February 4, 1983, private respondents, through counsel, submitted a Manifestation and Motion that these proceedings be considered and declared moot and academic considering the amicable settlement arrived at by the parties. Asked to comment, the Solicitor General interposed no objection, which comment was again "Noted" by the Court in its Resolution of March 3, 1983.

On April 20, 1983, I sent a note to the Chief Justice requesting again for inclusion of the case in the en banc agenda.

On June 23, 1983, the case was so included "for report". It was voted upon anew, with the following inconclusive results:

Grant Petition Dismiss Petition No Part Absent

1. Teehankee 1. Fernando, C.J. 1. Makasiar 1. Plana, J.
2. Escolin 2. Concepcion, 2. Aquino, JJ.
3. Relova 3. Guerrero
4. Herrera, JJ. 4. Abad Santos
5. De Castro
6. Vasquez
7. Gutierrez, Jr., JJ.

The Chief Justice reserved the right to prepare a separate opinion.

Mr. Justice Antonio Barredo had retired in the meantime on October 1, 1982.

The dismissal of the Petition was predicated either on lack of merit or because it had become moot and academic.

With the foregoing results of voting, without a majority of eight (8), the Petition was deemed dismissed, without prejudice to the filing of separate opinions by individual Justices.

I prepared my separate opinion on June 24, 1983 before I left for abroad on June 25, 1983 in the hope that the Resolution dismissing the Petition could finally be released considering that the separate dissenting opinions of Messrs. Justices Guerrero, Abad Santos, and de Castro were already of record. Copies of my separate opinion were circulated to the Chief Justice and to all Justices in my absence. I returned on July 25, 1983. Still, the case

remained pending.

On September 27, 1983, at the session en banc, Mr. Justice Efren I. Plana, who was absent during the June 23, 1983 deliberations, voted to grant the petition on a limited basis. The voting, thus, became:

To Grant To Dismiss No Part Sick Leave

1. Teehankee 1. Fernando, C.J. 1. Makasiar 1. De Castro, JJ.
2. Plana 2. Concepcion, Jr. 2. Aquino, JJ.
3. Escolin 3. Guerrero
4. Relova 4. Abad Santos
5. Herrera, JJ. 5. Gutierrez, JJ.

([*]Mr. Justice Teehankee confirmed his vote after he re-turned from abroad on October 17, 1983)

Mr. Justice Conrado Vasquez, had retired in the meantime on September 3, 1983.

The voting still being inconclusive, on the same date, September 27, 1983, Mr. Justice. Vicente Abad Santos was assigned to write the "plurality opinion".

Justice Abad Santos began circulating a "Decision" on October 7, 1983.

Following is my separate opinion, mainly based on my original "ponencia" and on my previous separate opinion.

In this Certiorari and Mandamus petition filed by the Solicitor General for the People of the Philippines, the Court is called upon to determine the validity of the dismissal by respondent Judge of the criminal case for Slight Physical Injuries against respondents in the light of the provisions and objectives of Presidential Decree No. 1508, which established a system of amicably settling disputes at the barangay level.

In a sworn statement dated June 20, 1981, Salvador Reyes, a radio reporter of Radio Veritas, related that in the afternoon of June 16, 1981, election day, while he was inside a voting center in Pasig, he sought clarification of a certain voting procedure from respondent Mayor Emiliano Caruncho, Jr., of Pasig, who had just arrived with four companions, that to his dismay the Mayor appeared belligerent and asked Reyes if the latter was an investigator, to which question Reyes replied politely that he was a media man; that Mayor Caruncho, for no apparent justifiable reason, grabbed Reyes' hair and pulled Reyes towards him, held Reyes by the neck and choked Reyes, then forcibly pushed Reyes to his companions who likewise manhandled Reyes by hitting Reyes once on the right side of his back and once at the back of his head.

