

LEO PITA, DOING BUSINESS UNDER THE NAME AND STYLE OF PINOY PLAYBOY, PETITIONER, VS. THE COURT OF APPEALS, RAMON BAGATSING, AND NARCISO CABRERA, RESPONDENTS.

G.R. No. 80806. October 05, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, publisher of Pinoy Playboy, a "men's magazine", seeks the review of the decision of the Court of Appeals,[1] rejecting his appeal from the decision of the Regional Trial Court, dismissing his complaint for injunctive relief. He invokes, in particular, the guaranty against unreasonable searches and seizures of the Constitution, as well as its prohibition against deprivation of property without due process of law.

There is no controversy as to the facts. We quote:

On December 1 and 3, 1983, pursuing an Anti-Smut Campaign initiated by the Mayor of the City of Manila, Ramon D. Bagatsing, elements of the Special Anti-Narcotics Group, Auxilliary Services Bureau, Western Police District, INP of the Metropolitan Police Force of Manila, seized and confiscated from dealers, distributors, newsstand owners and peddlers along Manila sidewalks, maga-zines, publications and other reading materials believed to be obscene, pornographic and indecent and later burned the seized materials in public at the University belt along C.M. Recto Avenue, Manila, in the presence of Mayor Bagatsing and several officers and mem-bers of various student organizations.

Among the publications seized, and later burned, was "Pinoy Playboy" magazines published and co-edited by plaintiff Leo Pita.

On December 7, 1983, plaintiff filed a case for injunction with prayer for issuance of the writ of preliminary injunction against Mayor Bagatsing and Narciso Cabrera, as superintendent of Western Police District of the City of Manila, seeking to enjoin and/or restrain said defendants and their agents from confiscating plaintiff's magazines or from otherwise preventing the sale or circulation thereof claiming that the magazine is a decent, artistic and educational magazine which is not per se obscene, and that the publication is protected by the Constitutional guarantees of freedom of speech and of the press.

By order dated December 8, 1983 the Court set the hearing on the petition for preliminary injunction on December 14, 1983 and ordered the defendants to show cause not later than December 13, 1983 why the writ prayed for should not be granted.

On December 12, 1983, plaintiff filed an Urgent Motion for issuance of a temporary restraining order against indiscriminate seizure, confiscation and burning of plaintiff's "Pinoy Playboy" Magazines, pending hearing on the petition for preliminary injunction in view of Mayor Bagatsing's pronouncement to continue the Anti-Smut Campaign. The Court granted the temporary restraining order on December 14, 1983.

In his Answer and Opposition filed on December 27, 1983 defendant Mayor Bagatsing admitted the confiscation and burning of obscene reading materials on December 1 and 3, 1983, but claimed that the said

materials were voluntarily surrendered by the vendors to the police authorities, and that the said confiscation and seizure was (sic) undertaken pursuant to P.D. No. 960, as amended by P.D. No. 969, which amended Article 201 of the Revised Penal Code. In opposing the plaintiff's application for a writ of preliminary injunction, defendant pointed out that in that anti-smut campaign conducted on December 1 and 3, 1983, the materials confiscated belonged to the magazine stand owners and peddlers who voluntarily surrendered their reading materials, and that the plaintiff's establishment was not raided.

The other defendant, WPD Superintendent, Narcisco Cabrera, filed no answer.

On January 5, 1984, plaintiff filed his Memorandum in support of the issuance of the writ of preliminary injunction, raising the issue as to "whether or not the defendants and/or their agents can without a court order confiscate or seize plaintiff's magazine before any judicial finding is made on whether said magazine is obscene or not".

The restraining order issued on December 14, 1983 having lapsed on January 3, 1984, the plaintiff filed an urgent motion for issuance of another restraining order, which was opposed by defendant on the ground that issuance of a second restraining order would violate the Resolution of the Supreme Court dated January 11, 1983, providing for the Interim Rules Relative to the Implementation of Batas Pambansa Blg. 129, which provides that a temporary restraining order shall be effective only for twenty days from date of its issuance.

On January 9, 1984 defendant filed his Comment and/or Rejoinder Memorandum in support of his opposition to the issuance of a writ of preliminary injunction.

On January 11, 1984, the trial court issued an Order setting the case for hearing on January 16, 1984 "for the parties to adduce evidence on the question of whether the publication 'Pinoy Playboy Magazine' alleged (sic) seized, confiscated and/or burned by the defendants, are obscene per se or not".

