

## Estrada v. Arroyo: Some Reflections

Justice Isagani A. Cruz\*

The most important case decided by the Supreme Court last year was *Joseph Estrada v. Gloria Macapagal Arroyo*.<sup>1</sup> Consolidated with *Joseph Estrada v. Aniano Desierto et al.*,<sup>2</sup> it settled the constitutional issues of Vice-President Arroyo's succession to the presidency and President Estrada's claimed immunity from suit.

The two cases were decided jointly, with Justice Reynato S. Puno as *ponente*. Justices Josue N. Bellosillo, Jose A. R. Melo, Leonardo A. Quisumbing, Minerva Gonzaga-Reyes, and Sabino R. de Leon concurred, with Justices Jose C. Vitug and Vicente V. Mendoza filing separate concurring opinions. That made eight of them. Five other justices, namely, Santiago M. Kapunan, Bernardo P. Pardo, Arturo B. Buena, Consuelo Ynares-Santiago, and Angelina Sadoval-Gutierrez concurred in the result. Chief Justice Hilario G. Davide, Jr. and Justice Artemio V. Panganiban took no part and explained their inhibition.

Those who concurred only in the result reserved the filing of separate opinions except Buena, who simply concurred in the result without more and Pardo, who reserved his vote on the question of presidential immunity from suit. Concurrence only in the result suggests a partial dissent that must be explained under the mandatory provisions of Art. VIII, Sec. 13 of the Constitution. Compliance with this rule will be discussed below.

The conclusions in the joint decision were supported by all the members of the Supreme Court, presumably including Davide and Panganiban if they had not recused themselves. One cannot help thinking, however, that some of those who concurred only in the result may have done so only to give the *ponencia* the unanimous support of the Court, possibly in deference to Chief Justice Davide, who played an active non-judicial role during the political impasse. No less compelling might have been the prevailing public opinion here and even abroad in favor of the new Arroyo government.

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1. *Joseph Estrada v. Gloria Macapagal Arroyo*, G.R. No. 146738, March 2, 2001.  
2. *Joseph Estrada v. Aniano Desierto et al.*, G.R. Nos. 146710-15, March 2, 2001.

The underlying facts of *Estrada v. Arroyo* are still fresh in the minds of our people and too important to be soon forgotten. With the evidence against the impeached President piling up inexorably, the proceedings took a turn for the worse when the pro-Estrada senators blocked the opening of the second envelope that supposedly would conclusively prove Estrada's guilt. This provoked the walk out of the prosecution lawyers and the outvoted senators that in turn triggered the instant and voluntary assemblage of the outraged people in what eventually became Edsa II. The demand for Estrada's ouster eventually grew in such number and anger as to unnerve the touted machismo.

With the masses at Edsa increasing by the hour, Vice-President Gloria Macapagal Arroyo took the oath of office as President of the Philippines at noon on January 20, 2001, before a jubilant crowd. Chief Justice Davide administered the oath in the presence of 12 justices of the Supreme Court, along with other high officials of the government (including some who had earlier abandoned the sinking ship). At about 2:30 in the afternoon of the same day, President Joseph Estrada, together with his family, took leave of Malacañang after issuing the following statement:

At twelve o'clock noon today, Vice President Gloria Macapagal Arroyo took her oath as President of the Republic of the Philippines. While along with many other legal minds of our country, I have strong and serious doubts about the legality and constitutionality of her proclamation as President, I do not wish to be a factor that will prevent the restoration of unity and order in our civil society.

It is for this reason that I now leave Malacañang Palace, the seat of the presidency of this country, for the sake of peace and in order to begin the healing process of our nation. I leave the Palace of our people with gratitude for the opportunities given to me for service to our people. I will not shirk from any future challenges that may come ahead in the same service of our country.

I call on all my supporters and followers to join me in the promotion of a constructive national spirit of reconciliation and solidarity.

May God bless our country and beloved people.

MABUHAY!