On July 2, 1981, Mayor Caruncho and policemen Alfonso Cordova, Cesar Corpuz and Jacinto Gonzales, all respondents herein, were charged, together with one John Doe, with the crime of Slight Physical Injuries in an Information filed by the City Fiscal of Quezon City, and docketed as Criminal Case No. 35961 in the Municipal Court of Pasig (Injury Case). The said Information reads:

"The undersigned City Fiscal of Quezon City pursuant to the authority under Ministry or Order No. 109, dated June 22, 1981, accuses it Emiliano Caruncho Jr., Alfonso Cordova, Cesar Corpuz, Jacinto Gonzales and John

Doe whose true name and real identity has not as yet been ascertained of the crime of SLIGHT PHYSICAL INJURIES.

"That on or about the 16th day of June, 1981, in Pasig, Metro Manila, Philippines, the above-named accused, conspiring together confederating with and mutually helping one another, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of SALVADOR F. REYES, by then and there pulling his hair, strangling him and hitting him on the different parts of his body, thereby inflicting upon said Salvador F. Reyes physical injuries which have required medical attendance and/or incapacitated him from performing his (work) for nine (9) days, to the damage and prejudice of the said offended party in such amount as may be awarded to him under the provisions of the Civil Code of the Philippines.

"CONTRARY TO LAW."[1]

A separate civil case for damages was also filed against said respondents by the complainant, Salvador Reyes, in the Court of First Instance of Quezon City.

Respondent Municipal Judge Eriberto Espiritu fixed bail of P200.00 for each respondent, all of whom posted cash bonds.

At the arraignment on July 16, 1981, respondents accused all pleaded not guilty. When the trial commenced on July 23, 1981, respondents-accused, through counsel, verbally moved to dismiss the Information on the ground that the complaining witness, Salvador Reyes, had executed an Affidavit of Desistance dated July 10, 1981. Said verbal motion to dismiss was opposed in writing by City Fiscal Sergio Apostol of Quezon City, the Fiscal designated by the Minister of Justice to prosecute the case, on grounds that the Affidavit of Desistance though voluntary could not be a legal basis for dismissal and the prosecution had sufficient evidence to secure the conviction of the accused even if the offended party had refused to testify.

In an Order dated August 10, 1981, respondent Judge Eriberto Espiritu dismissed the Injury Case and cancelled the bail posted by all respondents-accused, stating as main reasons therefor that: (1) the motion to dismiss "is not predicated solely on the affidavit of desistance of the offended party" but "is anchored on the existence of an amicable settlement between the offended party and the accused", said affidavit of desistance being "equivalent to an amicable settlement"; (2) Section 2(3) of P.D. 1508 which specifically allows settlement of light offenses is an exception to the rule enunciated in Article 2034 of the Civil Code, which allows compromise upon the civil liability arising from an offense, but not upon the public action for the imposition of the legal penalty; and (3) the Affidavit of Desistance "is in complete consonance with the objective and intention of P.D. 1508 as supplemented by its pertinent letters of instructions and implementations."

The Solicitor General, on behalf of the People of the Philippines, filed on August 25, 1981, the present Petition for Certiorari and Mandamus alleging that the Order of dismissal is void for having been issued with grave abuse of discretion amounting to lack of jurisdiction on the part of respondent Judge, and praying that Certiorari issue annulling said Order, of dismissal, as well as Mandamus ordering respondent Judge to proceed with the trial on the merits of the Injury Case (Criminal Case No. 35961) without further delay.

Incidentally, and although, technically, it may neither be here nor there, it has reliably come to my knowledge that respondents Jacinto Gonzales and Cesar Corpuz, as members of the Pasig Police Force, had been charged administratively by complainant Reyes in NAPOLCOM Administrative Case No. 82-0567. Although complainant, after filing his administrative complaint, sought its dismissal through an affidavit of desistance, NAPOLCOM did not dismiss the charge and found the two police officers guilty of less serious irregularities in the performance of duties and penalized them, in a decision dated September 30, 1982, with suspension without

pay for a period of one (1) year and of six (6) months, respectively.

