Time Out: Prescription, Public Office, and the Case of People v. *Romualdez & Sandiganbayan*

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I. INTRODUCTION

> "*Public Office is a Public Trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives.*"[1]

President Ferdinand Edralin Marcos took on the Philippine Presidency in 1965 and was overthrown by the historic People Power Revolution in February of 1986. During his tumultuous years in power, Marcos' administration was marred by massive government corruption, nepotism, political repression, and human rights violations. His exile to Hawaii did not hamper the controversies surrounding his past position. It was alleged that he and his wife, Imelda Romualdez Marcos, had moved billions of dollars of embezzled public funds from the country to the United States, Switzerland,

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1. PHIL. CONST. art. XI, § 1.

and other countries, as well as in fictitious public corporations during his 20-year stint as President.

The country's foreign debts were less than $1 billion when Marcos assumed the position in 1965 and more than $28 billion when he left office in 1986. Today, more than half of the country's revenues are outlaid for the payments on the interests of loans alone.[2] Created and placed under the control of alleged Marcos cronies were monopolies in several vital industries, such as coconut (under Eduardo Cojuangco, Jr. and Juan Ponce Enrile), tobacco (under Lucio Tan), banana (under Antonio Floirendo), manufacturing (under Herminio Disini and Ricardo Silverio), and sugar (under Roberto Benedicto). The Marcos and Romualdez families became owners, directly or indirectly, of the nation's largest corporations, such as the Philippine Long Distance Telephone Company (PLDT), the Philippine Airlines (PAL), Meralco (a national electric company), Fortune Tobacco, the San Miguel Corporation (Asia's largest beer and bottling company), numerous newspapers, radio and TV broadcasting companies (such as ABS-CBN), several banks, and real estate properties in New York, California, and Hawaii.[3] It was no exaggeration when Imelda Marcos declared in an interview that her family "own[s] practically everything in the Philippines."[4]

This case stems from a Court Resolution[5] which decided a Petition for Certiorari under Rule 65 of the Revised Rules of Court[6] by the People of the Philippines on 23 July 2008. It was based on the Resolutions issued by the Sandiganbayan in 2004, involving the criminal case filed against Benjamin "Kokoy" Romualdez for violations of the Anti-Graft and Corrupt Practices Act.[7] Romualdez is the younger brother of the former First Lady, Imelda Romualdez Marcos. These Resolutions were assailed on the ground of grave abuse of discretion and/or lack or excess of jurisdiction. The first assailed Resolution granted the Motion to Quash filed by private respondent

2. Chi Kyu Sim, A Comparison of the Economic Development of the Republic of Korea and the Philippines since Independence, *available at* http://www.zum.de/whkmla/sp/0708/chikyu/chikyu2.html (last accessed Sep. 25, 2009).

3. *Id.*

4. Christine Herrera, *Imelda to File ₱ 500-Billion suit v. Marcos Cronies*, Philippine Daily Inquirer, Dec. 5, 1998, at 1.

5. People of the Philippines v. Romualdez & Sandiganbayan, G.R. No. 166510, Apr. 29, 2009.

6. 1997 REVISED RULES OF CIVIL PROCEDURE, rule 65.

7. Anti-Graft and Corrupt Practices Act [Anti-Graft Act of 1960], Republic Act No. 3019 (1960).

Romualdez; the second assailed Resolution, on the other hand, denied the People's Motion for Reconsideration of the first assailed Resolution.[8]

Romualdez moved to quash the information on two grounds, namely: (1) that the facts alleged in the information do not constitute the offense with which the accused was charged; and, (2) that the criminal action or liability has been extinguished by prescription.[9]

II. FACTS OF THE CASE

The Resolution rendered on 29 April 2009 states that Petitioner filed a Petition for Certiorari under Rule 65, imputing grave abuse of discretion on the part of the Sandiganbayan in quashing the subject information.[10] The Petition sought to nullify — on jurisdictional grounds — the Sandiganbayan's rulings on 22 June 2004 and 23 November 2004.[11] These two cases involved the Office of the Ombudsman charging Romualdez before the Sandiganbayan with violation of Section 3 (e) of R.A. No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.[12] He was then a public officer as the Provincial Governor of the Province of Leyte, and allegedly using his influence with his brother-in-law, then President Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment was in violation of the existing laws.[13] It was said that the Office of the Ambassador or Chief of Mission was incompatible with his position as Governor of the Province of Leyte. This fact thereby enabled him to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte.[14]

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8. People of the Philippines v. Romualdez, 559 SCRA 492, 496 (2008).

9. *Id.* at 497.

10. *Romualdez & Sandiganbayan,* G.R. No. 166510, Apr. 29, 2009.

11. People of the Philippines v. Benjamin "Kokoy" Romualdez, Crim. Case No. 26916.

12. Anti-Graft Act of 1960, § 3 (e). This section provides:

> Sec. 3 (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantages or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

13. *Romualdez,* 559 SCRA at 497.

