BENJAMIN (“KOKOY”) T.ROMUALDEZ, PETITIONER, VS. HON. SIMEON V. MARCELO, IN HIS OFFICIAL CAPACITY AS THE OMBUDSMAN, AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENTS.

G.R. NOS. 165510-33. July 28, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For resolution is petitioner's Motion for Reconsideration[1] assailing the Decision dated September 23, 2005, the dispositive portion of which states:

> WHEREFORE, the petition is DISMISSED. The resolutions dated July 12, 2004 and September 6, 2004 of the Office of the Special Prosecutor, are AFFIRMED.
>
> SO ORDERED.[2]

Petitioner claims that the Office of the Ombudsman gravely abused its discretion in recommending the filing of 24 informations against him for violation of Section 7 of Republic Act (RA) No. 3019 or the Anti-Graft and Corrupt Practices Act; that the Ombudsman cannot revive the aforementioned cases which were previously dismissed by the Sandiganbayan in its Resolution of February 10, 2004; that the defense of prescription may be raised even for the first time on appeal and thus there is no necessity for the presentation of evidence thereon before the court a quo. Thus, this Court may accordingly dismiss Criminal Case Nos. 28031-28049 pending before the Sandiganbayan and Criminal Case Nos. 04-231857-04-231860 pending before the Regional Trial Court of Manila, all on the ground of prescription.

In its Comment,[3] the Ombudsman argues that the dismissal of the informations in Criminal Case Nos. 13406-13429 does not mean that petitioner was thereafter exempt from criminal prosecution; that new informations may be filed by the Ombudsman should it find probable cause in the conduct of its preliminary investigation; that the filing of the complaint with the Presidential Commission on Good Government (PCGG) in 1987 and the filing of the information with the Sandiganbayan in 1989 interrupted the prescriptive period; that the absence of the petitioner from the Philippines from 1986 until 2000 also interrupted the aforesaid period based on Article 91 of the Revised Penal Code.

For its part, the PCGG avers in its Comment[4] that, in accordance with the 1987 Constitution and RA No. 6770 or the Ombudsman Act of 1989, the Omdudsman need not wait for a new complaint with a new docket number for it to conduct a preliminary investigation on the alleged offenses of the petitioner; that considering that both RA No. 3019 and Act No. 3326 or the Act To Establish Periods of Prescription For Violations Penalized By Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin To Run, are silent as to whether prescription should begin to run when the offender is absent from the Philippines, the Revised Penal Code, which answers the same in the negative, should be applied.

The issues for resolution are: (1) whether the preliminary investigation conducted by the Ombudsman in Criminal Case Nos. 13406-13429 was a nullity; and (2) whether the offenses for which petitioner are being charged have already prescribed.

Anent the first issue, we reiterate our ruling in the assailed Decision that the preliminary investigation conducted by the Ombudsman in Criminal Case Nos. 13406-13429 is a valid proceeding despite the previous dismissal thereof by the Sandiganbayan in its Minute Resolution[5] dated February 10, 2004 which reads:

> Crim. Cases Nos. 13406-13429-PEO. vs. BENJAMIN T. ROMUALDEZ
>
> Considering that the Decision of the Honorable Supreme Court in G.R. Nos. 143618-41, entitled "Benjamin 'Kokoy' Romualdez vs. The Honorable Sandiganbayan (First Division, et al.)" promulgated on July 30, 2002 annulled and set aside the orders issued by this Court on June 8, 2000 which, among others, denied the accused's motion to quash the informations in these cases; that in particular the above-mentioned Decision ruled that the herein informations may be quashed because the officer who filed the same had no authority to do so; and that the said Decision has become final and executory on November 29, 2002, these cases are considered DISMISSED. Let these cases be sent to the archives.

The aforesaid dismissal was effected pursuant to our ruling in Romualdez v. Sandiganbayan[6] where petitioner assailed the Sandiganbayan's Order dated June 8, 2000 in Criminal Case Nos. 13406-13429 which denied his Motion to Quash, terminated the preliminary investigation conducted by Prosecutor Evelyn T. Lucero and set his arraignment for violations of Section 7 of RA No. 3019 on June 26, 2000.[7] In annulling and setting aside the aforesaid Order of the Sandiganbayan, we held that:

> In the case at bar, the flaw in the information is not a mere remediable defect of form, as in Pecho v. Sandiganbayan where the wording of the certification in the information was found inadequate, or in People v. Marquez, where the required certification was absent. Here, the informations were filed by an unauthorized party. The defect cannot be cured even by conducting another preliminary investigation. An invalid information is no information at all and cannot be the basis for criminal proceedings.[8]

In effect, we upheld in Romualdez v. Sandiganbayan[9] petitioner's Motion to Quash and directed the dismissal of Criminal Case Nos. 13406-13429 because the informations were filed by an unauthorized party, hence void.

