

**JOVITO R. SALONGA, PETITIONER, VS. HON. ERNANI CRUZ PAÑO,
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL,
BRANCH XVIII (QUEZON CITY), HON. JUDGE RODOLFO ORTIZ,
PRESIDIN...**

G.R. No. 59524. February 18, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The petitioner invokes the constitutionally protected right to life and liberty guaranteed by the due process clause, alleging that no prima facie case has been established to warrant the filing of an information for subversion against him. Petitioner asks this Court to prohibit and prevent the respondents from using the iron arm of the law to harass, oppress, and persecute him, a member of the democratic opposition in the Philippines.

The background of this case is a matter of public knowledge.

A rash of bombings occurred in the Metro Manila area in the months of August, September and October of 1980. On September 6, 1980, one Victor Burns Lovely, Jr., a Philippine-born American citizen from Los Angeles, California, almost killed himself and injured his younger brother, Romeo, as a result of the explosion of a small bomb inside his room at the YMCA building in Manila. Found in Lovely's possession by police and military authorities were several pictures taken sometime in May, 1980 at the birthday party of former Congressman Raul Daza held at the latter's residence in a Los Angeles suburb. Petitioner Jovito R. Salonga and his wife were among those whose likenesses appeared in the group pictures together with other guests, including Lovely.

As a result of the serious injuries he suffered, Lovely was brought by military and police authorities to the AFP Medical Center (V. Luna Hospital) where he was placed in the custody and detention of Col. Roman P. Madella, under the over-all direction of General Fabian Ver, head of the National Intelligence and Security Authority (NISA). Shortly afterwards, Mr. Lovely and his two brothers, Romeo and Baltazar Lovely were charged with subversion, illegal possession of explosives, and damage to property.

On September 12, 1980, bombs once again exploded in Metro Manila including one which resulted in the death of an American lady who was shopping at Rustan's Supermarket in Makati and others which caused injuries to a number of persons.

On September 20, 1980, the President's anniversary television radio press conference was broadcast. The younger brother of Victor Lovely, Romeo, was presented during the conference. In his interview, Romeo stated that he had driven his elder brother, Victor, to the petitioner's house in Greenhills on two occasions. The first time was on August 20, 1980. Romeo stated that Victor did not bring any bag with him on that day when he went to the petitioner's residence and did not carry a bag when he left. The second time was in the afternoon of August 31, 1980 when he brought Victor only to the gate of the petitioner's house. Romeo did not enter the petitioner's residence. Neither did he return that day to pick up his brother.

The next day, newspapers came out with almost identical headlines stating in effect that petitioner had been linked to the various bombings in Metro Manila.

Meanwhile, on September 25, 1980, Lovely was taken out of the hospital's intensive care unit and transferred to the office of Col. Madella where he was held incommunicado for some time.

On the night of October 4, 1980, more bombs were reported to have exploded at three big hotels in Metro Manila, namely: Philippine Plaza, Century Park Sheraton and Manila Peninsula. The bombs injured nine people. A meeting of the General Military Council was called for October 6, 1980.

On October 19, 1980, minutes after the President had finished delivering his speech before the International Conference of the American Society of Travel Agents at the Philippine International Convention Center, a small bomb exploded. Within the next twenty-four hours, arrest, search, and seizure orders (ASSOs) were issued against persons who were apparently implicated by Victor Lovely in the series of bombings in Metro Manila. One of them was herein petitioner. Victor Lovely offered himself to be a "state witness" and in his letter to the President, he stated that he will reveal everything he knows about the bombings.

On October 21, 1980, elements of the military went to the hospital room of the petitioner at the Manila Medical Center where he was confined due to his recurrent and chronic ailment of bronchial asthma and placed him under arrest. The arresting officer showed the petitioner the ASSO form which however did not specify the charge or charges against him. For some time, the petitioner's lawyers were not permitted to visit him in his hospital room until this Court in the case of *Ordoñez v. Gen Fabian Ver, et al.*, (G.R. No. 55345, October 28, 1980) issued an order directing that the petitioner's right to be visited by counsel be respected.

On November 2, 1980, the petitioner was transferred against his objections from his hospital arrest to an isolation room without windows in an army prison camp at Fort Bonifacio, Makati. The petitioner states that he was not informed why he was transferred and detained, nor was he ever investigated or questioned by any military or civil authority.

Subsequently, on November 27, 1980, the petitioner was released for humanitarian reasons from military custody and placed "under house arrest in the custody of Mrs. Lydia Salonga" still without the benefit of any investigation or charges.

On December 10, 1980, the Judge Advocate General sent the petitioner a "Notice of Preliminary Investigation" in *People v. Benigno Aquino, Jr., et al.* (which included petitioner as a co-accused), stating that "the preliminary investigation of the above-entitled case has been set at 2:30 o'clock p.m. on December 12, 1980" and that petitioner was given ten (10) days from receipt of the charge sheet and the supporting evidence within which to file his counter-evidence. The petitioner states that up to the time martial law was lifted on January 17, 1981, and despite assurance to the contrary, he has not received any copies of the charges against him nor any copies of the so-called supporting evidence.