As stated at the outset, the issue in this suit is whether or not the dismissal by respondent Judge of the Injury Case on the basis of the Affidavit of Desistance executed by complainant, Salvador Reyes, is justifiable in the light of the provisions and objectives of Presidential Decree No. 1508.

The rationale behind the issuance of Presidential Decree No. 1508 is evident in its preambular clauses wherein it is recognized that the perpetuation and official recognition of the Filipino tradition of amicably settling disputes among family and barangay members at the barangay level without judicial re-course would promote the speedy administration of justice, preserve and develop Filipino culture in accordance with the constitutional mandate, and strengthen the family as a basic social institution, and that the formal organization and institutionalization of a system of amicable-settlement of disputes at the barangay level would help relieve the Courts of docket congestion and enhance the quality of justice dispensed by the Courts.

Noteworthy, however, is the fact that the amicable settlement of disputes under Presidential Decree No. 1508 is subject to specific exceptions:

"SECTION. 2. Subject matters for amicable settlement. - The Lupon of each barangay shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

- (1) Where one party is the government, or any subdivision or instrumentality thereof;
- (2) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- (3) Offenses punishable by imprisonment exceeding 30 days, or a fine exceeding P200.00;
- (4) Offenses where there is no private offended party;
- (5) Such other classes of disputes which the Prime Minister may in the interest of justice determine upon recommendation of the Minister of Justice and the Minister of Local Government."

"SECTION 3. Venue - Disputes between or among persons actually residing in the same barangay shall be brought for amicable settlement before the Lupon of said barangay. Those involving actual residents of different barangays within the same city or municipality shall be brought in the barangay where the respondent or any of the respondents actually resides, at the election of the complainant. However, all disputes which involve real property or any interest therein shall be brought in the barangay where the real property or any part thereof is situated.

The Lupon shall have no authority over disputes:

- (1) involving parties who actually reside in barangays of different cities or municipalities, except where such barangays adjoin each other; and
- (2) involving real property located in different municipalities.

Objections to venue shall be raised in the mediation proceedings before the Barangay Captain as provided for in Section 4 (b) hereunder; otherwise, the same shall be deemed waived. Any legal question which may confront the Barangay Captain in resolving objections to venue herein referred to may be submitted to the Minister of Justice whose ruling thereon shall be binding." (Italics supplied).

Under the Decree, therefore, amicable settlement of disputes through the instrumentality of the Lupong Tagapayapa is possible only when the dispute is not among those subject matters expressly excluded by Section 2(1) to (5) of the Decree, and the contending parties are actually residing in the same city or municipality (Sec. 2) or in barangays of different cities or municipalities where such barangays adjoin each other (Sec. 3 [1]).

Although, in respect of subject matter, the crime of Slight Physical Injuries can be a proper subject for amicable settlement between the parties under Section 2 of P.D.1508 because it is punishable by *arresto menor*, or imprisonment from one (1) to thirty (30) days only, or by fine not exceeding P200.00,[2] applying Section 3, par. 2(1) of P.D. 1508, no Lupon can exercise authority over the parties and their dispute considering that the complainant, Salvador Reyes, and respondent Mayor, Emiliano Caruncho, are actual residents of different cities or municipalities, Salvador Reyes having given his address in his sworn statement dated June 20, 1981, as: "c/o Radio Veritas Compound, Fairview Park, Quezon City," and in his Affidavit of Desistance dated July 10, 1981, as: "Buick Street, Fairview Park (Radio Veritas Compound), Quezon City," and Mayor Caruncho being a resident of "MRR, Road, Pasig, Metro Manila," according to a Certification dated January 28, 1982 of the Barangay Captain thereat. The conciliation requirement as a pre-condition for the filing of the criminal case in Court under Section 6 of the Decree, to wit:

"Section 6. Conciliation, precondition to filing of complaint. -- No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudicate unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. x x x " (Italics ours)

would not, therefore, apply in their case, as in fact, it was not applied in the case at bar. Respondent Judge admitted this fact in his dismissal Order in question wherein he stated:

"It will be observed that the present case was directly filed before this Court without the benefit of preliminary investigation and without passing through the barangay lupon or pangkat where it can be amicably settled by the parties. This happened because the parties reside in different barangays which are not even adjacent to each other so that no lupon or pangkat can take cognizance and jurisdiction over the person."[3]

The present case is further excluded expressly from the coverage of P.D. 1508 by Section 2 (2) thereof because respondents Municipal Mayor and Municipal policemen are public officers and employees, respectively, and the alleged mauling incident is related to the performance of their official functions the same having arisen while respondents were on tour of inspection of polling centers taken place in-side a polling center on election day.

