REMEDIAL LAW

PART II

CRIMINAL PROCEDURE

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Philippine criminal procedure in its present state provides a fertile field for comment and criticism, and this observation can well apply to the jurisprudential output in 1973 in this area of remedial law. Hence what follow are strewn with comments and criticisms. These comments and criticisms (and many others which can be made but are beyond the scope of this survey) have long called for expression, and it may be said that they are of particular relevance, if not urgency, at this time when the Supreme Court is in the process of refashioning and updating the codal rules of procedure. They are here stated with the hope that the problems pointed out and the suggestions made will at least reach the attention of the Court, which might find room for their consideration either in its task of framing a new set of codal rules or in its future decisions.

JURISDICTION

1. CHALLENGE OF JURISDICTION

Applicability of estoppel

Among the more ancient and deeply-rooted principles of Philippine jurisprudence are the following:

1. Jurisdiction over the subject matter is conferred only by law; it does not depend on the consent or objection, on the acts or omissions of the parties.[1]

2. In criminal as in civil cases, the question of lack of jurisdiction may be raised at any time, *i.e.*, at any stage of the proceedings.[2]

3. No estoppel can arise out of an error or question of law,[3] and

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[1] Manila Railroad Co. v. Attorney-General, 20 Phil. 523 (1911); Banco Español-Filipino v. Palanca, 37 Phil. 921 (1918); Perez v. Tuason de Perez, 109 Phil. 654 (1960); Sonora v. Tongoy, G.R. No. L-33095, April 19, 1972, 44 SCRA 411, 416 (1972).

[2] Vda. de Roxas v. Rafferty, 37 Phil. 957 (1918); People v. Que Po Lay, 94 Phil. 640 (1954); Palanca v. Philippine Commercial & Industrial Bank, L-28713, May 31, 1972, 45 SCRA 331; Valera v. Court of Appeals, G.R. No. L-29416, January 28, 1971, 37 SCRA 80, 86 (1971).

[3] Tañada v. Cuenco, 103 Phil. 1051 (1957).

whether a court has jurisdiction or not is a matter of law.[4]

Once, these principles seemed absolute, steadfast and immutable. They are so no longer. An exception, to which *Ong Ching v. Ramolete*[5] (a civil case) and *People v. Casuga*[6] add new roots to make it more firmly established, has entrenched itself upon their field of application. This is the doctrine, supposed to be based on the principle of estoppel, that if a party has once invoked the jurisdiction of the court, he cannot thereafter challenge that court's jurisdiction in the same case.[7] *People v. Casuga*[8] provides an apt illustration of this doctrine. The offense charged in that case was grave slander, which falls within the concurrent original jurisdiction of the municipal court and the Court of First Instance, the penalty thereto being *arresto mayor* maximum to *prisión correccional* minimum. The case was filed in the municipal court which convicted the defendant and sentenced her to pay a fine of ₱20.00 with subsidiary imprisonment and to pay the costs. Instead of appealing to the Court of Appeals or the Supreme Court as provided in Section 45 of the Judiciary Act, as amended by Republic Act No. 6031, the defendant appealed to the Court of First Instance where she was re-arraigned and tried *de novo* and finally convicted of slight slander and sentenced to pay a fine of ₱50.00 with subsidiary imprisonment, the costs, and ₱500.00 by way of indemnity to the offended party. In her appeal to the Supreme Court, the defendant claimed for the first time, as one of her grounds for attacking the judgment of the Court of First Instance, that the court had no jurisdiction to entertain her appeal. It was held that she was barred by the doctrine of estoppel already adverted to. Citing fairly recent decisions,[9] the court explained that, while the jurisdiction of a tribunal may be challenged at any time,

> x x x the ends of justice would not be served if such belated jurisdictional questions were to be entertained and the proceedings nullified — when the court's jurisdiction had been invoked all the time by the party who would now belatedly question its jurisdiction because of its adverse decision.

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[4] People v. Casiano, G.R. No. L-15309, February 16, 1961, 1 SCRA 478, 496 (1961), citing 5 C.J.S. *Appeal & Errors*, 861-863 (1958). See also 23A C.J.S. *Criminal Law*, 274 (1961).

[5] G.R. No. L-35356, May 18, 1973, 51 SCRA 13, 20 (1973).

[6] G.R. No. L-37642, October 22, 1973, 53 SCRA 278 (1973).

[7] People v. Casiano, G.R. No. L-15309, Feb. 16, 1961, 1 SCRA 478 (1961); Tijam v. Sibonghanoy, G.R. No. L-21450, April 15, 1968, 23 SCRA 29, 36 (1968); Rodriguez v. Court of Appeals, G.R. No. L-29264, Aug. 29, 1969, 29 SCRA 419 (1969); Quimpo v. De la Victoria, G.R. No. L-31822, July 31, 1972, 46 SCRA 139, 145 (1972). Libudan v. Gil, G.R. No. L-21163 and G.R. No. L-25495, May 17, 1972, 45 SCRA 17 (1972).

[8] *Supra*, note 6.

[9] Calderon v. Public Service Commission, G.R. No. L-29228, April 30, 1971, 38 SCRA 624, 633 (1971); Vera v. People, G.R. No. L-31218, February 18, 1970, 31 SCRA 711 (1970); Francisco v. City of Davao, G.R. No. L-20654, December 24, 1964, 12 SCRA 628 (1964); Crisostomo v. Court of Appeals, G.R. No. L-27166, March 25, 1970, 32 SCRA 54 (1970).

> Sound public policy and the interest of a just, orderly, efficient and inexpensive administration of justice, whereby justice and fairness are accorded both to plaintiff and defendant, to the offended party as well as to the accused, properly raise a barrier against a party who would speculate on the fortunes of litigation and in the event of an adverse decision challenge the jurisdiction of the very tribunal whose jurisdiction he or she has invoked and procured at the expenditure of so much time, expense and effort on the part of the litigants and of the state. A graphic illustration of the soundness of this policy and doctrine is the present case where the appellant would set at naught a mere judgment imposing a ₱50.-fine and ₱500.-civil liability upon her rendered after protracted and extensive hearings conducted by the lower court in a case which has been pending for almost ten years now since its inception and in the language of *Sibonghanoy* would compel the offended party "to go up (her) Calvary once more."

The doctrine thus adopted does not only present an exceptional instance when the jurisdiction of a court can *not* be challenged at any time, contrary to the long established doctrine. It also provides an example of a case where the jurisdiction of the court over the subject matter is in effect conferred by the parties. At the same time, it proves that there may be estoppel even on a question of law.

2. Concurrent Jurisdiction

The exclusion rule

When two or more courts have concurrent jurisdiction over a criminal case, the rule is that the first court that assumes jurisdiction shall exercise jurisdiction to the exclusion of all the others.[10] This is a judicial doctrine which needs no statutory expression, but has nonetheless found enshrinement in the Revised Penal Code,[11] in the Judiciary Act,[12] and in General Orders Nos. 12 and 12-B. As embodied in General Order No. 12-B, it was applied in *Gamara v. Valero*[13] to nullify an order of a judge of the Court of First Instance of Laguna, with which an information for direct assault with double murder had been filed, directing the clerk of that court to transmit the records of the criminal case to the military tribunal, notwithstanding the fact that, under General Orders Nos. 12 and 12-B, the civil courts have concurrent jurisdiction with the military tribunals if, as in the *Gamara* case, the accused is a civilian.

This principle of exclusion was stated in *Basa v. Gamboa*[14] not to apply where the first court with which the case is filed is only at the

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[10] Laquian v. Baltazar, G.R. No. L-27514, February 18, 1970, 31 SCRA 552, 556-557 (1970); Alimajen v. Valera, 107 Phil. 244, 245 (1960).

[11] Art. 360.

[12] Sec. 44(g).

[13] G.R. No. L-36210, June 25, 1973, 51 SCRA 322 (1973).

[14] G.R. No. L-29883, November 29, 1973, 54 SCRA 146 (1973).

stage of preliminary investigation at the time a case involving the same offense is filed in another place also for investigation.

PROSECUTION OF OFFENSES[15]

1. WHO MAY SIGN AND FILE INFORMATIONS AND PROSECUTE CRIMINAL ACTIONS

Authority of special counsel appointed by the Secretary of Justice

The Revised Rules of Court define an information as "an accusation in writing charging a person with an offense subscribed by the fiscal and

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[15] See also Roque v. Ericta, G.R. No. L-30244, September 28, 1973, 53 SCRA 157 (1973), holding that "[t]he mere fact that the functions of the Provincial Fiscal as legal adviser and legal officer of the province have been transferred to the Provincial Attorney does not necessarily render the positions of prosecuting officers, such as those of special counsels, unnecessary. x x x The prosecution of offenses is a matter of public interest, and it is the duty of the government to prosecute all cases without oppressive, capricious or vexatious delays. The provincial government x x x cannot disengage itself from such a responsibility. In the order of administrative priorities, the two special counsels appointed by the Secretary of Justice to assist the fiscal with authority to sign informations, make investigations, and direct prosecutions could not be equated with the Provincial Attorney who discharges an entirely different function, much less can the former be considered of lesser import than the latter."