On January 16, 1984, the Court issued an order granting plaintiff's motion to be given three days "to file a reply to defendants' opposition dated January 9, 1984, serving a copy thereof to the counsel for the defendants, who may file a rejoinder within the same period from receipt, after which the issue of Preliminary Injunction shall be resolved".

Plaintiff's supplemental Memorandum was filed on January 18, 1984. Defendant filed his Comment on plaintiff's supplemental Memorandum on January 20, 1984, and plaintiff filed his "Reply-Memorandum" to defendants' Comment on January 25, 1984.

On February 3, 1984, the trial court promulgated the Order appealed from denying the motion for a writ of preliminary injunction, and dismissing the case for lack of merit.[2]

The Appellate Court dismissed the appeal upon the grounds, among other things, as follows:

We cannot quarrel with the basic postulate suggested by appellant that seizure of allegedly obscene publications or materials deserves close scrutiny because of the constitutional guarantee protecting the right to express oneself in print (Sec. 9, Art. IV), and the protection afforded by the constitution against unreasonable searches and seizure (Sec. 3, Art. IV). It must be equally conceded, however, that freedom of the press is not without restraint, as the state has the right to protect society from pornographic literature that is offensive to public morals, as indeed we have laws punishing the author, publishers and sellers of obscene publications (Sec. 1, Art. 201, Revised Penal Code, as amended by P.D. No. 960 and P.D. No. 969). Also well settled is the rule that the right against unreasonable searches and seizures recognizes certain exceptions, as when there is consent to the search or seizure. (People vs. Malesugui, 63 Phil. 22) or search is an incident to an arrest, (People vs. Veloso, 48 Phil. 169; Alvero vs. Dizon, 76 Phil. 637) or is conducted in a vehicle or movable structure (See Papa vs. Magno, 22 SCRA 857).[3]

The petitioner now ascribes to the respondent court the following errors:

1. The Court of Appeals erred in affirming the decision of the trial court and, in effect, holding that the police officers could without any court warrant or order seize and confiscate petitioner's magazines on the basis simply of their determination that they are obscene.
2. The Court of Appeals erred in affirming the decision of the trial court and, in effect, holding that the trial court could dismiss the case on its merits without any hearing thereon when what was submitted to it for resolution was merely the application of petitioner for the writ of preliminary injunction.[4]

The Court states at the outset that it is not the first time that it is being asked to pronounce what "obscene" means or what makes for an obscene or pornographic literature. Early on, in *People vs. Kottinger*,^[5] the Court laid down the test, in determining the existence of obscenity, as follows: "whether the tendency of the matter charged as obscene, is to deprave or corrupt those whose minds are open to such immoral influences and into whose hands a publication or other article charged as being obscene may fall."^[6] "Another test," so Kottinger further declares, "is that which shocks the ordinary and common sense of men as an indecency."^[7] Kottinger hastened to say, however, that "(w)hether a picture is obscene or indecent must depend upon the circumstances of the case,"^[8] and that ultimately, the question is to be decided by the "judgment of the aggregate sense of the community reached by it."^[9]

Yet Kottinger, in its effort to arrive at a "conclusive" definition, succeeded merely in generalizing a problem that has grown increasingly complex over the years. Precisely, the question is: When does a publication have a corrupting tendency, or when can it be said to be offensive to human sensibilities? And obviously, it is to beg the question to say that a piece of literature has a corrupting influence because it is obscene, and vice-versa.

Apparently, Kottinger was aware of its own uncertainty because in the same breath, it would leave the final say to a hypothetical "community standard" -- whatever that is -- and that the question must supposedly be judged from case to case.

About three decades later, this Court promulgated *People v. Go Pin*,^[10] a prosecution under Article 201 of the Revised Penal Code. Go Pin was also even hazier:

x x x We agree with counsel for appellant in part. If such pictures, sculptures and paintings are shown in art exhibits and art galleries for the cause of art, to be viewed and appreciated by people interested in art, there would be no offense committed. However, the pictures here in question were used not exactly for art's sake but rather for commercial purposes. In other words, the supposed artistic qualities of said pictures were being commercialized so that the cause of art was of secondary or minor importance. Gain and profit would appear to have been the main, if not the exclusive consideration in their exhibition; and it would not be surprising if the persons who went to see those pictures and paid entrance fees for the privilege of doing so, were not exactly artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes, but rather people desirous of satisfying their morbid curiosity and taste, and lust, and for love for excitement, including the youth who because of their immaturity are not in a position to resist and shield themselves from the ill and perverting effects of these pictures.^[11]

xxx xxx xxx

As the Court declared, the issue is a complicated one, in which the fine lines have neither been drawn nor divided. It is easier said than done to say, indeed, that if "the pictures here in question were used not exactly for art's sake but rather for commercial purposes,"^[12] the pictures are not entitled to any constitutional protection.