(Sgd.) JOSEPH EJERCITO ESTRADA

It later appeared that on the same day, he sent identical letters to the Senate President and the Speaker of the House of Representatives informing them that, pursuant to Art. VII, Sec. 11 of the Constitution, he was declaring his incapacity to discharge the powers and functions of his office and that "by operation of law, the Vice President shall be the Acting President."

President Arroyo soon organized the Cabinet and nominated Sen. Teofisto T. Guingona, Jr. as her Vice-President. He was readily confirmed by both Houses of Congress voting separately. She signed several bills into law and appointed some ambassadors, consuls and other public officials. In separate resolutions, the Senate and the House of Representatives recognized her as the President of the Philippines. At the *vin d'honneur* in Malacañang on January 23, the Papal Nuncio, as dean of the diplomatic corps, led more than a hundred foreign diplomats in extending their own recognition. U.S. President George W. Bush performed the same act through a telephone call from the White House to the new president.

The basic question addressed to the Supreme Court was the validity of the respondent's take-over of the Presidency of the Philippines from the petitioner. Arroyo claimed that Estrada had resigned, thereby paving the way for her constitutional succession under Art. VII, Sec. 8 of the Constitution. Estrada contended that he had not vacated his office and had merely taken a leave of absence because of his temporary incapacity. That condition only authorized Arroyo to replace him temporarily as acting President under Sec. 11 of the same Article.

The Court sustained Arroyo. It held that Sec. 11 was not applicable because it envisioned only the temporary incapacity of the President. Estrada's letters of January 20 to the heads of the legislature were "wrapped in mystery," not even having been mentioned by his counsel in their pleadings or during the oral argument or even intimated during the weeklong crisis. Estrada had vacated his office by his resignation.

The petitioner's resignation as President of the Philippines created the vacancy that was validly filled by Vice-President Arroyo under the aforesaid Sec. 8. Resignation, Justice Puno explained, could be express or implied, written or oral. Estrada's acts clearly showed that he was leaving Malacañang for good and not only to take a temporary respite from his powers and functions as President of the Philippines.

After discussing at length the facts and circumstances that led to Estrada's departure from the Palace on January 20, the decision concluded that he had actually and intentionally resigned under what it called the "totality test."

In sum, we hold that the resignation of the petitioner cannot be doubted. In the press release containing his final statement, (1) **he acknowledged the oath-taking of the respondent as President** of the Republic albeit with reservations about its legality; (2) he emphasized he was leaving the Palace, the seat of the presidency, for the sake of peace and in order to begin the healing process of our nation. **He did not say he was leaving the Palace due to any kind of inability and that he was going to re-assume the presidency as soon as the disability disappears;** (3) he expressed his gratitude to the people for the opportunity to serve them. Without doubt, he was referring to the **past opportunity** given him to

serve the people as President; (4) he assured that he will not shirk from any **future challenge** that may come ahead in the same service of our country. Petitioner's reference is to a **future challenge after occupying the office of the president** which he has given up; and (5) he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. **Certainly, the national spirit of reconciliation and solidarity could not be attained if he did not give up the presidency.** The press release was petitioner's valedictory, his final act of farewell. **His presidency is now in the past tense.** (emphasis supplied)

The 67-page decision also held that the issues raised were justiciable; conviction of President Estrada in the impeachment trial was not a condition precedent to the filing of criminal charges against him; he was not immune from suit as a non-sitting president; and his prosecution should not be enjoined because of what he called prejudicial publicity.

The petitioner filed a motion for reconsideration that was denied on April 3, 2001, in a 44-page resolution that "doth protest too much." It elaborated on the decision and rejected the movant's every single argument exhaustively (and exhaustingly). The hearsay rule alone covered ten pages, with a suggestion that it be completely ignored. Bellosillo filed a separate concurring opinion, as so again did Vitug and Mendoza. Panganiban submitted an extended explanation of his inhibition. No one dissented.