On February 9, 1981, the records of the case were turned over by the Judge Advocate General's office to the Ministry of Justice.

On February 24, 1981, the respondent City Fiscal filed a complaint accusing petitioner, among others of having violated Republic Act No. 1700, as amended by P.D. 885 and Batas Pambansa Blg. 31 in relation to Article 142 of the Revised Penal Code. The inquest court set the preliminary investigation for March 17, 1981.

On March 6, 1981, the petitioner was allowed to leave the country to attend a series of church conferences and undergo comprehensive medical examinations of the heart, stomach, liver, eye and ear including a possible

removal of his left eye to save his right eye. Petitioner Salonga almost died as one of the principal victims of the dastardly bombing of a Liberal Party rally at Plaza Miranda on August 20, 1971. Since then, he has suffered serious disabilities. The petitioner was riddled with shrapnel and pieces still remain in various parts of his body. He has an AV fistula caused by a piece of shrapnel lodged one millimeter from his aorta. The petitioner has limited use of his one remaining hand and arms, is completely blind and physical in the left eye, and has scar like formations in the remaining right eye. He is totally deaf in the right ear and partially deaf in the left ear. The petitioner's physical ailments led him to seek treatment abroad.

On or around March 26, 1981, the counsel for petitioner was furnished a copy of an amended complaint signed by Gen. Prospero Olivas, dated March 12, 1981, charging the petitioner, along with 39 other accused with the violation of R. A. 1700, as amended by P. D. 885, Batas Pambansa Blg. 31 and P. D. 1736. Hearings for preliminary investigation were conducted. The prosecution presented as its witnesses Ambassador Armando Fernandez, the Consul General of the Philippines in Los Angeles, California, Col. Balbino Diego, PSC/NISA, Chief, Investigation and Legal Panel of the Presidential Security Command and Victor Lovely himself.

On October 15, 1981, the counsel for petitioner filed a motion to dismiss the charges against petitioner for failure of the prosecution to establish a prima facie case against him.

On December 2, 1981, the respondent judge denied the motion. On January 4, 1982, he issued a resolution ordering the filing of an information for violation of the Revised Anti- Subversion Act, as amended, against forty (40) people, including herein petitioner.

The resolutions of the respondent judge dated December 2, 1981 and January 4, 1982 are now the subject of the petition. It is the contention of the petitioner that no prima facie case has been established by the prosecution to justify the filing of an information against him. He states that to sanction his further prosecution despite the lack of evidence against him would be to admit that no rule of law exists in the Philippines today.

After a painstaking review of the records, this Court finds the evidence offered by the prosecution utterly insufficient to establish a prima facie case against the petitioner. We grant the petition.

However, before going into the merits of the case, we shall pass upon a procedural issue raised by the respondents.

The respondents call for adherence to the consistent rule that the denial of a motion to quash or to dismiss, being interlocutory in character, cannot be questioned by certiorari; that since the question of dismissal will again be considered by the court when it decides the case, the movant has a plain, speedy and adequate remedy in the ordinary course of law; and that public interest dictates that criminal prosecutions should not be enjoined.

The general rule is correctly stated. However, the respondents fail to appreciate or take into account certain exceptions when a petition for certiorari is clearly warranted. The case at bar is one such exception.

In the case of *Mead v. Angel* (115 SCRA 256) the same contentions were advanced by the respondents to wit:

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“x x x Respondents advert to the rule that when a motion to quash filed by an accused in a criminal case shall be denied, the remedy of the accused-movant is not to file a petition for certiorari or mandamus or prohibition, the proper recourse being to go to trial, without prejudice to his right to reiterate the grounds invoked in his motion to quash if an adverse judgment is rendered against him, in the appeal that he may take therefrom in the manner authorized by law. (*Mill v. People, et al.*, 101 Phil. 599; *Echarol v. Purisima, et al.*, 13 SCRA 309.)

On this argument, we ruled:

"There is no disputing the validity and wisdom of the rule invoked by the respondents. However, it is also recognized that, under certain situations, recourse to the extraordinary legal remedies of certiorari, prohibition or mandamus to question the denial of a motion to quash is considered proper in the interest of 'more enlightened and substantial justice', as was so declared in 'Yap v. Lutero', G. R. No. L-12669, April 30, 1969".

Infinitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution. The integrity of a democratic society is corrupted if a person is carelessly included in the trial of around forty persons when on the very face of the record no evidence linking him to the alleged conspiracy exist.