In such a case, Section 6, Rule 117 of the Rules of Court is pertinent and applicable. Thus:

> SEC. 6. Order sustaining the motion to quash not a bar to another prosecution; exception. - An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in section 3(g) and (i)[10] of this Rule.

An order sustaining a motion to quash on grounds other than extinction of criminal liability or double jeopardy does not preclude the filing of another information for a crime constituting the same facts. Indeed, we held in Cudia v. Court of Appeals[11] that:

> In fine, there must have been a valid and sufficient complaint or information in the former prosecution. If, therefore, the complaint or information was insufficient because it was so defective in form or substance that the conviction upon it could not have been sustained, its dismissal without the consent of the accused cannot be pleaded. As the fiscal had no authority to file the information, the dismissal of the first information would not be a bar in petitioner's subsequent prosecution. x x x.[12]

Be that as it may, the preliminary investigation conducted by the Ombudsman in the instant cases was not a violation of petitioner's right to be informed of the charges against him. It is of no moment that the cases investigated by the Ombudsman bore the same docket numbers as those cases which have already been dismissed by the Sandiganbayan, to wit: Criminal Case Nos. 13406-13429. As we have previously stated:

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> The assignment of a docket number is an internal matter designed for efficient record keeping. It is usually written in the Docket Record in sequential order corresponding to the date and time of filing a case.
>
> This Court agrees that the use of the docket numbers of the dismissed cases was merely for reference. In fact, after the new informations were filed, new docket numbers were assigned, i.e., Criminal Cases Nos. 28031-28049 x x x.[13]

Besides, regardless of the docket numbers, the Ombudsman conducted the above-referred preliminary investigation pursuant to our Decision in Romualdez v. Sandiganbayan[14] when we categorically declared therein that:

> The Sandiganbayan also committed grave abuse of discretion when it abruptly terminated the reinvestigation being conducted by Prosecutor Lucero. It should be recalled that our directive in G.R. No. 105248 for the holding of a preliminary investigation was based on our ruling that the right to a preliminary investigation is a substantive, rather than a procedural right. Petitioner's right was violated when the preliminary investigation of the charges against him were conducted by an officer without jurisdiction over the said cases. It bears stressing that our directive should be strictly complied with in order to achieve its objective of affording petitioner his right to due process.[15]

Anent the issue on the prescription of the offenses charged, we should first resolve the question of whether this Court may validly take cognizance of and resolve the aforementioned issue considering that as we have said in the assailed Decision, "this case has never progressed beyond the filing of the informations against the petitioner"[16] and that "it is only prudent that evidence be gathered through trial on the merits to determine whether the offense charged has already prescribed."[17] We reconsider our stance and shall rule in the affirmative.

Rule 117 of the Rules of Court provides that the accused may, at any time before he enters his plea, move to quash the complaint and information[18] on the ground that the criminal action or liability has been extinguished,[19] which ground includes the defense of prescription considering that Article 89 of the Revised Penal Code enumerates prescription as one of those grounds which totally extinguishes criminal liability. Indeed, even if there is yet to be a trial on the merits of a criminal case, the accused can very well invoke the defense of prescription.

Thus, the question is whether or not the offenses charged in the subject criminal cases have prescribed? We held in the case of Domingo v. Sandiganbayan[20] that:

> In resolving the issue of prescription of the offense charged, the following should be considered: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.[21]

Petitioner is being charged with violations of Section 7 of RA No. 3019 for failure to file his Statements of Assets and Liabilities for the period 1967-1985 during his tenure as Ambassador Extraordinary and Plenipotentiary and for the period 1963-1966 during his tenure as Technical Assistant in the Department of Foreign Affairs.

Section 11 of RA No. 3019 provides that all offenses punishable therein shall prescribe in 15 years. Significantly, this Court already declared in the case of People v. Pacificador[22] that:

> It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.[23]

Thus, for offenses allegedly committed by the petitioner from 1962 up to March 15, 1982, the same shall prescribe in 10 years. On the other hand, for offenses allegedly committed by the petitioner during the period from March 16, 1982 until 1985, the same shall prescribe in 15 years.

