The Kuratong Baleleng Gang Case- A Saga Revisited*

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Introduction

On May 18, 1995[1], at around 4:00 A.M., eleven (11) known members of the Kuratong Baleleng Gang (KBG) figured in a shootout with the police forces during an operation conducted by the Anti-Bank Robbery and Intelligence Task Group (ABRITG) near the fly-over along Commonwealth Avenue in Quezon City. All of the 11 perished that fateful day.

Later, two members of the police team alleged that the killing was in reality a summary execution, or, in popular parlance, a rubout.

Thus began the saga of the infamous Kuratong Baleleng Gang case.

On November 2, 1995,[2] the Ombudsman filed with the Sandiganbayan eleven (11) informations for murder against Senator Panfilo Lacson who was, at the time the alleged murders took place, Chief Superintendent and head of the Presidential Anti-Crime Commission (PACC). He was charged, along with 25 other accused, for the wrongful killing of the 11 members of the KBG. Upon motion of Lacson, the criminal cases were remanded to the Ombudsman for reinvestigation. Subsequently, his participation in the crime was downgraded from principal to accessory. He pleaded not guilty[3] when arraigned.

On account of the downgrading of his criminal liability, Lacson consequently questioned the jurisdiction of the Sandiganbayan to hear the criminal cases against him, considering that, as stated in the amended information, none of the principal accused was a government official with

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1 As found in the Resolution of Judge Wenceslao Agnir, Jr. in Criminal Cases Nos. Q-99-81679 to Q-99-81689, dated March 29, 1999, p. 1.

2 Lacson vs. Executive Secretary, GR. 128096, January 20, 1999.

3 *See* Court of Appeals Decision dated August 24, 2001, p. 5.

a salary grade (SG) of 27 or higher, as required by Section 2 of Republic Act No. 7975 which was then in force. Finding Lacson's contention meritorious, the Sandiganbayan ordered the cases transferred to the Regional Trial Court.[4]

The Office of the Special Prosecutor filed a motion for reconsideration of the order to transfer. Pending resolution of the motion, R.A. No. 8429[5] took effect on February 23, 1997, amending R.A. No. 7975[6], which deleted the word *principal* from Section 2 of the earlier law. The amendment[7] effectively expanded the jurisdiction of the Sandiganbayan to include all cases where at least one of the accused, whether charged as principal, accomplice or accessory, is a government official with SG 27 or higher. The amendment applied to all cases pending in any court in which the trial is yet to begin as of the new law's enactment.[8]

Lacson challenged the constitutionality of the amendment. The Supreme Court dismissed the constitutional challenge but still ordered the transfer of the criminal cases to the Regional Trial Court, holding that the

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4 Ibid.

5 An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the purpose Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes.

6 Sec. 2. Section 4 of the same Decree is hereby further amended to read as follows:
"Sec. 4. Jurisdiction. The Sandiganbayan shall exercise original jurisdiction in all cases involving:

"a. Violations of ***Republic Act*** *No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices* ***Act, Republic Act*** *No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code,* ***where one or more of the principal accused*** *are officials occupying the following positions in the government, whether in permanent, acting or interim capacity, at the time of the commission* of the offense

7 Section 4. Section 4 of the same decree is hereby further amended to read as follows:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, **where one or more of the accused are officials** occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

8 C.A. Decision, p. 6.

amended informations for murder failed to indicate that the offenses charged therein were committed in relation to, or in discharge of, the official functions of respondent, as required by R.A. No. 8249.[9]

The criminal cases against respondent were raffled off to Branch 81 of the Regional Trial Court of Quezon City, then presided by Judge Wenceslao Agnir, now retired Associate Justice of the Court of Appeals.

Before Lacson could be arraigned, prosecution witnesses recanted their affidavits implicating him in the murder cases. Likewise, seven (7) of the 11 complainants executed separate affidavits of desistance declaring lack of interest to prosecute the cases.

Accordingly, Lacson, along with his co-accused, filed identical motions asking the court to:

(1) make a judicial determination of the existence of probable cause for the issuance of warrants of arrest;
(2) hold in abeyance the issuance of the warrants; and
(3) dismiss the cases should the trial court find lack of probable cause.[10]

On March 29, 1999, Judge Agnir issued a resolution dismissing the criminal cases against all the accused for lack of probable cause.