See further, Villegas v. Enrile, G.R. No. L-29827, March 31, 1973, 50 SCRA 10 (1973), reiterating the ruling in Estrella v. Orendain, G.R. No. L-19611, February 27, 1971, 37 SCRA 640 (1971), as to the nature and constitutional basis of the power and function of prosecuting offenses as well as the administrative relationships of those charged with this function, to wit: "Nonetheless, the Estrella decision, the opinion being penned by Justice Barredo, makes manifest why the Office of the City Fiscal should be under the control of respondent Secretary of Justice. As a matter of fact, the ultimate basis of such competence is the constitutional power of the President vesting in him the control of all executive departments, bureaus or offices, as well as his duty to take care that the laws be faithfully executed. So Justice Barredo's opinion makes clear: 'Importantly, it must be borne in mind that while it is true that a fiscal in exercising his discretion as to whether or not to prosecute somebody for an offense performs a quasi-judicial act, the functions that he discharges as an officer of the government are basically executive. He belongs to the executive department rather than to the judiciary. If indeed, in some instances, his salary is paid by the corresponding local governments, he does not thereby become a part thereof, for he is always within the ambit of the national authority when it comes to the supervision and control of his office, powers and functions. As a matter of fact, Section 83 of the Revised Administrative Code places him under the "general supervision and control" of the Department of Justice together with other prosecuting officers and under Section 74 of the same Code, the Secretary of Justice as "Department Secretary shall assume the burden and responsibility of all activities of the Government under his control and supervision." * * * Consequently, the constitutional power of the President of control of all executive departments, bureaus or offices (Sec. 10, Art. VII, Constitution of the Philippines) should be considered as embracing his office. Withal, the prosecution of crimes is part of the President's duty to "take care that the laws be faithfully executed" * * * and the Secretary of Justice is, by the nature of his office, the principal *alter ego* of the President in the performance of such duty, * * * whereas the working arms of the Secretary in this respect are the fiscals and other prosecuting officers. On the other hand, Section 79(c) of the Revised Administrative Code defines the extent of a department secretary's powers in the premises this wise: "Section 76(c). *Power of*

filed with the court."[16] They further provide that "[a]ll *criminal actions* either commenced by complaint or by information *shall be prosecuted under the direction and control of the fiscal.*"[17]

From these provisions one easily gets the impression that only fiscals are authorized to sign and file informations and direct and control criminal prosecutions. This is not so, however. In several decisions, it has been held that a person appointed by the Secretary of Justice as acting fiscal under Section 1679 of the Revised Administrative Code or to assist a fiscal in the discharge of his duties under Section 1686 of the same Code may prepare, sign, and file informations, as well as make investigations and conduct prosecutions, independently of the fiscal.[18] The same powers have been held to be possessed by private prosecutors directed and authorized by the Secretary of Justice under Section 3 of Republic Act No. 3783, as amended by Republic Act No. 5184.[19] These rulings are reaffirmed in *Nassr v. Perez.*[20]

Violation of Tax Code—Is approval of the Commissioner of Internal Revenue necessary?

Reiterating *U.S. v. Rodriguez*[21], *Nassr v. Perez*[22] also holds that the approval of the Commissioner does not have to be obtained before an information for a violation of the Tax Code may be filed by a fiscal or a special counsel duly appointed by the Secretary of Justice. Such approval is required only for the institution of a civil action for the recovery of taxes or the enforcement of administrative penalties like fine and forfeiture, and is not necessary in criminal prosecutions.

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direction and supervision. — The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the chief of said bureaus or offices when advisable in the public interest.'" Further there is this equally relevant portion: 'Needless to say, any legislative attempt to impair or detract from the Secretary's authority, as herein-above defined, over city and provincial fiscals by confining the same to 'general administrative supervision' or otherwise by means of any description of similar import, cannot stand as it would be vulnerable to the attack of invalidity, since such limitation would of necessity have the effect of downgrading the President's constitutional prerogative of control, exercised thru the Secretary of Justice as already defined and delineated in emphatic terms by this Court in the precedent cases above cited. Indeed, why should any fiscal have the same degree of independence from the Executive as the judges who belong to another department of the government?'"

[16] Rule 110, Sec. 3.

[17] Rule 110, Sec. 4, first par.; emphasis supplied.

[18] People v. Dinglasan, 77 Phil. 636 (1946); Siazon v. Judge of the CFI of Cotabato, G.R. No. L-29354, January 27, 1969, 26 SCRA 664 (1969); Estrella v. Orendain, G.R. No. L-19611, February 27, 1971, 37 SCRA 640 (1971); Secretary of Justice v. Maglanoc, G.R. No. L-19600, July 19, 1967, 20 SCRA 683 (1967); People v. Sierra, G.R. Nos. L-27611-13, August 30, 1972, 46 SCRA 717 (1972).

[19] Estrella v. Orendain, *supra*, note 18.

[20] G.R. No. L-28779, February 28, 1973, 49 SCRA 508 (1973). See also Roque v. Ericta, *supra*, note 15.

[21] 38 Phil. 759 (1918).

[22] *Supra*, note 20.

2. INTERVENTION BY OFFENDED PARTY

Subject to the direction and control of the fiscal, the offended party may intervene personally or by attorney in the prosecution of the offense.[23] This assumes, of course, that he has not waived the civil action or expressly reserved the right to institute it separately[24] or, even if he has not made such waiver or reservation, that he has not actually instituted it.[25] If he has done any of these things, his right to intervene in the criminal action is forfeited for the reason that his interest in its prosecution has thereby disappeared.[26] These rules are restated in *Garcia v. Florido*.[27]

Effect when reservation is withdrawn

In *People v. Casuga*[28] the private prosecutor made the announcement that the offended party would file a separate civil case. He later withdrew this reservation and thereafter conducted the examination of the witnesses on three hearing days. The government prosecutors were present at these hearings and presumably remained in control of the prosecution of the case. The accused claimed that the proceedings were null and void because, a reservation of the civil action having been made, the private prosecutor had no legal personality to represent, or present evidence for, the prosecution. This contention was held to be without a valid basis since the private prosecutor had withdrawn the reservation to file a separate civil action and the prosecution of the case remained at all times under the control of the government prosecutors.

Effect of abdication by public prosecutor of control over the prosecution

The decision in *Garcia v. Domingo*[29] goes even further. Citing the ruling in *Cariaga v. Justo-Guerrero*,[30] it declares that the fact that the criminal case is commenced and prosecuted without the intervention, mediation or participation of the fiscal or any of his deputies is a defect which does not vitiate the jurisdiction of the court. Accordingly, the proceedings therein are valid, this defect notwithstanding. The practice is, of course, something which should not be endorsed, and the censorious admonition is made in the decision that the court should have cited the public prosecutor to intervene

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[23] Rule 110, Sec. 15.

[24] *Id.*

[25] Gorospe v. Gatmaitan, 98 Phil. 600 (1956).

[26] *Id.* See also Española v. Singson, 98 Phil. 809 (1956); People v. Capistrano, 90 Phil. 823 (1952); People v. Olavides, 80 Phil. 280 (1948).

[27] G.R. No. L-35095, August 31, 1973, 52 SCRA 420 (1973).

[28] *Supra*, note 6.

[29] G.R. No. L-30104, July 25, 1973, 52 SCRA 143 (1973).

[30] G.R. No. L-24494, June 22, 1968, 23 SCRA 1061 (1968).

3. RULE ON PROHIBITION AND INJUNCTION—EXCEPTIONS

Oppression, abuse or harassment

The rule is that a criminal action may not be retained or stayed, either by injunction—preliminary or final[31]—or prohibition.[32] Two main considerations have been articulated as dictating this rule. *First,* public policy requires that criminal acts be immediately and speedily investigated and prosecuted for the protection of society, and the pursuit of this goal will considerably suffer if the investigation and the prosecution of criminal acts may be halted at any stage.[33] *Second,* an adequate remedy is available to the accused who may establish as a defense to the prosecution that he did not commit the act charged or that the statute or ordinance on which it is based is invalid and, in case of conviction, may take an appeal.[34]

This rule, however, is not too rigid to admit of any exception. It has been held to be subject to relaxation in extraordinary or extreme cases where equitable considerations require that the criminal proceeding be stopped. One of these instances is when it is necessary to put a brake on the criminal proceeding in order to prevent the use of the strong arm of the law in an oppressive, abusive and vindictive manner or for the purpose of harassment.[35] The accused-appellees in *Basa v. Gamboa*[36] must have had this exceptional situation in mind when, in support of the prohibition and preliminary injunction they had obtained from the trial court, they expressed apprehension about the possible consequences of sanctioning the procedure followed by the complainant, to wit, filing, simultaneously or in succession, charges of a transitory or continuing offense of abduction with rape in the courts of all the places or provinces where such offense or some of the essential ingredients thereof had taken place, even if only for preliminary investigation. On this apprehension the Supreme Court, speaking through Chief Justice Makalintal, observed: "To shop for a sympathetic forum in that manner is certainly not to be countenanced, especially if it becomes evident that it is designed to oppress, abuse or harass the defendants. In such eventuality, however, there is always the equitable remedy of prohibition or injunction available. In

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[31] University of the Philippines v. City Fiscal of Quezon City, G.R. No. L-18562, July 31, 1961, 2 SCRA 980 (1961).