Ex-Senator Jovito Salonga, himself a victim of the still unresolved and heinous Plaza Miranda bombings, was arrested at the Manila Medical Center while hospitalized for bronchial asthma. When arrested, he was not informed of the nature of the charges against him. Neither was counsel allowed to talk to him until this Court intervened through the issuance of an order directing that his lawyers be permitted to visit him (*Ordoñez v. Gen. Fabian Ver, et al.*, G.R. No. 55345, October 28, 1980). Only after four months of detention was the petitioner informed for the first time of the nature of the charges against him. After the preliminary investigation, the petitioner moved to dismiss the complaint but the same was denied. Subsequently, the respondent judge issued a resolution ordering the filing of an information after finding that a prima facie case had been established against all of the forty person accused.

In the light of the failure to show prima facie that the petitioner was probably guilty of conspiring to commit the crime, the initial disregard of petitioner's constitutional rights together with the massive and damaging publicity made against him, justifies the favorable consideration of this petition by this Court. With former Senator Benigno Aquino, Jr. now deceased, there are at least 38 other co-accused to be tried with the petitioner. The prosecution must present proof beyond reasonable doubt against each and every one of the 39 accused, most of whom have varying participations in the charge for subversion. The prosecution's star witness Victor Lovely and the only source of information with regard to the alleged link between the petitioner and the series of terrorist bombings is now in the United States. There is reason to believe the petitioner's citation of international news dispatches[*] that the prosecution may find it difficult if not infeasible to bring him back to the Philippines to testify against the petitioner. If Lovely refused to testify before an American federal grand jury how could he possibly be made to testify when the charges against the respondent come up in the course of the trial against the 39 accused. Considering the foregoing, we find it in the interest of justice to resolve at this stage the issue of whether or not the respondent judge gravely abused his discretion in issuing the questioned resolutions.

The respondents contend that the prosecution will introduce additional evidence during the trial and if the evidence, by then, is not sufficient to prove the petitioner's guilt, he would anyway be acquitted. Yes, but under the circumstances of this case, at what cost not only to the petitioner but to the basic fabric of our criminal justice system?

The term "prima facie evidence" denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain the proposition it supports or to establish the facts, or to counterbalance the presumption of innocence to warrant a conviction. The question raised before us now is: Were the evidences against the petitioner uncontradicted and if they were unexplained or uncontradicted, would they, standing alone, sufficiently overcome the presumption of innocence and warrant his conviction?

We do not think so.

The records reveal that in finding a case against the petitioner, the respondent judge relied only on the testimonies of Col. Balbino Diego and Victor Lovely. Ambassador Armando Fernandez, when called upon to testify on

subversive organizations in the United States nowhere mentioned the petitioner as an organizer, officer or member of the Movement for Free Philippines (MFP), or any of the organizations mentioned in the complaint. Col. Diego, on the other hand, when asked what evidence he was able to gather against the petitioner depended only on the statement of Lovely "that it was the residence of ex-Senator Salonga where they met together with Renato Tañada, one of the brains of the bombing conspiracy x x x and the fact that Sen. Salonga has been meeting with several subversive personnel based in the U.S.A. was also revealed to me by Victor Burns Lovely;" and on the group pictures taken at former Congressman Raul Daza's birthday party. In concluding that a conspiracy exists to overthrow by violent means the government of the Philippines in the United States, his only bases were "documentary as well as physical and sworn statements that were referred to me or taken by me personally," which of course negate personal knowledge on his part. When asked by the court how he would categorize petitioner in any of the subversive organizations, whether petitioner was an organizer, officer or a member, the witness replied:

"A.

To categorize former Senator Salonga if he were an organizer, he is an officer or he is a member, your Honor, please, we have to consider the surrounding circumstances and on his involvement: first, Senator Salonga wanted always to travel to the United States at least once a year or more often under the pretext of to undergo some sort of operation and participate in some sort of seminar." (t.s.n., April 21, 1981, pp. 14-15)

Such testimony, being based on affidavits of other persons and purely hearsay, can hardly qualify as prima facie evidence of subversion. It should not have been given credence by the court in the first place. Hearsay evidence, whether objected to or not, has no probative value as the affiant could not have been cross-examined on the facts stated therein. (See *People v. Labinia*, 115 SCRA 223; *People v. Valero*, 112 SCRA 661). Moreover, as Victor Lovely, himself, was personally examined by the court, there was no need for the testimony of Col. Diego. Thus, the inquest judge should have confined his investigation to Victor Burns Lovely, the sole witness whose testimony had apparently implicated petitioner in the bombings which eventually led to the filing of the information.

Lovely's account of the petitioner's involvement with the former's bombing mission is found in his sworn statement made before Col. Diego and Lt. Col. Madella and taken on October 17, 1980 at the AFP Medical Center. Lovely was not presented as a prosecution or state witness but only as a defense witness for his two younger brothers, Romeo and Baltazar, who were both included in the complaint but who were later dropped from the information. Victor Lovely was examined by his counsel and cross-examined by the fiscal. In the process, he identified the statement which he made before Col. Diego and Lt. Col. Madella. After Lovely's testimony, the prosecution made a manifestation before the court that it was adopting Lovely as a prosecution witness.