It was *People v. Padan y Alova*,^[13] however, that introduced to Philippine jurisprudence the "redeeming" element that should accompany the work, to save it from a valid prosecution. We quote:

x x x We have had occasion to consider offenses like the exhibition of still or moving pictures of women in the

nude, which we have condemned for obscenity and as offensive to morals. In those cases, one might yet claim that there was involved the element of art; that connoisseurs of the same, and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models in tableaux vivants. But an actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. One can see nothing in it but clear and unmitigated obscenity, indecency, and an offense to public morals, inspiring and causing as it does, nothing but lust and lewdness, and exerting a corrupting influence specially on the youth of the land. x x x[14]

Padan y Alova, like Go Pin, however, raised more questions than answers. For one thing, if the exhibition was attended by "artists and persons interested in art and who generally go to art exhibitions and galleries to satisfy and improve their artistic tastes,"[15] could the same legitimately lay claim to "art"? For another, suppose that the exhibition was so presented that "connoisseurs of [art], and painters and sculptors might find inspiration,"[16] in it, would it cease to be a case of obscenity?

Padan y Alova, like Go Pin also leaves too much latitude for judicial arbitrament, which has permitted an ad lib of ideas and "two-cents worths" among judges as to what is obscene and what is art.

In a much later decision, *Gonzalez v. Kalaw Katigbak*,[17] the Court, following trends in the United States, adopted the test: "Whether to the average person, applying contemporary standards, the dominant theme of the material taken as a whole appeals to prurient interest." [18] *Kalaw-Katigbak* represented a marked departure from *Kottinger* in the sense that it measured obscenity in terms of the "dominant theme" of the work, rather than isolated passages, which were central to *Kottinger* (although both cases are agreed that "contemporary community standards" are the final arbiters of what is "obscene"). *Kalaw-Katigbak* undertook moreover to make the determination of obscenity essentially a judicial question and as a consequence, to temper the wide discretion *Kottinger* had given unto law enforcers.

It is significant that in the United States, constitutional law on obscenity continues to journey from development to development, which, states one authoritative commentator (with ample sarcasm), has been as "unstable as it is unintelligible." [19]

Memoirs v. Massachusettes,[20] a 1966 decision, which characterized obscenity as one "utterly without any redeem-ing social value,"[21] marked yet another development.

The latest word, however, is *Miller v. California*,[22] which expressly abandoned *Massachusettes*, and established "basic guidelines,"[23] to wit: "(a) whether 'the average person, applying contemporary standards' would find the work, taken as a whole, appeals to the prurient interest ...; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." [24]

(A year later, the American Supreme Court decided *Hamling v. United States*,[25] which repeated *Miller*, and *Jenkins v. Georgia*,[26] yet another reiteration of *Miller*, *Jenkins*, curiously, acquitted the producers of the motion picture, *Carnal Knowledge*, in the absence of "genitals" portrayed on screen, although the film highlighted contemporary American sexuality.)

The lack of uniformity in American jurisprudence as to what constitutes "obscenity" has been attributed to the reluctance of the courts to recognize the constitutional dimension of the problem.[27] Apparently, the courts have assumed that "obscenity" is not included in the guaranty of free speech, an assumption that as we averred, has allowed a climate of opinions among magistrates predicated upon arbitrary, if vague theories of what is acceptable to society. And "[t]here is little likelihood," says Tribe, "that this development has reached a state of rest, or that it will ever do so until the Court recognizes that obscene speech is speech nonetheless, although it is subject -? as in

all speech -- to regulation in the interests of [society as a whole] -- but not in the interest of a uniform vision of how human sexuality should be regarded and portrayed." [28]

In the case at bar, there is no challenge on the right of the State, in the legitimate exercise of police power, to suppress smut -- provided it is smut. For obvious reasons, smut is not smut simply because one insists it is smut. So is it equally evident that individual tastes develop, adapt to wide-ranging influences, and keep in step with the rapid advance of civilization. What shocked our forebears, say, five decades ago, is not necessarily repulsive to the present generation. James Joyce and D. H. Lawrence were censored in the thirties yet their works are considered important literature today. [29] Goya's *La Maja desnuda* was once banned from public exhibition but now adorns the world's most prestigious museums.