14. *Id.*

Romualdez responded with a Motion to Dismiss with Comment *ad cautelam*, wherein he argued that the proper remedy to an order granting a Motion to Quash a criminal information is by way of appeal under Rule 45 since such order is a final order and not merely interlocutory.[15] Romualdez likewise raised before the Court his argument that the criminal action or liability had already been extinguished by prescription, which argument was debunked by the Sandiganbayan.[16]

The Court granted the Petition in its 23 July 2008 Decision. While the Court acknowledged that the mode for review of a final ruling of the Sandiganbayan was by way of a Rule 45 petition,[17] it nonetheless allowed the Rule 65 petition of petitioners, acceding that such remedy was available on the claim that grave abuse of discretion amounting to lack or excess of jurisdiction had been properly and substantially alleged.[18] The Decision then proceeded to determine that the quashal of the information was indeed attended with grave abuse of discretion, the information having sufficiently alleged the elements of Section 3 (e) of R.A. No. 3019, the offense with which private respondent was charged. The Decision concluded that the Sandiganbayan had committed grave abuse of discretion by premising its quashal of the information "on considerations that either not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial."[19]

Private respondent filed a Motion for Reconsideration, placing renewed focus on his argument that the criminal charge against him had been extinguished on account of prescription. In the 23 July 2008 Decision, Romualdez posited that the 15-year prescription under Section 11 of R.A. No. 3019[20] had lapsed since the preliminary investigation of the case for an offense committed "on or about and during the period from 1976 to February 1986" commenced only in May 2001 after a Division of the Sandiganbayan referred the matter to the Office of the Ombudsman.[21] He argued that there was no interruption of the prescriptive period for the

15. *Romualdez & Sandiganbayan,* G.R. No. 166510, Apr. 29, 2009.

16. *Id.*

17. 1997 REVISED RULES OF CIVIL PROCEDURE, rule 45.

18. *Romualdez & Sandiganbayan,* G.R. No. 166510, Apr. 29, 2009.

19. *Id.*

20. Anti-Graft Act of 1960, § 11. This section provides:

> Sec. 11. *Prescription of offenses.* All offenses punishable under this Act shall prescribe in ten years.

21. *Romualdez,* 559 SCRA at 498.

offense because the proceedings undertaken under the 1987 complaint filed with the Presidential Commission on Good Government (PCGG) were null and void pursuant to the Supreme Court's ruling in *Cojuangco, Jr. v. PCGG*[22] and *Cruz, Jr. v. Sandiganbayan.*[23] He likewise argued that the Revised Penal Code (RPC) provision that prescription does not run when the offender is absent from the Philippines should not apply to his case, as he was charged with an offense not covered by the RPC. Also, the law on the prescription of offenses punished under special laws[24] does not contain any rule similar to that found in the RPC.[25]

In a Minute Resolution dated 9 September 2008, the Court denied the Motion for Reconsideration. Dealing with the issue on prescription, the same Resolution stated:

> We did not rule on the issue of prescription because the Sandiganbayan's ruling on this point was not the subject of the People's Petition for *Certiorari.* While the private respondent asserted in his Motion to Dismiss *Ad Cautelam* filed with us that prescription had set in, he did not file his own petition to assail this aspect of the Sandiganbayan ruling, he is deemed to have accepted it; he cannot now assert that in the People's Petition that sought the nullification of the Sandiganbayan ruling on some other ground, we should pass upon the issue of prescription he raised in his Motion.[26]

It is from this Resolution that Romualdez filed a second Motion for Reconsideration, where he reiterates that the charges against him had already prescribed. The issue on prescription is discussed in this Comment.

III. RESOLUTION OF THE SUPREME COURT

The 29 April 2009 Resolution favored Romualdez, with majority of the Court deciding that the case against him had already prescribed. The matter tackled by the Court was the issue on prescription. The Court's earlier ruling in *Romualdez v. Marcelo*[27] was cited and its decision was concurred with by the present Court and accordingly granted the private respondent's Motion. The Resolution stated that the subject criminal cases were filed with the Sandiganbayan only on 5 November 2001, which was clearly beyond the 15-

22. *See* Cojuangco v. Presidential Commission on Good Government, 190 SCRA 226 (1990).

23. *See* Cruz, Jr. v. Sandiganbayan, 194 SCRA 474 (1991).

24. An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin To Run, Act No. 3326, §2 (1926).

25. *Romualdez*, 559 SCRA at 498.

26. *Romualdez & Sandiganbayan*, G.R. No. 166510, Apr. 29, 2009.

