

The seal of the Supreme Court of the Philippines is a circular emblem. It features a central shield with a star at the top, a sunburst in the middle, and a book at the bottom. The shield is surrounded by a wreath. The outer ring of the seal contains the text "SUPREME COURT" at the top and "REPUBLIC OF THE PHILIPPINES" at the bottom. A banner at the bottom of the shield reads "DATASATRAYAN".

JURISPRUDENCE ON SPEEDY TRIAL AND DISPOSITION OF CRIMINAL CASES

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I. Preliminary Investigation

1.1 When required

Ernesto J. San Agustin vs. People of the Philippines, G. R. No. 158211, August 31, 2004

We agree with the Court of Appeals that the petitioner was unlawfully arrested without a warrant of arrest against him for kidnapping/serious illegal detention. As correctly ruled by the Court of Appeals:

Furthermore, warrantless arrest or the detention of petitioner in the instant case does not fall within the provision of Section 5, Rule 113, Revised Rules on Criminal Procedure, as amended, which provides:

“Sec. 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has been committed and he has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.”

X X X

Consequently, the petitioner is entitled to a preliminary investigation before an Information may be filed against him for said crime. The inquest investigation conducted by the State Prosecutor is void because under Rule 112, Section 7 of the Revised Rules on Criminal Procedure, an inquest investigation is proper only when the suspect is lawfully arrested without a warrant:

SEC. 7. When accused lawfully arrested without warrant. – When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest investigation has been conducted in accordance with existing

rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

We also agree with the Court of Appeals that **the absence of a preliminary investigation does not affect the jurisdiction of the trial court but merely the regularity of the proceedings. It does not impair the validity of the Information or otherwise render it defective.**¹ Neither is it a ground to quash the Information or nullify the order of arrest issued against him or justify the release of the accused from detention.² However, the trial court should suspend proceedings and order a preliminary investigation³ considering that the inquest investigation conducted by the State Prosecutor is null and void.⁴ In sum, then, the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction in ordering the City Prosecutor to conduct a reinvestigation which is merely a review by the Prosecutor of his records and evidence instead of a preliminary investigation as provided for in Section 3, Rule 112 of the Revised Rules on Criminal Procedure.

However, we do not agree with the ruling of the Court of Appeals that there was no need for the City Prosecutor to conduct a preliminary investigation since the crime charged under the Information filed with the MeTC was arbitrary detention under Article 124, paragraph 1 of the Revised Penal Code punishable by arresto mayor in its maximum period to prision correccional in its minimum period, which has a range of four months and one day to two years and four months. **Whether or not there is a need for a preliminary investigation under Section 1 in relation to Section 9 of Rule 112 of the Revised Rules on Criminal Procedure depends upon the imposable penalty for the crime charged in the complaint filed with the City or Provincial Prosecutor's Office and not upon the imposable penalty for the crime found to have been committed by the respondent after a preliminary investigation.** In this case, the crime charged in the complaint of the NBI filed in the Department of Justice was kidnapping/serious illegal detention, the imposable penalty for which is reclusion perpetua to death.

1.2 Procedure

a. **Ma. Rosario Santos-Concio, et al. v. Raul M. Gonzalez, et al., G. R. No. 175057, January 29, 2008**

A complaint for purposes of conducting a preliminary investigation differs from a complaint for purposes of instituting a criminal prosecution. Confusion apparently springs because two complementary procedures adopt the usage of the

¹ *Villaflor vs. Viva* 349 SCRA 194 (2001)

² *Larranaga vs. Court of Appeals*, 287 SCRA 581 (1998)

³ *Villaflor vs. Viva*, supra

⁴ *Doromal vs. Sandiganbayan*, 177 SCRA 354 (1989)

same word, for lack of a better or alternative term, to refer essentially to a written charge. There should be no confusion about the objectives, however, since, as intimated during the hearing before the appellate court, preliminary investigation is conducted precisely to elicit further facts or evidence.⁵ Being generally inquisitorial, the preliminary investigation stage is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the preparation of a complaint or information.⁶

Consider the following pertinent provision of Rule 112 of the Revised Rules on Criminal Procedure:

SEC. 3. Procedure. – The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.⁷

As clearly worded, **the complaint is not entirely the affidavit of the complainant, for the affidavit is treated as a component of the complaint.** The phraseology of the above-quoted rule recognizes that all necessary allegations need not be contained in a single document. It is unlike a criminal “complaint or information” where the averments must be contained in one document charging only one offense, non-compliance with which renders it vulnerable to a motion to quash.⁸

The Court is not unaware of the practice of incorporating all allegations in one document denominated as “complaint-affidavit.” It does not pronounce strict adherence to only one approach, however, for there are cases where the extent of one’s personal knowledge may not cover the entire gamut of details material to the alleged offense. The private offended party or relative of the deceased may not even have witnessed the fatality,⁹ in which case the peace officer or law enforcer has to rely chiefly on affidavits of witnesses. The Rules do not in fact preclude the attachment of a referral or transmittal letter similar to that of the NBI-NCR. Thus, in *Soriano v. Casanova*,¹⁰ the Court held:

⁵ *Rollo*, p. 541.
⁶ *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 90.
⁷ Rules of Court, Rule 112, Sec. 3, par. (a).
⁸ Rules of Court, Rule 117, Sec. 3 (f) in relation to Rule 110, Sec. 13
⁹ As the appellate court pointed out, for obvious reasons the victims who died could no longer sign the complaint; *rollo*, pp. 549-550.
¹⁰ G.R. No. 163400, March 31, 2006, 486 SCRA 431.

A close scrutiny of the letters transmitted by the BSP and PDIC to the DOJ shows that these were not intended to be the complaint envisioned under the Rules. It may be clearly inferred from the tenor of the letters that the officers merely intended to transmit the affidavits of the bank employees to the DOJ. Nowhere in the transmittal letters is there any averment on the part of the BSP and PDIC officers of personal knowledge of the events and transactions constitutive of the criminal violations alleged to have been made by the accused. In fact, the letters clearly stated that what the OSI of the BSP and the LIS of the PDIC did was to respectfully transmit to the DOJ for preliminary investigation the affidavits and personal knowledge of the acts of the petitioner. These affidavits were subscribed under oath by the witnesses who executed them before a notary public. Since the affidavits, not the letters transmitting them, were intended to initiate the preliminary investigation, we hold that Section 3(a), Rule 112 of the Rules of Court was substantially complied with.

Citing the ruling of this Court in *Ebarle v. Sucaldito*, the Court of Appeals correctly held that a complaint for purposes of preliminary investigation by the fiscal need not be filed by the offended party. The rule has been that, unless the offense subject thereof is one that cannot be prosecuted de officio, the same may be filed, for preliminary investigation purposes, by any competent person. The crime of estafa is a public crime which can be initiated by “any competent person.” The witnesses who executed the affidavits based on their personal knowledge of the acts committed by the petitioner fall within the purview of “any competent person” who may institute the complaint for a public crime. x x x¹¹

A preliminary investigation can thus validly proceed on the basis of an affidavit of any competent person, without the referral document, like the NBI-NCR Report, having been sworn to by the law enforcer as the nominal complainant. To require otherwise is a needless exercise. The cited case of *Oporto, Jr. v. Judge Monserate*¹² does not appear to dent this proposition. After all, what is required is to reduce the evidence into affidavits, for while reports and even raw information may justify the initiation of an investigation, the preliminary investigation stage can be held only after sufficient evidence has been gathered and evaluated which may warrant the eventual prosecution of the case in court.¹³

¹¹ Id. at 438-439; *Tayaban v. People*, G.R. No. 150194, March 6, 2007, 517 SCRA 488, 502-503; Rules of Court, Rule 110, Sec. 3, where it is unlike a “complaint” which is “x x x subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.”

¹² 408 Phil. 561 (2001). Both *Oporto* and the prior *en banc* case of *People v. Historillo* (389 Phil. 141 [2000]) rely on *U.S. v. Bibal* (4 Phil. 369 [1905]) in holding that the lack of oath (even) in a criminal complaint does not invalidate the judgment of conviction since the want of an oath is a mere defect in form which does not affect the substantial rights of the defendant on the merits. *Oporto*, however, involved an administrative case concerning the proper issuance of a warrant of arrest in a criminal case not requiring a preliminary investigation, in which case the judge needs to personally examine in writing and under oath the complainant and witnesses, which could not have been done absent any sworn statement.

¹³ *Olivas v. Office of the Ombudsman*, G.R. No. 102420, December 20, 1994, 239 SCRA 283, 294-295.

In the present case, there is no doubt about the existence of affidavits. The appellate court found that “certain complaint-affidavits were already filed by some of the victims,”¹⁴ a factual finding to which this Court, by rule, generally defers.

A complaint for purposes of conducting preliminary investigation is not required to exhibit the attending structure of a “complaint or information” laid down in Rule 110 (Prosecution of Offenses) which already speaks of the “People of the Philippines” as a party,¹⁵ an “accused” rather than a respondent,¹⁶ and a “court” that shall pronounce judgment.¹⁷ If a “complaint or information” filed in court does not comply with a set of constitutive averments, it is vulnerable to a motion to quash.¹⁸ The filing of a motion to dismiss in lieu of a counter-affidavit is proscribed by the rule on preliminary investigation, however.¹⁹ The investigating officer is allowed to dismiss outright the complaint only if it is not sufficient in form and substance or “no ground to continue with the investigation”²⁰ is appreciated.

The investigating fiscal, to be sure, has discretion to determine the specificity and adequacy of averments of the offense charged. He may dismiss the complaint forthwith if he finds it to be insufficient in form or substance or if he otherwise finds no ground to continue with the inquiry, or proceed with the investigation if the complaint is, in his view, in due and proper form. It certainly is not his duty to require a more particular statement of the allegations of the complaint merely upon the respondents’ motion, and specially where after an analysis of the complaint and its supporting statements he finds it sufficiently definite to apprise the respondents of the offenses which they are charged. Moreover, the procedural device of a bill of particulars, as the Solicitor General points out, appears to have reference to informations or criminal complaints filed in a competent court upon which the accused are arraigned and required to plead, and strictly speaking has no application to complaints initiating a preliminary investigation which cannot result in any finding of guilt, but only of probable cause.²¹

Petitioners’ claims of vague allegations or insufficient imputations are thus matters that can be properly raised in their counter-affidavits to negate or belie the existence of probable cause.

b. Vicente P. Ladlad, et al. v. Emmanuel Y. Velasco, et al., G. R. Nos. 172070-72; Liza L. Maza, et al. v. Raul M. Gonzalez, et al., G. R. Nos.