As to when these two periods begin to run, reference is made to Act No. 3326 which governs the computation of prescription of offenses defined by and penalized under special laws. Section 2 of Act No. 3326 provides:

> SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

In the case of People v. Duque,[24] we construed the aforequoted provision, specifically the rule on the running of the prescriptive period as follows:

> In our view, the phrase "institution of judicial proceedings for its investigation and punishment" may be either disregarded as surplusage or should be deemed preceded by the word "until." Thus, Section 2 may be read as: "Prescription shall begin to run from the day of the commission of the violation of the law; and if the same be not known at the time, from the discovery thereof;"

or as:

> "Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and until institution of judicial proceedings for its investigation and punishment." (Emphasis supplied)[25]

Thus, this Court rules that the prescriptive period of the offenses herein began to run from the discovery thereof or on May 8, 1987, which is the date of the complaint filed by the former Solicitor General Francisco I. Chavez against the petitioner with the PCGG.

In the case of Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto[26] this Court already took note that:

> In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution that ousted President Ferdinand E. Marcos, we ruled that the government as the aggrieved party could not have known of the violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans.[27]

However, both respondents in the instant case aver that, applying Article 91 of the Revised Penal Code suppletorily, the absence of the petitioner from the Philippines from 1986 until April 27, 2000 prevented the prescriptive period for the alleged offenses from running.

We disagree.

Section 2 of Act. No. 3326 is conspicuously silent as to whether the absence of the offender from the Philippines bars the running of the prescriptive period. The silence of the law can only be interpreted to mean that Section 2 of Act No. 3326 did not intend such an interruption of the prescription unlike the explicit mandate of Article 91. Thus, as previously held:

> Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the

> Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of the interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.[28]

The only matter left to be resolved is whether the filing of the complaint with the PCGG in 1987 as well as the filing of the informations with the Sandiganbayan to initiate Criminal Case Nos. 13406-13429 in 1989 interrupted the running of the prescriptive period such that when the Ombudsman directed petitioner to file his counter-affidavit on March 3, 2004, the offenses have already prescribed.

Under Section 2 of Act No. 3326, the prescriptive period shall be interrupted "when proceedings are instituted against the guilty person." However, there is no such proceeding instituted against the petitioner to warrant the tolling of the prescriptive periods of the offenses charged against him.

In Romualdez v. Sandiganbayan,[29] petitioner averred that PCGG acted without jurisdiction and/or grave abuse of discretion in conducting a preliminary investigation of cases not falling within its competence.[30] This Court, in its resolve to "deal with the merits of the case to remove the possibility of any misunderstanding as to the course which it wishes petitioner's cases in the Sandiganbayan to take"[31]declared invalid -

> the preliminary investigation conducted by the PCGG over the 24 offenses ascribed to Romualdez (of failure to file annual statements of assets and liabilities), for lack of jurisdiction of said offenses.[32]

In Romualdez v. Sandiganbayan,[33] petitioner assailed the validity of the informations filed with the Sandiganbayan in Criminal Case Nos. 13406-13429 considering that the same were subscribed and filed by the PCGG. In granting petitioner's plea, this Court held, thus:

> Here, the informations were filed by an unauthorized party. The defect cannot be cured by conducting another preliminary investigation. An invalid information is no information at all and cannot be the basis for criminal proceedings.[34]

Indeed, the nullity of the proceedings initiated by then Solicitor General Chavez in 1987 with the PCGG and by the PCGG with the Sandiganbayan in 1989 is judicially settled. In contemplation of the law, no proceedings exist that could have merited the suspension of the prescriptive periods.

Besides, the only proceeding that could interrupt the running of prescription is that which is filed or initiated by the offended party before the appropriate body or office. Thus, in the case of People v. Maravilla,[35] this Court ruled that the filing of the complaint with the municipal mayor for purposes of preliminary investigation had the effect of suspending the period of prescription. Similarly, in the case of Llenes v. Dicdican,[36] this Court held that the filing of a complaint against a public officer with the Ombudsman tolled the running of the period of prescription.

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

However, in his Dissenting Opinion, Mr. Justice Carpio contends that the offenses charged against the petitioner could not have prescribed because the latter was absent from the Philippines from 1986 to April 27, 2000 and thus the prescriptive period did not run from the time of discovery on May 8, 1987, citing Article 91 of the Revised Penal Code which provides that "[t]he term of prescription should not run when the offender is absent from the Philippine Archipelago."