But neither should we say that "obscenity" is a bare (no pun intended) matter of opinion. As we said earlier, it is the divergent perceptions of men and women that have probably compounded the problem rather than resolved it.

What the Court is impressing, plainly and simply, is that the question is not, and has not been, an easy one to answer, as it is far from being a settled matter. We share Tribe's disappointment over the discouraging trend in American decisional law on obscenity as well as his pessimism on whether or not an "acceptable" solution is in sight.

In the final analysis perhaps, the task that confronts us is less heroic than rushing to a "perfect" definition of "obscenity", if that is possible, as evolving standards for proper police conduct faced with the problem, which, after all, is the plaint specifically raised in the petition.

However, this much we have to say.

Undoubtedly, "immoral" lore or literature comes within the ambit of free expression, although not its protection. In free expression cases, this Court has consistently been on the side of the exercise of the right, barring a "clear and present danger" that would warrant State interference and action. [30] But, so we asserted in *Reyes v. Bagatsing*, [31] "the burden to show the existence of grave and imminent danger that would justify adverse action ... lies on the ... authorit(ies)." [32]

"There must be objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger." [33] "It is essential for the validity of ... previous restraint or censorship that the ... authority does not rely solely on his own appraisal of what the public welfare, peace or safety may require." [34]

"To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test." [35]

The above disposition must not, however, be taken as a neat effort to arrive at a solution -- so only we may arrive at one -- but rather as a serious attempt to put the question in its proper perspective, that is, as a genuine constitutional issue.

It is also significant that in his petition, the petitioner asserts constitutional issues, mainly, due process and illegal search and seizure.

As we so strongly stressed in *Bagatsing*, a case involving the delivery of a political speech, the presumption is that the speech may validly be said. The burden is on the State to demonstrate the existence of a danger, a danger that must not only be: (1) clear but also, (2) present, to justify State action to stop the speech. Meanwhile, the Government must allow it (the speech). It has no choice. However, if it acts notwithstanding that (absence of evidence of a clear and present danger), it must come to terms with, and be held accountable for, due process.

The Court is not convinced that the private respondents have shown the required proof to justify a ban and to

warrant confiscation of the literature for which mandatory injunction had been sought below. First of all, they were not possessed of a lawful court order: (1) finding the said materials to be pornography, and (2) authorizing them to carry out a search and seizure, by way of a search warrant.

The Court of Appeals has no "quarrel that ... freedom of the press is not without restraint, as the state has the right to protect society from pornographic literature that is offensive to public morals." [36] Neither do we. But it brings us back to square one: were the "literature" so confiscated "pornographic"? That "we have laws punishing the author, publisher and sellers of obscene publications (Sec. 1, Art. 201, Revised Penal Code, as amended by P.D. No. 960 and P.D. No. 969)," [37] is also fine, but the question, again, is: Has the petitioner been found guilty under the statute?

The fact that the former respondent Mayor's act was sanctioned by "police power" is no license to seize property in disregard of due process. In *Philippine Service Exporters, Inc. v. Drilon*, [38] we defined police power as "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare." [39] Presidential Decrees Nos. 960 and 969 are, arguably, police power measures, but they are not, by themselves, authorities for high-handed acts. They do not exempt our law enforcers, in carrying out the decree of the twin presidential issuances (Mr. Marcos'), from the commandments of the Constitution, the right to due process of law and the right against unreasonable searches and seizures, specifically. Significantly, the Decrees themselves lay down procedures for implementation. We quote:

Sec. 2. Disposition of the Prohibited Articles. - The disposition of the literature, films, prints, engravings, sculptures, paintings, or other materials involved in the violation referred to in Section 1 hereof (Art. 201), RPC as amended) shall be governed by the following rules:

(a) Upon conviction of the offender, to be forfeited in favor of the Government to be destroyed.