¹⁴ *Rollo*, p. 121, citing TSN taken during the proceedings at the Court of Appeals on April 24, 2006, at 95-98, 108-119 (*rollo*, pp. 467-470, 480-491).

¹⁵ Rules of Court, Rule 110, Sec. 2.

¹⁶ *Id.* at Secs. 6-7.

¹⁷ *Id.* at Sec. 9.

¹⁸ Rules of Court, Rule 117, Sec. 3 (a) in relation to Rule 110, Secs. 6-11.

¹⁹ *Id.*, Rule 112, Sec. 3, par. (c).

²⁰ *Id.* at par. (b).

²¹ *Cinco v. Sandiganbayan*, G.R. Nos. 92362-67, October 15, 1991, 202 SCRA 726, 734; *vide Martinez v. Court of Appeals*, G.R. No. 168827, April 13, 2007, 521 SCRA 176.

172074-76; Crispin B. Beltran v. People of the Philippines et al., G. R. No. 175013, June 1, 2007

The procedure for preliminary investigation of offenses punishable by at least four years, two months and one day is outlined in Section 3, Rule 112 of the Revised Rules of Criminal Procedure, thus:

Procedure.—The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the

hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

Instead of following this procedure scrupulously, as what this Court had mandated in an earlier ruling, “so that the constitutional right to liberty of a potential accused can be protected from any material damage,”²² respondent prosecutors nonchalantly disregarded it. Respondent prosecutors failed to comply with Section 3(a) of Rule 112 which provides that the complaint (which, with its attachment, must be of such number as there are respondents) be accompanied by the affidavits of the complainant and his witnesses, subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public. Respondent prosecutors treated the unsubscribed letters of Tanigue and Mendoza of the CIDG, PNP as complaints²³ and accepted the affidavits attached to the letters even though some of them were notarized by a notary public without any showing that a prosecutor or qualified government official was unavailable as required by Section 3(a) of Rule 112.

Further, Section 3(b) of Rule 112 mandates that the prosecutor, after receiving the complaint, must determine if there are grounds to continue with the investigation. If there is none, he shall dismiss the case, otherwise he shall “issue a subpoena to the respondents.” Here, after receiving the CIDG letters, respondent prosecutors peremptorily issued subpoenas to petitioners requiring them to appear at the DOJ office on 13 March 2006 “to secure copies of the complaints and its attachments.” During the investigation, respondent prosecutors allowed the CIDG to present a masked Fuentes who subscribed to an affidavit before respondent prosecutor Velasco. Velasco proceeded to distribute copies of Fuentes’ affidavit not to petitioners or their counsels but to members of the media who covered the proceedings. Respondent prosecutors then required petitioners to submit their counter-affidavits in 10 days. It was only four days later, on 17 March 2006, that petitioners received the complete copy of the attachments to the CIDG letters.

These uncontroverted facts belie respondent prosecutors’ statement in the Order of 22 March 2006 that the preliminary investigation “was done in accordance with the

²² *Webb v. De Leon*, 317 Phil. 758 (1995).

²³ Defined under Section 3, Rule 110 of the Revised Rules of Criminal Procedure as “**sworn** written statement charging a person with an offense, subscribed by the offended party, any peace officer, or other public officer charged with the enforcement of the law violated.” (Emphasis supplied)

Revised Rules o[f] Criminal Procedure.”²⁴ Indeed, **by peremptorily issuing the subpoenas to petitioners, tolerating the complainant’s antics during the investigation, and distributing copies of a witness’ affidavit to members of the media knowing that petitioners have not had the opportunity to examine the charges against them, respondent prosecutors not only trivialized the investigation but also lent credence to petitioners’ claim that the entire proceeding was a sham.**

A preliminary investigation is the crucial sieve in the criminal justice system which spells for an individual the difference between months if not years of agonizing trial and possibly jail term, on the one hand, and peace of mind and liberty, on the other hand. Thus, we have characterized the right to a preliminary investigation as not “a mere formal or technical right” but a “substantive” one, forming part of due process in criminal justice.²⁵ This especially holds true here where the offense charged is punishable by reclusion perpetua and may be non-bailable for those accused as principals.

Contrary to the submission of the Solicitor General, respondent prosecutors’ filing of the Information against petitioners on 21 April 2006 with Branch 57 of the RTC Makati does not moot the petitions in G.R. Nos. 172070-72 and 172074-76. Our power to enjoin prosecutions cannot be frustrated by the simple filing of the Information with the trial court.

2. Filing of Complaint or Information

2.1 Causes of delay after receipt of the information and before arraignment, and remedies therefor

Teresita Tanghal Okabe v. Pedro De Leon Gutierrez, et al., G. R. No. 150185, May 27, 2004

We agree with the petitioner that before the RTC judge issues a warrant of arrest under Section 6, Rule 112 of the Rules of Court²⁶ in relation to Section 2, Article III of the 1987 Constitution, the judge must make a personal determination of the existence or non-existence of probable cause for the arrest of the accused. The duty to make such determination is personal and exclusive to the issuing judge. He cannot abdicate his duty and rely on the certification of the investigating prosecutor that he had conducted a preliminary investigation in accordance with law and the Rules of Court, as amended, and found probable cause for the filing of the Information.

²⁴ *Rollo* (G.R. Nos. 172074-76), pp. 61-62; Annex “A.”

²⁵ *Go v. Court of Appeals*, G.R. No. 101837, February 11, 1992, 206 SCRA 138

²⁶ The assailed orders and warrant of arrest were issued before the Revised Rules on Criminal Procedure took effect.

Under Section 1, Rule 112 of the Rules on Criminal Procedure, the investigating prosecutor, in conducting a preliminary investigation of a case cognizable by the RTC, is tasked to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent therein is probably guilty thereof and should be held for trial. A preliminary investigation is for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.²⁷

If the investigating prosecutor finds probable cause for the filing of the Information against the respondent, he executes a certification at the bottom of the Information that from the evidence presented there is a reasonable ground to believe that the offense charged has been committed and that the accused is probably guilty thereof. Such certification of the investigating prosecutor is, by itself, ineffective. It is not binding on the trial court. Nor may the RTC rely on the said certification as basis for a finding of the existence of probable cause for the arrest of the accused.²⁸

In contrast, the **task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.** Probable cause is meant such set of facts and circumstances which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested.²⁹ In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense.³⁰ A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion, it requires less than evidence which would justify conviction.³¹

The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged of crimes from the tribulations, expenses and anxiety of a public trial:

It must be stressed, however, that in these exceptional cases, the Court took the extraordinary step of annulling findings of probable cause either to prevent the misuse of the strong arm of the law or to protect the orderly administration of justice. The constitutional duty of this Court in criminal litigations is not only to acquit the innocent after trial but to insulate, from the start, the innocent from unfounded charges. For the Court is aware of the strains of a criminal accusation and the stresses of litigation which should not be suffered by the clearly innocent. The filing of an unfounded criminal information in court

²⁷ *People v. Pocular*, 167 SCRA 176 (1988).

²⁸ *People v. Inting*, 187 SCRA 788 (1990).

²⁹ *Webb v. De Leon*, 247 SCRA 652 (1995).

³⁰ *People v. Aruta*, 288 SCRA 626 (1998).

³¹ *Ibid.*

exposes the innocent to severe distress especially when the crime is not bailable. Even an acquittal of the innocent will not fully bleach the dark and deep stains left by a baseless accusation for reputation once tarnished remains tarnished for a long length of time. The expense to establish innocence may also be prohibitive and can be more punishing especially to the poor and the powerless. Innocence ought to be enough and the business of this Court is to shield the innocent from senseless suits right from the start.³²

In determining the existence or non-existence of probable cause for the arrest of the accused, the RTC judge may rely on the findings and conclusions in the resolution of the investigating prosecutor finding probable cause for the filing of the Information. After all, as the Court held in *Webb v. De Leon*,³³ the judge just personally reviews the initial determination of the investigating prosecutor finding a probable cause to see if it is supported by substantial evidence.³⁴ However, in determining the existence or non-existence of probable cause for the arrest of the accused, the judge should not rely solely on the said report.³⁵ **The judge should consider not only the report of the investigating prosecutor but also the affidavit/affidavits and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.**³⁶ Indeed, in *Ho v. People*,³⁷ this Court held that:

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.³⁸

The rulings of this Court are now embedded in Section 8(a), Rule 112 of the Revised Rules on Criminal Procedure which provides that an Information or complaint

³² *Dissenting opinion of Mr. Justice Reynato S. Puno in Roberts, Jr. v. Court of Appeals*, 254 SCRA 307 (1996).

³³ *Supra* note 30.

³⁴ *Supra* note 29.

³⁵ *Ho v. People*, 280 SCRA 365 (1997).

³⁶ *Soliven v. Makasiar*, 167 SCRA 394 (1988).

³⁷ *Supra* note 36.

³⁸ *Id.* at 381-382.

filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence of the resolution:

SEC. 8. Records. – (a) Records supporting the information or complaint. An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence and the resolution on the case.

If the judge is able to determine the existence or non-existence of probable cause on the basis of the records submitted by the investigating prosecutor, there would no longer be a need to order the elevation of the rest of the records of the case. However, if the judge finds the records and/or evidence submitted by the investigating prosecutor to be insufficient, he may order the dismissal of the case, or direct the investigating prosecutor either to submit more evidence or to submit the entire records of the preliminary investigation, to enable him to discharge his duty.³⁹ The judge may even call the complainant and his witness to themselves answer the court's probing questions to determine the existence of probable cause.⁴⁰ The rulings of this Court in *Soliven v. Makasiar*⁴¹ and *Lim v. Felix*⁴² are now embodied in Section 6, Rule 112 of the Revised Rules on Criminal Procedure, with modifications, viz:

SEC. 6. When warrant of arrest may issue. – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.