On March 27, 2001, then PNP Director Leandro Mendoza endorsed the affidavits executed by new witnesses Police Insp. Ysmael S. Yu and Police Sr. Insp. Abelardo Ramos to the Department of Justice for preliminary investigation. Based on this endorsement, then Secretary of Justice Hernando Perez formed a panel to investigate the matter. On April 17, 2001, Lacson was subpoenaed to attend the investigation.

On May 28, 2001, Lacson and his co-accused, invoking, among others, their constitutional right against double jeopardy, filed with the Regional Trial Court of Manila a petition for prohibition with application for temporary restraining order and/or writ of preliminary injunction to enjoin the State prosecutors from conducting the preliminary

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[9] Lacson vs. Executive Secretary, 301 SCRA 298 (1999).
[10] See People vs. Lacson, G.R. No. 149453, May 28, 2002

investigation. The petition, docketed as Civil Case No. 01-100933,[11] was raffled off to Branch 40, presided by Judge Herminia Pasamba.

Judge Pasamba, in an Order dated June 5, 2001, denied the petition.

On June 6, 2001, 11 informations for murder involving the killing of the same members of the KBG were filed before the RTC of Quezon City and were docketed as Criminal Cases Nos. 01-101102 to 01-101112.[12] Lacson and his 25 co-accused were charged as principals in the wrongful killing of the KBG members. The criminal cases were raffled to the sala of Judge Theresa Yadao of RTC-Quezon City, Branch 81.

Meanwhile, Lacson filed with the Court of Appeals a petition for review on certiorari of the denial of his petition for prohibition by Judge Pasamba. He stressed therein the applicability in his case of Section 8, Rule 117 of the Revised Rules on Criminal Procedure.[13] He claims, among others, that cases similar to those filed against him (where the penalty imposable is imprisonment of six [6] years or more) cannot be revived after the lapse of two years from the date the order of provisional dismissal was issued.

On June 8, 2001, Lacson also filed in the criminal cases before RTC-Quezon City, Branch 81 a motion for judicial determination of probable cause and in the absence thereof, for the outright dismissal of the case.

On June 13, 2001, he filed a manifestation and motion to suspend the proceedings before the trial court.

In the interim, the Court of Appeals issued a temporary restraining order enjoining Judge Yadao from issuing a warrant of arrest or conducting any proceeding or hearing in Criminal Cases Nos. 01-101102 to 01-1011112. The TRO was made permanent on August 24, 2001,[14] after the Court of Appeals granted Lacson's petition for review. The appellate court held that the proceedings conducted by the State prosecutors with respect to the criminal cases filed in Quezon City are null

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[11] See Decision by RTC Judge Theresa Yadao dated November 12, 2003.
[12] Ibid.
[13] See Lacson vs. Herminia Pasamba, et.al., CA GR No. SP No. 65034, August 24, 2001
[14] Ibid.

and void, and consequently ordered the dismissal of the new informations filed before the RTC-Quezon City.

Thereafter, the Office of the Solicitor General filed a petition for review on certiorari before the Supreme Court assailing the decision of the Court of Appeals.

For its part, the Supreme Court, in an e*n banc* resolution,[15] held that Lacson can invoke Section 8, Rule 117 of the Revised Rules of Criminal Procedure. However, it added that due to lack of sufficient factual bases, it could not itself determine whether or not said rule applied to Lacson's case. It then ordered the remand of the case to the RTC-Quezon City, Branch 81,

> "so that the State prosecutor and respondent Lacson can adduce evidence and be heard on whether the requirements of Section 8, Rule 117 have been complied with on the basis of the evidence of which the trial court should make a ruling on whether the Informations in Criminal Cases Nos. 01-101102 to 01-101112 should be dismissed or not."[16]

The OSG thereafter moved for the reconsideration of the e*n banc* resolution.

The Supreme Court's Ruling

In its decision, the Supreme Court declared that Section 8, Rule 117 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, can be given retroactive effect just like any other rule favorable to the accused. However, certain factual issues, upon which the application of the new rule depends, must first be resolved. In the cases involving Lacson, there is a need to provide answers to the following questions:

(a) was the provisional dismissal of the cases with the express consent of the accused?

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[15] People vs. Lacson, GR No. 149453, May 28, 2002.

[16] People vs. Lacson, et. al., CC Nos. Q-01-101102 to Q-01-101112, November 12, 2003; quoting the Supreme Court in GR No. 149453.

(b) did the court order the dismissal after notice to the offended party?

(c) has the two-year period to revive the cases as provided under the new rules already lapsed? and

(d) is there a justification for the filing of the cases beyond the two-year period?