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Mr. Justice Carpio argues that -

> Article 10 of the same Code makes Article 91 "x x x supplementary to [special laws], unless the latter should x x x provide the contrary." Nothing in RA 3019 prohibits the supplementary application of Article 91 to that law. Hence, applying Article 91, the prescriptive period in Section 11 of RA 3019, before and after its amendment, should run only after petitioner returned to this jurisdiction on 27 April 2000.
>
> There is no gap in the law. Where the special law is silent, Article 10 of the RPC applies suppletorily, as the Court has held in a long line of decisions since 1934, starting with People v. Moreno. Thus, the Court has applied suppletorily various provisions of the RPC to resolve cases where the special laws are silent on the matters in issue. The law on the applicability of Article 10 of the RPC is thus well-settled, with the latest reiteration made by this Court in 2004 in Jao Yu v. People.

He also expresses his apprehension on the possible effects of the ruling of the Majority Opinion and argues that -

> The accused should not have the sole discretion of preventing his own prosecution by the simple expedient of escaping from the State's jurisdiction. x x x An accused cannot acquire legal immunity by being a fugitive from the State's jurisdiction. x x x.
>
> To allow an accused to prevent his prosecution by simply leaving this jurisdiction unjustifiably tilts the balance of criminal justice in favor of the accused to the detriment of the State's ability to investigate and prosecute crimes. In this age of cheap and accessible global travel, this Court should not encourage individuals facing investigation or prosecution for violation of special laws to leave Philippine jurisdiction to sit-out abroad the prescriptive period. The majority opinion unfortunately chooses to lay the basis for such anomalous practice.

With all due respect, we beg to disagree.

Article 10 of the Revised Penal Code provides:

> ART. 10. Offenses not subject to the provisions of this Code. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

Pursuant thereto, one may be tempted to hastily conclude that a special law such as RA No. 3019 is supplemented by the Revised Penal Code in any and all cases. As it is, Mr. Justice Carpio stated in his Dissenting Opinion that -

> There is no gap in the law. Where the special law is silent, Article 10 of the RPC applies suppletorily, as the Court has held in a long line of decisions since 1934, starting with People v. Moreno. Thus, the Court has applied suppletorily various provisions of the RPC to resolve cases where the special laws are silent on the matters in issue. The law on the applicability of Article 10 of the RPC is thus well-settled, with the latest reiteration made by this Court in 2004 in Jao Yu v. People.

However, it must be pointed out that the suppletory application of the Revised Penal Code to special laws, by virtue of Article 10 thereof, finds relevance only when the provisions of the special law are silent on a particular matter as evident from the cases cited and relied upon in the Dissenting Opinion:

In the case of People v. Moreno,[37] this Court, before ruling that the subsidiary penalty under Article 39 of the Revised Penal Code may be applied in cases of violations of Act No. 3992 or the Revised Motor Vehicle Law, noted that the special law did not contain any provision that the defendant can be sentenced with subsidiary imprisonment in case of insolvency.

In the case of People v. Li Wai Cheung,[38] this Court applied the rules on the service of sentences provided in Article 70 of the Revised Penal Code in favor of the accused who was found guilty of multiple violations of RA No. 6425 or The Dangerous Drugs Act of 1972 considering the lack of similar rules under the special law.

In the case of People v. Chowdury,[39] the Court applied Articles 17, 18 and 19 of the Revised Penal Code to define the words "principal," "accomplices" and "accessories" under RA No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 because it was not defined therein although it referred to the same terms in enumerating the persons liable for the crime of illegal recruitment.

In the case at bar, the silence of RA No. 3019 on the question of whether or not the absence of the accused from the Philippines prevents or tolls the running of the prescriptive period is more apparent than real.

Even before the enactment of RA No. 3019 in 1960, Act No. 3326 was already in effect as early as December 4, 1926. Section 3 thereof categorically defines "special acts" as "acts defining and penalizing violations of the law not included in the Penal Code".

Thus, in the case of Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,[40] this Court was categorical in ruling that -

> The law on prescription of offenses is found in Articles 90 and 91 of the Revised Penal Code for offenses punishable thereunder. For those penalized under special laws, Act No. 3326 applies.