27. Romualdez v. Marcelo, 497 SCRA 89 (2006).

year prescriptive period provided under Section 11 of the R.A. No. 3019.[28] In addition, it was stated that while there were cases filed by the PCGG, these were quashed based on prevailing jurisprudence that the PCGG lacked the authority to file said cases. It was then necessary for the Office of the Ombudsman to conduct the required preliminary investigation to enable the filing of the present charges.[29]

The initial filing of the complaint in 1989 or the preliminary investigation conducted by the PCGG that preceded it could not have interrupted the prescriptive period under R.A. No. 3019.[30] The said investigation was considered as void *ab initio* because previous authority from the President was necessary to investigate graft and corruption cases involving the Marcos cronies.[31] Furthermore, the Court stated that the rule for criminal violations of R.A. No. 3019 provides that the prescriptive period is tolled only when the Office of the Ombudsman receives a complaint or otherwise initiates its investigation.[32] The Court also said that Section 2 of Act No. 3326 is conspicuously silent as to whether the absence of the offender from the Philippines bars the running of the prescriptive period.[33] It stressed that "the silence of the law can only be interpreted to mean that Section 2 did not intend such an interruption of the prescription unlike the explicit mandate of Article 91."[34]

Under Section 2, the prescriptive period shall be interrupted "when proceedings are instituted against the guilty person."[35] The Court, however, noted that there is no such proceeding instituted against the petitioner to warrant the tolling of the prescriptive periods of the offenses charged against him.[36] Because of these facts, the Court ruled that the offense had already prescribed.

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28. *Romualdez & Sandiganbayan,* G.R. No. 166510, Apr. 29, 2009.

29. *Id.*

30. *Id.*

31. *See Cruz*, 194 SCRA 474 (Investigatory power of the PCGG extended only to alleged ill-gotten wealth cases.).

32. *Romualdez & Sandiganbayan*, G.R. No. 166510, Apr. 29, 2009 (citing Salvador v. Desierto, 420 SCRA 76, 81-82 (2004)).

33. Jay B. Rempillo, SC Dismisses Criminal Raps Against Former Ambassador Romualdez, *available at* http://sc.judiciary.gov.ph/news/courtnews%20flash/2006/07/07280601.php (last accessed Sep. 25, 2009).

34. *Id.*

35. Act No. 3326, §2, ¶ 2.

36. Jay B. Rempillo, SC Dismisses Criminal Raps Against Former Ambassador Romualdez, *available at* http://sc.judiciary.gov.ph/news/courtnews%20flash/2006/07/07280601.php (last accessed Sep. 25, 2009).

Associate Justice Antonio Carpio dissented from the majority Decision, joined by Associate Justices Arturo Brion, Conchita Carpio-Morales and Minita Chico-Nazario. Justice Carpio anchored his argument in that a person who commits a crime cannot simply flee from this jurisdiction, wait out for the prescriptive period to expire, then come back to move for the dismissal of the charge against him on the ground of prescription.[37] He based his opinion on Articles 10 and 91 of the RPC,[38] on R.A. No. 3019, and on Section 2 of Act No. 3326.[39] He states that R.A. No. 3019 provides that "[a]ll offenses punishable under this Act shall prescribe in 15 years," but that the special law does not specifically provide for a procedure for computing the prescriptive period.[40] He concedes that both R.A. No. 3019 and Act No. 3326 are silent on whether the absence of the offender from the Philippines bars the running of the prescriptive period.[41]

However, pursuant to the supplementary application of the related provisions of the RPC, the latter's Article 10 should apply.[42] As clearly stated, unless special laws expressly prohibit the application of the RPC, its provisions should be made to apply in case of any deficiency of the provisions found in special laws. In this regard, it was emphasized that nothing in R.A. No. 3019 or Act No. 3326 prohibits the application of Article 91 of the RPC. Hence, there is "[n]o bar to the application to these special laws of Article 91 regarding the tolling of the prescriptive period during the absence of the offender from Philippine jurisdiction."[43] From these arguments, Justice Carpio voted to dissent from the majority Resolution.

His colleague, Associate Justice Arturo Brion, also dissented from the Decision. He, however, anchored his stand in that first, the Court had no jurisdiction to rule on the issue of prescription and second, a second Motion

37. *Romualdez & Sandiganbayan*, G.R. No. 166510, Apr. 29, 2009 (citing Justice Antonio Carpio's dissenting opinion).

38. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 10 & 91 (1932).

39. Act No. 3326, §2, ¶ 1. This section provides:

> Sec. 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

40. Anti-Graft Act of 1960.

41. *Romualdez & Sandiganbayan,* G.R. No. 166510, Apr. 29, 2009.

42. *Id.* (citing Justice Antonio Carpio's dissenting opinion).