According to Lovely's statement, the following events took place:

"36.

Q.

Did Psinakis tell you where to stay?

"A.

Yes, at first he told me to check-in at Manila Hotel or the Plaza Hotel where somebody would come to contact me and give the materials needed in the execution of my mission. I thought this was not safe so I disagreed with him. Mr. Psinakis changed the plan and instead told me to visit the residence of Ex-Sen. Jovito Salonga as

often as I can and someone will meet me there to give the materials I needed to accomplish my mission.

“37.

Q.

Did you comply as instructed

"A.

Yes, I arrived in Manila on August 20, 1980 and stayed at the residence of Mr. Johnny Chua, husband of my business partner, then I went to the Hospital where I visited my mother and checked-in at Room 303 of the YMCA at Concepcion Street, Manila-

“38.

Q.

Did you visit the residence of former Senator Jovito Salonga as directed by Psinakis?

"A.

I visited Sen. Salonga's place three (3) times, the first visit was August 20 or 21, and the last was 4:00 P.M. of August 31, 1980. In addition to these visits, I TALKED to him on the phone about three or four times. On my first visit, I told him 'I am expecting an attache case from some-body which will be delivered to your house', for which Sen. Salonga replied 'Wala namang nagpunta dito at wala namang attache case para sa iyo.' However, if your attache case arrives, I'll just call you.' I gave him my number. On my second visit, Salonga said, 'I'll be very busy so just come back on the 31st of August at 4 P.M.' On that date, I was with friends at Batulao Resort and had to hurry back to be at Salonga's place for the appointment. I arrived at Salonga's place at exactly 4 P.M.

“39.

Q.

What happened then?

"A.

I was ushered to the sala by Mrs. Salonga and after five minutes, Sen. Salonga joined me in the sala. Sen. Salonga informed me that somebody will be coming to give me the attache case but did not tell me the name.

40.

Q.

“Are there any subject matters you discussed while waiting for that somebody to deliver your materials?”

"A.

Yes, Salonga asked if Sen. Aquino and I have met, I explained to him the efforts of Raul Daza in setting up that meeting but I have previous business commitments at Norfolk, Virginia. I told him, however, that through the efforts of Raul Daza, I was able to talk with Ninoy Aquino in the airport telephone booth in San Francisco. He also asked about Raul Daza, Steve Psinakis and the latest opposition group activities but it seems he is well informed.

"A.

About thirty (30) minutes.

"41.

Q.

What happened when the man arrived?

"A.

This man arrived and I was greatly surprised to see Atty. Renato Tañada. Jovy Salonga was the one who met him and as I observed parang nasa sariling bahay si Tañada nung dumating. They talked for five (5) minutes in very low tones so I did not hear what they talked about. After their whispering conversations, Sen. Salonga left and at this time Atty. 'Nits' Tañada told me 'Nasa akin ang kailangan mo, nasa kotse.'

"43.

Q.

Were the materials given to you?

"A.

When Sen. Salonga came back, we asked to be permitted to leave and I rode in Atty. Nits Tañada's old Pontiac

car colored dirty brown and proceeded to Broadway Centrum where before I alighted, Atty. Tañada handed me a 'Puma' bag containing all the materials I needed.

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"45.

Q.

What were the contents of the Puma bag?

"A.

Ten (10) pieces of Westclox pocket watch with screw and wirings, ten (10) pieces electrical blasting caps 4" length, ten (10) pieces non-electrical blasting caps 1" length, nine (9) pieces volts dry cell battery, two (2) improvised electrical testers, ten (10) plastic packs of high explosive about 1 pound weight each.

However, in his interview with Mr. Ronnie Nathanielz which was aired on Channel 4 on November 8, 1980 and which was also offered as evidence by the accused, Lovely gave a different story which negates the above testimony insofar as the petitioner's participation was concerned:

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Q.

"Who were the people that you contacted in Manila and for what purpose?

"A.

Before I left for the Philippines, Mr. Psinakis told me to check in at the Manila Hotel or the Plaza Hotel, and somebody would just deliver the materials I would need. I disapproved of this, and I told him I would prefer a place that is familiar to me or who is close to me. Mr. Psinakis suggested the residence of Sen. Salonga.

"And so, I arrived in Manila on August 20, 1980, I made a call to Sen. Salonga, but he was out. The next day I made a call again. I was able to contact him. I made an appointment to see him. I went to Sen. Salonga's house the following day. I asked Sen. Salonga if someone had given him an attache case for me. He said nobody. Afterwards, I made three calls to Sen. Salonga. Sen. Salonga told me 'call me again on the 31st of August. I did not call him, I just went to his house on the 31st of August at 4 P.M. A few minutes after my arrival, Atty. Renato Tañada arrived. When he had a chance to be near me, he (Atty. Tañada) whispered to me that he had the attache case and the materials I needed in his car. These materials were given to me by Atty. Tañada when I alighted at the Broadway Centrum.' (Underscoring supplied)

During the cross-examination, counsel for petitioner asked Lovely about the so-called destabilization plan which the latter mentioned in his sworn statement:

"Q. You mentioned in your statement taken on October 17, 1980, marked Exhibit 'G' about the so-called

destabilization plan of Aquino. When you attended the birthday party of Raul Daza wherein Jovito Salonga was also present, was this destabilization plan as alleged by you already formulated?