2.2 DOJ Circular No. 70,⁴³

a. ***Bernadette L. Adasa v. Cecille S. Abalos, G. R. No. 168617, February 19, 2007***

³⁹ The assailed orders and warrant of arrest were issued before the Revised Rules on Criminal Procedure took effect.

⁴⁰ *People v. Poculan*, 167 SCRA 176 (1988).

⁴¹ The assailed orders and warrant of arrest were issued before the Revised Rules on Criminal Procedure took effect. *Soliven v. Makasiar*, 167 SCRA 394 (1988)

⁴² The assailed orders and warrant of arrest were issued before the Revised Rules on Criminal Procedure took effect. *Lim, Sr. v. Felix*, 194 SCRA 292.

⁴³ Dated July 3, 2000

The all too-familiar rule in statutory construction, in this case, an administrative rule⁴⁴ of procedure, is that when a statute or rule is clear and unambiguous, interpretation need not be resorted to.⁴⁵ Since Section 7 of the subject circular clearly and categorically directs the DOJ to dismiss outright an appeal or a petition for review filed after arraignment, no resort to interpretation is necessary.

Petitioner's reliance to the statutory principle that "the last in order of position in the rule or regulation must prevail" is not applicable. In addition to the fact that Section 7 of DOJ Circular No. 70 needs no construction, the cited principle cannot apply because, as correctly observed by the Court of Appeals, there is no irreconcilable conflict between Section 7 and Section 12 of DOJ Circular No. 70. Section 7 of the circular provides:

SECTION 7. Action on the petition. – The Secretary of Justice may dismiss the petition outright if he finds the same to be patently without merit or manifestly intended for delay, or when the issues raised therein are too unsubstantial to require consideration. If an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused had already been arraigned. Any arraignment made after the filing of the petition shall not bar the Secretary of Justice from exercising his power of review.

On the other hand, Section 12 of the same circular states:

SECTION 12. Disposition of the Appeal. – The Secretary may reverse, affirm or modify the appealed resolution. He may, *motu proprio* or upon motion, dismiss the petition for review on any of the following grounds:

- (a) That the petition was filed beyond the period prescribed in Section 3 hereof;
- (b) That the procedure or any of the requirements herein provided has not been complied with;
- (c) That there is no showing of any reversible error;
- (d) That the appealed resolution is interlocutory in nature, except when it suspends the proceedings based on the alleged existence of a prejudicial question;
- (e) That the accused had already been arraigned when the appeal was taken;
- (f) That the offense has already prescribed; and
- (g) That other legal or factual grounds exist to warrant a dismissal.

⁴⁴ When an administrative agency promulgates rules and regulations, it "makes" a new law with the force and effect of a valid law. (*Victorias Milling Co., Inc. v. Social Security Commission*, 114 Phil. 555, 558 [1962].)

⁴⁵ *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, G.R. No. 74851, 9 December 1999, 320 SCRA 279, 289.

It is noteworthy that the principle cited by petitioner reveals that, to find application, the same presupposes that “one part of the statute cannot be reconciled or harmonized with another part without nullifying one in favor of the other.” In the instant case, however, **Section 7 is neither contradictory nor irreconcilable with Section 12 As can be seen above, Section 7 pertains to the action on the petition that the DOJ must take, while Section 12 enumerates the options the DOJ has with regard to the disposition of a petition for review or of an appeal.**

As aptly observed by respondent, Section 7 specifically applies to a situation on what the DOJ must do when confronted with an appeal or a petition for review that is either clearly without merit, manifestly intended to delay, or filed after an accused has already been arraigned, i.e., he may dismiss it outright if it is patently without merit or manifestly intended to delay, or, if it was filed after the accused has already been arraigned, the Secretary shall not give it due course.

Section 12 applies generally to the disposition of an appeal. Under said section, the DOJ may take any of four actions when disposing an appeal, namely:

1. reverse the appealed resolution;
2. modify the appealed resolution;
3. affirm the appealed resolution;
4. dismiss the appeal altogether, depending on the circumstances and incidents attendant thereto.

As to the dismissal of a petition for review or an appeal, the grounds are provided for in Section 12 and, consequently, the DOJ must evaluate the pertinent circumstances and the facts of the case in order to determine which ground or grounds shall apply.

Thus, **when an accused has already been arraigned, the DOJ must not give the appeal or petition for review due course and must dismiss the same.** This is bolstered by the fact that arraignment of the accused prior to the filing of the appeal or petition for review is set forth as one of the grounds for its dismissal. Therefore, in such instance, the DOJ, noting that the arraignment of an accused prior to the filing of an appeal or petition for review is a ground for dismissal under Section 12, must go back to Section 7 and act upon as mandated therein. In other words, the DOJ must not give due course to, and must necessarily dismiss, the appeal.

Likewise, petitioner’s reliance on the principle of contemporary construction, i.e., the DOJ is not precluded from entertaining appeals where the accused had already been arraigned, because it exercises discretionary power, and because it promulgated itself the circular in question, is unpersuasive. As aptly ratiocinated by the Court of Appeals:

True indeed is the principle that a contemporaneous interpretation or construction by the officers charged with the enforcement of the rules and regulations it promulgated is entitled to great weight by the court in the latter’s construction of such rules and regulations. That does not, however, make such a

construction necessarily controlling or binding. For equally settled is the rule that courts may disregard contemporaneous construction in instances where the law or rule construed possesses no ambiguity, where the construction is clearly erroneous, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation.

If through misapprehension of law or a rule an executive or administrative officer called upon to implement it has erroneously applied or executed it, the error may be corrected when the true construction is ascertained. If a contemporaneous construction is found to be erroneous, the same must be declared null and void. Such principle should be as it is applied in the case at bar.⁴⁶

Petitioner's posture on a supposed exception to the mandatory import of the word "shall" is misplaced. It is petitioner's view that the language of Section 12 is permissive and therefore the mandate in Section 7 has been transformed into a matter within the discretion of the DOJ. To support this stance, petitioner cites a portion of Agpalo's Statutory Construction which reads:

For instance, the word "shall" in Section 2 of Republic Act 304 which states that "banks or other financial institutions owned or controlled by the Government shall, subject to availability of funds xxx, accept at a discount at not more than two per centum for ten years such (backpay) certificate" implies not a mandatory, but a discretionary, meaning because of the phrase "subject to availability of funds." Similarly, the word "shall" in the provision to the effect that a corporation violating the corporation law "shall, upon such violation being proved, be dissolved by quo warranto proceedings" has been construed as "may."⁴⁷

After a judicious scrutiny of the cited passage, it becomes apparent that the same is not applicable to the provision in question. In the cited passage, the word "shall" departed from its mandatory import connotation because it was connected to certain provisos/conditions: "subject to the availability of funds" and "upon such violation being proved." No such proviso/condition, however, can be found in Section 7 of the subject circular. Hence, the word "shall" retains its mandatory import.

At this juncture, the Court of Appeals' disquisition in this matter is enlightening:

Indeed, if the intent of Department Circular No. 70 were to give the Secretary of Justice a discretionary power to dismiss or to entertain a petition for review despite its being outrightly dismissible, such as when the accused has already been arraigned, or where the crime the accused is being charged with has already prescribed, or there is no reversible error that has been committed, or that there are legal or factual grounds warranting dismissal, the result would not only be incongruous but also irrational and even unjust. For then, the action of the Secretary of Justice of giving due course to the petition would serve no

⁴⁶ *Rollo*, p. 58.

⁴⁷ Agpalo, *Statutory Construction* (1990), pp. 240-241, citing *Diokno v. Rehabilitation Finance Corporation*, 91 Phil. 608, 611 (1952) and *Government v. El Hogar Filipino*, 50 Phil. 399 (1927).

purpose and would only allow a great waste of time. Moreover, to give the second sentence of Section 12 in relation to its paragraph (e) a directory application would not only subvert the avowed objectives of the Circular, that is, for the expeditious and efficient administration of justice, but would also render its other mandatory provisions - Sections 3, 5, 6 and 7, nugatory.⁴⁸

In her steadfast effort to champion her case, petitioner contends that the issue as to whether the DOJ rightfully entertained the instant case, despite the arraignment of the accused prior to its filing, has been rendered moot and academic with the order of dismissal by the trial court dated 27 February 2003. Such contention deserves scant consideration.

It must be stressed that the trial court dismissed the case precisely because of the Resolutions of the DOJ after it had, in grave abuse of its discretion, took cognizance of the petition for review filed by petitioner. Having been rendered in grave abuse of its discretion, the Resolutions of the DOJ are void. As the order of dismissal of the trial court was made pursuant to the void Resolutions of the DOJ, said order was likewise void. The rule in this jurisdiction is that a void judgment is a complete nullity and without legal effect, and that all proceedings or actions founded thereon are themselves regarded as invalid and ineffective for any purpose.⁴⁹ That respondent did not file a motion for reconsideration or appeal from the dismissal order of the trial court is of no moment. Since the dismissal was void, there was nothing for respondent to oppose.

Petitioner further asserts that Section 7 of DOJ Circular No. 70 applies only to appeals from original resolution of the City Prosecutor and does not apply in the instant case where an appeal is interposed by petitioner from the Resolution of the City Prosecutor denying her motion for reinvestigation. This claim is baseless.

A reading of Section 7 discloses that there is no qualification given by the same provision to limit its application to appeals from original resolutions and not to resolutions on reinvestigation. Hence, the rule stating that “when the law does not distinguish, we must not distinguish”⁵⁰ finds application in this regard.

Petitioner asserts that her arraignment was null and void as the same was improvidently conducted. Again, this contention is without merit. Records reveal that petitioner’s arraignment was without any restriction, condition or reservation.⁵¹ In fact she was assisted by her counsels Atty. Arthur Abudiente and Atty. Maglinao when she pleaded to the charge.⁵²

Moreover, the settled rule is that **when an accused pleads to the charge, he is deemed to have waived the right to preliminary investigation and the right to**

⁴⁸ *Rollo*, p. 57.