(b) Where the criminal case against any violator of this decree results in an acquittal, the obscene/immoral literature, films, prints, engravings, sculptures, paintings or other materials and articles involved in the violation referred to in Section 1 (referring to Art. 201) hereof shall nevertheless be forfeited in favor of the government to be destroyed, after forfeiture proceedings conducted by the Chief of Constabulary.

(c) The person aggrieved by the forfeiture action of the Chief of Constabulary may, within fifteen (15) days after his receipt of a copy of the decision, appeal the matter to the Secretary of National Defense for review. The decision of the Secretary of National Defense shall be final and unappealable. (Sec. 2, PD NO. 960 as amended by PD No. 969.)

Sec. 4. Additional Penalties. - Additional penalties shall be imposed as follows:

1. In case the offender is a government official or employee who allows the violations of Section 1 hereof, the penalty as provided herein shall be imposed in the maximum period and, in addition, the accessory penalties provided for in the Revised Penal Code, as amended, shall likewise be imposed. [40]

Under the Constitution, [41] on the other hand:

SEC. 3. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall not be violated, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined by the judge, or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. [42]

It is basic that searches and seizures may be done only through a judicial warrant, otherwise, they become

unreasonable and subject to challenge. In *Burgos v. Chief of Staff, AFP*,^[43] we countermanded the orders of the Regional Trial Court authorizing the search of the premises of *We Forum* and *Metropolitan Mail*, two Metro Manila dailies, by reason of a defective warrant. We have greater reason here to reprobate the questioned raid, in the complete absence of a warrant, valid or invalid. The fact that the instant case involves an obscenity rap makes it no different from *Burgos*, a political case, because, and as we have indicated, speech is speech, whether political or "obscene".

The Court is not ruling out warrantless searches, as the Rules of Court (1964 rev.) (the Rules then prevailing), provide:

SEC. 12. Search without warrant of person arrested.-- A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense.^[44]

but as the provision itself suggests, the search must have been an incident to a lawful arrest, and the arrest must be on account of a crime committed. Here, no party has been charged, nor are such charges being readied against any party, under Article 201, as amended, of the Revised Penal Code.

We reject outright the argument that "[t]here is no constitutional nor legal provision which would free the accused of all criminal responsibility because there had been no warrant,"^[45] and that "violation of penal law [must] be punished."^[46] For starters, there is no "accused" here to speak of, who ought to be "punished". Second, to say that the respondent Mayor could have validly ordered the raid (as a result of an anti-smut campaign) without a lawful search warrant because, in his opinion, "violation of penal laws" has been committed, is to make the respondent Mayor judge, jury, and executioner rolled into one. And precisely, this is the very complaint of the petitioner.

We make this resume.

1. The authorities must apply for the issuance of a search warrant from a judge, if in their opinion, an obscenity rap is in order;
2. The authorities must convince the court that the materials sought to be seized are "obscene", and pose a clear and present danger of an evil substantive enough to warrant State interference and action;
3. The judge must determine whether or not the same are indeed "obscene:" the question is to be resolved on a case-to-case basis and on His Honor's sound discretion.
4. If, in the opinion of the court, probable cause exists, it may issue the search warrant prayed for;
5. The proper suit is then brought in the court under Article 201 of the Revised Penal Code;
6. Any conviction is subject to appeal. The appellate court may assess whether or not the properties seized are indeed "obscene".

These do not foreclose, however, defenses under the Constitution or applicable statutes, or remedies against abuse of official power under the Civil Code^[47] or the Revised Penal Code.^[48]

WHEREFORE, the petition is GRANTED. The decision of the respondent court is REVERSED and SET ASIDE. It appearing, however, that the magazines subject of the search and seizure have been destroyed, the Court declines to grant affirmative relief. To that extent, the case is moot and academic.

SO ORDERED.

Melencio-Herrera, Cruz, Paras, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., Narvasa, and Feliciano, JJ., in the result.

Gutierrez, Jr., on leave.

[1] Gonzaga-Reyes, Minerva, J., Javellana, Luis A. and Ramirez, Pedro A., JJ., Concurring.

[2] Rollo, 30-31.

[3] Id., 41.

[4] Id., 12-13.

[5] 45 Phil. 352 (1923), per Malcolm, J.

[6] Supra, 356.

[7] Supra, 357.

[8] Supra.

[9] Supra, 359.

[10] 97 Phil. 418 (1955), per Montemayor, J.

[11] Supra., 419.