WITNESS:

"A Not to my knowledge.

COURT TO WITNESS:

"Q. Mr. Witness, who invited you to the party?

"A. Raul Daza, your Honor.

"Q. Were you told that Mr. Salonga would be present in the party?

"A. I am really not quite sure, your Honor.

"Q. Alright. You said initially it was social but then it became political. Was there any political action taken as a result of the party?

"A. Only political discussion, your Honor." (TSN, July 8, 1981, pp. 69-84).

Counsel for petitioner also asked Lovely whether in view of the latter's awareness of the physical condition of petitioner, he really implicated petitioner in any of the bombings that occurred in Metro Manila. The fiscal objected without stating any ground. In sustaining the objection, the Court said:

"Sustained. . . The use of the word 'implicate' might expand the role of Mr. Salonga. In other words, you are widening the avenue of Mr. Salonga's role beyond the participation stated in the testimony of this witness about Mr. Salonga, at least, as far as the evidence is concerned, I supposed, is only being in the house of Mr. Salonga which was used as the contact point. He never mentions Mr. Salonga about the bombings. Now these words had to be put in the mouth of this witness. That would be unfair to Mr. Salonga." (TSN. July 8, 1981, p. 67)

Respondent judge further said:

"COURT:

"As the Court said earlier, the parts or portions affecting Salonga only refers to the witness coming to Manila already then the matter of . . . I have gone over the statement and there is no mention of Salonga insofar as activities in the United States is concerned. I don't know why it concerns this cross-examination.

"ATTY. YAP:

"Because according to him, it was in pursuance of the plan that he came to Manila.

"COURT:

"According to him it was Aquino, Daza, and Psinakis who asked him to come here, but Salonga was introduced only when he (Lovely) came here. Now, the tendency of the question is also to connect Salonga to the activities in the United States. It seems to be the thrust of the questions.

"COURT:

"In other words, the point of the Court as of the time when you asked him question, the focus on Salonga was only from the time when he met Salonga at Greenhills. It was the first time that the name of Salonga came up. There was no mention of Salonga in the formulation of the destabilization plan as affirmed by him. But you are bringing this up although you are only cross-examining for Salonga as if his (Lovely's) activities in the United States affected Salonga. " (TSN. July 8, 1981, pp. 73-74).

Apparently, the respondent judge wanted to put things in proper perspective by limiting the petitioner's alleged "participation" in the bombing mission only to the fact that petitioner's house was used as a "contact point" between Lovely and Tañada, which was all that Lovely really stated in his testimony.

However, in the questioned resolution dated December 2, 1981, the respondent judge suddenly included the "activities" of petitioner in the United States as his basis for denying the motion to dismiss:

"On the activities of Salonga in the United States, the witness, Lovely, in one of his statements declared: 'To the best of my recollection he mentioned of some kind of violent struggle in the Philippines being most likely should reforms be not instituted by President Marcos immediately.'

"It is therefore clear that the prosecution's evidence has established facts and circumstances sufficient for a finding that excludes a Motion to Dismiss by respondent Salonga. The Movement for Free Philippines is undoubtedly a force born on foreign soil, it appears to rely on the resources of foreign entities, and is being (sic) on gaining ascendancy in the Philippines with the use of force and for that purpose it has linked itself with even communist organizations to achieve its end. It appears to rely on aliens for its supporters and financiers."

The jump from the "contact point" theory to the conclusion of involvement in subversive activities in the United States is not only inexplicable but without foundation.

The respondents admit that no evidence was presented directly linking petitioner Salonga to actual acts of violence or terrorism. There is no proof of his direct participation in any overt acts of subversion. However, he is tagged as a leader of subversive organizations for two reasons -

(1) Because his house was used as a "contact point"; and

(2) Because "he mentioned some kind of violent struggle in the Philippines being most likely should reforms be not instituted by President Marcos immediately."

The "contact point" theory or what the petitioner calls the "guilt by visit or guilt by association" theory is too tenuous a basis to conclude that Senator Salonga was a leader or mastermind of the bombing incidents. To indict a person simply because some plotters, masquerading as visitors, have somehow met in his house or office would be to establish a dangerous precedent. The right of citizens to be secure against abuse of governmental processes in criminal prosecutions would be seriously undermined.

The testimony of Victor Lovely against petitioner Salonga is full of inconsistencies. Senator Salonga and Atty. Renato Tañada could not have whispered to one another because the petitioner is almost totally deaf. Lovely could not have met Senator Salonga at a Manglapus party in Washington, D.C. in 1977 because the petitioner left for the United States only on November, 1978. Senator Salonga denies having known Mr. Lovely in the United States or in the Philippines. He states that he has hundred of visitors from week to week in his residence but cannot recall any Victor Lovely.