Section 2 of Act No. 3326 provides that the prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. The running of the prescriptive period shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. Clearly, Section 2 of Act No. 3326 did not provide that the absence of the accused from the Philippines prevents the running of the prescriptive period. Thus, the only inference that can be gathered from the foregoing is that the legislature, in enacting Act No. 3326, did not consider the absence of the accused from the Philippines as a hindrance to the running of the prescriptive period. Expressio unius est exclusio alterius. To elaborate, -

> Indeed, it is an elementary rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim "expressio unius est exclusio alterius." Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.[41]

Had the legislature intended to include the accused's absence from the Philippines as a ground for the interruption of the prescriptive period in special laws, the same could have been expressly provided in Act No. 3326. A case in point is RA No. 8424 or the Tax Reform Act of 1997 where the legislature made its intention clear and was thus categorical that "

> SEC. 281. Prescription for Violations of any Provision of this Code - All violations of any provision of this Code shall prescribe after five (5) years.
>
> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty persons and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.
>
> The term of prescription shall not run when the offender is absent from the Philippines. (Emphasis supplied)

According to Mr. Justice Carpio, Article 91 of the Revised Penal Code fills the so-called "gap" in Act No. 3326.

Thus, while Act No. 3326 governs the operation of the prescriptive period for violations of R.A. No. 3019, Article 91 of the Revised Penal Code can and shall still be applied in cases where the accused is absent from the Philippines. In effect, Article 91 would supplement Act No. 3326.

This could not have been the intention of the framers of the law.

While it is true that Article 10 of the Revised Penal Code makes the Code suppletory to special laws, however, Act No. 3326 cannot fall within the ambit of "special law" as contemplated and used in Article 10 of the RPC.

In the case of United States v. Serapio,[42] the Court had the occasion to interpret the term "special laws" mentioned in Article 7 of then Penal Code of the Philippines, which is now Article 10 of the Revised Penal Code, as referring to penal laws that punish acts not defined and penalized by the Penal Code of the Philippines. Thus -

> This contention makes it necessary to define "special laws," as that phrase is used in article 7 of the Penal Code. Does this phrase "leyes especiales," as used in the Penal Code (article 7) have the meaning applied to the phrase "special laws," as the same is generally used? x x x It is confidently contended that the phrase "leyes especiales," as used in the Penal Code (article 7) is not used with this general signification: In fact, said phrase may refer not to a special law as above defined, but to a general law. A careful reading of said article 7 clearly indicates that the phrase "leyes especiales" was not used to signify "special laws" in the general signification of that phrase. The article, it will be noted, simply says, in effect, that when a crime is made punishable under some other law than the Penal Code, it (the crime) is not subject to the provisions of said code.[43]

Even if we consider both Act No. 3326 and Article 91 as supplements to RA No. 3019, the same result would obtain. A conflict will arise from the contemporaneous application of the two laws. The Revised Penal Code explicitly states that the absence of the accused from the Philippines shall be a ground for the tolling of the prescriptive period while Act No. 3326 does not. In such a situation, Act No. 3326 must prevail over Article 91 because it specifically and directly applies to special laws while the Revised Penal Code shall apply to special laws only suppletorily and only when the latter do not provide the contrary. Indeed, elementary rules of statutory construction dictate that special legal provisions must prevail over general ones.

The majority notes Mr. Justice Carpio's reservations about the effects of ruling that the absence of the accused from the Philippines shall not suspend the running of the prescriptive period. Our duty, however, is only to interpret the law. To go beyond that and to question the wisdom or effects of the law is certainly beyond our constitutionally mandated duty. As we have already explained -

> Even on the assumption that there is in fact a legislative gap caused by such an omission, neither could the Court presume otherwise and supply the details thereof, because a legislative lacuna cannot be filled by judicial fiat. Indeed, courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. An omission at the time of the enactment, whether careless or calculated, cannot be judicially supplied however after later wisdom may recommend the inclusion. Courts are not authorized to insert into the law what they think should be in it or to supply what they think the legislature would have supplied if its attention has been called to the omission.[44]

Mr. Justice Carpio also remarks that the liberal interpretation of the statute of limitations in favor of the accused only relates to the following issues: (1) retroactive or prospective application of laws providing or extending the prescriptive period; (2) the determination of the nature of the felony committed vis-à-vis the applicable prescriptive period; and (3) the reckoning of when the prescriptive period runs. Therefore, the aforementioned principle cannot be utilized to support the Majority Opinion's conclusion that the prescriptive period in a special law continues to run while the accused is abroad.

We take exception to the foregoing proposition.