43. *Id.*

for Reconsideration, under the combined application of Section 2, Rule 52[44] and Section 2, Rule 56[45] of the Revised Rules of Court, was a prohibited pleading that the Court could not and should not have entertained. He examined the Court's limits of its certiorari jurisdiction stating that "[t]he Rule 65 petition is a very narrow and focused remedy that solely addresses cases involving lack or want of jurisdiction."[46] Under the clear terms of what is to be discussed under the Court's certiorari jurisdiction, he stated that the Court had no jurisdiction to over the issue of prescription because it was never brought to the Court on a petition for certiorari; it was an issue that was never alleged before the Court to have been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.[47] In fact, under the 29 April 2009 Resolution, the majority had not challenged the unanimous finding of grave abuse of discretion in the 23 July 2008 Decision. Rather, it had sidestepped the issue and proceeded to rule on the issue of prescription — a matter outside the jurisdiction of the Court.[48] Because of this, according to Justice Brion, the majority "[a]ccepted that the petition before [u]s is indeed a Rule 65 petition, but at the same time proceeded to rule on an

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44. 1997 REVISED RULES OF CIVIL PROCEDURE, rule 52, § 2. This section provides:

> Sec. 2. *Second motion for reconsideration* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

45. *Id.* rule 56 (a), § 2. This section provides:

> Sec. 2. *Rules applicable* — The procedure in original cases for certiorari, prohibition, mandamus, quo warranto and habeas corpus shall be in accordance with the applicable provisions of the Constitution, laws, and Rules 46, 48, 49, 51, 52 and this Rule, subject to the following provisions:
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> a) All references in said Rules to the Court of Appeals shall be understood to also apply to the Supreme Court;
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> b) The portions of said Rules dealing strictly with and specifically intended for appealed cases in the Court of Appeals shall not be applicable; and
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> c) Eighteen (18) clearly legible copies of the petition shall be filed, together with proof of service on all adverse parties.
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> The proceedings for disciplinary action against members of the judiciary shall be governed by the laws and Rules prescribed therefor, and those against attorneys by Rule 139-B, as amended.

46. *Romualdez & Sandiganbayan*, G.R. No. 166510, Apr. 29, 2009 (citing Justice Arturo Brion's dissenting opinion).

47. *Id.*

48. *Id.*

issue that is not appropriate, for jurisdictional reasons, for a Rule 65 petition to consider and rule upon."[49]

Again, he added that the second Motion for Reconsideration is a prohibited pleading under the present Rules of Court. To him, "[t]he majority ruling, in short, had not shown any valid reason for admitting a prohibited second Motion for Reconsideration, much less any compelling reason explaining how and why it ruled on an issue not legitimately encompassed by the Petition for Certiorari before us."[50] For these reasons, he voted to dissent from the Resolution.

IV. ANALYSIS

A. The Fight Against Corruption

The Philippines certainly cannot be faulted for trying, or at least appearing to try, to fight corruption. This is especially true as the country impresses society with a long history of flawed executive-led efforts. Since the Philippines' declaration of independence in 1945, the Executive branch has created 14 presidential anti-corrupt bodies,[51] beginning with an integrity

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49. *Id.*

50. *Id.*

51. Presidential Anti-Graft Bodies:

(1) Integrity Board — Elpidio Quirino
(2) Presidential Complaints and Action Committee — Ramon Magsaysay
(3) Presidential Committee on Administrative Performance and Efficiency — Carlos Garcia
(4) Presidential Anti-Graft Committee — Carlos Garcia
(5) Presidential Anti-Graft Committee — Diosdado Macapagal
(6) Presidential Agency on Reforms in Government Office — Ferdinand Marcos
(7) Presidential Complaints and Action Office — Ferdinand Marcos
(8) Presidential Agency on Reforms and Governmental Operations — Ferdinand Marcos
(9) Complaints and Investigation Office — Ferdinand Marcos
(10) Public Ethics and Accountability Task Force — Corazon Aquino
(11) Presidential Commission on Good Government — Corazon Aquino
(12) Presidential Commission Against Graft and Corruption — Fidel Ramos
(13) Inter-Agency Anti-Graft Coordinating Council — Joseph Estrada

board in 1950 until the current Presidential Anti-Graft Commission under President Gloria Macapagal-Arroyo.[52] Likewise, the Philippines also has a long list of anti-corruption legislative efforts. Among these include the Constitution under Article XI,[53] Republic Act Nos. 6770,[54] 1379,[55] 6713,[56] 7080,[57] 9160,[58] and 3019, the RPC under Titles II and VII, and Presidential Decree No. 749.[59]

The main purpose of these agencies and legislative actions is to ensure that there is transparency and honesty among those involved in public service. However, a report by the Department of Finance showed that ₱242 billion had been lost to corruption in the Bureau of Internal Revenue in 2003 alone.[60] It is not farfetched to assume that there are millions of public funds lost to graft and corruption in other areas of government, even with

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(14) Presidential Anti-Graft Commission — Gloria Macapagal-Arroyo

52. Paper for the Aug. 26, 2006 Talk on Corruption, *available at* http://www.pagc.gov.ph/File/Chair_Speeches/PDF/2006/Paper%20for%20the%2026%20August%202006%20Talk%20on% 20Corruption,%20Iloilo%20City.pdf (last accessed Sep. 22, 2009).