The presence of Lovely in a group picture taken at Mr. Raul Daza's birthday party in Los Angeles where Senator Salonga was a guest is not proof of conspiracy. As stated by the petitioner, in his many years in the turbulent world of politics, he has posed with all kinds of people in various groups and various places and could not possibly vouch for their conduct. Commenting on the matter, newspaper columnist Teodoro Valencia stated that Filipinos love to pose with important visitors and the picture proves nothing.

It is likewise probable that a national figure and former politician of Senator Salonga's stature can expect guests and visitors of all kinds to be visiting his home or office. If a rebel or subversive happens to pose with the petitioner for a group picture at a birthday party abroad, or even visit him with others in his home, the petitioner does not thereby become a rebel or subversive, much less a leader of a subversive group. More credible and stronger evidence is necessary for an indictment. Nonetheless, even if we discount the flaws in Lovely's testimony and dismiss the refutations and arguments of the petitioner, the prosecution evidence is still inadequate to establish a prima facie finding.

The prosecution has not come up with even a single iota of evidence which could positively link the petitioner to any proscribed activities of the Movement for Free Philippines or any subversive organization mentioned in the complaint. Lovely had already testified that during the party of former Congressman Raul Daza which was alleged to have been attended by a number of members of the MFP, no political action was taken but only political discussion. Furthermore, the alleged opinion of the petitioner about the likelihood of a violent struggle here in the Philippines if reforms are not instituted, assuming that he really stated the same, is nothing but a legitimate exercise of freedom of thought and expression. No man deserves punishment for his thoughts. Cogitationis poenam nemo meretur. And as the late Justice Oliver W. Holmes stated in the case of *U.S. v. Schwimmer*, 279 U.S. 644, "x x x if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought - not free thought for those who agree with us but freedom for the thought that we hate."

We have adopted the concept that freedom of expression is a "preferred" right and, therefore, stands on a higher level than substantive economic or other liberties. The primacy, the high estate accorded freedom of expression is a fundamental postulate of our constitutional system. (*Gonzales v. Commission on Elections*, 29 SCRA 835). As explained by Justice Cardozo in *Palko v. Connecticut* (302 U.S. 319) this must be so because the lessons of history, both political and legal, illustrate that freedom of thought and speech is the indispensable condition of nearly every other form of freedom. Protection is especially mandated for political discussions. This Court is particularly concerned when allegations are made that restraints have been imposed upon mere criticisms of

government and public officials. Political discussion is essential to the ascertainment of political truth. It cannot be the basis of criminal indictments.

The United States Supreme Court in *Noto v. United States* (367 U.S. 290) distinguished between the abstract teaching of the moral propriety or even moral necessity for a resort to force and violence and speech which would prepare a group for violent action and steel it to such action. In *Watts v. United States* (394 U.S. 705), the American court distinguished between criminal threats and constitutionally protected speech.

It stated:

"We do not believe that the kind of political hyperbole indulged in by petitioner fits within that statutory term. For we must interpret the language Congress chose against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. *New York Times Co. v. Sullivan* (376 U.S. 254). The language of the political arena, like the language used in labor disputes is often vituperative, abusive, and inexact. We agree with petitioner that his only offense was a kind of very crude offensive method of stating a political opposition to the President.

In the case before us, there is no teaching of the moral propriety of a resort to violence, much less an advocacy of force or a conspiracy to organize the use of force against the duly constituted authorities. The alleged remark about the likelihood of violent struggle unless reforms are instituted is not a threat against the government. Nor is it even the uninhibited, robust, caustic, or unpleasantly sharp attack which is protected by the guarantee of free speech. Parenthetically, the American case of *Brandenburg v. Ohio* (395 U.S. 444) states that the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. The words which petitioner allegedly used according to the best recollections of Mr. Lovely are light years away from such type of proscribed advocacy.

Political discussion even among those opposed to the present administration is within the protective clause of freedom of speech and expression. The same cannot be construed as subversive activities per se or as evidence of membership in a subversive organization. Under Presidential Decree No. 885, Section 3, paragraph 6, political discussion will only constitute prima facie evidence of membership in a subversive organization if such discussion amounts to:

"(6) Conferring with officers or other members of such association or organization in furtherance of any plan or enterprise thereof."

As stated earlier, the prosecution has failed to produce evidence that would establish any link between petitioner and any subversive organization. Even if we lend credence to Lovely's testimony that a political discussion took place at Daza's birthday party, no proof whatsoever was adduced that such discussion was in furtherance of any plan to overthrow the government through illegal means. The alleged opinion that violent struggle is likely unless reforms are instituted by no means shows either advocacy of or incitement to violence or furtherance of the objectives of a subversive organization.