In their separate opinions concurring in the result, Kapunan questioned the petitioner's ouster as not done through the constitutional process of impeachment and described the Angara diary as hearsay; Pardo described Estrada's resignation as involuntary but did not say much about the Court's ruling on his immunity from suit; Ynares-Santiago rejected the view that the demonstrations at EDSA II were the acts of the sovereign people; and Sandoval-Gutierrez doubted that the petitioner had effectively and legally resigned. Justice Buena, who also concurred in the result, did not explain his misgivings.

Given their strong objections to the judgment of the Court, I submit that they should have dissented from it instead of simply concurring in the result. That would have been a more forthright stand than taking the fickle position of the fictional Julia who, while resisting, actually surrendered. If they sincerely believed in their reservations, they should not have simply yielded them on the feeble justification that the Arroyo government was already in place. A *fait accompli* is a cowardly excuse for a previous wrong.

Speaking as an ordinary citizen and lawyer, I venture the suggestion that the claimed resignation of Joseph Estrada was a factual question to be resolved, as the decision itself put it, "by the totality of prior, contemporaneous and posterior *facts* and circumstantial evidence bearing a material relevance on the issue." Questions of fact are supposed to be

examined only by the lower courts, subject to the appellate jurisdiction of the Supreme Court under Art. VIII, Sec. 5(2) of the Constitution to review their decisions in, among others, "all cases in which only an error or question of law is involved."

It is worth noting that the factual findings of the Court were based for the most part on Sen. Edgardo Angara's diary, "The Final Days of Joseph Ejercito Estrada," as serialized in the *Philippine Daily Inquirer* on February 4-6, 2001. Calling it "an authoritative window on the state of mind of the petitioner," the decision extensively discussed its entries and their interpretation to reach its conclusion that the petitioner's state of mind led him to resign and not merely take a leave of absence.

There is nothing in the decision showing that the diary was submitted in evidence or at least attached as an annex to any of the pleadings. Neither has it been shown that Angara was presented as a witness before the Court to affirm under oath the recitals in his diary. Lacking such formalities, the work is merely hearsay and conceivably even fiction. It does not appear as one of the exception to the hearsay rule under the Rules of Court.

Neither, in my humble opinion, can it be the subject of judicial notice as a matter of public knowledge. "A fact is said to be generally recognized or known when its existence or operation is accepted by the public without examination or contention. The test is whether sufficient notoriety attached to the fact involved as to make it proper to assume its existence without proof."<sup>3</sup> The events related in the diary were not generally known to the public; only those who read it were aware of its entries and possibly some did not even believe them. It is hard to accept the diary as a reliable, and much less a legal, "window" to the petitioner's state of mind, as Angara described it.

I can only wish now that the Court had used *Estrada v. Arroyo* as a precedent to support its own inquiry into whether all the complainants in the *Kuratong Baleleng Case*<sup>4</sup> had been notified of its provisional dismissal as the condition for the application of the 2-year prescriptive period under Rule 117, Sec. 8 of the Rules of Court. That is another factual question that it could also have directly and more speedily decided instead of remanding it to a lower court.

Justice Puno's *ponencia* is well crafted as usual, without affection or attempt at erudition. (I remember one incident when I was still a member of the Court, I remarked I could not make heads or tail of a concurrence filed by a colleague. To my delighted surprise, everyone agreed, proving I was not really that dense after all.) Justice Puno's style is simple but eloquent

and reveals a sharp but unassuming intellect, particularly in the field of constitutional law. I am sure that if the seniority rule is not ignored, he will make an outstanding Chief Justice in due time.

*Estrada v. Arroyo* is, as I see it, more of an exercise in judicial statesmanship than an objective determination based on the facts of the case and the pertinent laws and jurisprudence. It is a reflection not so much of our fealty to the Rule of Law, although there was an earnest effort to honor it, as of the desperate hope of the sovereign people for a better government and a less threatening future.

3. 20 AM. JUR. 49.

4. *People of the Philippines v. Lacson*, G.R. No. 149453 (May 28, 2002).