⁴⁹ *Gorion v. Regional Trial Court of Cebu, Branch 17*, G.R. No. 102131, 31 August 1992, 213 SCRA 138, 147.

⁵⁰ *Philippine Free Press, Inc. v. Court of Appeals*, G.R. No. 132864, 24 October 2005, 473 SCRA 639, 662.

⁵¹ Records, pp. 64-65.

⁵² *Id.*

question any irregularity that surrounds it.⁵³ This precept is also applicable in cases of reinvestigation as well as in cases of review of such reinvestigation. In this case, when petitioner unconditionally pleaded to the charge, she effectively waived the reinvestigation of the case by the prosecutor as well as the right to appeal the result thereof to the DOJ Secretary. Thus, with the arraignment of the petitioner, the DOJ Secretary can no longer entertain the appeal or petition for review because petitioner had already waived or abandoned the same.

Unless the Secretary of Justice directs otherwise, the appeal shall not hold the filing of the corresponding information in court on the basis of the finding of probable cause in the appealed resolution. The appellant and the trial prosecutor shall see to it that, pending resolution of the appeal, the proceedings in court are held in abeyance.⁵⁴

If the Secretary of Justice finds it necessary to reinvestigate the case, the reinvestigation shall be held by the investigating prosecutor, unless, for compelling reasons, another prosecutor is designated to conduct the same.⁵⁵

The Secretary may reverse, affirm or modify the appealed resolution. He may, motu proprio or upon motion, dismiss the petition for review on any of the grounds in Section 12.⁵⁶

b. Office of the Ombudsman v. Mary Ann T. Castro G. R. No. 164678,
October 20, 2005

Besides, a **motion for reconsideration of the resolution of the preliminary investigation conducted by the city prosecutor is allowed.** Section 3 of the Department of Justice Circular No. 70 reads:

SEC. 3. Period of appeal. – The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed decision. Only one motion for reconsideration shall be allowed.

Likewise, the filing of a motion for reconsideration is consistent with the principle of due process and allowed under Section 56 of the Manual for Prosecutors.⁵⁷ In the subject case, the information was filed in court on September 28, 2001. However, the spouses Gonzales received a copy of the unfavorable recommendation of Laborte only

⁵³ *Kuizon v. Desierto*, G.R. Nos. 140619-24, 9 March 2000, 354 SCRA 158, 176-177; *Gonzales v. Court of Appeals*, 343 Phil. 297, 304-305 (1997); *People v. Baluran*, 143 Phil. 36, 44 (1981).

⁵⁴ DoJ Circular No.70, July 3, 2000., Section 9

⁵⁵ Id., Section 11

⁵⁶ Id., Section 12

⁵⁷ *Rollo*, at 57.

on October 1, 2001.⁵⁸ Thus, they filed on October 10, 2001 a motion for reconsideration which was the appropriate and available remedy for them.

In *Sales v. Sandiganbayan*,⁵⁹ we held that the denial of the opportunity to file a motion for reconsideration is tantamount to a denial of due process, thus:

The filing of a motion for reconsideration is an integral part of the preliminary investigation proper. There is no dispute that the Information was filed without first affording petitioner-accused his right to file a motion for reconsideration. The denial thereof is tantamount to a denial of the right itself to a preliminary investigation. This fact alone already renders preliminary investigation conducted in this case incomplete. The inevitable conclusion is that the petitioner was not only effectively denied the opportunity to file a motion for reconsideration of the Ombudsman's final resolution but also deprived of his right to a full preliminary investigation preparatory to the filing of the information against him.⁶⁰

In the instant case, the information was filed before the spouses Gonzales could file a motion to reconsider the adverse recommendation of Laborte. The filing of the information deprived them of the right to a full-blown preliminary investigation.

We find that Castro did not usurp the jurisdiction of the trial court as the comment was only recommendatory in nature. **The judge was not deprived of the authority to make a personal evaluation of the evidence before him and to act accordingly.** In fact, spouses Gonzales moved for the dismissal of the case not before the Office of the City Prosecutor but before the trial court where the information was filed. This Court in *Roberts, Jr. v. Court of Appeals*,⁶¹ stated:

Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. **What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.**

We are aware of our ruling in *Crespo v. Mogul*⁶² that discourages the Secretary of Justice from entertaining any appeal from the action of the fiscal once the case is filed in court to avoid a situation whereby the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court. However, the comment filed by Castro was only recommendatory. As such, it could either be adopted

⁵⁸ Records, p. 4.

⁵⁹ 421 Phil. 176, 192 (2001).

⁶⁰ Id.

⁶¹ 324 Phil. 568, 601 (1996).

⁶² G.R. No.53373, June 30, 1987, 151 SCRA 462, 471.

or disregarded by the trial judge who has full discretion and jurisdiction over the case. Castro's participation in the case was in compliance with the orders from.

c. *Marielen C. Corpuz, et al. v. Sandiganbayan, et al.*, G. R. No. 162214, November 11, 2004

Under Section 9, Rule 119 of the Revised Rules of Criminal Procedure, the petitioners had the burden of proving the factual basis for their motions for the dismissal of the Informations on the ground of a denial of their right to a speedy trial and to a speedy disposition of the cases against them. They were burdened to prove that such delay caused by the Prosecutor was vexatious, capricious or whimsical. On the other hand, the Prosecutor was burdened to present evidence to establish that the delay in the submission of his report on the reinvestigation of the cases was reasonably attributed to the ordinary process of justice, and that the accused suffered no serious prejudice beyond that which ensued after an inevitable and ordinary delay.

Indubitably, there was an undue and inordinate delay in the reinvestigation of the cases by the Ombudsman/Special Prosecutor, and, consequently, the submission of his report thereon. Despite the lapse of more than one year, he failed to comply with the Orders of the Sandiganbayan. It bears stressing that a reinvestigation is summary in nature, and merely involves re-examination and re-evaluation of the evidence already submitted by the complainant and the accused, as well as the initial finding of probable cause which led to the filing of the Informations after the requisite preliminary investigation. Undeniably, the Ombudsman/Special Prosecutor is saddled with "cases of equal, if not of more importance" than the cases against the petitioners. However, this is not a valid justification for an inordinate delay of one (1) year in the termination of the reinvestigation of the cases. The Prosecutor should have expedited the reinvestigation not only because he was ordered by the Sandiganbayan to submit a report within sixty (60) days, but also because he is bound to do so under the Constitution, and under Section 13 of Rep. Act No. 6770:

The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the results thereof. (Section 12, Article XI of the 1987 Constitution)

The Ombudsman and his deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the government to the people. (Section 13, Republic Act No. 6770)

In *Hodges v. United States*,⁶³ it was emphasized that the government, and for that matter, the trial court, is not without responsibility for the expeditious trial for criminal cases. The burden for trial promptness does not solely rest upon the defense. The right to a speedy trial is not to be honored only for the vigilant and the knowledgeable.⁶⁴ In *De Vera v. Layague*,⁶⁵ we also held that:

The constitutional mandate to promptly dispose of cases does not only refer to the decision of cases on their merits, but also to the resolution of motions and other interlocutory matters, as the constitutional provisions explicitly mention “cases” and “matters.” Therefore, respondent judge must not be excused for his delay in resolving the incident in Civil Case No. 17,215.

d. *Ligaya V. Santos v. Domingo I. Orda, Jr., G. R. No. 158236, September 1, 2004*

We resolve to grant this petition considering that this contention is impressed with merit.

The rule, therefore, in this jurisdiction is that **once a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused, rests in the sound discretion of the Court.** Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court which has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation (*Crespo v. Mogul*, 151 SCRA 462).

However, if the trial court has failed to make an independent finding of the merits of the case or make an independent evaluation or assessment of the merits of the case, but merely anchored the dismissal of the case on the revised position of the prosecution, the trial court has relinquished the discretion he was duty-bound to exercise because, in effect, it is the prosecution through the Department of Justice which decides what to do and that the trial court was reduced into a mere rubber stamp, in violation of the ruling in *Crespo v. Mogul (Martinez v. Court of Appeals*, 237 SCRA 576, 577), which is the situation obtaining in this case considering that the dismissal of the criminal cases against private respondents was based solely on [the] recommendation of the Secretary of Justice because the reliance of public respondent Judge was based solely on the prosecutor’s averment that the Secretary of Justice had recommended the dismissal of the case against private respondent which is

⁶³ 408 F.2d. 543 (1969).

⁶⁴ *Barker v. Wingo*, 33 L.Ed.2d 101 (1972).

⁶⁵ 341 SCRA 67 (2000).

an abdication of the trial court's duty and jurisdiction to determine a prima facie case, in blatant violation of the court's pronouncement in *Crespo v. Mogul* (*Perez v. Hagonoy Rural Bank*, 327 SCRA 588).

Moreover, public respondent having already issued the warrants of arrest on private respondents which, in effect, means that a probable cause exists in those criminal cases, it was an error to dismiss those cases without making an independent evaluation especially that the bases of the probable cause are the same evidence which were made the bases of the Joint Resolution dated June 11, 2002 of the Secretary of Justice.

e. **Sps. Carolina and Reynaldo Jose v. Sps. Suarez, G. R. No. 176795, June 30, 2008**

Thus, whether or not the interest rate imposed by petitioners is eventually declared void for being *contra bonos mores* will not affect the outcome of the B.P. Blg. 22 cases because what will ultimately be penalized is the mere issuance of bouncing checks. In fact, the primordial question posed before the court hearing the B.P. Blg. 22 cases is whether the law has been breached, that is, if a bouncing check has been issued.

The issue has in fact been correctly addressed by the MTCCs when respondents' motion to suspend the criminal proceedings was denied upon the finding that there exists no prejudicial question which could be the basis for the suspension of the proceedings. **The reason for the denial of the motion is that the "cases can very well proceed for the prosecution of the accused in order to determine her criminal propensity ... as a consequence of the issuance of several checks which subsequently ... bounced" for "what the law punishes is the issuance and/or drawing of a check and upon presentment for deposit or encashment, it was dishonored due to insufficient funds [or] account closed."**⁶⁶

There being no prejudicial question, the RTC and, consequently, the Court of Appeals gravely erred when they allowed the suspension of the proceedings in the B.P. Blg. 22 cases.