It cannot be successfully argued that if the incident were related to the performance of respondents' official functions the case should have been filed with the Sandiganbayan, for the reason that under Section 4, paragraph 2 of P.D. 1606,[4] amending P.D. 1486, the jurisdiction of the Sandiganbayan over offenses punishable by a penalty not higher than *prision correccional* or its equivalent, is concurrent with regular Courts.

It is futile for respondents to allege, quite belatedly in their Joint Memorandum and Joint Reply Memorandum before this Court, that dismissal of the case against them was inevitable because the mandatory requirement of barangay conciliation under Section 6 of P.D. 1508 (*supra*) was not complied with considering that at the time of

the commission of the act charged as constituting a slight offense, and at the time of the execution of the Affidavit of Desistance, the disputants were residents of the same city. because Metro Manila which encompasses their places of residence, is one large city or political unit by virtue of P.D. 824, and besides, complainant Reyes and respondent Caruncho "now reside in the same street and within the same barangay in Pasig" at MRR Road, Barangay No. 6, Pasig, Metro Manila, "since July 1981" as shown by a certification of the Barangay Captain thereat. Respondents are now estopped from making such assertions after the case had been filed to the charge without having assailed at the first instance, the alleged non-compliance with the Decree prior to the filing of the case in Court. Besides, individuals should not be allowed to change their residence simply to attain their ends, if we are to remain true to the spirit of P.D. 1508, which is to promote real and lasting peace among bona-fide residents of the community.

Notwithstanding that the present case falls outside the ambit of Presidential Decree No. 1508, respondent Judge justified his dismissal Order thus:

"The argument that P.D. 1508 must be limited to specific barangays cannot be readily received. Such a narrow construction would not achieve the lofty purposes for which P.D. 1508 had been laboriously framed.

xxx xxx xxx xxx

"To the mind of the Court, the foregoing circumstances brought about by the situations beyond the control of either party in this case, will not in any manner discount or detract on the right of the parties hereto to amicably settle their dispute in this case in accordance with the above declared public policy on the matter. Otherwise, to do so would in effect render the avowed intention of P.D. 1508 in part nugatory.

"Significantly, it is relevant to note that if the law allows the intervention of Barangay Officials in settling disputes amicably, the law could be given more meaning and substance if we allow the parties to settle their disputes among them selves without the participation of anyone. To permit the litigants to put an end to their controversy, will certainly cut the costs of litigation in terms of time, money and efforts. More, it will help preserve the old Filipino tradition of settling disputes amicably. Most important of all, it will help to decongest court dockets and afford judges an opportunity to concentrate on more important cases. In sum, it would mean an improvement in the administration of justice in the country."[5]

I cannot agree with respondent Judge's expanded application and interpretation of Presidential Decree No. 1508, particularly where a case, as this one, does not fall within its coverage.

The cardinal principle should not be overlooked that to the State belongs the power to prosecute and punish crimes since a criminal offense is an outrage to the sovereignty of the State. This has found clear enunciation in Article 2034 of the Civil Code reading:

"Art. 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty."

That has been the prevailing principal. It was the pronouncement of this Court in U .S. vs. Pablo:[6]

"The right of prosecution and punishment for a crime is one of the attributes that by a natural law belongs to the sovereign per instinctively charged by the cannon will of the members of society to look after, guard and defend the interests of the community, the individual and social rights and the liberties of every citizen, and the guaranty of the exercise of his rights."