The Court found that the provisional dismissal of the cases against Lacson bore his express consent, as it was Lacson himself who moved for the dismissal of the cases for lack of probable cause. However, the Court found the records to be inconclusive as to whether notices were given to the offended parties before the cases against Lacson were dismissed. The relatives of the victims who executed the affidavits of desistance did not appear in court to affirm their affidavits. Instead, it was Atty. Godwin Valdez who presented their affidavits of desistance, claiming that he assisted the private complainants in preparing their affidavits and that he signed the same as a witness.

It appeared from the case records that only seven persons submitted their affidavits of desistance and it could not be determined whether the relatives of the three other victims likewise executed affidavits of desistance.

According to the Supreme Court, the records do not support the finding made by the appellate court that the prosecution and the offended parties were notified of the hearing on the affidavits of desistance. The finding made by the Court of Appeals is contrary to then Judge Agnir's finding that only seven of the complainants submitted affidavits of desistance.

The Court observed that the issue of whether or not the reinvestigation is barred by Section 8, Rule 117, was not tackled before Judge Pasamba as in fact the sole issue raised therein was whether or not the reinvestigation will violate Lacson's right against double jeopardy. The applicability of Section 8, Rule 117 was, in fact, never considered in the trial court; the argument that Section 8, Rule 117 bars revival of the multiple murder cases against him was raised by Lacson for the first time before the Court of Appeals.

In any event, according to the Supreme Court, the reckoning date of the two-year bar must first be determined — (a) from the date of the order of dismissal by Judge Agnir; (b) from the dates copies of the order were received by the various offended parties; or (c) from the date of the effectivity of the new rule.

Finally, the Court said that the new rule fixes a timeline to penalize the State for its inexcusable delay in prosecuting cases already filed in courts. The State must therefore present compelling reasons to justify the revival of cases beyond the two-year bar.

Retroactive or Prospective – The Bigger Picture

The basic legal principle in Remedial Law that laws of procedure may be given retroactive effect provided they are favorable to the accused is not absolute. In retroactively applying a procedural rule, substantial rights must not be impaired.[17] Even when a procedural rule is favorable to the accused, the State has the paramount duty to protect the interest of the greater majority, which duty cannot be ignored. [18] This clash of rights demands a delicate balancing of the interests involved, which is a fundamental postulate of constitutional law.[19] These interests usually consist in the exercise by an individual of his basic freedoms on one hand, and government's promotion of fundamental public interest or policy objectives on the other.[20]

Lacson invokes Section 8, Rule 117 of the 2000 Rules on Criminal Procedure to bar the re-filing of the criminal cases against him. He supports this argument by invoking his constitutional right to a speedy disposition of his case. On the other hand, the State posits that Section 8, Rule 117 should not be retroactively applied as it deprives it of a reasonable opportunity to fairly indict criminals. The query then should be: absent Section 8, Rule 117, can the state still prosecute Lacson despite the dismissal by Judge Agnir of the original criminal cases filed against him? This writer submits that the answer is in the affirmative.

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17 *Bernardo vs. Court of Appeals*, 168 SCRA 439.
18 *Secretary of Justice vs. Lantion*, 343 SCRA 377.
19 *See Malayan Insurance Co. vs. Smith, Bell, & Co.*, 101 SCRA 61, citing *Republic vs. Purisima*, 78 SCRA 470.
20 *See Blo Umpar Adiong vs. Commission on Elections*, 207 SCRA 712.

The dismissal by then Judge Agnir of the cases against Lacson was premised on Section 2, Article III[21] of the 1987 Constitution. In his Motion for Judicial Determination of Probable Cause and for Examination of Witnesses filed with Judge Agnir, Lacson prayed for the following relief:

> 1) That a judicial determination of probable cause pursuant to Section 2, Article 111 of the Constitution be conducted by this Honorable Court, and for this purpose, an order be issued directing the prosecution to present the private complainants and their witnesses at a hearing scheduled therefor; and
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> 2) That warrants for the accused-movants be withheld, or, if issued, recalled in the meantime until the resolution of this incident.[22]

Lacson's motion had the effect of a quashal, since he clearly filed the same prior to his arraignment before Judge Agnir's court. Judge Agnir held that:

> "xxx the documents attached to the Informations in support thereof have been rendered meaningless, if not absurd, with the recantation of the principal prosecution witnesses and the desistance of the private complainants. There is no more evidence to show that a crime has been committed and that the accused are probably guilty thereof. xxx" *(Underscoring Supplied)*

Under the circumstances then obtaining, the prosecution had to its disposal certain remedies against the order of dismissal. Prior to its amendment, the Rules on Criminal Procedure, under Section 6, Rule 117 provides that the quashal of the Information is not a bar to another prosecution for the same offense except when the motion was based on the extinction of criminal action or liability or on the fact that the accused has

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[21] Sec. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complaint and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[22] Resolution of Judge Agnir

been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.[23] *(Underscoring Supplied)*

There is no dispute that the dismissal by Judge Agnir of the information filed against Lacson does not fall under any of the above stated exceptions.