⁶⁶ CA rollo, p. 129. Per Order dated 12 November 2004 by MTCC Branch 2, Cebu City

3. Arraignment

3.1 Plea bargaining

Joselito Raniero J. Daan v. Sandiganbayan, G. R. Nos. 163972-77, March 28, 2008

Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval. It usually **involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that for the graver charge.**⁶⁷

Plea bargaining is authorized under Section 2, Rule 116 of the Revised Rules of Criminal Procedure, to wit:

SEC. 2. Plea of guilty to a lesser offense. — **At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged.** After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (sec. 4, cir. 38-98)

Ordinarily, plea bargaining is made during the pre-trial stage of the proceedings. Sections 1 and 2, Rule 118 of the Rules of Court, require plea bargaining to be considered by the trial court at the pre-trial conference,⁶⁸ viz:

SEC. 1. Pre-trial; mandatory in criminal cases. – In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:

- (a) **plea bargaining;**
- (b) stipulation of facts;
- (c) marking for identification of evidence of the parties;
- (d) waiver of objections to admissibility of evidence;
- (e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
- (f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case.

⁶⁷ *People of the Philippines v. Villarama, Jr.*, G.R. No. 99287, June 23, 1992, 210 SCRA 246, 251-252.

⁶⁸ *Ladino v. Garcia*, 333 Phil. 254, 258 (1996); see also A.M. No. 03-1-09-SC dated July 13, 2004 (GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES).

SEC. 2. Pre-trial agreement. – All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court.

But it may also be made during the trial proper and even after the prosecution has finished presenting its evidence and rested its case. Thus, the Court has held that it is immaterial that plea bargaining was not made during the pre-trial stage or that it was made only after the prosecution already presented several witnesses.⁶⁹

Section 2, Rule 116 of the Rules of Court presents the basic requisites upon which plea bargaining may be made, i.e., that it should be **with the consent of the offended party and the prosecutor**⁷⁰ and that the **plea of guilt should be to a lesser offense which is necessarily included in the offense charged**. The rules however use word may in the second sentence of Section 2, denoting an **exercise of discretion upon the trial court on whether to allow the accused to make such plea**.⁷¹ Trial courts are exhorted to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused.⁷²

In *People of the Philippines v. Villarama*,⁷³ the Court ruled that the **acceptance of an offer to plead guilty to a lesser offense is not demandable by the accused as a matter of right** but is a matter that is addressed entirely to the sound discretion of the trial court,⁷⁴ viz:

x x x In such situation, jurisprudence has provided the trial court and the Office of the Prosecutor with a yardstick within which their discretion may be properly exercised. Thus, in *People v. Kayanan* (L-39355, May 31, 1978, 83 SCRA 437, 450), We held that the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged. In his concurring opinion in *People v. Parohinog* (G.R. No. L-47462, February 28, 1980, 96 SCRA 373, 377), then Justice Antonio Barredo explained clearly and tersely the rationale or the law

x x x (A)fter the prosecution had already rested, the only basis on which the fiscal and the court could rightfully act in allowing the appellant to change his former plea of not guilty to murder to guilty to the lesser crime of homicide could be nothing more nothing less than the evidence already in the record. The reason for this being that Section 4 of Rule 118 (now Section 2, Rule 116) under

⁶⁹ *People of the Philippines v. Mamarion*, 459 Phil. 51, 75 (2003).

⁷⁰ *People of the Philippines v. Dawaton*, 437 Phil. 861, 871 (2002).

⁷¹ *People of the Philippines v. Besonia*, 466 Phil. 822, 833 (2004).

⁷² *People of the Philippines v. Judge Kayanan*, 172 Phil. 728, 739 (1978).

⁷³ G.R. No. 99287, June 23, 1992, 210 SCRA 246 *supra* note 68.

⁷⁴ *Id.* at 252.

which a plea for a lesser offense is allowed was not and could not have been intended as a procedure for compromise, much less bargaining.⁷⁵

However, Villarama involved plea bargaining after the prosecution had already rested its case.

As regards plea bargaining during the pre-trial stage, as in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law.⁷⁶

3.2 Causes of delay during arraignment and remedies therefor

a. Romualdez vs. Sandiganbayan, 435 SCRA 371

No substantial distinction between a “motion to quash” and a “motion to dismiss.”

x x x

When allegations in the information are vague or indefinite, the remedy of the accused is not a motion to quash, but a motion for a bill of particulars.

b. People of the Philippines v. Reynaldo Jose, G. R. No. 130487, June 19, 2000

Accused-appellant's history of mental illness was brought to the court's attention on the day of the arraignment. Counsel for accused-appellant moved for suspension of the arraignment on the ground that his client could not properly and intelligently enter a plea due to his mental condition. The Motion for Suspension is authorized under Section 12, Rule 116 of the 1985 Rules on Criminal Procedure⁷⁷ which provides:

“Sec. 12. Suspension of arraignment.—The arraignment shall be suspended, if at the time thereof:

(a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge

⁷⁵ Id. at 252-253.

⁷⁶ *People of the Philippines v. Court of Appeals* G.R. No. 159261, February 21, 2007, 516 SCRA 383, 398.

⁷⁷ Now Section 11, Rule 116 of the present Rules

against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.

(b) x x x.”

The arraignment of an accused shall be suspended if at the time thereof he appears to be suffering from an unsound mental condition of such nature as to render him unable to fully understand the charge against him and to plead intelligently thereto. Under these circumstances, the court must suspend the proceedings and **order the mental examination of the accused, and if confinement be necessary for examination, order such confinement and examination.** If the accused is not in full possession of his mental faculties at the time he is informed at the arraignment of the nature and cause of the accusation against him, the process is itself *a felo de se*, for he can neither comprehend the full import of the charge nor can he give an intelligent plea thereto.⁷⁸

The question of suspending the arraignment lies **within the discretion of the trial court.**⁷⁹ And the test to determine whether the proceedings will be suspended depends on the question of whether the accused, even with the assistance of counsel, would have a fair trial. This rule was laid down as early as 1917, thus:

“In passing on the question of the propriety of suspending the proceedings against an accused person on the ground of present insanity, the judges should bear in mind that not every aberration of the mind or exhibition of mental deficiency is sufficient to justify such suspension. The test is to be found in the question whether the accused would have a fair trial, with the assistance which the law secures or gives; and it is obvious that under a system of procedure like ours where every accused person has legal counsel, it is not necessary to be so particular as it used to be in England where the accused had no advocate but himself.”⁸⁰ In the American jurisdiction, the issue of the accused’s “present insanity” or insanity at the time of the court proceedings is separate and distinct from his criminal responsibility at the time of commission of the act. The defense of insanity in a criminal trial concerns the defendant’s mental condition at the time of the crime’s commission. “Present insanity” is

⁷⁸ Pamaran, *The 1985 Rules on Criminal Procedure Annotated*, p. 322 [1998].

⁷⁹ In the landmark case of *United States v. Guendia*, 37 Phil. 337, 345 [1917], it was declared that:

“x x x [W]hen a judge of first instance is informed or discovers that an accused person is apparently in a present condition of insanity or imbecility, it is within his discretion to investigate the matter, and if it be found that by reason of any such affliction the accused could not, with the aid of his counsel, make a proper defense, it is the duty of the court to suspend the proceedings and commit the accused to a proper place of detention until his faculties are recovered. If, however, such investigation is considered unnecessary, and the trial proceeds, the court will acquit the accused if he be found exempt from criminal responsibility by reason of imbecility or lunacy. In such case an order for his commitment to an asylum should be made pursuant to the provisions of paragraph 2 of article 8 (1) of the Penal Code [now par. 2, Article 12 (1)].

⁸⁰ *United States v. Guendia*, 37 Phil. 337, 345 [1917]; also cited in Francisco, *Criminal Procedure*, p. 330 [1996] and Herrera, *Remedial Law*, vol. 4, pp. 384-385 [1992].

commonly referred to as “competency to stand trial”⁸¹ and relates to the appropriateness of conducting the criminal proceeding in light of the defendant’s present inability to participate meaningfully and effectively.⁸² In competency cases, the accused may have been sane or insane during the commission of the offense which relates to a determination of his guilt. However, if he is found incompetent to stand trial, the trial is simply postponed until such time as he may be found competent. Incompetency to stand trial is not a defense; it merely postpones the trial.⁸³

In determining a defendant’s competency to stand trial, the test is **whether he has the capacity to comprehend his position, understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, and to cooperate, communicate with, and assist his counsel to the end that any available defense may be interposed.**⁸⁴ This test is prescribed by state law but it exists generally as a statutory recognition of the rule at common law.⁸⁵ Thus:

“[I]t is not enough for the x x x judge to find that the defendant [is] oriented to time and place, and [has] some recollection of events, but that the test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.”⁸⁶

There are two distinct matters to be determined under this test: (1) whether the defendant is sufficiently coherent to provide his counsel with information necessary or relevant to constructing a defense; and (2) whether he is able to comprehend the significance of the trial and his relation to it.⁸⁷ The first requisite is the relation between the defendant and his counsel such that the defendant must be able to confer coherently with his counsel. The second is the relation of the defendant vis-a-vis the court proceedings, i.e., that he must have a rational as well as a factual understanding of the proceedings.⁸⁸

⁸¹ Pizzi, “Competency to Stand Trial in Federal Courts: Conceptual and Constitutional Problems,” 45 Univ. of Chicago Law Review 21-22 [1977]. The term “present insanity” was used in the case of *Youtsey v. United States*, 97 F. 937 [1899] to distinguish it from insanity at the time of commission of the offense.

⁸² 21 Am Jur 2d, Criminal Law, Sec. 97 [1981 ed.]; LaFave and Scott, Criminal Law, p. 333, 2d ed. [1986]; del Carmen, Criminal Procedure, Law and Practice, pp. 395-396, 3rd ed. [1995]; Ferdico, Criminal Procedure for the Criminal Justice Professional, pp. 55-56, 7th ed. [1999].