[32] Gorospe v. Peñaflorida, 101 Phil. 886 (1957); Kwong Sing v. City of Manila, 41 Phil. 103 (1920); Dimayuga v. Fernandez 43 Phil. 304 (1922); Lava v. Gonzales, G.R. No. L-23048, July 31, 1964, 11 SCRA 650 (1964).

[33] Nicomedes v. Chief of Constabulary, 110 Phil. 52 (1960), citing Gorospe v. Peñaflorida, *supra,* note 32; Hernandez v. Albano, G.R. No. L-19272, January 25, 1967, 19 SCRA 95 (1967).

[34] Gorospe v. Peñaflorida, *supra,* note 32.

[35] Hernandez v. Albano, *supra,* note 33; Gorospe v. Peñaflorida, *supra,* note 32; Dimayuga v. Fernandez, *supra,* note 32.

[36] G.R. No. L-29883, November 29, 1973, 54 SCRA 146 (1973).

the present case there is no indication of oppression, abuse or harassment in the actuations of the complainant."

PROSECUTION OF CIVIL ACTION

1. RESERVATION OF SEPARATE CIVIL ACTION

Garcia v. Florido[37] provided the Supreme Court with a fitting, but unavailed-of, opportunity to resolve categorically a question which has been a puzzle to practitioners and students of law since the promulgation of the Revised Rules of Court. This is the question of the effect, validity, and propriety of requiring in the Revised Rules a reservation as a condition for the institution of an independent civil action of the kind contemplated in Articles 31, 32, 33, 34, and 2177 of the Civil Code.[38] Obviously relying on this requirement of the Revised Rules, the trial court in the *Florido* case[39] dismissed a civil action for damages for injuries suffered in a vehicular accident caused by the negligence of the defendants, one of the grounds for the dismissal being that there was no showing that the plaintiffs reserved, in the criminal proceeding filed 20 days earlier, their right to institute the civil action separately. On the question thus presented, the Supreme Court's majority opinion viewed the civil action as one based on quasi-delict but treated the question of reservation in the following manner:

> x x x Some legal writers are of the view that in accordance with Article 31, the civil action based upon quasi-delict may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. Hence, "the *proviso* in Section 2 of Rule 111 with reference to x x x Articles 32, 33, and 34 of the Civil Code is contrary to the letter and spirit of the said articles, for these articles were drafted x x x and are intended to constitute as (*sic*) exceptions to the general rule stated in what is now Section 1 of Rule 111. The *proviso*, which is procedural, may also be regarded as an unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation required in the *proviso*."[40] *But in whatever way We view* the institution of the civil action for recovery of damages under quasi-delict by petitioners, *whether as one that should be governed by the provisions of Section 2 of Rule 111 of the Rules which require reservation by the injured party* considering that by the institution of the civil action even before the commencement of the trial of the criminal case, petitioners have thereby foreclosed their right to intervene

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[37] G.R. No. L-35095, August 31, 1973, 52 SCRA 420 (1973).

[38] REVISED RULES OF COURT, Rule 111, Sec. 2.

[39] *Supra*, note 37.

[40] The Court cited at this point a footnote of Justice Capistrano in Corpus v. Paje, G.R. No. L-26737, July 31, 1969, 28 SCRA 1062, 1069 (1969).

> therein, *or one where the reservation to file the civil action need not be made,* for the reason that the law itself (Article 33 of the Civil Code) already makes the reservation and the failure of the offended party to do so does not bar him from bringing the action, *under the peculiar circumstances of the case, We find no legal justification for respondent court's order of dismissal.*[41]

The majority opinion thus did not squarely meet and rule on the issue of the necessity of reservation. It was left to the concurring opinion, penned by Justice Barredo, to state categorically that the proviso in Section 2 of Rule 111 requiring reservation "is inoperative, it being substantive in character and is not within the power of the Supreme Court to promulgate". This view expressed in the concurring opinion can easily be supported by authorities, even if it did not cite any. It is settled doctrine of the Court that substantive law cannot be modified or changed by rules of procedure.[42] This is so in view of the constitutional provision that such rules shall not diminish, increase or modify substantive rights.[43] It has, accordingly, been held that the rules of practice and procedure cannot conflict with or defeat a provision of substantive law that the prescription of a crime totally extinguishes criminal liability.[44] By the same token, it has further been held that Rule 108 of the Revised Rules of Court, prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alterations in the civil register, should be "limited solely to the implementation of Article 412 [of the Civil Code], the substantive law on the matter of correcting entries in the civil register."[45] As the Court has put it:

> x x x Rule 108, *like all the other provisions of the Rules of Court,* was promulgated by the Supreme Court pursuant to its rule-making authority under Sec. 13 of Art. VIII of the Constitution, which directs that such rules of court "shall not diminish or increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, said Rule 108 *would thereby become unconstitutional for it would be increasing or modifying substantive rights,* which changes are not authorized under Article 412 of the New Civil Code.[46]

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[41] Emphasis, except that on the word "proviso," supplied.

[42] Reyes v. De Luz, 88 Phil. 581 (1951).

[43] NEW CONST., Art. X, Sec. 5(5).

[44] People v. Castro, 95 Phil. 462 (1954).

[45] Chua Wee v. Republic, G.R. No. L-27731, April 21, 1971, 38 SCRA 409 (1971); Go v. Civil Registrar of the Municipality of Malabon, L-29637, May 31, 1971, 39 SCRA 350 (1971).

[46] *Id.* Emphasis supplied.

That the right to file an independent civil action entirely separate and distinct from the criminal action under Articles 31, 32, 33, 34, and 2177 of the New Civil Code is a substantive right, and that said articles are substantive law, cannot be seriously disputed. For this right was created by said articles; it was inexistent and could not be exercised before the effectivity of the New Civil Code.[47] As stated by Justice Capistrano in *Corpus v. Paje,*[48] the aforesaid articles were drafted and are intended as exceptions to the general rule stated in what is now Section 1 of Rule 111. They do not impose as a condition for the exercise of the right that it be reserved in the criminal action. That condition is imposed by Section 2 of Rule 111 of the Revised Rules of Court. Undoubtedly, it has the effect of diminishing or modifying the right provided in the aforementioned articles. It is, accordingly, unconstitutional.

But even assuming, *arguendo,* that the requirement of reservation in the Rules may constitutionally be upheld, it is obviously out of place or entirely inappropriate with respect to a separate civil action brought under Article 31 of the Civil Code. For, by the provision of Section 2 of Rule 111, the reservation has to be made "as required in the preceding section," *i.e.,* Section 1 of the same Rule. But under Section 1 what needs to be reserved is a civil action for recovery of civil liability *arising from a criminal offense* because it is that kind of civil action which, if not reserved, is impliedly instituted with the criminal action. The civil action contemplated in Article 31 of the Civil Code is of an entirely different nature, it being "based on an obligation not *arising from the act or omission complained of as a felony,*" and therefore there is no occasion, no need, for reserving it because it is not, and can never be, impliedly instituted with the criminal action and thus it "may proceed independently of the criminal proceedings and *regardless of the result of the latter.*"

PRELIMINARY INVESTIGATION

1. AUTHORITY TO CONDUCT

Libel cases

The question to which the Supreme Court addressed itself in *People v. Hechanova*[49] was, as formulated by the Court, whether or not a Quezon City Branch of the Court of First Instance of Rizal had the power or authority to conduct preliminary examination or investigation on a libel

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[47] See the definitions of substantive law and procedural law in Bustos v. Lucero, 81 Phil. 640 (1948); Primicias v. Ocampo, 93 Phil. 446 (1953).

[48] *Supra,* note 40.

[49] G.R. No. L-26459, November 29, 1973, 54 SCRA 101 (1973).

charge filed by the complainant directly with that court. Actually, the question could have been more narrowly and precisely drawn by mentioning in its formulation the particular circumstance which characterized this case, namely, that the charge had previously been filed with the Office of the City Fiscal and there dismissed for failure to establish a *prima facie* case. Apparently, however, the Court, as may be gleaned from the reasons it gave for its decision, really intended to treat the matter as broadly as it stated or framed the issue.

In insisting that the Quezon City branch of the court possessed the authority to conduct preliminary examination and investigation on his complaint, the complainant cited Article 360 of the Revised Penal Code[60] and Section 13, Rule 112 of the Revised Rules of Court. The pertinent portions of Article 360 of the Revised Penal Code read as follows:

> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: x x x
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> Preliminary investigation of criminal actions for written defamations as provided for in the chapter shall be conducted by the provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted in accordance with the provisions of this article.

Rule 112, on the other hand, provides:

> SEC. 13. *Preliminary examination and investigation by the judge of the Court of First Instance.* — Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice of the peace referred to in the second paragraph of section 2 hereof for preliminary examination and investigation, or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information.

The Supreme Court rejected the complainant's position on the following grounds:

1. Nothing in Article 360 indicates that preliminary investigation and/or examination should be conducted by the Court of First Instance. On the contrary, it provides that the same "shall be conducted by the

[60] As amended by Republic Act No. 1289 and Republic Act No. 4363.

provincial or city fiscal of the province or city, or by the municipal court of the city or capital of the province where such actions may be instituted".