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We believe that a liberal interpretation of the law on prescription in criminal cases equally provides the authority for the rule that the prescriptive period runs while the accused is outside of Philippine jurisdiction. The nature of the law on prescription of penal statutes supports this conclusion. In the old but still relevant case of People v. Moran,[45] this Court extensively discussed the rationale behind and the nature of prescription of penal offenses -

> "We should at first observe that a mistake is sometimes made in applying to statutes of limitation in criminal suits the construction that has been given to statutes of limitation in civil suits. The two classes of statutes, however, are essentially different. In civil suits the statute is interposed by the legislature as an impartial arbiter between two contending parties. In the construction of the statute, therefore, there is no intendment to be made in favor of either party. Neither grants the right to the other; there is therefore no grantor against whom the ordinary presumptions, of construction are to be made. But it is, otherwise when a statute of limitation is granted by the State. Here the State is the grantor, surrendering by act of grace its rights to prosecute, and declaring the offense to be no longer the subject of prosecution.' The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offence; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute, is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt. Independently of these views, it must be remembered that delay in instituting prosecutions is not only productive of expense to the State, but of peril to public justice in the attenuation and distortion, even by mere natural lapse of memory, of testimony. It is the policy of the law that prosecutions should be prompt, and that statutes, enforcing such promptitude should be vigorously maintained. They are not merely acts of grace, but checks imposed by the State upon itself, to exact vigilant activity from its subalterns, and to secure for criminal trials the best evidence that can be obtained." (Emphasis supplied)

Indeed, there is no reason why we should deny petitioner the benefits accruing from the liberal construction of prescriptive laws on criminal statutes. Prescription emanates from the liberality of the State. Any bar to or cause of interruption in the operation of prescriptive periods cannot simply be implied nor derived by mere implication. Any diminution of this endowment must be directly and expressly sanctioned by the source itself, the State. Any doubt on this matter must be resolved in favor of the grantee thereof, the accused.

The foregoing conclusion is logical considering the nature of the laws on prescription. The exceptions to the running of or the causes for the interruption of the prescriptive periods may and should not be easily implied. The prescriptive period may only be prevented from operating or may only be tolled for reasons explicitly provided by the law.

In the case of People v. Pacificador,[46] we ruled that:

> It bears emphasis, as held in a number of cases, that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted. The said legal principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender. In the case of People v. Moran, this Court amply discussed the nature of the statute of limitations in criminal cases, as follows:
> The statute is not statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence, it is that statues of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the

> legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.[47]

In view of the foregoing, the applicable 10-and-15-year prescriptive periods in the instant case, were not interrupted by any event from the time they began to run on May 8, 1987. As a consequence, the alleged offenses committed by the petitioner for the years 1963-1982 prescribed 10 years from May 8, 1987 or on May 8, 1997. On the other hand, the alleged offenses committed by the petitioner for the years 1983-1985 prescribed 15 years from May 8, 1987 or on May 8, 2002.

Therefore, when the Office of the Special Prosecutor initiated the preliminary investigation of Criminal Case Nos. 13406-13429 on March 3, 2004 by requiring the petitioner to submit his counter-affidavit, the alleged offenses subject therein have already prescribed. Indeed, the State has lost its right to prosecute petitioner for the offenses subject of Criminal Case Nos. 28031-28049 pending before the Sandiganbayan and Criminal Case Nos. 04-231857-04-231860 pending before the Regional Trial Court of Manila.

WHEREFORE, premises considered, petitioner's Motion for Reconsideration is GRANTED. Criminal Case Nos. 28031-28049 pending before the Sandiganbayan and Criminal Case Nos. 04-231857-04-231860 pending before the Regional Trial Court of Manila are all hereby ordered DISMISSED.

SO ORDERED.

Quisumbing, and Azcuna, JJ., concur.
Carpio, J., dissenting opinion.

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[1] Rollo, pp. 180-502.

[2] Id. at 475.

[3] Id. at 537-554.

[4] Id. at 558-569.

[5] Id. at 57.

[6] 434 Phil. 670 (2002).

[7] Id. at 675.

[8] Id. at 680.

[9] Supra note 6.

[10] RULES OF COURT, Rule 117, Sec.3, pars. (g) and (i) provides:

SEC. 3. Grounds. - The accused may move to quash the complaint or information on any of the following grounds:

x x x x
(g) That the criminal action or liability has been extinquished;
x x x x
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[11] 348 Phil. 190 (1998).

[12] Id. at 201.

[13] Rollo, p. 472.

[14] Supra note 6.

[15] Id. at 682-683.