⁸³ *Id.*

⁸⁴ 21 Am Jur 2d, “Criminal Law,” Sec. 96; see list of cases therein; see also Raymond and Hall, California Criminal Law and Procedure, p. 230 [1999].

⁸⁵ *Id.*; see also LaFave and Scott, *supra*, at 333; Weihofen, Mental Disorder as a Criminal Defense, 430 [1954]. Long before legislation on competency to stand trial, the case of *Youtsey v. United States*, 97 F. 937 [1899] recognized that a federal court had the same wide discretion established by the common law when the question of present insanity was presented—*United States v. Sermon*, 228 F. Supp. 972, 982 [1964].

⁸⁶ *Dusky v. United States*, 362 US 402, 4 L ed 2d 824, 825, 80 S Ct 788 [1960]. This is commonly referred to as the “Dusky standard”—LaFave and Scott, *supra*, at 334-335, Note 26.

⁸⁷ LaFave and Scott, *supra.*; see also Notes: “Incompetency to Stand Trial,” 81 Harvard Law Review, 454, 459 [Dec. 1967].

⁸⁸ LaFave and Scott, *supra*, at 334.

The **determination of whether a sanity investigation or hearing should be ordered rests generally in the discretion of the trial court.**⁸⁹ **Mere allegation of insanity is insufficient.** There must be evidence or circumstances that raise a “reasonable doubt”⁹⁰ or a “bona fide doubt”⁹¹ as to defendant’s competence to stand trial. Among the factors a judge may consider is evidence of the defendant’s irrational behavior, history of mental illness or behavioral abnormalities, previous confinement for mental disturbance, demeanor of the defendant, and psychiatric or even lay testimony bearing on the issue of competency in a particular case.⁹²

In the case at bar, when accused-appellant moved for suspension of the arraignment on the ground of accused’s mental condition, the trial court denied the motion after finding that the questions propounded on appellant were intelligently answered by him. The court declared::

“x x x

It should be noted that when this case was called, the Presiding Judge asked questions on the accused, and he (accused) answered intelligently. As a matter of fact, when asked where he was born, he answered, in Tagug.

The accused could answer intelligently. He could understand the questions asked of him.

WHEREFORE, for lack of merit, the Urgent Motion to Suspend Arraignment and to Commit Accused to Psychiatric Ward at Baguio General Hospital, is hereby DENIED.

SO ORDERED.”⁹³

The fact that accused-appellant was able to answer the questions asked by the trial court is not conclusive evidence that he was competent enough to stand trial and assist in his defense. Section 12, Rule 116 speaks of an unsound mental condition that “effectively renders [the accused] unable to fully understand the charge against him and to plead intelligently thereto.” It is not clear whether accused-appellant was of such sound mind as to fully understand the charge against him. It is also not certain whether his plea was made intelligently. The plea of “not guilty” was not made by accused-appellant but by the trial court “because of his refusal to plead.”⁹⁴

⁸⁹ 21 Am Jur 2d, “Criminal Law,” Sec. 103 [1981 ed.].

⁹⁰ The term “reasonable doubt” was used in *Drope v. Missouri*, *supra*, at 118; *see also* LaFave and Scott, *supra*, Note 34, at 335-336.

⁹¹ In *Pate v. Robinson*, *supra*, at 822, the court used the term “bona fide doubt” as to defendant’s competence; *see also* LaFave and Scott, *supra*, Note 34, at 335-336.

⁹² 21 Am Jur 2d, “Criminal Law,” Sec. 104 [1981 ed.]; *Drope v. Missouri*, *supra*, at 118; *Pate v. Robinson*, *supra*, at 822.

⁹³ Order dated January 6, 1995, Records, p. 16.

⁹⁴ *See* Second Order of January 6, 1995, Records, p. 19.

The trial court took it solely upon itself to determine the sanity of accused-appellant. The trial judge is not a psychiatrist or psychologist or some other expert equipped with the specialized knowledge of determining the state of a person's mental health. To determine the accused-appellant's competency to stand trial, the court, in the instant case, should have at least ordered the examination of accused-appellant, especially in the light of the latter's history of mental illness.

c. *Gamas vs. Oco*, 425 SCRA 588

Compliance with the four duties of a judge (Section 6 of Rule 116 of the Rules of Court) during arraignment is mandatory and the only instance when the court can arraign without the benefit of counsel is if the accused waives such right and the court, finding the accused capable allows him to represent himself in person.

X X X

Once the accused informs the judge that he cannot afford a lawyer and the court has not allowed the accused to represent himself or the accused is incapable of representing himself, the judge has the duty to appoint a counsel de officio to give meaning and substance to the constitutional right of the accused to counsel.

4. Trial

a. *People of the Philippines v. Pedro Sasan Bariquit, et al.*, G. R. No. 122733, October 2, 2000

Beyond this, long-settled is the rule that the **discharge of a defendant, in order that he may be called to testify against his co-defendants, is within the sound discretion of the court,**⁹⁵ the **discharge of an accused in order that he may be utilized as a state witness is expressly left to the sound discretion of the court.**⁹⁶

Indeed, the Court has the exclusive responsibility to see that the conditions prescribed by the rule exist.⁹⁷ For the law seeks to regulate the manner of enforcement of the regulations in the sound discretion of the court. **The grant of discretion in cases of this kind under this provision was not a grant of arbitrary discretion to the trial courts, but such is to be exercised with due regard to the correct administration of justice.**

⁹⁵ *Lugtu vs. Court of Appeals*, 183 SCRA 388 [1990]; *People vs. Tabayoyong*, 104 SCRA 724 [1981]; *People vs. Bautista*, 106 Phil. 39 [1959]; *People vs. Ibañez*, 92 Phil. 936 [1953]. *People vs. Bautista*, 49 Phil. 389 [1926].

⁹⁶ *Ramos vs. Sandiganbayan*, 191 SCRA 671 [1990].

⁹⁷ *Ibid*; *People vs. Ibañez*, 92 Phil. 936 [1953].

Under these circumstances, the trial court, in ordering the discharge of Rogelio Lascuña as state witness, merely exercised its discretion in a manner consistent with the law and prevailing jurisprudence.

Even so, this Court has time and again declared that even if the discharged witness should lack some of the qualifications enumerated by Section 9, Rule 119 of the Rules of Court, his testimony will not, for that reason alone, be discarded or disregarded. In the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one. This is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant.⁹⁸

Stated differently, the **improper discharge, of an accused will not render inadmissible his testimony nor detract from his competency as a witness.**⁹⁹

Once the discharge is ordered, any future development showing that any, or all, of the five conditions have not been actually fulfilled, may not affect the legal consequences of the discharge,¹⁰⁰ and the admissibility and credibility of his testimony if otherwise admissible and credible.¹⁰¹ Any witting or unwitting error of the prosecution in asking for the discharge, and of the court granting the petition, no question of jurisdiction being involved cannot deprive the discharged accused of the acquittal provided by the Rules,¹⁰² and of the constitutional guarantee against double jeopardy.¹⁰³

b. *Jovencito R. Zuño v. Alejandrino C. Cabebe A. M. OCA No. 03-1800-RTJ, November 26, 2004, 444 SCRA 382 (2004)*

Respondent judge contends that the accused were entitled to their right to a speedy trial, hence, he granted bail without a hearing. He blames the prosecution for the delay.

Respondent's contention is bereft of merit. There is no indication in the records of the criminal case that the prosecution has intentionally delayed the trial of the case. Even assuming there was delay, this does not justify the grant of bail without a hearing. This is utter disregard of the Rules. **The requirement of a bail hearing has been incessantly stressed by this Court. In the same vein, the Code of Judicial Conduct enjoins judges to be conversant with the law and the Rules and maintain professional competence; and by the very nature of his office, should be circumspect in the performance of his duties. He must render justice without**

⁹⁸ *Mangubat v. Sandignbayan*, 135 SCRA 732 [1985].

⁹⁹ *People v. Aniñon*, 158 SCRA 701, 711 [1988].

¹⁰⁰ *Ibid.*

¹⁰¹ *People v. Bautista*, 106 Phil. 39 [1959].

¹⁰² Section 10, Rule 119, Rules of Court.

¹⁰³ *People v. Aniñon*, 158 SCRA 701, 711 [1988] citing *People vs. Mendiola*, 82 Phil. 740 [1949].

resorting to shortcuts clearly uncalled for. Obviously, respondent failed to live up to these standards.

c. *Rene S. Ong, et al. v. People of the Philippines, et al.*, G. R. No. 140904, October 9, 2000

It is true that the prerogative writ of certiorari does not lie to correct every controversial interlocutory order but is confined merely to questions of jurisdiction. Its function is to keep an inferior court within its jurisdiction and to relieve persons from arbitrary acts, meaning acts which courts or judges have no power or authority in law to perform. It is not designed to correct procedural errors or the court's erroneous findings and conclusions (*De Vera v. Pineda*, 213 SCRA 434 [1992]).

However, certiorari can be properly resorted to where the factual findings complained of are not supported by the evidence on record (*Congregation of the Religious of the Virgin Mary v. CA*, 291 SCRA 385 [1998]). As earlier observed, with the inadmissibility of the prosecution's documentary evidence, the trial court's finding of a prima facie case against petitioners is glaringly unsupported by the sole testimony of private complainant, hence the RTC resolution reversing the MeTC's denial of the demurrer to evidence cannot be said to be the "fruit" of grave abuse of discretion. Since the factual findings of the MeTC are devoid of support in the evidence on record, it was proper for the RTC to review said findings. Moreover, in order to determine whether or not there was grave abuse of discretion in denying the demurrer to evidence, the RTC had to inquire into the admissibility and sufficiency of the documentary and testimonial evidence submitted by the prosecution.