Earlier leading cases had also unequivocally declared that the repression and punishment of public offenses are matters of interest to society or of public policy, hence, criminality cannot be affected by compromise or novation of contract; that even where the offended party expressly waives indemnification, it is the duty of the public prosecutor to institute criminal proceedings for the punishment of the offender.[7]

More current jurisprudence likewise looks with disfavor on affidavits of desistance.

"The Court looks with disfavor upon the dropping of criminal complaints upon mere affidavits of desistance of the complainant particularly where the commission of the offenses as in this case is duly supported by documentary evidence."[8]

An offended party may have a "change of heart" in so far as the offense wrought on person is concerned but this will not affect the public prosecution of the offense itself.

"At this stage of the action, this change of heart erects no shield against punishment; it will not insulate petitioner from the effects of his criminal act. And this, notwithstanding the stultified apostasy of the victim.

"Temporizing with crime, courts of justice are not to countenance. Because, pardon by the offended party -- except as provided in Article 344 of the Revised Penal Code -- does not extinguish the criminal act. And even in the excepted cases, pardon must come before the institution of the criminal proceedings."[9]

As confirmed in Section 2(2) of P.D. 1508, the impediment to affidavits of desistance in criminal proceedings has additional basis when the offender is a government officer or employee. In such a situation, the complainant, although initially courageous, can be induced to desist because of effective outside pressure, or because of inside fear of future retaliation, specially when the offender can carry a gun and is in a position, directly or through others under him, to do him physical injury in an apparently legal manner, or can cause him serious harm in business, economic or other social spheres, through administrative action or inaction which cannot be successfully objected to through legal proceedings. As the saying goes, "one can-not fight City Hall."

It is important, too, to bear in mind that the intervention of an offended party in the prosecution of a criminal action is subject to the direction and control of the Fiscal.[10]

Respondents objection to the authority of Quezon City Fiscal Apostol on the grounds that the regular Fiscal, Fiscal Castillo of Pasig, never failed nor refused to investigate or prosecute the instant case, nor was he given the opportunity to be heard, and that the authority to prosecute public officers charged with slight physical injuries whether filed in the Sandiganbayan or in the Municipal Court, is lodged exclusively in the Tanodbayan under Section 17, P.D. 1607, was never raised in the Court below Respondents pleaded to the charge without objection, hence, are now estopped from questioning the Fiscal's authority. Besides, it appears on record that the prosecuting Fiscal was properly authorized by the Minister of Justice in Ministry Order No. 109 dated June 22, 1981, to conduct an investigation and if warranted by the evidence to prosecute the case.

Respondents-accused further assail the propriety of the remedies of Certiorari and Mandamus availed of by petitioner in this case, relying on the doctrine that Certiorari is not proper when ordinary appeal is available as an adequate remedy, and citing in support thereof the recent Decision of this Court (Second Division) in *People of the Philippines vs. City Judge Villanueva*, G. R. No. 56443, December 19, 1981.

Aside from the distinguishable factual situations in the two cases there is a crucial difference between them in that, in the Villanueva case, the period for appeal had elapsed before the petitioners therein filed the Certiorari and Mandamus petition before this Court, while the instant Petition was filed well within the period to appeal, the questioned Order having been issued on August 10, 1981 and this Petition having been filed on August 25, 1981.

Besides, the general rule that Certiorari cannot be a substitute for appeal yields to established exceptions. In rendering the Order of dismissal, respondent Judge acted with grave abuse of discretion tantamount to excess or lack of jurisdiction. This is so patent that the issuance of the remedies herein prayed for must be held to be justified[11] in the broader interests of justice.[12]

Reinstatement of the criminal case in the Court below would not, contrary to respondents' claim, offend the prohibition against-double jeopardy. The dismissal of the criminal case below was upon motion of respondents-accused themselves, hence, with their express consent so that double jeopardy does not attach.