[16] Rollo, p. 474.

[17] Id.

[18] RULES OF COURT, Rule 117, Sec. 1.

[19] Id., Sec. 3(g).

[20] 379 Phil. 708 (2000).

[21] Id. at 717.

[22] G.R. No. 139405, March 13, 2001, 354 SCRA 310.

[23] Id. at 318.

[24] G.R. No. 100285, August 13, 1992, 212 SCRA 607.

[25] Id. at 615.

[26] 415 Phil. 723 (2001).

[27] Id. at 729-730.

[28] Canet v. Decena, G.R. No. 155344, January 20, 2004, 420 SCRA 388, 394.

[29] 313 Phil. 870 (1995).

[30] Id. at 875.

[31] Id. at 880.

[32] Id. at 884.

[33] Supra note 6.

[34] Id. at 680.

[35] G.R. No. L-47646, September 19, 1988, 165 SCRA 392.

[36] 328 Phil. 1272 (1996).

[37] 60 Phil. 712 (1934).

[38] G.R. Nos. 90440-42, October 13, 1992, 214 SCRA 504.

[39] G.R. Nos. 129577-80, February 15, 2000, 325 SCRA 572.

[40] G.R. No. 135482, August 14, 2001, 362 SCRA 721.

[41] Centeno v. Villalon-Pornillos, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 203.

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[42] 23 Phil. 584 (1912).

[43] Id.at 591-592.

[44] Canet v. Decena, supra note 28 at 394.

[45] 44 Phil. 387, 405-406 (1923).

[46] Supra note 22.

[47] Id. at 319-320.

DISSENTING OPINION

CARPIO, J.:

I vote to deny petitioner's motion for reconsideration.

In the Decision of 23 September 2005, the Court rejected petitioner's contention that the 23 criminal cases filed against him for violation of Section 7, Republic Act No. 3019 ("RA 3019") should be dismissed for being barred by prescription. The Court held:

> Petitioner also alleges that respondents acted with grave abuse of discretion in not dismissing the preliminary investigation on the ground of prescription of the offense. This allegation is a matter of defense which must be settled in a full-blown trial. Evidence must be received to resolve the case on its merits.
>
> In Domingo v. Sandiganbayan, we considered the following in resolving the issue of prescription: (1) the period of prescription for the offense charged; (2) the time the period of prescription starts to run; and (3) the time the prescriptive period was interrupted.
>
> Petitioner is being charged under Section 7 of R.A. No. 3019, a special law. Section 11 of the same statute provides for the period of prescription for the offense charged, i.e., 15 years. However, the applicable rule on the time the period of prescription starts to run is Section 2 of Act No. 3326, which provides:
> SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same not be known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

This Court quotes the concurring and dissenting opinion of Justice Reynato S. Puno in Presidential Ad Hoc Committee v. Hon. Desierto:

> The law on prescription of special crimes like violation of R.A. No. 3019 (Anti-Graft Law) is provided for in Section 2 of Act No. 3326, viz:
>
> "SEC. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof..."
>
> The application of this provision is not simple and each case must be decided according to its facts. It involves a careful study and analysis of contentious facts: (a) when the commission of the violation of the law happened; (b) whether or not the violation was known at the time of its commission, and (c) if not known then, the time of its discovery. In addition, there is the equally difficult problem of choice of legal and equitable doctrines to apply to the above elusive facts. For the general rule is that the mere fact that a person entitled to

> an action has no knowledge of his right to sue or of the facts out of which his right arises, does not prevent the running of the statute. This stringent rule, however, admits of an exception. Under the "blameless ignorance" doctrine, the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, courts decline to apply the statute of limitations where the plaintiff neither knew nor had reasonable means of knowing the existence of a cause of action. Given all these factual and legal difficulties, the public respondent should have ordered private respondents to answer the sworn complaint, required a reply from the petitioners and conducted such hearings as may be necessary so he could have all the vital facts at his front and, upon their basis, resolve whether the offense charged has already prescribed. (Emphasis supplied)

It is noteworthy that petitioner did not raise the defense of prescription in his motion to dismiss the preliminary investigation. It is only in this petition that he raised this issue. As this case has never progressed beyond the filing of the informations against petitioner, it is only prudent that evidence be gathered through trial on the merits to determine whether the offense charged has already prescribed.