53. PHIL. CONST. art XI.

54. An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman and For Other Purposes [Ombudsman Act of 1989], Republic Act No. 6770 (1989).

55. An Act Declaring Forfeiture in Favor of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing For the Proceedings Therefor, Republic Act No. 1379 (1955).

56. An Act Establishing A Code of Conduct and Ethical Standards for Public Officials and Employees, To Uphold the Time-Honored Principle of Public Office Being A Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and For Other Purposes [CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICERS AND EMPLOYEES], Republic Act No. 6713 (1989).

57. An Act Defining and Penalizing the Crime of Plunder [Anti-Plunder Act of 1991], Republic Act No. 7080 (1991).

58. An Act Defining the Crime of Money Laundering, Providing Penalties Therefor and For Other Purposes [Anti-Money Laundering Act of 2001], Republic Act No. 9160 (2001).

59. Granting Immunity from Prosecution to Givers of Bribes and Other Gifts and To Their Accomplices in Bribery and Other Graft Cases Against Public Officers, Presidential Decree No. 749 (1975).

60. Alleged Corruption is Arroyo's Darkest Legacy, *available at* http://francis-pangilinan.politicalarena.com/news/alleged-corruption-is-arroyo-s-darkest-legacy-chiz (last accessed Sep. 22, 2009).

the existence of the abovementioned laws and anti-graft agencies. In fact, the Philippines' rank in Transparency International's Corruption Perception Index has fallen from 102nd in 2004 to 141st in 2008.[61] Therefore, these numbers show a need for stricter measures to be taken and more importantly, implemented, in order to hold individuals in public office accountable for their actions. Mere technicalities in the law should not be used by public officials to escape punishment.

B. On Prescription

Prescription of a crime is the loss or waiver by the State of its right to prosecute an act prohibited or punished by law.[62] It is the policy of the law that prosecutions should be prompt and that statutes enforcing that promptitude should be maintained, these provisions being not merely acts of grace but checks imposed by the State upon itself "to exact vigilant activity from its subalterns and to secure for criminal trials the best evidence that can be obtained."[63] It is a recognized mode of extinguishing criminal liability under the RPC.[64]

The RPC provides for the period of prescription of offenses falling within its provisions.[65] It states that prescription "[c]ommences to run from

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61. *Id.*

62. People v. Lacson, 400 SCRA 267, 354 (2003) (citing People v. Montenegro, 68 Phil 659; People v. Moran, 44 Phil 405).

63. *Id.* (citing Justice Jose Vitug's dissenting opinion; *see also* Wharton on Criminal Pleading and Practice, 9th ed., 1889, § 316, at 215).

64. REVISED PENAL CODE, art. 89. This article provides:

> Art. 89. *How criminal liability is totally extinguished* — Criminal liability is totally extinguished:
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> (1) By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
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> (2) By service of the sentence;
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> (3) By amnesty, which completely extinguishes the penalty and all its effects;
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> (4) By absolute pardon;
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> (5) By prescription of the crime;
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> (6) By prescription of the penalty;
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> (7) By the marriage of the offended woman, as provided in Article 344 of this Code.

65. REVISED PENAL CODE, art. 91. This article provides:

> Art. 91. *Computation of prescription of offenses* — The period of prescription shall commence to run from the day on which the crime

the day following the commission or discovery of the crime, by the offended party, the authorities or their agents."[66] In addition, the period is interrupted by the filing of a complaint or information, and commences to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to the offender.[67] More importantly, the law states that prescription shall not run when the offender is outside the Philippines, except when there is an extradition treaty.[68] All these provisions apply to violations or offenses under the RPC. However, the rules differ when there is an offense falling under special laws. Each special law should ideally provide for its own period of prescription.

The *Romualdez* case involves the application of a special law, that of R.A. No. 3019. Under this law, it specifically provides that a violation of any of its provisions prescribes in 15 years. However, this rule will only refer to violations committed after the amendment was made in 1982. Before this, the prescriptive period for any violation is only 10 years. This is the period applicable before the amendment in 1982 was made, which extended the prescription to 15 years.[69] The point of contention in the present scenario is that while the special law provides for a period of prescription, it does not supply a procedure as to when such period shall commence. As stated in the preceding chapter, the dissent of Justice Carpio posits that the RPC should be made to apply in this case where the law is silent. This assertion is based on Article 10 of the same Code, which illustrates its supplementary nature in case of any absence, lack or void in other laws.

C. *Survey of Local Jurisprudence*

Past decisions of the Court as regards prescription show that when the law alleged to have been violated is a special law, particularly R.A. No. 3019, the

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> is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
>
> The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

66. ABELARDO C. ESTRADA, CRIMINAL LAW: BOOK 1 OF THE REVISED PENAL CODE MADE EASY FOR STUDENTS, BAR EXAMINEES & PRACTITIONERS 346 (2008) (citing REVISED PENAL CODE, art. 91).