Lovely also declared that he had nothing to do with the bombing on August 22, 1980, which was the only bomb-ing incident that occurred after his arrival in Manila on August 20, and before the YMCA explosion on September 6, 1980. (See TSN, pp. 63-63, July 8, 1981). He further testified that:

"WITNESS:

"Actually, it was not my intention to do some kind of bombing against the government. My bombing mission was directed against the particular family (referring to the Cabarrus family). [TSN, p. 11, July 9, 1981] [Rollo, p. 10].

Such a statement wholly negates any politically motivated or subversive assignment which Lovely was supposed to have been commissioned to perform upon the orders of his co-accused and which was the very reason why they were charged in the first place. The respondent judge also asked Lovely about the possible relation between Cabarrus and petitioner:

"COURT:

"Q.

Did you suspect any relation between Cabarrus and Jovito Salonga, why did you implicate Jovito Salonga?

"A.

No, your Honor. I did not try to implicate Salonga.

It should be noted that after Lovely's testimony, the prosecution manifested to the court that it was adopting him as a prosecution witness. Therefore, the prosecution became irreversibly bound by Lovely's disclaimers on the witness stand, that it was not his intention "to do some kind of bombing against the government" and that he "did not try to implicate Salonga", especially since Lovely is the sole witness adopted by the prosecution who could supposedly establish the link between the petitioner and the bombing incidents.

The respondent court should have taken these factors into consideration before concluding that a prima facie case exists against the petitioner. Evidence must not only proceed from the mouth of a credible witness but it must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances. (People v. Dayad, 56 SCRA 439) In the case at bar, the prosecution cannot even present a credible version of the petitioner's role in the bombings even if it ignores the subsequent disclaimers of Lovely and without relying on mere affidavits including those made by Lovely during his detention.

The resolution dated January 4, 1982 suffers from the same defect. In this resolution, Lovely's previous declarations about the bombings as part of the alleged destabilization plan and the people behind the same were accorded such credibility by the respondent judge as if they had already been proved beyond reasonable doubt.

The purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials. (Trocio v. Manta, 118 SCRA 241; citing Hashim v. Boncan, 71 Phil. 216). The right to a preliminary investigation is a statutory grant, and to withhold it would be to transgress constitutional due process. (See People v. Oandasa, 25 SCRA 277) However, in order to satisfy the due process clause it is not enough that the preliminary investigation is conducted in the sense of making sure that a transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantees of freedom and fair play which are birthrights of all who live in our country. It is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since

the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons (See *La Chemise Lacoste, S.A. v. Fernandez*, 129 SCRA 391). The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by vitalizing and not denigrating constitutional rights. So it has been before. It should continue to be so. (*Mercado v. Court of First Instance of Rizal*, 116 SCRA 93).

The Court had already deliberated on this case, a consensus on the Court's judgment had been arrived at, and a draft ponencia was circulating for concurrences and separate opinions, if any, when on January 18, 1985, respondent Judge Rodolfo Ortiz granted the motion of respondent City Fiscal Sergio Apostol to drop the subversion case against the petitioner. Pursuant to instructions of the Minister of Justice, the prosecution restudied its evidence and decided to seek the exclusion of petitioner Jovito Salonga as one of the accused in the information filed under the questioned resolution.

We were constrained by this action of the prosecution and the respondent Judge to withdraw the draft ponencia from circulating for concurrences and signatures and to place it once again in the Court's crowded agenda for further deliberations.

Insofar as the absence of a *prima facie* case to warrant the filing of subversion charges is concerned, this decision has been rendered moot and academic by the action of the prosecution.

Respondent Fiscal Sergio Apostol correctly points out, however, that he is not precluded from filing new charges for the same acts because the petitioner has not been arraigned and double jeopardy does not apply. In that sense, the case is not completely academic.

Recent developments in this case serve to focus attention on a not too well known aspect of the Supreme Court's functions.

The setting aside or declaring void, in proper cases, of intrusions of State authority into areas reserved by the Bill of Rights for the individual as constitutionally protected spheres where even the awesome powers of Government may not enter at will is not the totality of the Court's functions.

The Court also has the duty to formulate guiding and controlling constitutional principles, precepts, doctrines, or rules. It has the symbolic function of educating bench and bar on the extent of protection given by constitutional guarantees.

In *Dela Camara v. Enage* (41 SCRA 1), the petitioner who questioned a P1,195,200.00 bail bond as excessive and, therefore, constitutionally void, escaped from the provincial jail while his petition was pending. The petition became moot because of his escape but we nonetheless rendered a decision and stated:

"The fact that the case is moot and academic should not preclude this Tribunal from setting forth in language clear and unmistakable, the obligation of fidelity on the part of lower court judges to the unequivocal command of the Constitution that excessive bail shall not be required."