A preliminary investigation is merely inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare the complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the person against whom it is taken in jeopardy.[1]

In his motion for reconsideration, petitioner reiterated his claim of prescription. Finding merit in petitioner's contention this time around, the majority opinion grants reconsideration and dismisses the criminal cases. The majority opinion does so on the ground that the "silence" in Section 2 of Act No. 3326 on the effect of the absence of the accused from this jurisdiction in computing the period of prescription in Section 11 of RA 3019, before and after its amendment,[2] should be resolved in petitioner's favor. Thus, the majority opinion allows the prescriptive period to run during petitioner's absence from this jurisdiction from 1986 to April 2000 or for a period of nearly 14 years.

I cannot subscribe to such view.

Article 91[3] of the Revised Penal Code ("RPC") provides that "[t]he term of prescription should not run when the offender is absent from the Philippine Archipelago." Article 10[4] of the same Code makes Article 91 "x x x supplementary to [special laws], unless the latter should x x x provide the contrary." Nothing in RA 3019 prohibits the supplementary application of Article 91 to that law. Hence, applying Article 91, the prescriptive period in Section 11 of RA 3019, before and after its amendment, should run only after petitioner returned to this jurisdiction on 27 April 2000.

There is no gap in the law. Where the special law is silent, Article 10 of the RPC applies suppletorily, as the Court has held in a long line of decisions since 1934, starting with People v. Moreno.[5] Thus, the Court has applied suppletorily various provisions[6] of the RPC to resolve cases where the special laws are silent on the matters in issue. The law on the applicability of Article 10 of the RPC is thus well-settled, with the latest reiteration made by this Court in 2004 in Jao Yu v. People.[7]

The Court has followed Act No. 3326 in computing the prescriptive period in cases involving special laws.[8] However, these cases dealt with the question of when to reckon the running of the prescriptive period,[9] not with the question of whether the prescriptive period in a special law runs when the accused is outside Philippine jurisdiction. Similarly, in the cases where this Court interpreted statutes of limitations in favor of the accused, the issues relate to the (1) retroactive[10] or prospective[11] application of laws providing or extending the prescriptive period; (2) the determination of the nature of the felony committed vis a vis the applicable

prescriptive period;[12] and (3) the reckoning of when the prescriptive period runs.[13] Thus, these cases are no authority to support the conclusion that the prescriptive period in a special law runs while the accused is abroad.

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

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

Accordingly, I vote to DENY the Motion for reconsideration.

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[1] Romualdez v. Marcelo, G.R. Nos. 165510-33, 23 September 2005, 470 SCRA 754, 767-769.

[2] By Batas Pambansa Blg. 195 dated 16 March 1982.

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

> The term of prescription shall not run when the offender is absent from the Philippine Archipelago." (Emphasis supplied)

[4] Art. 10. "Offenses not subject to the provisions of this Code. - Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary." (Emphasis supplied)

[5] 60 Phil. 712(1934).

[6] Article 39 to impose subsidiary penalty for violation of Batas Pambansa Blg. 22 (Jao Yu v. People, G.R. No. 134172, 20 September 2004, 438 SCRA 431), Act No. 4003, as amended (People v. Cubelo, 106 Phil. 496 [1959]), and Act 3992 (People v. Moreno, supra); Articles 17, 18, and 19 to determine the liability of an accused in a case for violation of the Labor Code (People v. Chowdury, 382 Phil. 459 [2000]); Article 70 for the sentencing of an accused found guilty of multiple counts for violation of Republic Act No. 6425 (People v. Li Wai Cheung, G.R. Nos. 90440-42, 13 October 1992, 214 SCRA 504); Article 45 to confiscate unlicensed money in a case for violation of Central Bank Circular No. 37 (People v. Exconde, 101 Phil. 1125 [1957]).

[7] Supra.

[8] People v. Sandiganbayan, G.R. No. 101724, 3 July 1992, 211 SCRA 241; People v. Duque, G.R. No. 100285, 13 August 1992, 212 SCRA 607; Presidential Ad Hoc Committee v. Hon. Desierto, 375 Phil. 697 (1999). But see People v. Tamayo (No. 584, 28 December 1940, 40 O.G. 2313) where the Court, following Article 10, gave

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supplementary effect to Article 91 to resolve the issue of prescription in a case for violation of the Revised Administrative Code.

[9] Significantly, in People v. Duque, supra, the Court resolved such issue by applying both Act No. 3326 and Article 91.

[10] People v. Parel, 44 Phil. 437 (1923).

[11] People v. Pacificador, G.R. No. 139405, 13 March 2001, 354 SCRA 310.

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

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

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