With the grant by the RTC of the demurrer to evidence, the same constituted a valid acquittal and any further prosecution of petitioners on the same charge would expose them to being put twice in jeopardy for the same offense. A dismissal of a criminal case by the grant of a demurrer to evidence is not appealable as the accused would thereby be placed in double jeopardy (See Regalado, Remedial Law Compendium, p. 441).

d. *Rodolfo G. Valencia v. Sandiganbayan*, G. R. No. 165996, October 17, 2005

Finally, if petitioner disagrees with the denial of his motion for leave to file demurrer to evidence, **his remedy is not to file a petition for certiorari but to proceed with the presentation of his evidence and to appeal any adverse decision that may be rendered by the trial court.** The last sentence of Section 23, Rule 119 of the Rules of Court, provides that "the order denying a motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or certiorari before judgment."

e. **Mary Helen Estrada v. People of the Philippines, G. R. No. 162371, August 25, 2005**

The holding of trial in absentia is authorized under Section 14 (2), Article III of the 1987 Constitution which provides that “after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been **duly notified and his failure to appear is unjustifiable**” In fact, in *People vs. Tabag*,¹⁰⁴ the Court even admonished the trial court for failing to proceed with the trial of some accused who escaped from preventive detention, to wit:

Finally, the trial court also erred in not proceeding with the case against Laureño Awod and Artemio Awod after their successful escape on 19 October 1989 while in preventive detention. They had already been arraigned. Therefore, pursuant to the last sentence of paragraph (2), Section 14, Article III of the Constitution, trial against them should continue and upon its termination, judgment should be rendered against them notwithstanding their absence unless, of course, both accused have died and the fact of such death is sufficiently established. Conformably with our decision in *People v. Salas*, their escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were to be deemed to have received notice. The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. This being so, then pursuant to *Gimenez v. Nazareno*, the trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion. Thereafter, the trial court had the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives’ re-appearance or re-arrest. They were deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.

It is obvious that the trial court forgot our rulings in *Salas* and *Nazareno*. We thus take this opportunity to admonish trial judges to abandon any cavalier stance against accused who escaped after arraignment, thereby allowing the latter to make a mockery of our laws and the judicial process. Judges must always keep in mind *Salas* and *Nazareno* and apply without hesitation the principles therein laid down, otherwise they would court disciplinary action.¹⁰⁵

From the foregoing pronouncement, it is quite clear that all of petitioner’s protestations that she was denied due process because neither she nor her counsel received notices of the trial court’s orders are all to naught, as by the mere fact that she jumped bail and could no longer be found, petitioner is **considered to have waived her right to be present at the trial, and she and her counsel were to be deemed to have received notice.**

¹⁰⁴ G.R. No. 116511, February 12, 1997, 268 SCRA 115

¹⁰⁵ *Id.*, at. 133-134.

Moreover, in the earlier case of *People vs. Magpalao*¹⁰⁶, the Court already ruled that:

. . . once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court.¹⁰⁷

Nevertheless, in this case, records reveal that the trial court sent out notices to petitioner and her counsel. In a Resolution dated September 30, 2002, the CA required the Office of the Solicitor General to submit proof of service on petitioner and her counsel of the RTC's Order dated March 31, 1997 setting the date for reception of evidence on May 14, 1997; the Order dated May 14, 1997 considering petitioner to have waived her right to present evidence in her defense in view of the fact that she has jumped bail; and the RTC Decision dated July 2, 1997. On December 20, 2002, the Office of the Solicitor General, submitted such proof of service. Thus, in its Decision promulgated on October 28, 2003, the CA made the factual finding that petitioner and her counsel were indeed duly served with copies of the assailed RTC orders and decision at the addresses they submitted to the trial court. Factual findings of the CA are conclusive on the parties and not reviewable by this Court.¹⁰⁸ As held in *Morandarte vs. Court of Appeals*,¹⁰⁹ "inquiry upon the veracity of the CA's factual findings and conclusion is not the function of the Supreme Court for the Court is not a trier of facts."

With the finding that petitioner and her counsel were duly notified of the hearing dates for reception of defense evidence and the decision of the trial court, in addition to the undisputed fact that petitioner jumped bail when trial of her case was pending, petitioner's argument that the RTC Decision was null and void for having been rendered in violation of petitioner's constitutional right to due process, i.e., the right to be heard and be assisted by counsel, must also fail.

Due process is satisfied when the parties are afforded a fair and reasonable opportunity to explain their respective sides of the controversy.¹¹⁰

In the present case, petitioner was afforded such opportunity. The trial court set a hearing on May 14, 1997 for reception of defense evidence, notice of which was duly sent to the addresses on record of petitioner and her counsel, respectively. When they failed to appear at the May 14, 1997 hearing, they later alleged that they were not notified of said setting. Petitioner's counsel never notified the court of any change in her address, while petitioner gave a wrong address from the very beginning, eventually jumped bail and evaded court processes. Clearly, therefore, petitioner and her counsel were given all the opportunities to be heard. They cannot now complain of alleged

¹⁰⁶ G.R. No. 92415, May 14, 1991, 197 SCRA 79.

¹⁰⁷ *Id.*, at. 87-88.

¹⁰⁸ *Fernandez v. Fernandez*, G. R. No. 143256, August 28, 2001, 416 Phil. 322, 337.

¹⁰⁹ G.R. No. 123586, August 12, 2004, 436 SCRA 213, 222.

¹¹⁰ *People v. Larrañaga*, G. R. Nos. 138874-75, February 3, 2004, 421 SCRA 530, 569.

violation of petitioner's right to due process when it was by their own fault that they lost the opportunity to present evidence.

f. *People of the Philippines v. Paterno B. Vitancur*, G. R. No. 128872, November 22, 2000

First. Accused-appellant claims that the trial court hastily appointed a counsel *de officio* to represent him, without his consent, during the initial trial on account of his counsel's absence. He argues that this is in violation of Art. 14 of the International Covenant of Civil and Political Rights to give him legal protection considering that he was charged with a heinous crime.¹¹¹

This argument is untenable. Accused-appellant's counsel was duly notified of the initial presentation of the prosecution evidence. However, without any prior notice to the trial court or any motion for the cancellation of the said hearing, he failed to appear at the trial. It appears that **in its desire to prevent any delay in the proceedings, the trial court appointed a counsel *de officio* for accused-appellant.** The latter proceeded to trial without making any comment or objection. He must therefore be **deemed to have consented as to the temporary representation by said counsel,** which was only for the purpose of the direct examination of private complainant. Contrary to accused-appellant's claim, the **appointment of a counsel *de officio* in his favor was very much in line with the trial court's duty to provide him the legal protection under the law he invoked, in view of the fact that his counsel *de parte*, despite due notice of the trial, failed to appear.** Besides, such action by the trial court did not prejudice his defense considering that he was able to lengthily cross-examine private complainant.

g. *Joel P. Libuit v. People of the Philippines*, G. R. No. 154363, September 13, 2005

Now, in this case, the only question of law properly raised is whether the petitioner was deprived of his constitutional right to counsel. In his Reply,¹¹² petitioner contends that the trial court should have appointed a counsel *de officio* when his counsel consistently failed to appear for his cross-examination.

The duty of the court to appoint a counsel *de officio* for the accused who has no counsel of choice and desires to employ the services of one is mandatory only at the time of arraignment. No such duty exists where the accused has proceeded to arraignment and then trial with a counsel of his own choice. Worth noting, when the time for the presentation of evidence for the defense arrived, and the defendant appeared by himself alone, the absence of his counsel was inexcusable.¹¹³

¹¹¹ Brief for the Accused-Appellant, *rollo*, pp. 63-64.

¹¹² *Rollo*, pp. 68-71.

¹¹³ Joaquin G. Bernas, S. J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* 502 (2003 ed.); See *Sayson v. People*, No. L-51745, 28 October 1988, 166 SCRA 680, 690-691; *People v. Serzo, Jr.*, G. R. No. 118435, 20 June 1997, 274 SCRA 553, 567.

In the present case, since the petitioner was represented by counsel *de parte* at the arraignment and trial, the trial court could not be deemed duty-bound to appoint a counsel *de officio* for the continuation of his cross-examination. Indeed, after his initial cross-examination, the trial court granted the petitioner's motion to postpone, giving him sufficient time to engage the services of another counsel. The failure of Atty. Jose Dimayuga, his newly hired lawyer, to appear at the subsequent hearings without reason was sufficient legal basis for the trial court to order the striking from the records of his direct testimony, and thereafter render judgment upon the evidence already presented. In fact, the repeated failure to appear of defendant's counsel at the trial may even be taken as a deliberate attempt to delay the court's proceedings.

At the most, **the appointment of a counsel *de officio* in a situation like the present case would be discretionary with the trial court, which discretion will not be interfered with in the absence of grave abuse.**¹¹⁴ This Court is convinced that the trial court had been liberal in granting postponements asked by the petitioner himself. We think that such liberality removes any doubt that its order was tainted with grave abuse of discretion.

h. *Leodegario Bayani v. People of the Philippines*, G. R. No. 155619, August 14, 2007

However, petitioner is barred from questioning the admission of Evangelista's testimony even if the same is hearsay. **Section 34, Rule 132 of the Rules of Court requires that the trial court shall not consider any evidence which has not been finally offered. Section 35 of the same Rule provides that as regards the testimony of a witness, the offer must be made at the time the witness is asked to testify.** And under Section 36 of the same Rule, objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the ground therefor becomes reasonably apparent.

Thus, it has been held that "in failing to object to the testimony on the ground that it was hearsay, the evidence offered may be admitted."¹¹⁵ Since no objection to the admissibility of Evangelista's testimony was timely made – from the time her testimony was offered¹¹⁶ and up to the time her direct examination was conducted¹¹⁷ – then petitioner has effectively waived¹¹⁸ any objection to the admissibility thereof and his belated attempts to have her testimony excluded for being hearsay has no ground to stand on.

¹¹⁴ *Sayson v. People*, Id., at. 691.

¹¹⁵ *Cabugao v. People of the Philippines*, G.R. No. 158033, July 30, 2004, 435 SCRA 624, 633.

¹¹⁶ TSN, June 29, 1993, pp. 4-6.

¹¹⁷ Id.