In *Gonzales v. Marcos* (65 SCRA 624) whether or not the Cultural Center of the Philippines could validly be created through an executive order was mooted by Presidential Decree No. 15, the Center's new charter pursuant to the President's legislative powers under martial law. Still, this Court discussed the constitutional mandate on the preservation and development of Filipino culture for national identity. (Article XV, Section 9, Paragraph 2 of the Constitution).

In the habeas corpus case of Aquino, Jr., v. Enrile, 59 SCRA 183), during the pendency of the case, 26 petitioners were released from custody and one withdrew his petition. The sole remaining petitioner was facing charges of murder, subversion, and illegal possession of firearms. The fact that the petition was moot and academic did not prevent this Court in the exercise of its symbolic function from promulgating one of the most voluminous decisions ever printed in the Reports.

In this case, the respondents agree with our earlier finding that the prosecution evidence miserably fails to establish a prima facie case against the petitioner, either as a co-conspirator of a destabilization plan to overthrow the government or as an officer or leader of any subversive organization. They have taken the initiative of dropping the charges against the petitioner. We reiterate the rule, however, that this Court will not validate the filing of an information based on the kind of evidence against the petitioner found in the records.

WHEREFORE, the petition is DISMISSED for having become moot and academic.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Melencio-Herrera, Plana, Escolin, Relova, and Cuevas, JJ., concur.

Aquino, De la Fuente, and Alampay, JJ., no part.

Abad Santos, J., separate opinion.

[*] In the Philippines Daily Express, dated December 8, 1981, Lovely was quoted as having said in the United States that "I was not the bomber, I was bombed."

"Lovely, who was granted immunity in the United States, reportedly would not testify before a San Francisco federal grand jury and instead said, "Your Honor, I came back to tell what happened in the Philippines. I was not the bomber, I was bombed."

The United States Press International dispatch from San Francisco, U. S., written by Spencer Sherman, gives a fuller account, thus:

"With the grand jury present in the courtroom Lovely alleged it was Philippine authorities who were responsible for his injuries. It was they, not him, who placed the bomb in his hotel room, he said.

"I came back to the States to tell what happened in the Philippines. I was not the bomber. I was bombed. There are so many secrets that will come out soon. I cannot (testify) even if I will be jailed for lifetime. I welcome that."

--UPO press dispatch from San Francisco, November 24,

1981.

The Philippine News, a San Francisco-based weekly, in its issue of December 23, 1981, contains the same account, with the following words

"Your Honor. . . I am not going to participate I was almost murdered. I cannot continue. My friends were murdered before I came to the United States. . . I came back to the United States to tell what happened in the Philippines. I was not the bomber, I was bombed. There are many secrets that will come out very soon I cannot. Even if I will be jailed for my lifetime. I welcome that."

CONCURRING OPINION

ABAD SANTOS, J.:

Del Castillo vs. Ponce Enrile, G.R. No. 62119, August 27, 1984, 131 SCRA 405, was a petition for the writ of habeas corpus. Before this Court could finally act on the petition, the subject was released and for that reason the majority of this Court resolved to dismiss the petition for having become moot and academic. Justice Teehankee and the undersigned disagreed with the majority; we expressed the view that despite the release of the subject, the petition should have been resolved on the merits because it posed important legal questions.

Babst, et al. vs. National Intelligence Board, Special Committee No. 2, et al., G.R. No. 62992, Sept. 2, 1984, was a petition for prohibition to restrain the respondents from interrogating the petitioners, members of the print media, on various aspects of their works, feelings, sentiments, beliefs, associations and even their private lives. Again the majority of this Court dismissed the petition because the assailed proceedings had come to an end thereby rendering the petition moot and academic. In dismissing the petition a short and mild note of concern was added. And again Justice Teehankee and the undersigned disagreed with the majority. We expressed the view that this Court should rule squarely on the matters raised in the petition rather than dismiss it for having become moot and academic.

I am glad that this Court has abandoned its cavalier treatment of petitions by dismissing them on the ground that they have become moot and academic and stopped there. I am glad it has reverted to *De la Camara vs. Enage*, *Gonzales vs. Marcos* and *Aquino vs. Enrile* which are mentioned in the ponencia of Justice Gutierrez.

I agree with the ponencia of Justice Gutierrez that because the subversion charges against the petitioner had been dropped by the trial court on January 18, 1985, there is no longer any need to prohibit the respondents from prosecuting Criminal Case No. Q-18606 insofar as he is concerned.

I am not revealing any confidential matter by saying that the initial action of this Court was to grant the petition, i.e. prohibit the prosecution of the petitioner. This is manifest from the ponencia of Justice Gutierrez. I regret that on this matter the Court has been pre-empted by a "first strike" which has occurred once too often.

Justice Gutierrez states that, "The Court had already deliberated on this case, and a consensus on the Court's judgment had been arrived at." Let me add that the consensus had taken place as early as October 24, 1984, and the decision started to circulate for signature on November 2, 1984. Alas, on January 18, 1985, the decision was still circulating - overtaken by events. The decision could have had a greater impact had it been promulgated prior to the executive action.

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