2. Section 13 of Rule 112 clearly applies only to cases where the complaint filed directly with the Court of First Instance has not been the subject of a previous preliminary examination and investigation conducted by the fiscal. In the instant case, the libel charge filed by the complainant had previously been examined and investigated and dismissed by the Office of the City Fiscal.

3. Section 13 of Rule 112 does not apply to cities, like Manila, Bacolod and others, the respective charters of which authorize only the city fiscal to conduct preliminary investigations of criminal complaints. Quezon City is such a city.

There would have been nothing objectionable about the Court's decision had it stopped with the first two grounds. But the third ground perpetuates an error which took root in the concurring opinion of Chief Justice Moran in *Espiritu v. Dela Rosa*,[51] was assumed as settled rule insofar as Manila was concerned in *Sayo v. Chief of Police*,[52] was specifically extended to Bacolod in *Montelibano v. Ferrer*,[53] and now in this instant case is declared applicable to Quezon City. The doctrine in these cases which denies the courts in Manila, Bacolod, Quezon City, and other cities similarly situated any authority to conduct preliminary examinations and/or investigations stems from wrong premises and a faulty reasoning. These premises and this reasoning are something like this: The provisions of the city charters in question[54] have not been repealed by the Rules of Court (old and revised). As such, the provisions of the Rules of Court empowering the trial courts to conduct preliminary examinations and/or investigations do not apply in cities with charters containing such provisions, and what govern therein in respect to preliminary examinations and investigations are said provisions of the city charters. Such provisions authorize only the city fiscal to conduct preliminary examinations and investigations. Therefore, all criminal complaints should be filed with that officer for preliminary examination and investigation after which he may file the corresponding information.

What is manifestly wrong with the foregoing reasoning is that it refuses to apply the related provisions of the Rules of Court simply because

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[51] 78 Phil. 827 (1947).
[52] 80 Phil. 859 (1948).
[53] 97 Phil. 228 (1955).
[54] When the Rules of Court of 1940 was promulgated, the City Charter of Manila was part of the Revised Administrative Code of 1917. And when the Revised Rules of Court was promulgated in 1964, the present Charter of Manila (Rep. Act No. 409) had long been in existence. The City Charter of Bacolod (Com. Act No. 326) was enacted in 1938; that of Quezon City (Revised), in 1951.

the Rules have not repealed the provisions of the city charters concerned which authorize only the city fiscal to conduct preliminary examinations and investigations. But why should the fact that said provisions have not been repealed preclude the application of other laws like the Rules of Court which confer similar authority to the courts without any distinction based on the place where they exercise jurisdiction. The city charter provisions in question merely constitute the basis for the city fiscal to conduct preliminary examination and investigation. There is nothing therein which makes the grant of power exclusive in the sense that the same power may not be conferred upon the courts by other laws. The pertinent portions of the City Charter of Manila, of which the corresponding ones in the respective charters of Bacolod[55] and Quezon City[56] are exact reproductions, simply provide:

> x x x [The fiscal of the city] shall also have charge of the prosecution of all crimes, misdemeanors, and violations of the city ordinances, in the Court of First Instance and the municipal courts of the city, and shall discharge all the duties in respect to the criminal prosecutions enjoined by law upon provincial fiscals.
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> The fiscal of the city shall also cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, and for this purpose may issue *subpoena*, summon witnesses to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance. x x x[57]

We know of no principle of law or statutory construction—and the Court has not cited any—which states that when a grant of power is made in this manner that power cannot likewise be given to any other official or office by another law. That would go against the overriding principle—part of the bedrock of constitutional law—which recognizes no irrepealable law. The more, if not the only, rational construction seems to be that the Rules of Court (both old and new) add the city court and the Court of First Instance to those already authorized in the city charters to conduct preliminary examinations and/or investigations. If there is anything objectionable in this, it would not be because of a city charter provision of the sort above-quoted. The objection would rest on the principle that the rules of practice and procedure cannot modify or change substantive law,[58] in view of the constitutional in-

[55] COM. ACT No. 326 (1938), Sec. 22.
[56] REP. ACT No. 537 (1950), Sec. 28.
[57] REP. ACT No. 409 (1949), Sec. 38.
[58] Reyes v. De Luz, *supra*, note 42.

junction that such rules shall not diminish, increase, or modify substantive rights.[59] The Court, however, obviously does not look at the matter in this light. Nor does it entertain the view that the grant of power to conduct preliminary examination and/or investigation is a matter of substantive law which can be made only by statute and not by the Rules of Court.[60] On the contrary, it impliedly, but clearly, recognizes the validity of the provisions of the Rules of Court granting that power to the courts except that it holds them inapplicable to cities like Manila, Bacolod, and Quezon City. But while thus recognizing their validity and applicability in other cities and in the provinces, the doctrine it has adopted in the *Sayo*,[61] *Montelibano*[62] and *Hechanova*[63] cases would have the result of likewise rendering said provisions of the Rules inoperative in the other cities and in the provinces as well, at least insofar as the Courts of First Instance are concerned. For in the provinces only the provincial fiscal[64] and municipal judges[65] are specifically authorized by statute to conduct preliminary examinations and/or investigations. And in the cities whose charters do not copy that of Manila, only the city fiscal and the city judge or judges are specifically given that authority. By parity of reasoning, Section 13 of Rule 112 should not also apply to the provinces and those cities. In which case, Section 13 of Rule 112, while recognized to be valid, would be totally rendered inoperative. This makes obvious the absurdity of the doctrine.

2. FILING OF CHARGES FOR PURPOSES OF PRELIMINARY EXAMINATION AND INVESTIGATION

Simultaneous or successive filing of the same charge when offense is transitory or continuing

The offense alleged in *Basa v. Gamboa*[66] was abduction with rape committed in Manila, Gapan, and San Antonio. A complaint was filed by

[59] NEW CONST., Art. X, Sec. 5(5).

[60] A statutory ratification seems to have been made in R.A. 5180. See note 64, *infra*.

[61] *Supra*, note 52.

[62] *Supra*, note 53.

[63] *Supra*, note 49.

[64] REVISED ADM. CODE, Sec. 1687; REP. ACT No. 5180, Sec. 1, as amended by PRES. DEC. No. 77. Note, however, the opening clause of Section 1 of Republic Act No. 5180 — to wit: "Notwithstanding any provisions of law to the contrary and except when an investigation has been conducted by a judge of first instance, city or municipal judge or other officer in accordance with law and the Rules of Court of the Philippines" — which seems to recognize the existence of authority of judges of city courts and judges of first instance in cities. It may, of course, be argued that this clause must be understood to carry the restrictive sense given by the Supreme Court to provisions of the Rules of Court empowering city courts and Courts of First Instance to conduct preliminary examination and investigation.

[65] ACT No. 194, Sec. 2; JUDICIARY ACT, Sec. 87, second par.

[66] G.R. No. L-29883, November 29, 1973, 54 SCRA 146 (1973).

the offended party on December 2, 1967 with the municipal court of Gapan which, after placing the principal defendant under arrest,[67] immediately started hearing the case on preliminary investigation. While the investigation was pending, the Metrocom, whose assistance the complainant had sought, filed another complaint against the same defendants for the same offense with the Office of the City Fiscal of Manila. When the pending preliminary investigation in Gapan was brought to the attention of the investigating assistant fiscal of Manila, he postponed the hearing to February 21, 1968, on which date the Metrocom moved to dismiss on the ground that the complainant could pursue her remedy in the case she had filed in Gapan. This motion was denied; and so was a similar motion filed by the defendants. In the meantime, on January 11, 1968, the municipal court of Gapan, after receiving the evidence of the parties, dismissed the case pending before it on the ground that "the crime committed is and ought to be a consented crime of abduction." The defendants brought against the City Fiscal of Manila prohibition with preliminary injunction proceedings which the lower court granted. The Supreme Court reversed the lower court's order on the ground, among others,[68] that, since the municipal court of Gapan dismissed the case and no jeopardy of conviction attached, the situation was as if no charge had been filed at all. There could be no doubt, according to the Court, that had the complainant gone to the Office of the City Fiscal of Manila after, instead of before, the case was dismissed in Gapan, no question would have been raised as to the Manila City Fiscal's authority to receive and investigate her complaint. It made no difference, continued the Court, that the complainant filed her complaint with the said office while the investigation in Gapan was still pending, since the investigation ended in a dismissal.

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[67] As the facts are recited in the Court's decision the municipal court does not seem to have conducted a preliminary examination prior to the arrest. The complaint was merely accompanied by an affidavit and it seems that on the basis thereof the warrant of arrest was issued. If, as appears from the decision's cursory recitation of the facts on this point, this was what happened, then there was something irregular because Section 87 (second par.) of the Judiciary Act requires that "[n]o warrant of arrest shall be issued by any municipal judge in any criminal case filed with him unless he first examines the witness or witnesses personally, and the examination shall be under oath and reduced to writing in the form of *searching questions and answers*." See Doce v. Branch II of the CFI of Quezon, G.R. No. L-26437, March 13, 1968, 22 SCRA 1028 (1968) and Luna v. Plaza, G.R. No. L-27511, November 29, 1968, 26 SCRA 310, 318 (1968).