"When a criminal case is 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 constitutes of his constitutional prerogative against double jeopardy as he thereby prevents the court from proceeding to the trial on the merits and rendering judgment of conviction against him."[13]

It is in view of the foregoing considerations that I have persisted in maintaining the stand that the Order of respondent Judge, dismissing the criminal case against respondent Mayor Emiliano Caruncho, Jr., should be set aside and respondent Judge should be ordered to reinstate the same and to proceed with the trial thereof on the merits.

Before closing this opinion, I cannot but comment on the attitude taken by media man, Salvador F. Reyes, in this case. It appears to me that, rather than fight for it, he had surrendered to a great extent freedom of the press by asking for the dismissal of the complaint filed on his behalf by the prosecution.

I cannot also help but note that even the Office of the Solicitor General, responsible for the initiation of this Certiorari and Mandamus proceeding, should ultimately interpose no objection to its dismissal.

* "Decision", Justice Abad Santos, p. 1.

** Separate Opinion, Justice Gutierrez, p. 2.

*** "August 6/82

"Justice Herrera,

I have circulated copies of my dissent. However, I have not signed yet, intending to do so after I have known the reaction to my dissent. If the majority dissents" against it, I may go along, or just sign as the lone dissenter if no one agrees with me.

Thanks,

(Signed)

"P.S. In the meantime, the draft decision may be circulated, not to lose time Same"

[1] p. 7, Petition.

[2] Arts. 76 and 266, Revised Penal Code.

[3] p. 43, Rollo.

[4] "x x x

"The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than prision correccional, or its equivalent, except as herein provided; in other offenses, it shall be

concurrent with the regular courts.

"x x x"

[5] pp. 42-43, Rollo.

[6] 35 Phil. 94, 100.

[7] U.S. vs. Mendezona, 2 Phil. 352, 376; U.S. vs. Leaño et al., 6 Phil. 368, 372.

[8] Quinio vs. Borbolla, 79 SCRA 155, 162 (1977).

[9] Balite vs. People, 18 SCRA 280, 290 (1966).

[10] Sec. 4, Rule 110, Rules of Court; Tan, Jr. vs. Gallardo, 73 SCRA 306 (1976).

[11] Lamagan vs. de la Cruz, 40 SCRA 101, 107 (1971).

[12] Sanchez, Jr. vs. Court of Appeals, 69 SCRA 327, 331 (1976).

[13] People vs. Consulta, 70 SCRA 277, 282, citing cases; see also People vs. Pilpa, 79 SCRA 81.

SEPARATE OPINION

PLANA, J.:

Official abuse is not and should not be subject to compromise. Rather, it should be prosecuted despite the desistance of the offended party, if there is available evidence. Presidential Decree No. 1508 itself expressly provides that there can be no amicable settlement "when one party is a public officer or employee, and the dispute relates to the performance of his official functions." [Sec. 2, Par. (2).]

Turning to the case at bar, according to complainant Salvador Reyes, while he was inside a voting center in Pasig on June 20, 1981, Mayor Caruncho grabbed his hair, pulled and held him by the neck, choked him and then forcibly pushed him to his (Mayor Caruncho's) companions who likewise manhandled Reyes. When this unfortunate incident occurred, private respondents were on an official tour of inspection of polling centers. The offensive action was therefore done in connection with the performance of their official duties.

Accordingly, the criminal information against private respondents should not be dismissed on the basis of compromise or the desistance of the complainant, there being sufficient evidence to establish the charge, as averred by the prosecuting officer.

On this limited basis, I vote with Justice Herrera to grant the petition.

SEPARATE OPINION

ESCOLIN, J.:

Considering that the offense charged was allegedly committed by respondent Municipal Mayor and Municipal Policemen while in the performance of their official duties, the certification of Barangay Captain of Caniogan, Pasig, Metro Manila, as to the amicable settlement entered into by complainant and respondent Municipal Mayor

does not justify dismissal of the charge. Section 2, par. 2, of P.D. 1508 explicitly provides that the Barangay Lupon shall have no authority to arbitrate disputes where "one party is a public officer or employee, and the dispute relates to the performance of his official functions." Accordingly, vote to grant the petition.