¹¹⁸ *Maunlad Savings and Loan Association, Inc. v. Court of Appeals*, 399 Phil. 590, 599 (2000).

5. Promulgation of judgment

a. *Marilyn C. Pascua v. Court of Appeals, et al.*, G. R. No. 140243, December 14, 2000

The resolution of the instant petition is dependent on the proper interpretation of Section 6, Rule 120 of the 1985 Rules on Criminal Procedure, which provides:

Section 6. Promulgation of judgment --The judgment is promulgated by reading the same in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel.

Incidentally, Section 6, Rule 120 of the Revised Rules of Criminal Procedure which took effect December 1, 2000 adds more requirements but retains the essence of the former Section 6, to wit:

Section 6. Promulgation of judgment. --The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the

accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

Promulgation of judgment is an official proclamation or announcement of the decision of the court (Jacinto, Sr., Commentaries and Jurisprudence on the Revised Rules of Court [Criminal Procedure], 1994 ed., p. 521). In a criminal case, promulgation of the decision cannot take place until after the clerk receives it and enters it into the criminal docket. It follows that when the judge mails a decision through the clerk of court, it is not promulgated on the date of mailing but after the clerk of court enters the same in the criminal docket (Ibid., citing *People v. Court of Appeals*, 52 O.G. 5825 [1956]).

According to the first paragraph of Section 6 of the aforesaid Rule (of both the 1985 and 2000 versions), the **presence in person of the accused at the promulgation of judgment is mandatory in all cases except where the conviction is for a light offense**, in which case the accused may appear through counsel or representative. Under the third paragraph of the former and present Section 6, any accused, regardless of the gravity of the offense charged against him, must be given notice of the promulgation of judgment and the requirement of his presence. He must appear in person or in the case of one facing a conviction for a light offense, through counsel or representative. The present Section 6 adds that if the accused was tried *in absentia* because he jumped bail or escaped from prison, notice of promulgation shall be served at his last known address.

Significantly, both versions of said section set forth the rules that become operative **if the accused fails to appear at the promulgation despite due notice: (a) promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused at his last known address or**

through his counsel; and (b) if the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused.

Here lies the difference in the two versions of the section. The old rule automatically gives the accused 15 days from notice (of the decision) to him or his counsel within which to appeal. **In the new rule, the accused who failed to appear without justifiable cause shall lose the remedies available in the Rules against the judgment. However, within 15 days from promulgation of judgment, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state in his motion the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within 15 days from notice.**

It thus appears that the judgment in a criminal case must be promulgated in the presence of the accused, except where it is for a light offense, in which case it may be pronounced in the presence of his counsel or representative (*Dimson v. Elepaño*, 99 Phil. 733 [1956]), and except where the judgment is for acquittal, in which case the presence of the accused is not necessary (*Cea, etc., et al. v. Cinco, et al.* 96 Phil. 31 [1954]). Notably, one of the conditions of the bail given for the provisional liberty of an accused in a criminal case is that he shall surrender himself (or the bondsman shall surrender the accused) for execution of the final judgment (Section 2[d], Rule 114, Revised Rules of Criminal Procedure). Thus, it follows that it is the responsibility of the accused to make himself available to the court upon promulgation of a judgment of conviction, and such presence is secured by his bail bond. This amplifies the need for the presence of the accused during the promulgation of a judgment of conviction, especially if it is for a grave offense. Obviously, a judgment of conviction cannot be executed --and the sentence meted to the accused cannot be served --without his presence. Besides, where there is no promulgation of the judgment, the right to appeal does not accrue (*People v. Jaranilla*, 55 SCRA 565 [1974]).

Jurisprudence further dictates that the absence of counsel during the promulgation will not result in a violation of any substantial right of the accused, and will not affect the validity of the promulgation of the judgment (*Bernardo v. Abeto*, CA-G. R. No. 6076, 31 January 1940; *Gonzales v. Judge*, 186 SCRA 101 [1990]).

In the vintage case of *Cea, etc., et al. v. Cinco, et al* (supra), the Court citing *U. S. v. Beecham*, (28 Phil. 258 [1914]), stated the reasons for requiring the attendance of the accused in case of conviction for a grave or less grave offense, to wit:

...The common law required, when any corporal punishment was to be inflicted on the defendant, that he should be personally present before the court at the time of pronouncing the sentence. (1 Chitty's Crim. Law [5th Am. ed.], 693, 696.) Reasons given for this are, that the defendant may be identified by the court as the real party adjudged to be punished (Holt, 399); that the defendant may have a chance to plead or move in arrest of judgment (*King vs. Speke*, 3 Salk.,

358); that he may have an opportunity to say what he can say why judgment should not be given against him (2 Hale's Pleas of the Crown, 401, 402); and that the example of the defendants, who have been guilty of misdemeanors of a gross and public kind, being brought up for the animadversion of the court and the open denunciation of punishment, may tend to deter others from the commission of similar offenses (Chitty's Crim. Law [5th ed.], 693, 696) ***."

Nevertheless, as mentioned above, **regardless of the gravity of the offense, promulgation of judgment *in absentia* is allowed under the Rules. The only essential elements for its validity are: (a) that the judgment be recorded in the criminal docket; and (b) that a copy thereof shall be served upon the accused or counsel.**

X X X

What is the significance of the recording of the judgment with the criminal docket of the court? By analogy, let us apply the principles of civil law on registration.

To register is to record or annotate. American and Spanish authorities are unanimous on the meaning of the term "to register" as "to enter in a register; to record formally and distinctly; to enroll; to enter in a list" (*Po Sun Tun vs. Prize and Provincial Government of Leyte*, 54 Phil. 192 [1929]). In general, registration refers to any entry made in the books of the registry, including both registration in its ordinary and strict sense, and cancellation, annotation, and even the marginal notes. In strict acceptance, it pertains to the entry made in the registry which records solemnly and permanently the right of ownership and other real rights (*Ibid.*). Simply stated, registration is made for the purpose of notification (Paras, *Civil Code of the Philippines*, Vol. II, 1989 ed., p. 653, citing *Bautista vs. Dy Bun Chin*, 49 O.G. 179 [1952]).

Registration is a mere ministerial act by which a deed, contract, or instrument is sought to be inscribed in the records of the Office of the Register of Deeds and annotated at the back of the certificate of title covering the land subject of the deed, contract, or instrument. Being a ministerial act, it must be performed in any case and, if it is not done, it may be ordered performed by a court of justice (Cruz, *The Law of Public Officers*, 1997 ed., p. 102). In fact, the public officer having this ministerial duty has no choice but to perform the specific action which is the particular duty imposed by law. Its purpose is to give notice thereof to all persons. It operates as a notice of the deed, contract, or instrument to others, but neither adds to its validity nor converts an invalid instrument into a valid one between the parties. If the purpose of registration is merely to give notice, then questions regarding the effects or invalidity of instruments are expected to be decided after, not before, registration. It must follow as a necessary consequence that registration must first be allowed, and validity or effect of the instruments litigated afterwards (*Seron vs. Hon. Rodriguez, etc., and Seron*, 110 Phil. 548 [1960]; *Gurbax Singh Pabla & Co., et al. vs. Reyes, et al.*, 92 Phil. 177 [1952]; *Register of Deeds of Manila vs. Tinoco Vda. De Cruz*, 95 Phil. 818 [1954]; *Samanilla vs. Cajucom, et al.*, 107 Phil. 432 [1960]).

Applying the above-mentioned principles to the instant case, we are prompted to further examine the provisions on promulgation *in absentia*.

As held in *Florendo vs. Court of Appeals* (239 SCRA 325 [1994]), the rules allow promulgation of judgment *in absentia* to obviate the situation where juridical process could be subverted by the accused jumping bail. But the Rules also provide measures to make promulgation in absentia a formal and solemn act so that the absent accused, wherever he may be, can be notified of the judgment rendered against him. As discussed earlier, the sentence imposed by the trial court cannot be served in the absence of the accused. Hence, all means of notification must be done to let the absent accused know of the judgment of the court. And the means provided by the Rules are: (1) the act of giving notice to all persons or the act of recording or registering the judgment in the criminal docket (which Section 6 incidentally mentions first showing its importance; and (2) the act of serving a copy thereof upon the accused (at his last known address) or his counsel. In a scenario where the whereabouts of the accused are unknown (as when he is at large), the recording satisfies the requirement of notifying the accused of the decision wherever he may be.

b. *People of the Philippines v. Court of Appeals*, G. R. No. 140285, September 27, 2006

The trial court correctly cancelled respondent's bail because of his failure to appear during the promulgation of judgment despite notice. He violated the condition of his bail that he must appear before the proper court whenever so required by that court or the Rules.¹¹⁹ Simply stated, he jumped bail. As such, his arrest, as ordered by the trial court, is proper.¹²⁰ This is in accordance with Section 6, Rule 120 of the Revised Rules on Criminal Procedure which provides in part, thus:

SEC. 6. Promulgation of judgment. – The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. x x x

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. x x x

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence

¹¹⁹ Section 2(b), Rule 114, Revised Rules on Criminal Procedure

¹²⁰ *Maguddatu v. Court of Appeals*, G.R. No. 139599, February 23, 2000, 326 SCRA 362.

was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

The last paragraph of Section 6 quoted above authorizes the promulgation of judgment in absentia in view of respondent's failure to appear despite notice. It bears stressing that the rule authorizing promulgation in absentia is intended to obviate the situation where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment.¹²¹

Here, respondent tried in vain to subvert the judicial process by not appearing during the promulgation of judgment. Thus, **he lost his remedies against the judgment.** In fact, he cannot challenge successfully the cancellation of his bail by the trial court. The Court of Appeals certainly erred in enjoining the arrest of respondent. Its declaration that respondent might flee or commit another crime is conjectural utterly lacks merit. Respondent already demonstrated that he is a fugitive from justice.

¹²¹ Agpalo, *Handbook on Criminal Procedure* (Revised Rules of Criminal Procedure, effective December 1, 2000), citing *Florendo v. Court of Appeals*, 239 SCRA 325 (1994); *People v. Prades*, 293 SCRA 411 (1998).