[68] The other grounds are discussed under the topic on prohibition and injunction, *supra*.

RIGHTS OF AN ACCUSED

1. PRESUMPTION OF INNOCENCE

By constitutional mandate,[69] which is echoed in the Rules,[70] an accused shall be presumed innocent until the contrary is proved. In view of this presumption, it rests on the prosecution to prove the guilt of the accused, and its proof must be beyond reasonable doubt.[71] Accordingly, every piece of evidence, oral or documentary, submitted by the prosecution must be subjected to the most careful scrutiny, independently of whatever defense or evidence may be offered by the accused, and every circumstance favoring his innocence must be taken into account.[72] These exacting standards are not met and hence the constitutional right to be presumed innocent until otherwise proved is violated if, as happened in *People v. Palacpac,*[73] the court convicts some of the accused despite its finding that "their participation *was not clearly shown* by testimonial witnesses for the prosecution *except by general statements or declarations*" of one of them.

Nor can refuge be taken by the prosecution in the doctrine which normally prevents appellate courts from disturbing the conclusions of the trial court on the credibility of the witnesses in recognition of the latter's being in a better position to appreciate the evidence because it had the opportunity to actually see and hear the witnesses and observe their demeanor and manner of testifying. For, as stated in *People v. Macaraeg,*[74] this doctrine must yield to the superior and immutable principle of presumption of innocence which requires that the guilt of the accused must be proved beyond reasonable doubt and which must prevail unless overturned by such proof.

2. BAIL

Who may be admitted to bail

In guaranteeing "all persons" (except those charged with capital offenses when the evidence of guilt is strong) the right to bail, the Constitution does so in a manner compatible with the purpose of bail. Bail is given to secure a person's release or provisional liberty and is required as security to insure that he will appear in the court where his appearance is required, either to answer a criminal charge lodged against him or to

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[69] NEW CONST., Art. IV, Sec. 19.

[70] RULE 115, Sec. 1(a).

[71] People v. Palacpac, G.R. No. L-27822, February 28, 1973, 49 SCRA 440 (1973), and People v. Macaraeg, G.R. No. L-32806, October 23, 1973, 53 SCRA 285 (1973), People v. Dramayo, G.R. No. L-21325, October 29, 1971, 42 SCRA 59 (1971).

[72] *Id.*

[73] *Supra*, note 71.

[74] *Supra*, note 71.

serve a sentence that that court may impose.[75] Bail, therefore, presupposes deprivation of liberty. Accordingly, the right to bail accrues only when a person is arrested or deprived of his liberty.[76] It is incongruous to grant bail to one who is free. It was upon this basis, apart from another to be presently mentioned, that the Supreme Court sanctioned the cancellation by the Court of First Instance of an order of the municipal court granting bail to the petitioner in *Mendoza v. Court of First Instance of Quezon*[77] despite the fact that the petitioner was then still at large.

Extent of evidence the prosecution may present

Another basis for the Supreme Court's ruling upholding the cancellation of the bail granted by the municipal court in *Mendoza v. Court of First Instance*[78] is the fact that the prosecution was never given a chance to present its evidence. The Court's reliance on this ground is certainly unassailable. But one of the doctrines it cites in support thereof goes beyond what is necessary and, what is more, is of doubtful validity. Without qualification, it cites as "squarely in point" the doctrine in *People v. San Diego*[79] that:

> x x x [W]hether the motion for bail of a defendant who is in custody for a capital offense be resolved in a summary proceeding or in the course of a regular trial, the prosecution must be given an opportunity to present, within a reasonable time, *all the evidence that it may desire to introduce* before the court should resolve the motion for bail. If, as in the criminal case involved in the instant special civil action, the prosecution should be denied such an opportunity, there would be a violation of procedural due process, and the order of the court granting bail should be considered void. x x x

The unqualified citation of this ruling in the *San Diego* case is unfortunate because the same has been restricted, modified, or corrected in 1971 by the Court's decision in *Siazon v. Presiding Judge of the Circuit Criminal Court, 16th Judicial District,*[80] of which there is no mention, while the earlier decision of *People v. Bocar,*[81] supposedly reiterative of *San Diego,* is also cited. The question that thus arises is: has the Court reverted to the *San Diego* ruling and abandoned that of *Siazon,* or has it merely failed or forgotten to take note of the latter?

Whatever the answer may be to this question, which can only be a matter for guesswork, it must be stated that the *San Diego* ruling seems to go too far and would have the effect of placing in the prosecution ab-

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[75] Feliciano v. Pasicolan, G.R. No. L-14657, July 31, 1961, 2 SCRA 888 (1961).
[76] Manigbas v. Luna, 98 Phil. 466 (1956).
[77] G.R. Nos. L-35612-14, June 27, 1973, 51 SCRA 369 (1973).
[78] *Supra,* note 77.
[79] G.R. No. L-29676, December 24, 1968, 26 SCRA 522 (1968).
[80] G.R. Nos. L-34156-58, October 29, 1971, 42 SCRA 184 (1971).
[81] G.R. No. L-27120, March 28, 1969, 27 SCRA 512 (1969).

solute control of the nature and quantum of evidence to be ventilated in the proceeding. The formulation of the *Siazon* decision seems to state the better rule, namely: "The right of the prosecution to control the quantum of evidence and the order of presentation of the witnesses, while not to be disregarded, must nevertheless be equated with the purpose of the hearing, which is to determine whether the accused falls within the exception to the general rule that he is constitutionally entitled to bail before conviction. To allow the prosecution to conduct the hearing as if it were a full-dress trial on the merits would defeat the purpose of the proceeding." This is especially true where the petition for bail is heard before the case is tried on the merits, as when the accused has not been formally charged or the charges are still being investigated. Probably the only instance when the prosecution should be allowed to have its way is, as pointed out by Justice Teehankee in his concurring opinion in the *Siazon* case, where it has serious reason to fear, sufficiently shown to the court, that the witness it seeks to present is an important one and might no longer be available at the regular trial.

Forfeiture of bail—previous dismissal of case against accused as ground for annulling judgment against bondsmen

For unexplained failure of the bondsmen to produce the person of the accused in *People v. Lania*[82] on the date of hearing and even after the lapse of the period, extended for a total of 45 days, fixed in the order requiring them to produce the accused and/or satisfactorily explain their failure to do so, judgment was rendered against them confiscating in favor of the government all the properties they put up as bail, which in due course of law were thereafter sold at public auction. In *Vallangca v. Ariola*,[83] these same bondsmen sought to annul the judgment of confiscation and the auction sale effecting it on the ground that the case against the accused had been dismissed two years before the confiscation of their bond. It was conceded by the Supreme Court, to which their petition for annulment through *certiorari* was appealed, that if this were true, it would have freed them from their liability as bondsmen. The records did not, however, bear them out.

As there was no other issue raised by the petition, this finding should have been sufficient to completely dispose of the case. But the Court still saw in the case another issue which it posited as follows: *"The only question* before us is one of law, namely, whether the decision of the lower court has support in the appropriate rule of court as authoritatively expounded." Then it went on to quote Section 15 of Rule 144 and discuss lengthily the jurisprudence thereunder and what the bondsmen should have

[82] Criminal Case No. 1060 of the Municipal Court of Buguey, Cagayan.
[83] G.R. No. L-29226, September 28, 1973, 53 SCRA 139 (1973).

done to obtain at least a mitigation of their liability. But, as pointed out in the concurring opinion, had not the petitioners conceded that the procedure for confiscation laid down in Section 15 of Rule 114 was correctly followed but that it had no legal basis because of the dismissal, which they attempted to show, of the criminal case? The extended dissertation on Section 15 and the jurisprudence thereon seems to have been entirely unnecessary. And, apart from the fact that it settles nothing about a real issue, it could only serve to sow confusion as to the state of jurisprudence on the matter.

3. HABEAS CORPUS

The function of the writ of *habeas corpus*, which is also constitutionally guaranteed,[84] is closely related to that of bail. Both are remedies to which a person detained may resort to obtain his liberty. They are not the same, however. Bail is the proper remedy when the detention is legal, while *habeas corpus* may properly be sought only when the detention is illegal. The respective fields of application of these two remedies are clearly delineated in *Mendoza v. Court of First Instance of Quezon*[85] where the Supreme Court held the petition for *habeas corpus* improper because the petitioner's deprivation of liberty was made pursuant to a warrant of arrest properly issued.

There may, nonetheless, be a case where the two remedies may simultaneously be sought and granted. Where, for instance, the arrest was properly made without warrant but the person arrested was detained beyond the limit allowed by law, an application for both bail and *habeas corpus* has been allowed to prosper.[86]

4. PUBLIC TRIAL

Garcia v. Domingo[87] states for the first time in this jurisdiction the meaning of public trial to which every accused is entitled under the Constitution.[88] In this case the city judge conducted on fourteen separate occasions the trial of the accused invariably on Saturdays and inside his air-conditioned chambers. No objection was made by the accused to the holding of the hearings in the judge's chambers and the setting of such hearings on Saturdays was with their conformity. The question was whether their right to a public trial was violated. The Court ruled in the negative. Speaking through Justice Fernando, the Court stated that a trial is public—

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[84] NEW CONST., Art. IV, Sec. 15.
[85] *Supra*, note 77.
[86] Peralta v. Ramos, 71 Phil. 271 (1941).
[87] *Supra*, note 29.
[88] Art. IV, Sec. 19.