As of the time of the re-filing on June 6, 2001 of the 11 informations for murder, a little over two years have elapsed since the original informations were dismissed on March 29, 1999. If one added to that the four years that have elapsed from the time the crime happened on May 18, 1995 until the dismissal of the cases by Judge Agnir on March 29, 1999, then only six years would have passed since the crime happened. The period of six years is computed without even taking into consideration the suspension of the running of the period due to the filing of the informations.

This period of six years is well within the 20-year period of prescription, under Article 90 of the Revised Penal Code, for prosecution for murder. Denying to the State the right to prosecute Lacson and his co-accused after March 29, 2001, two years from the date the original cases were dismissed, effectively nullifies the right of the State to prosecute the accused. This cuts short the prescriptive period for murder from 20 years to a mere six years.

The filing of the complaint or information interrupts the period of prescription of offenses, but said period shall commence to run again after such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to the accused.[24] Undeniably, the proceedings before the trial court was terminated without Lacson being convicted or acquitted, hence the period of prescription for his offense commenced to run again after the date of termination. However, by the time the prosecution filed new informations against him, based on new investigations conducted thereon, only six years (as computed above) have passed, which is clearly still within the prescriptive period of the crime for which Lacson is being charged.

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[23] Sec. 3, pars. (f) and (h), Rule 117, Revised Rules of Court.
[24] Art. 91, Revised Penal Code.

Lacson cannot invoke his right against double jeopardy since, as previously pointed out, Judge Agnir dismissed the informations against him before Lacson could be arraigned. It is elementary that without a valid arraignment, the first jeopardy does not attach.

Prior to the amendment of the rules, the State may gather enough evidence to support its case, as it did in the cases against Lacson when new witnesses emerged, and to file new informations for the same offense, pursuant to Section 6 of Rule 117.

The rule on prescription of crimes recognizes this right of the State to be given ample opportunity to prosecute violators of its laws, on one hand, and, on the other, the right of the accused to have the case against him disposed of within the soonest possible time. It cannot be gainsaid that both these rights are substantive.

Rule Making Power of the Supreme Court

It must be stressed that the rule making power of the Supreme Court is limited only by the fact that the same shall not diminish, increase or modify substantive rights. While procedural rules laid down by the Supreme Court may be given retroactive application, no substantive rights must thereby be impaired.[25]

In *Reodica vs. Court of Appeals*[26] the Court said:

> "It must be stressed that prescription in criminal cases is a matter of substantive law. Pursuant to Sec 5 (5), Article VIII of the Constitution, this Court, in the exercise of its rule-making power, is not allowed to diminish, increase, or modify substantive rights. Hence, in case of conflict between the Rule on Summary Procedure promulgated by this Court and the Revised Penal Code, the latter prevails."

The foregoing ruling is of course consistent with the constitutional mandate that delimits the rule-making[27] power of the Honorable Supreme Court.

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[25] Duremdes vs. Court of Appeals, 178 SCRA 746 (1989)
[26] 292 SCRA 87 (1998).
[27] Sec. 5. The Supreme Court shall have the following powers:

It is readily apparent that Section 8 should only be given prospective application as it is in the nature of a penalty. It attempts to punish the State for its failure to prosecute a particular case within the period prescribed in the new rule. It almost has the effect of delimiting the prescriptive period of offenses provided in the Revised Penal Code.