67. *Id.* at 347.

68. *Id.*

69. People v. Pacificador, 354 SCRA 310, 318 (2001).

applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended.[70]

1. Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto

In *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[71] the core issue discussed was "whether the public respondent, then Ombudsman Aniano A. Desierto, committed grave abuse of discretion in holding that the offenses with which the other respondents in the case were charged, had already prescribed."[72]

On 8 October 1992, then President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans, with the Chairman of the PCGG as Chairman, the Solicitor General as Vice-Chairman, and one representative each from the Office of the Executive Secretary, Department of Finance, Department of Justice, Development Bank of the Philippines, Philippine National Bank, Asset Privatization Trust, Government Corporate Counsel and the Philippine Export and Foreign Loan Guarantee Corporation as members.[73] The Committee was tasked to perform certain functions to recover behest loans.[74] Behest loans are part of the ill-gotten wealth which former President Marcos and his cronies accumulated and which the government, through the PCGG, seeks to recover.[75]

President Ramos then issued Memorandum Order No. 61 and directed the Committee to "include in its investigation, inventory and study, all non-performing loans which shall embrace both behest and non-behest loans."[76] The Committee then reported to President Ramos that the Philippine Seeds, Inc. (PSI), of which the respondents in this case were Directors, was one of the corporations which availed of behest loans. Ramos directed the Chairman of the Committee to proceed with administrative and judicial actions against "the 21 firms in this batch with positive findings ASAP."[77] A complaint was then filed against the Directors of PSI under R.A. No. 3019. However, in its resolution approved on 9 June 1996, the Ombudsman

70. Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto, 317 SCRA 272, 296 (1999).

71. *Id.*

72. *Id.* at 280.

73. *Id.* at 281.

74. *Id.* at 281-82.

75. *Id.* at 286.

76. *Presidential Ad Hoc Fact-Finding Committee on Behest Loans*, 317 SCRA at 282.

77. *Id.* at 283.

dismissed the complaint on the ground of prescription. It relied on *People v. Dinsay*,[78] which is a case decided by the Court of Appeals, stating that since the transactions were evidenced by public instruments and therefore open to perusal by the public, the prescriptive period commenced to run from the time of the commission of the crime, not from the discovery thereof.[79] Since the disputed transactions were entered into in 1969, 1970, 1975, and 1978, the offenses had already prescribed.

The Committee argued that under the Constitution, the right of the State to recover behest loans as ill-gotten wealth is imprescriptible.[80] However, even assuming that the charges were prescriptible, the prescriptive period should be counted from the discovery of the crimes charges and not from the date of their commission.[81] The *Dinsay* case was said to be inapplicable since first, it was a case decided by the Court of Appeals and therefore, with no persuasive value; second, it involved a persecution for estafa in that the accused disposed of his property stating it was free from any liens or encumbrances despite the fact that it had a notice of *lis pendens* with the Registry of Deeds,[82] third, the case involved private parties and not public officers and fourth, the ruling was not absolute. Also, the Committee stated that even assuming the discovery rule does not apply, but because of the rule on "equitable tolling," prescription had not set in for the offenses. This principle is based on the doctrine *contra non valentem agree nulla currit praescriptio*, which means that no prescription shall run against a person unable to bring an action.[83] The Committee asserted that it was unable to bring an action since the loans were concealed and unknown, both parties to the loan transactions were in conspiracy to perpetrate the fraud against the State and that the loans were granted at the time when President Marcos was at the threshold of his authority and no one dared to question his orders.[84]

The Ombudsman, however, stated that the Constitutional provision is inapplicable since what was sought in the action was not to recover unlawfully acquired wealth, but to hold the respondents criminally liable

78. People v. Dinsay, C.A., 40 O.G., 12th Supp., 50.

79. *Presidential Ad Hoc Fact-Finding Committee on Behest Loans*, 317 SCRA at 285.

80. PHIL. CONST. art. XI, § 15. This article provides:

> Sec. 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees as transferees, shall not be barred by prescription, laches, or estoppel.

81. *Presidential Ad Hoc Fact-Finding Committee on Behest Loans*, 317 SCRA at 286.

82. *Id.*

83. *Id.* at 287.