> x x x when anyone interested in observing the manner a judge conducts the proceedings in his courtroom may do so. There is to be no ban on such attendance. His being a stranger to the litigants is of no moment. No relationship to the parties need be shown. The thought that lies behind this safeguard is the belief that thereby the accused is afforded further protection, that his trial is likely to be conducted with regularity and not tainted with any impropriety. x x x

In the case at bar, although the trial was held in the judge's air-conditioned chamber, "[t]here [was] no showing", according to the Court, "that the public was thereby excluded. It is to be admitted that the size of the room alloted the Judge would reduce the number of those who could be present. Such a fact though is not indicative of any transgression of this right. x x x [I]t suffices to satisfy the requirement of a trial being public if the accused could 'have his friends, relatives and counsel present, no matter with what offense he may be charged.'"

5. RIGHT AGAINST DOUBLE JEOPARDY

Effect of dismissal on demurrer to evidence

People v. Donesa[89] reiterates the rule that a dismissal ordered on motion of the accused after termination of the presentation of the evidence for the prosecution, on the ground that the same fails to establish a *prima facie* case, has the force and effect of an acquittal. The decision adds a new dimension to the rule by holding that, because of this characteristic, such a dismissal cannot be nullified by giving a retroactive effect to a subsequent ruling of the Supreme Court declaring that a judge lacks authority to decide a case after he has been permanently transferred to another court outside the province.[90]

PLEAS

1. EFFECT OF PLEA OF GUILTY

A plea of guilty constitutes an admission of the truth of all the material allegations of the complaint or information, including all the aggravating circumstances mentioned therein.[91] It thus removes the necessity of presenting further evidence since, for all intents and purposes, the case is deemed tried on its merits and submitted for decision.[92] In other

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[89] G.R. No. L-24162, January 31, 1973, 49 SCRA 281 (1973).

[90] See comments under the topic on Judgment, *infra*.

[91] People v. Pohong, G.R. No. L-32332. August 15, 1973, 52 SCRA 287 (1973); People v. Busa, G.R. No. L-32047, June 25, 1973, 51 SCRA 317 (1973), citing People v. Arpa, G.R. No. L-26789, April 25, 1969, 27 SCRA 1037, 1042 (1969), and People v. Boyles, G.R. No. L-15308, May 29, 1964, 11 SCRA 88 (1964).

[92] People v. Rapirap, 102 Phil. 863 (1958).

words, by entering it the accused necessarily forecloses his right to defend himself from the charge and leaves the court no alternative but to impose the penalty fixed by law under the circumstances.[93] Consequently, any mistake or misunderstanding on the part of the accused, especially in capital offenses, may prove irreversibly fatal to him.[94]

2. Procedure When Plea of Guilty to a Capital Offense Charge is Entered

It is in view of the foregoing far-reaching effects of a plea of guilty and of its desire to forestall the fatal consequences of mistaken or improvident pleas that the Supreme Court has been very strict in enforcing certain guidelines which, since its decisions in *People v. Apduhan*[95] and *People v. Solacito,*[96] it has most emphatically impressed upon the trial courts to follow when a defendant charged with a capital offense enters a plea of guilty thereto. The degree of strictness shown by the Court in this respect may be gauged by the fact that in each of the eleven (11) cases of this kind which it reviewed and passed upon in 1973 it set aside the judgment of conviction based on plea of guilty for failure to observe with exactitude the said guidelines.[97]

Ascertaining whether defendent fully understands the meaning of the charge and the consequences of his plea

The first of these guidelines is that a trial court must "refrain from accepting with alacrity an accused's plea of guilty;" it must take all necessary steps—in the words of the Court, it must be "extra solicitous" —in ascertaining that the accused fully understands the nature and meaning of the charges against him and the effects of a plea of guilty thereto.[98]

This imperative duty of the trial court has been held not observed:

1. Where, as shown by the records, the information was merely read to the accused whereupon, according to the interpreter, he pleaded guilty and the trial court did not even talk to the accused or direct any questions to him on the circumstances attending the commission of the crime, much less acquaint him with the legal implications of his plea of guilty, but addressed itself on the matter solely and exclusively to his counsel *de officio.*[99]

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[93] People v. Martinez, G.R. No. L-35353, April 30, 1973, 50 SCRA 509 (1973), citing People v. Balisacan, G.R. No. L-26376, August 31, 1966, 17 SCRA 1119 (1966).

[94] People v. Saligan, *infra* note 104.

[95] G.R. No. L-19491, August 30, 1968, 24 SCRA 798 (1968).

[96] G.R. No. L-29209, August 25, 1969, 29 SCRA 61 (1969).

[97] See all cases in note 104, *infra.*

[98] People v. Apduhan, *supra,* note 95; People v. Poliong, *supra,* note 91, at 290.

[99] People v. Saligan, *infra,* note 104.

2. Where the accused was an illiterate Visayan who had difficulty understanding, more so speaking, Tagalog and there was no showing that the trial court explained the meaning or import of the allegations of "treachery" and "evident premeditation", or whether these allegations were translated or explained in Tagalog or Visayan and, if so, in what way or manner they were explained in the layman's language.[100]

3. Where the trial court limited itself to asking the appellant two brief questions (namely: *first,* whether the appellant was aware of the consequences of his change of plea from one of not guilty to that of guilty, which the appellant answered in the affirmative; *second,* whether the appellant knew that notwithstanding such plea of guilty the only possible penalty was that of death, which the appellant also answered in the affirmative) and, apart from failing to inform the appellant of the aggravating circumstances alleged in the information and their effect on his plea, as well as failing to ask the appellant whether he was invoking mitigating circumstances in his favor, did not make any inquiry, obviously called for, why the appellant had a sudden change of plea after he had previously pleaded not guilty to the charge against him.[101]

4. Where, after the appellants had pleaded not guilty, the trial judge addressed them as follows:

> I understand that you are confused and you are not ready to plead guilty to the crime charged but the court is, however, giving you today and tonight up to 8:00 o'clock in the morning tomorrow to make a soul search, concentrate and ask your heart, mind and body as to the consequence of your act because under Art. 160 of the Revised Penal Code, by virtue of the crime that you have committed the Court has no alternative except to impose the death penalty which is the maximum penalty provided for by Art. 248 of the Revised Penal Code. So, I repeat again that you make a thorough soul searching as to the consequence of your act and the life you will face in the future that is death. You have to understand that the duty of this Court is merely to interpret and apply the law and it has no power to assume the executive authority to pardon you or parole you or lower the penalty. This Court has the duty alone which is to apply the law. That is his primary duty. It is up for the executive department to give you the necessary clemency if they deem it necessary, so I am giving you up to tomorrow at 8:00 o'clock, June 29, to make up your minds.[101a]

The first portion of this remark, according to the Supreme Court, may be interpreted as an outright solicitation by the court itself of a change of plea by the accused, while the latter portion "could mean, to an unschooled prisoner, that the judge had already assumed his guilt and that the death sentence was inescapable. It is not farfetched that one, some,

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[100] People v. Bacong, *infra,* note 104.

[101] People v. Ricalde, *infra,* note 104; People v. Alamada, *infra,* note 104.

[101a] [ED'S NOTE: The passage is a direct quotation.]

or all of the four defendants changed his or their pleas simply out of resignation to what appeared to him or to them as a preordained fate."[102]

In any of these situations, it was immaterial that the defendant was represented by counsel. This was especially so where the counsel was just appointed as such *de officio* and he did not have enough time to acquaint himself with the defendant's case before arraignment or plea.[103]

Taking of evidence

The second guideline laid down by the Supreme Court is that despite the entry of a plea of guilty to a capital offense charge, the trial court must take or require the presentation of evidence.[104] This procedure, according to the Court, is the prudent and proper course to follow so that the guilt of the defendant and the precise degree of his culpability may be established or accurately determined.[105] It will also serve to dispel all doubt that the accused misunderstood the nature and effects of his plea.[106] And, not the least, it will aid the Supreme Court in fulfilling its duty of review by providing it with the necessary basis for determining the legality of the conviction and the correctness of the penalty imposed.[107]

Even if the defendant is allowed to testify, this requirement is not satisfied if he is asked only about his age and educational attainment and how he went about surrendering to the authorities, and is not interrogated regarding any aspect of the commission of the crime.[108]

Affording counsel de officio full opportunity to know facts

The third guideline is that the trial judge must accord the defendant's counsel *de officio* the fullest opportunity not only to examine the records but also to acquire every relevant information on the matter, such as conferring with the accused lengthily so that he can give him intelligent and effective advice and assistance.[109] This is not only essential in order to forestall improvident pleas of guilty; it also gives substance, more than form, to the constitutional right to counsel.[110]

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[102] People v. Daeng, *infra*, note 104.