Differences in opinion is not an uncommon occurrence. When it happens, resolution of a question would necessarily take time. The pros and cons of the issue have to be weighed and re weighed carefully and deliberately, with initial opinions, at times, changing midstream. The present case is a typical example of this deliberative process in a Collegiate Court.

The separate opinion filed by Justice de Castro, quoted in full in the decision penned by justice Abad Santos, necessitated the re-calendaring of the case. Further discussions/resulted in six justices ultimately adopting the said opinion. That the final votation turned out the way it did is but a simple case of some justices changing their minds, after thorough and assiduous deliberation, for what they believed should be the correct disposition of the issue involved.

SEPARATE OPINION

RELOVA, J.:

I vote to grant the petition because the offense charged was allegedly committed by respondent mayor and policeman while in the performance of their official duties in which case the certification of the Barangay Captain regarding amicable settlement entered into by the complainant and the respondent mayor will not justify dismissal of the case. (Section 2, Paragraph 2 of P.D. 1508).

There were differences of opinion which is not unusual in a collegiate court and because the issue has to be weighed and reweighed carefully, initial opinions, at times changed. The final votes resulted in some justices changing their stand.

SEPARATE OPINION

GUTIERREZ, JR., J.:

When the People of the Philippines filed the present petition for certiorari and mandamus, I had initial doubts on whether the dismissal by the respondent Judge of the criminal case for slight physical injuries really constituted grave abuse of discretion tantamount to lack of jurisdiction. The petitioner asked us to set aside an order of the court arrived at in apparent good faith and to direct the prosecution of a light offense where the accused and the complainant had made up their differences and the latter forgiven the former for the laying on of hands upon his body. If the persons involved had been ordinary citizens, the petition would have been dismissed outright for the courts have many more important cases to handle than a slight physical injuries complaint where there was no more complainant. But because the accused was the municipal mayor of a major municipality while the complainant was a newspaperman and considering the peculiar circumstances surrounding the alleged offense including the fact that its commission was depicted live on national television, I initially went along with the members of the Court who were for granting the petition.

After hearing the observations of Justice Abad Santos and other members of the Court during subsequent deliberations on the petition and after having read the dissent of Justice de Castro, my earlier doubts, were, however, strengthened. When counsel for the petitioner, therefore, had a change of mind and filed his Comment

dated February 23, 1983 I also changed my earlier vote and decided to vote for the dismissal of the petition. The petitioner stated that it interposed no objection to the motion to consider the proceedings moot and academic for the reasons and changed circumstances stated in the motion. The effect of the petitioner's manifestation is that, in addition to there being no complainant in the slight physical injuries case before the metropolitan trial court of Pasig, Rizal, there would be no more petitioner in the certiorari and mandamus case before us. It would be too much to declare the respondent Judge as having acted with grave abuse of discretion in a minor case of slight physical injuries where there was no complainant before him and to grant a petition when, in effect, there was no more petitioner before the Supreme Court. To me the petition had ceased to have merit and importance. To grant it would run counter to all principles declaring that the work of the Supreme Court as a court of cassation "is less concerned with the decision of cases that begin and end with the transient rights and obligations of particular individuals but is more intertwined with the direction of national policies, momentous economic and social problems, the delimitation of governmental authority and its impact of fundamental rights." (Sinco, Political Law, Eleventh Edition, p.315). The fact that the accused is a town mayor and the incident was televised should not affect the legal significance of the case. Perhaps, we should adopt the practice of the United States Supreme Court where the petitions are denied in minute resolutions "for want of a substantial federal question." Instead of denying petitions for lack of merit, the Court should deny some petitions which while showing some merit do not present substantial questions warranting Supreme Court action.

I must state for the record that I do not know Mr. Caruncho personally and that I have met him only once in my life time during an official engagement after I had already voted to dismiss the petition. I still feel that if Mr. Reyes pursues or could still pursue his complaint and Mr. Caruncho is found guilty beyond reasonable doubt, he should receive the penalty lawfully corresponding to the offense. The case would be a municipal court case. Unfortunately, there is no complainant in the criminal case and no more petitioner in this petition before us.