84. *Id.*

under R.A. No. 3019. In addition, he insisted that prescription had already set in. As stated in the case:

> As a matter of fact it prescribed in ten years pursuant to the original provision of Section 11 of R.A. No. 3019, which fixed the prescriptive period at ten years. B.P. Blg. 195, which increased the prescriptive period to fifteen years, became effective only on 16 March 1982 and cannot be given retroactive effect; hence, the offenses which might have arisen from the grant of the assailed loans in 1969, 1975[,] and 1978 prescribed in 1979, 1985 and 1988, respectively.[85]

The Ombudsman also cited Act No. 3326 to bolster his reasoning. Finally, he argued and maintained that:

> Any confidential relationship between the former strongman and the respondents DBP officials ceased altogether after the February 1986 EDSA revolution. Even assuming then that the running of the 10-year period of prescription was suspended by reason of the said confidential relationship, the same re-started in February 1986 and went on to lapse in February 1996. However, the complaint of the COMMITTEE in OMB-0-96-0968 was filed only on 2 March 1996.[86]

The Court agreed with the Ombudsman that the Constitutional provision was inapplicable since it was meant only for civil actions for the recovery of ill-gotten wealth. Citing the deliberations of the Constitutional Commissions, the conclusion made was that the prosecution of offenses arising from, relating or incident to, or involving ill-gotten wealth contemplated by the Constitution may be barred by prescription. Further, since the law alleged to have been violated involved a special law, the applicable rule in its computation is that of Act No. 3326. Therefore, it means that if the commission of the crime was known, the prescriptive period shall commence on the day it was committed.[87] The Court stated:

> In the present case, it was well-nigh impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made because, as alleged, the public officials concerned connived or conspired with the "beneficiaries of the loans." Thus, we agree with the COMMITTEE that the prescriptive period for the offenses with which the respondents in OMB-0-96-0968 were charged should be computed from the discovery of the commission thereof and not from the day of such commission.[88]

The Court directed the Ombudsman to proceed with its preliminary investigation.

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85. *Id.* at 288.

86. *Id.* at 289.

87. *Presidential Ad Hoc Fact-Finding Committee on Behest Loans*, 317 SCRA at 296.

88. *Id.* at 296.

2. People v. Pacificador[89]

In *People v. Pacificador*, it was settled that Section 2 of Act No. 3326 governs the computation of prescription of offenses defined and penalized under special laws.[90] The respondent in this case was charged before the Sandiganbayan with the crime of violation of R.A. No. 3019.[91] Pacificador was then Chairman of the Board of the National Shipyard and Steel Corporation (NSSC), a government-owned corporation. It was alleged that he caused the sale, transfer and conveyance of the NSSC of its ownership, titles, rights and interests over parcels of land in Camarines Norte to the Philippine Smelters Corporation by virtue of a contract.[92] The terms and conditions of said contract were said to be manifestly and grossly disadvantageous to the government.[93] Upon his arraignment, the respondent filed a Motion to Dismiss alleging that the court had no jurisdiction since the crime charged had been extinguished by prescription.

The Sandiganbayan denied the Motion, citing the ruling on matters of prescription in *Francisco v. Court of Appeals*[94] to the effect that the filing of the complaint with the fiscal's office also interrupted the period of prescription of the offense.[95] On a Motion for Reconsideration, Pacificador alleged that the prosecution of the crime was time-barred by prescription as shown by the facts and circumstances on record. The Sandiganbayan granted the Motion when it admitted it committed an oversight in applying Article 91 of the RPC and the doctrine laid down in the *Francisco* case. The resolution stated that what was supposed to apply was Act No. 3326.[96]

Petitioner filed a Petition for Review on Certiorari from this resolution alleging that the provision of Act No. 3326 was not applicable in the instant case for the reason that R.A. No. 3019 provides for its own prescriptive period. Even if R.A. No. 3019 does not state exactly when the 15-year period begins to run, Article 91 of the RPC should have applied suppletorily.[97] From this, the Court stated that the longer prescriptive period of 15 years as provided in Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, was inapplicable to this case for the reason that the amendment, not being favorable to the accused, cannot be given retroactive effect. The

89. *Pacificador*, 354 SCRA 310.

90. *Id.*

91. *Id.* at 313.

92. *Id.*

93. *Id.*

94. Francisco v. Court of Appeals, 122 SCRA 538 (1983).

95. *Pacificador*, 354 SCRA at 314.

96. *Id.* at 315.

97. *Id.* at 316.

amendment was effective on 16 March 1982. Hence, the Court found that the crime prescribed on 6 January 1986, 10 years after it was committed in 1976.

Petitioner also denied having any knowledge of the crime at the time it was allegedly committed by respondent. He contends that the ordinary principles of prescription do not apply in this case for the reason that the criminal acts were concealed and were prevented from being discovered.[98] On this argument, the Court decided that the petition was without merit since the registration of the Deed of Sale involving the properties with the Registry of Deeds constituted constructive notice thereof to the whole world, including the petitioner.[99]

In addition, the Court sought to distinguish between its decisions in the instant case and that of the previous *Presidential Ad Hoc Fact-Finding Committee on Behest Loans* case. The Court stated that in the previous case, "[i]t was impossible for the state, the aggrieved party, to have known the violations of R.A. No. 3019."[100] Therefore, the prescriptive period ran only from the time of discovery of the alleged illegality of the transactions. In the instant case, the Court stated the records of the case do not show how the acts of the respondent could have prevented the discovery of any illegality except for the bare allegations of petitioner.[101]

3. Salvador v. Desierto[102]

Another relevant case is that of *Salvador v. Desierto*, where the Court held that the applicable laws on prescription of criminal offenses defined and penalized under the RPC are found in Articles 90 and 91 of the same Code. However, for offenses falling under special laws, Act No. 3326 must be applied.