[103] People v. Alamada *infra*, note 104.

[104] See People v. Daeng, G.R. No. L-34091, January 30, 1973, 49 SCRA 221 (1973); People v. Ricalde, G.R. No. L-34673, January 30, 1973, 49 SCRA 228 (1973); People v. Martinez, G.R. No. L-35353, April 30, 1973, 50 SCRA 509 (1973); People v. Busa, G.R. No. L-32047, June 25, 1973, 51 SCRA 317 (1973); People v. Villafuerte, G.R. No. L-32036, July 31, 1973, 52 SCRA 204 (1973); People v. Alamada, G.R. Nos. L-34594-95, July 13, 1973, 52 SCRA 103 (1973); People v. Andaya, G.R. No. L-29644, July 25, 1973, 52 SCRA 137 (1973); People v. Pohong, G.R. No. L-32332, August 15, 1973, 52 SCRA 287 (1973); People v. Duque, G.R. No. L-33267-A, September 27, 1973, 53 SCRA 132 (1973); People v. Saligan, G.R. No. L-33267-A, September 29, 1973, 54 SCRA 190 (1973); Bacong, G.R. No. L-36161, December 19, 1973, 54 SCRA 288 (1973).

[105] People v. Busa, *supra*, note 104; People v. Duque, *supra*, note 104.

[106] People v. Daeng, *supra*, note 104.

[107] *Id.*

[108] People v. Alamada, *supra*, note 104.

[109] People v. Martinez, *supra*, note 93.

[110] *Id.*

Record of proceedings

Another guideline which the court has indicated should be observed, although it has not as yet been given a definite formulation, is that the proceedings taken in the trial court in the matter of arraignment, and plea, as well as the taking of evidence, must be made of record as completely as possible. This guideline may be gleaned from the following pronouncement of the Court in *People v. Busa*:[111]

> x x x. Surely, records which merely sketchily declare that information was read to the accused and that the latter "freely, voluntarily and spontaneously entered the plea of guilty," do not tell the whole story. They deny us full opportunity to review the cases fairly and intelligently.
>
> x x x. Thus, a judgment meting out the penalty of death is valid only if it is susceptible of a fair and reasonable examination by this Court.

Or, in a more crystallized form, from the following passage found in both *People v. Duque*[112] and *People v. Saligan*:[113]

> x x x the barrenness of the record cannot give rise to the presumption that the trial court had accepted the pleas of guilty in accordance with law. For, as we have held in *People vs. Busa*, a judgment meting out the penalty of death is valid only *if the* record is susceptible of a fair and reasonable examination by this Court.

The rule enunciated in this latter passage is in marked contrast with the doctrine so far adopted by the Court as to arraignment. Silence of the records as to when, where, or how arraignment was made or whether it was made at all did not deter the court from holding in some cases[114] that the accused was arraigned in accordance with law if the court made mention of the arraignment in its decision. In one case, the Court even went so far as to presume that the accused was arraigned even if the clerk of court, the court stenographer, and the judge himself failed to take note of the arraignment, justifying this presumption by citing the presumption of regularity of court proceedings.[115]

It may, perhaps, now be argued that the rule which the court has recently adopted with respect to the silence or inadequacy of the records of the proceedings taken when a plea of guilty to a capital offense charge is entered can well be applied to arraignment, at least also in cases involving a capital offense. For the process of ascertaining whether the ac-

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[111] *Supra*, note 104.
[112] *Supra*, note 104.
[113] *Supra*, note 104.
[114] See, *e.g.*, People v. Cariaga, 64 Phil. 390 (1937); Domingo v. Director of Prisons, 77 Phil. 1053 (1947).
[115] U.S. v. Sobreviñas, 35 Phil. 32 (1916).

cused understands fully the meaning and consequences of his plea of guilty, though it may actually take place after the accused has pleaded or has manifested his willingness to plead guilty, is in reality a part of the process of arraignment.

TRIAL

1. Right of Prosecution to Present Unlisted Witnesses

The rule in Section 1 of Rule 116 that the prosecution may call at the trial witnesses other than those named in the complaint or information is applied in *People v. Dorico*.[116]

2. State Witness

Mention is made in *People v. Villafuerte*[117] that a defendant may be wholly discharged from the information as a state witness if his testimony is of absolute necessity and he does not appear to be the most guilty. There are, of course, other requirements.[118]

JUDGMENT

1. Validity of Judgment Rendered By a Judge After His Transfer or Assignment to Another Court Outside the Province

The specific question posed by the prosecution as petitioner in *People v. Donesa*[119] was whether the respondent judge had authority to dismiss the criminal case after he had already been appointed and qualified as judge of another district. It appeared that before the qualification of the respondent judge to his new position on July 13, 1964, the prosecution had completed presenting its evidence and, following this, the accused had filed, on April 23, 1964, a motion to dismiss. The prosecution filed its opposition to this motion only on August 7, 1964 and its motion to reopen the case for the purpose of having some exhibits translated from Ilocano to English was filed on August 12, 1964. The order of dismissal was issued on January 12, 1965. The prosecution submitted in its *certiorari* petition in the Supreme Court that the respondent judge lacked authority to issue this order because he had not "totally heard" the case within the meaning of Section 9 of Rule 135 in view of the pending motion for the translation of some exhibits presented by it.

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[116] G.R. No. L-31568, November 29, 1973, 54 SCRA 172 (1973), citing People v. Palacio, 108 Phil. 220 (1960).

[117] *Supra*, note 104.

[118] See Rev. Rules of Court, Rule 119, sec. 9.

[119] *Supra*, note 89.

The Supreme Court approached the question thus presented by first making the general observation that to say that a case was not "totally heard" under the circumstances—after the prosecution had rested its case and the defense had presented a motion to dismiss—would negate the intent of Section 9, Rule 135, "which is a restatement of the former statutory provision on the subject," Section 13 of Act 867 (passed in 1903)[120] and that, even more, this interpretation was not countenanced by the constitutional right against double jeopardy since the order of the dismissal issued by the respondent judge amounted to an acquittal. The Court then proceeded to expound on the jurisprudence regarding the effect of dismissal upon demurrer to the evidence. After which it said that even if the double jeopardy aspect were left out of account, still the prosecution's petition to annul the dismissal order would not lie. It then cited *Baguinguito v. Rivera*[121] which, citing *Aliño v. Villamor*,[122] held that the submission of memoranda "was not, properly speaking, a part of the hearing or trial as understood in" Section 13 of Act 867, and hence the fact that they had not been submitted when the decision was rendered outside the province could not be made a basis for concluding that the case was not "heard and duly argued" before, or that an opportunity for argument was not given to the parties or their counsel by, the judge rendering such decision. Without saying that this ruling applied by analogy to a motion to reopen a case in order that certain exhibits may be translated, it proceeded to cite other decisions holding that Section 13 of Act 867 was applicable to both civil and criminal cases[123] and that the reason for the discretionary authority granted a judge transferred to another province to prepare a decision after his transfer was:

> x x x Obviously, the public interest and the speedy administration of justice will be best served if the judge who heard the evidence renders the decision. It might well happen that the full extent of the six months' period[124] would be used by the trial judge to receive the evidence, giving him no opportunity to promulgate decisions, with the result that all the mountain of evidence would be left for the perusal of a judge who did not hear the witnesses — a result which should be dodged if it be legally feasible.
>
> The law does not mean to authorize a judge to try a case and then deprive him of the power to render his decision after he has taken cognizance of it. x x x[125]

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[120] Section 9, Rule 135 of the REV. RULES OF COURT is a copy of the second paragraph of Section 51, Judiciary Act.

[121] 56 Phil. 423 (1931).

[122] 2 Phil. 234 (1903).

[123] U.S. v. Baluyut, 5 Phil. 129 (1905).

[124] This is the maximum period for which, under Section 155 of the Administrative Code, as amended by Act No. 3107 (now repealed), the Secretary of Justice may detail a judge of first instance to a district or province other than his own for the purpose of trying all kinds of cases, excepting criminal and election cases.

[125] Quoted by the Court from Delfino v. Paredes, 48 Phil. 645 (1926).

The Court's opinion then took note of the recent decision in *People v. Soria*[126] where the Court held that a judge's authority to prepare and sign judgments outside the territorial jurisdiction of the court where the cases are pending may be exercised by him only if his transfer or assignment to another court is temporary, not permanent. The opinion conceded that under this doctrine the respondent judge in the instant case would be devoid of authority to issue the order of dismissal. It, however, held the *Soria* decision inapplicable because, like the decisions cited therein,[127] it was promulgated after the issuance of the order of dismissal in the instant case and could not be given retroactive effect because it would result in the deprivation of the constitutional right of the accused against double jeopardy.

This theory of retroactivity is certainly something novel. For from the point of view of the law applied and interpreted by the *Soria* decision, there is no such retroactivity.[128] That law—found in Section 51 of the Judiciary Act of 1948, as amended, and reproduced in Section 9 of Rule 135 of the Revised Rules of Court—was already in force when the dismissal order questioned in *People v. Donesa*[129] was issued by the respondent judge. That law must be deemed to have carried already the meaning given to it by the *Soria* decision when the dismissal in the *Donesa* case was rendered on January 12, 1965—indeed, it must be deemed to have carried it from the time of its enactment way back in 1948.