I would also like to comment to Justice Melencio-Herrera's making of record the various changes of voting positions of the Justices in the course of the deliberations on this none too important petition.

As the most junior member of this Court, I was struck from the moment I joined the Court about the amount of study and research that I must devote myself to, in order to participate in the deliberations on the cases before us during Monday to Thursday daily sessions. Modesty aside, I had no difficulty disposing of my entire backlog during my five and a half years in the Court of Appeals and helping out of the oldest cases left by some retiring Justices. But upon being appointed to the Supreme Court, I had to give up teaching law at the University of the Philippines, most of my lectures for the Integrated Bar chapters all over the country, authorship of a book for the U.P. Law Center, and various social activities. All because of the time and effort needed for the Court's deliberations during our Division and En Banc sessions.

Precisely because of these deliberations, however, we change positions whenever convinced that a different view of the applicable law is the correct one. Justice Abad Santos may have used the word "flipped" in a light-hearted vein in the main opinion, but one purpose of repeated deliberations on our cases is precisely to convince some Justices to "flip" because a better interpretation of the law than their initial impressions is warranted by the facts of the case.

Only recently, I prepared two draft decisions after full deliberations on the petitions had been completed. But after the final drafts had already been signed by all the members of the Division except the Chairman, the drafts had to be modified because the latter brought up some points which were not exactly the same as the viewpoints expressed in the draft decisions but with which I and the other Justices decided to agree after yet another deliberation on each petition. In other words, there can still be a change of mind even when only one signature is needed before promulgation. As the junior member, I would certainly be the last person on this Court to remain

inflexible and unchanging in my voting and in my decisions or in motions for reconsideration simply because I had earlier made up my mind. More so, when I am always the first one to vote and to concur or dissent in a separate opinion without knowing how the more senior Justices and the Chief Justice would eventually cast their final votes or write their separate opinions.

Regarding Justice Melencio-Herrera's concern about delays in the resolution of cases, there is no member of this Court who does not share an equal concern. From the moment I joined this Court, I have seen the Chief Justice continuously appeal to all of us to give appropriate priority to death penalty and life imprisonment cases, to see how all labor cases may be expedited, to look for older cases that may have become moot so they can be dismissed in minute resolutions, and to otherwise press for early resolution of pending cases and at the same time, unfailingly congratulate his Court whenever statistics on decided cases show that a little back.

However, as expressed every now and then by Senior Associate Justice Claudio Teehankee, our concern for expedited action should not result in cutting short deliberations on any petition until the views of all the Justices desiring to comment have been fully heard. The Supreme Court is a collegiate court and full and free deliberations are the index of collegiality.

I had earlier expressed my views on the mandatory nature of the eighteen (18) months limit in Section 11, Article X of the Constitution as part of this separate opinion but I have decided to reserve them for another petition where this issue is squarely raised.

I do not know if there was an intent in the recital of the voting of the Justices in Justice Melencio-Herrera's opinion to suggest a liberalization of the rule that all our deliberations must be in strict confidence. In the Court of Appeals, we normally asked the Division Clerk of Court to sit with us and a stenographer to take notes whenever we were discussing a case. The raffle of cases is public and the assignments of cases to Divisions and Justices is not confidential.

The more complex nature of our cases, the fact that the passing of the buck stops with this Court, and the resolution of the majority of cases through minute resolutions warrants a greater amount of confidentiality in our deliberations. However, I have an open mind on the matter. If the Supreme Court considers opening our deliberations to the general public or at least decides to have a stenographer taking verbatim notes of every matter discussed during our sessions, I will have no objections. In that way, litigants and the general public would have a way of knowing when the need arises on how we arrive at our decisions especially where petitions are denied on minute resolutions. Unfounded and unfortunate speculations about the decision making process would disappear and the interests of justice would thereby be served.

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