As the Court held: "When the Court approved Section 8, it intended the new rule to be applied prospectively and not retroactively, for if the intention of the Court were otherwise, it would defeat the very purpose for which it was intended, namely, to give the State a period of two years from notice of the provisional dismissal of criminal cases with the express consent of the accused."[28]

While Lacson has the constitutional right to a speedy disposition of the cases against him, so does the State have the right to prosecute alleged criminals. As the Supreme Court held in *Domingo vs. Sandiganbayan*:[29]

> "xxx The concept of speedy disposition of cases is a relative term and must necessarily be a flexible concept. Hence, the doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are the length of delay, the reasons for such delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay.[30] The right of an accused to a speedy trial is guaranteed to him by the Constitution, but the same shall not be utilized to deprive the State of a reasonable opportunity of fairly indicting criminals. **It secures rights to an accused, but it does not preclude the rights of public justice.**[31] *(Underscoring Supplied)*

While the Court recognizes the right to speedy disposition quite distinctly from the right to a speedy trial, and although the same Court has

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(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, practice, and procedure in all courts, the admission to the practice of law, the Integrated bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase or modify substantive rights. x x x

28 People vs. Lacson, GR. No. 149453, October 7, 2003.

29 322 SCRA 655 (2000)

30 *Alvizo vs. Sandiganbayan*, 220 SCRA 55 (1993).

31 *People vs. Gines, et. al.*, 197 SCRA 488 (1991).

always zealously espoused protection from oppressive and vexatious delays not attributable to the party involved, it has, at the same time, held that a party's individual rights should not work against and preclude the people's equally important right to public justice. [32]

The Supreme Court likewise held in *Sumbang, Jr. vs. Gen. Court Martial PRO-Region 6, Iloilo City:*[33]

> "In the instant case, two teenagers, namely Joemarie Bedia and Joey Panes, were killed allegedly by petitioner. We find that petitioner failed to seasonably assert his right and since the membership of the court-martial had undergone changes which could not be attributable to the machination and control of the respondent, we hold that substantial justice will be best served if the trial of this case will be allowed to continue until its resolution." *(Underscoring Supplied)*

Given the fact that even the Supreme Court recognizes the possibility that the new Rule has the effect of penalizing the State for inexcusable delay in prosecuting criminal cases, it would not be amiss to say that, if application of the new rule were to be made prospective, the two-year period must be reckoned, at the very least, from the date of effectivity of said rule and not from the time when the case was first dismissed. This is but fair considering that when the case was dismissed there was as yet no such rule to speak of.

This writer submits that rules of procedure should be utilized to determine the truth and to render substantial justice.

Contrary to what then Judge Agnir believed, we cannot write *finis* to these cases and lay to rest the ghost of the incident of May 18, 1995. For, until we truly ferret out the truth as to what transpired that fateful day, nobody – not the accused, not the witnesses, not the private complainants, and not the public who deserve to know the truth – can get on with their lives.

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[32] Guerrero vs. CA , 257 SCRA 703

[33] 337 SCRA 227 (2000).

Epilogue

In a Resolution dated April 1, 2003, the Supreme Court, voting 10-4-1, granted the motion filed by the Office of the Solicitor General for reconsideration of its May 28, 2002 resolution. The Court reversed its earlier ruling and this time held that Lacson and his co-accused cannot invoke Section 8, Rule 117 because the requirements of said provision were not complied with when the cases were provisionally dismissed on March 29, 1999. Moreover, said provision cannot be applied retroactively since doing so would be unfair to the State. The Court directed RTC-Quezon City, Branch 81 to forthwith proceed with the trial of the cases.

Lacson moved for reconsideration of said resolution. On October 7, 2003, the Supreme Court, this time voting 8-4, denied the motion but modified its April 1, 2003 resolution by ordering that the cases be re-raffled among the special criminal courts of RTC-Quezon City.

Thereafter, nine identical motions for judicial determination of the existence of probable cause, all praying for the dismissal of the criminal cases should there be a finding of lack of probable cause, were filed by the following accused, to wit: accused Panfilo M. Lacson dated July 8, 2001 (with a Supplemental Motion dated October 9, 2003); accused Jewel F. Canson dated June 8, 2001; accused Almario A. Hilario and Ricardo G. Dandan dated June 9, 2001; accused Jose Erwin T. Villacorte, Joselito T. Esquivel, Osmundo B. Cariño, and Roberto O. Agbalog dated June 18, 2001; accused Gil C. Meneses dated June 25, 2001; accused Romeo M. Acop and Francisco G. Zubia Jr. dated October 9, 2003; accused Angelito N. Caisip dated October 13, 2003; accused Zorobabael S. Laureles dated October 14, 2003; and accused Antonio Frias dated October 16, 2003.

On November 12, 2003, Judge Theresa Yadao**,** finding that no probable cause exists for the issuance of warrants of arrest against any or all of the accused, granted the aforesaid motions and ordered the dismissal of Criminal Cases Nos. Q-01-101102 to 01-101112**.**[34]

[34] See Decision by RTC Judge Theresa Yadao dated November 12, 2003, Supra note 11.