Be this as it may, the time seems to have come to reconsider and discard the *Soria* ruling as to the interpretation of the second paragraph of Section 51 of the Judiciary Act. The reasons given by Justice Teehankee in his separate opinion in *People v. Donesa*[130] seem irrefragable:

> Compelling considerations support such abandonment of *Soria* and a reversion to the old rulings cited in the main opinion that the public interest and the speedy administration of justice will be best served if the judge who heard the evidence (although he may have been permanently transferred to another province or station) renders the decision rather than to leave (*sic*) a mountain of evidence and transcripts for the perusal and appreciation of a new judge totally unfamiliar with the case and who did not have the opportunity of hearing the witnesses and observing their deportment for purposes of gauging their credibility and appraising their testimony.

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[126] G.R. No. L-25175, March 1, 1968, 22 SCRA 948 (1968).

[127] Ong Siu v. Paredes, G.R. No. L-21638, July 26, 1966, 17 SCRA 661 (1966), and Jimenez v. Republic, G.R. No. L-24529, February 17, 1968, 22 SCRA 622 (1968).

[128] See Senarillos v. Hermosisima, 100 Phil. 501 (1956) which states that the court's interpretation of a statute "constitutes part of the law as of the date it was originally passed, since [the] Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."

[129] *Supra*, note 89.

[130] *Supra*, note 89.

Again, there seems to be no valid reason to authorize a *permanently* transferred judge who has heard the case *only in part*, upon petition of any of the parties and upon recommendation of the respective or incumbent district judge, "to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction" pursuant to the *proviso* in the second paragraph of section 51 of the Judiciary Act, *supra*, but to withhold such authorization to decide the case from the same *permanently* transferred judge who has *"totally heard"* the case.

Finally, the statute, section 51, *supra*, uses practically the same words at the beginning and at the end of the second paragraph, *viz*, the case of a judge who heard the case *in toto* leaving the province "by *transfer* or assignment to another court of equal jurisdiction" and the case of a judge who may *continue* hearing a case *heard only in part* and to decide it "notwithstanding his *transfer* or appointment to another court of equal jurisdiction." I see no valid basis for *Soria's* distinction that would give two entirely different and contradictory meanings to the same word and hold that "transfer" in cases heard *in toto* should be limited to *temporary* transfers to be applicable, while it would refer and apply also to *permanent* transfers in cases " heard *only in part*." There is no room for making such a distinction, since the law does not so distinguish nor indicate any such intent.

SEARCHES AND SEIZURES

1. SEARCH WARRANTS

Asian Surety & Insurance Company, Inc. v. Herrera[131] applies several rulings on search warrants, some of which are enunciated for the first time in this jurisdiction.

In that case the respondent judge, upon the sworn application of an agent of the NBI supported by the deposition of his witness, issued on October 27, 1965 a search warrant in connection with an undocketed criminal case for estafa, falsification, insurance fraud, and the tax evasion, against the Asian Surety and Insurance Co., a corporation with principal office at Room 200 Republic Supermarket Bldg., Rizal Avenue, Manila. The search warrant was of the following tenor:

> It appearing to the satisfaction of the undersigned, after examining under oath *NBI Agent Celso J. Zoleta, Jr.* and his witness *Manuel Cuaresma* that there are good and sufficient reasons to believe that *Mr. William Li Yao* or his employees has/have in his/their control in premises *No. 2nd Floor Republic Supermarket Building, in Rizal Avenue* district of *Sta. Cruz, Manila*, property (Subject of the offense; stolen or embezzled and proceeds or fruits of the offense used or

[131] G.R. No. L-25232, December 20, 1973, 54 SCRA 312 (1973).

> intended to be used as the means of committing the offense) should be seized and brought to the undersigned.
>
> You are hereby commanded to make an immediate search at any time in the ..... of the premises above-described and forthwith seize and take possession of the following personal property to wit: Fire Registers, Loss Bordereau, Adjusters Report including subrogation receipt and proof of loss, Loss Registers, Books of Accounts, including cash receipts and disbursements and general ledger, check vouchers, income tax returns, and other papers *connected therewith* x x x for the years *1961 to 1964* to be dealt with as the law directs.

Armed with this search warrant the NBI agent who obtained it and other NBI agents entered the premises of the Republic Supermarket and served the search warrant upon Atty. Alidio of the insurance company in the presence of Mr. William Li Yao, president and chairman of the board of directors of the company. After the search they seized and carried away two carloads of documents, papers, receipts, and records.

Grounds for invalidating a search warrant

In its petition to quash and annul the search warrant and to have the documents, papers, receipts and records thus seized returned, the insurance company questioned the validity of the search warrant and the manner of its execution. Resolving this question, the Supreme Court declared the search warrant and its enforcement invalid on the following grounds:

1. It was issued for four separate and distinct offenses—estafa, falsification, tax evasion, and insurance fraud—in violation of the injunction of Section 3 of Rule 126 that "[no] search warrant shall issue for more than one specific offense."

2. Contrary to the constitutional requirement, it did not particularly describe the things to be seized. The reference by the search warrant to the properties to be seized as "subject of the offense; stolen or embezzled and proceeds or fruits of the offense used or intended to be used as the means of committing the offense"; its description of them as "Fire Registers, Loss Bordereau, Adjusters Report, including subrogation receipt and proof of loss, Loss Registers, Books of Accounts, including cash receipts and disbursements and general ledger, check vouchers, income tax returns, and other papers connected therewith"; and its enumeration of estafa, falsification, tax evasion, and insurance fraud as the offenses supposed to have been committed by the corporation—these:

> x x x render it impossible for Us to see how the above-described property can simultaneously be contraband goods, stolen or embezzled and other proceeds or fruits of one and the same offense. What is plain and clear is the fact that the respondent Judge made no attempt to determine whether the property he authorized to be searched and

> seized pertains specifically to any one of the three classes of personal property that may be searched and seized under a search warrant under Rule 126, Sec. 2 of the Rules. The respondent Judge simply authorized search and seizure under an omnibus description of the personal properties to be seized. Because of this all embracing description which includes all conceivable records of petitioner corporation, which if seized (as it was really seized in the case at bar), could possibly paralyze its business, petitioner in several motions filed for early resolution of this case, manifested that the seizure of TWO carloads of their papers has paralyzed their business to the grave prejudice of not only the company, its workers, agents, employees but also of its numerous insured and beneficiaries of bonds issued by it, including the government itself, and of the general public. And correlating the same to the charges for which the warrant was issued, We have before US the infamous general warrants of old. x x x

3. It transgressed the mandate of Section 8 of Rule 126 that "[t]he warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night." It left blank the *time* for making the search, and the actual search was conducted in the evening of October 27, 1965 at 7:30 P.M. until the wee hours of the morning of October 28, 1965, thus causing untold inconvenience to the petitioner and its officers and employees. On this point, the Court cited Puerto Rican and American authorities stating the rule, which it adopted for the first time, that where a search is to be made during the nighttime, the authority for executing the same at that time should appear in the directive on the face of the warrant.

4. The time of the application for the search warrant—and this was another novel doctrine introduced in this jurisdiction—was so far remote in time in relation to the time of commission of the alleged offenses. The offenses were alleged to have taken place from 1961 to 1964, and the application for search warrant was made only on October 27, 1965. To support its ruling on this point, the Court quoted the following passages from Joseph Varon's work on Searches, Seizures and Immunities:

> (2) Such statement as to the time of the alleged offense must be clear and definite *and must not be too remote from the time of the making of the affidavit and issuance of the search warrant.*
>
> (3) There is no rigid rule for determining whether the stated time of observation of the offense is too remote from the time when the affidavit is made or the search warrant issued, but, *generally speaking, a lapse of time of less than three weeks will be held not to invalidate the search warrant, while a lapse of four weeks will be held to be so.*

> A good and practical rule of thumb to measure the nearness of time given in the affidavit as to the date of the alleged offense, and the time of making the affidavit is thus expressed: *The nearer the time at which the observation of the offense is alleged to have been made, the more reasonable the conclusion of establishment of probable cause.* [Italics supplied by the Court.]

5. The respondents failed to give a detailed receipt of the things seized, and thus failed to comply with Section 10 of Rule 126. In the receipts one could find mention only of "one bordereau of reinsurance, 8 fire registers, 1 marine register, four annual statements, folders described only as Bundle gm-1 red folders; bundle 17-22 big cartons folders; folders of various sizes, etc.," without stating therein the nature and kind of documents contained in the folders of which about a thousand were seized.

Inadmissibility of fruits of illegal search and seizure

Asian Surety and Insurance Company, Inc., v. Herrera[132] also reiterates, and thus more firmly establishes, the ruling in *Stonehill v. Diokno*[133] that illegally searched and seized documents, papers, and things are inadmissible in evidence. Citing the experience in common law jurisdictions, the Court said that this exclusionary rule has been found to be the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures.

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[132] *Supra*, note 131.
[133] G.R. No. L-19550, June 19, 1967, 20 SCRA 383 (1967).