[12] Supra.

[13] 101 Phil. 749 (1957).

[14] Supra, 752.

[15] Go Pin, supra.

[16] Padan y Alovera, supra.

[17] No. 69500, July 21, 1985, 137 SCRA 717, per Fernando, C.J.

[18] Supra, 726, citing Roth v. United States, 354 US 476 (1957).

[19] TRIBE, AMERICAN CONSTITUTIONAL LAW 656 (1978 ed.)

[20] 383 US 410 (1966).

[21] See TRIBE, id., 661.

[22] 413 US 15 (1973).

[23] Supra, 24.

[24] Supra.

[25] 418 US 87 (1974).

[26] 418 US 153 (1974).

[27] TRIBE, *id.*

[28] *Id.*, 661-662; emphasis in the original.

[29] See *Kingsley Pictures v. N.Y. Regents*, 360 US 684 (1959). The case involved the movie version of *Lady Chatterley's Lover*. See also *United States v. One Book called "Ulysses"*, 5 F. Supp. 182 (1934).

[30] *Gonzales vs. COMELEC*, No. L-27833, April 18, 1969, 27 SCRA 835; *Reyes v. Bagatsing*, No. 65366, November 9, 1983, 125 SCRA 553.

[31] *Supra*

[32] *Supra*, 572 per Teehankee, J., Concurring; emphasis in the original.

[33] *Supra*, emphasis in the original.

[34] *Supra*, emphasis in the original.

[35] *Supra*, emphasis in the original.

[36] *Rollo, id.*, 41.

[37] *Id.* The question whether or not Presidential Decrees Nos. 960 and 969 are unconstitutional is another thing; we will deal with the problem in the proper hour and in the appropriate case. Judicial restraint is a bar to a consideration of the problem that does not exist, or if it exists, it exists but in the abstract.

[38] G. R. No. 81958, June 30, 1988.

[39] *Supra*, at 3.

[40] Pres. Decree No. 960, sec. 2 as amended by Pres. Decree No. 969.

[41] CONST. (1973), the Charter then in force.

[42] *Supra*, art. IV, sec. 3.

[43] No. 64266, December 26, 1984, 133 SCRA 800.

[44] RULES OF COURT (1964). Rule 126, sec. 12. As amended, the provision now reads as follows: "SEC. 12. Search incident to lawful arrest. -- A person lawfully arrested may be searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant." [RULES ON CRIMINAL PROCEDURE (1985 rev.), Rule 126, sec. 12.]

[45] *Rollo, id.*, 51.

[46] *Id.*

[47] CIVIL CODE, art. 32. The provision states: "ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

(1) Freedom of religion;

- (2) Freedom of speech;
- (3) Freedom to write for the press or to maintain a periodical publication;
- (4) Freedom from arbitrary or illegal detention;
- (5) Freedom of suffrage;
- (6) The right against deprivation of property without due process of law;
- (7) The right to a just compensation when private property is taken for public use;
- (8) The right to the equal protection of the laws;
- (9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
- (10) The liberty of abode and of changing the same;
- (11) The privacy of communication and correspondence;
- (12) The right to become member of associations or societies for purposes not contrary to law;
- (13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
- (14) The right to be free from involuntary servitude in any form;
- (15) The right of the accused against excessive bail;
- (16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
- (17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
- (18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
- (19) Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute."

[48] REV. PEN. CODE. arts. 129, 130. The provisions state:

"ART. 129. Search warrants maliciously obtained and abuse in the service of those legally obtained. - In addition to the liability attaching to the offender for commission of any other offense, the penalty of arresto mayor in its maximum period to prision correccional in its minimum period and a fine not exceeding P1,000 pesos shall be imposed upon any public officer or employee who shall procure a search warrant without just cause, or, having

legally procured the same, shall exceed his authority or use unnecessary severity in executing the same.

The acts, committed by a public officer or employee, punishable by the above article are:

(1) Procuring a search warrant without just cause:

(2) Exceeding one's authority or using unnecessary severity in the execution of a legally procured search warrant."

"ART. 130. Searching domicile without witnesses. - The penalty of *arresto mayor* in its medium and maximum periods shall be imposed upon a public officer or employee who, in cases where a search is proper, shall search the domicile, papers or other belongings of any person, in the absence of the latter, any member of his family, or in their default, without the presence of two witnesses residing in the same locality.

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