Here, a Petition for Certiorari was filed which assailed the resolution of then Ombudsman Aniano A. Desierto which dismissed the case against the respondents and which denied petitioner's Motion for Reconsideration.

Hotel Mirador, Inc. (Hotel Mirador) obtained three loans from the Development Bank of the Philippines (DBP) amounting to a total of ₱95 million to finance the construction and development of its hotel building.[103] In 1992, then President Fidel V. Ramos issued Administrative Order No. 13,

98. *Id.*

99. *Id.* at 319.

100. *Id.* at 321.

101. *Pacificador*, 354 SCRA at 321.

102. Salvador v. Desierto, 420 SCRA 76 (2004).

103. *Id.* at 77.

creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee) to inventory all behest loans, determine the parties responsible therefore, and recommend the appropriate actions to be taken by the government.[104] Based on the criteria provided by Memorandum Order No. 61, the Committee, through petitioner, found that the loans obtained by Hotel Mirador from the DBP were behest loans. Thus, petitioner filed with the Office of the Ombudsman a sworn complaint against the directors and officers of Hotel Mirador for violations of Section 3 (e) and (g), of R.A. No. 3019.[105]

Desierto dismissed the complaints. One of the grounds cited was that the crime had prescribed since the latest transaction complained of occurred on 22 April 1977, beyond the 15-year period provided by Section 11 of R.A. No. 3019. However, the Court stated that:

> Records show that the act complained of was discovered in 1992. The complaint was filed with the Office of respondent Ombudsman on September 18, 1996, or four (4) years from the time of discovery. Thus, the filing of the complaint was well within the prescriptive period of 15 years.[106]

The petition was still dismissed by the Court as it concluded that the respondent Ombudsman did not commit grave abuse of discretion.[107]

D. Dissecting the Rules

From recently discussed jurisprudence, it can be gleaned that the rules as regards prescription are clear and straightforward. The cases consistently provide that first, the rules under the RPC are only applicable to offenses falling within its provisions, but will not apply to crimes punished by special laws. Second, the RPC may be applied suppletorily to special laws; and third, the RPC cannot be applied to special laws providing for different penalties.[108]

It is a well-established principle in statutory construction that special law prevails over general law. This principle is recognized under Article 10 of the RPC, which states that special laws are not subject to the provisions of the

104. *Id.* at 78.

105. *Id.*

106. *Id.* at 82.

107. *Id.* at 83.

108. *See* ARTURO M. DE CASTRO, STUDY GUIDE FOR THE BAR: CRIMINAL LAW REVIEWER ON SPECIAL PENAL LAWS 2-3 (2008).

RPC but also that the RPC shall be supplementary to such laws, unless the latter should provide the contrary.[109]

The inconsistency of this provision was clarified in the case of *Evangeline Ladonga v. People of the Philippines*,[110] where the Court said:

> The first clause should be understood to mean only that the special penal laws are controlling with regard to offenses therein specifically punished. Said clause only restates the elemental rule of statutory construction that special legal provisions prevail over general ones *Lex specialis derogant generali.* In fact, the clause can be considered as a superfluity, and could have been eliminated altogether. The second clause contains the soul of the article. The main idea and purpose of the article is embodied in the provision that the "code shall be supplementary" to special laws, unless the latter should specifically provide the contrary.[111]

However, as experienced in the instant case of *Romualdez*, there is a seeming conflict between the provisions of the RPC and the special law on prescription of crimes in that the latter does not provide absence from the Philippines as a ground for interruption of the period of prescription while the RPC provides for one.[112] According to Professor Arturo M. De Castro:

> Since being absent in the Philippines is not provided as a ground to interrupt prescriptive period applicable to offenses punished by special laws, only the ground of filing an action in court, to the exclusion of being absent in the country, shall apply to prescription of offenses punished by special penal laws under the established rule of *expressio unius est exclusion alterius* in [s]tatutory [c]onstruction.[113]

This maxim means that "[w]here a statu[t]e, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others."[114] De Castro also adds that penal laws on prescription must be strictly construed against the state and more favorably to the accused under the doctrine of *pro rio.* Citing *Pacificador*, De Castro states that this principle takes into account the "[n]ature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender."[115]

The dissent of Justice Carpio applied the suppletory character of the RPC in stating that the case against *Romualdez* had not yet prescribed. His

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109. *Id.*

110. *Ladonga v. People of the Philippines,* 451 SCRA 673 (2005).

111. *Id.* at 682.

112. DE CASTRO, *supra* note 109, at 4.

113. *Id.*at 5.

114. *Id.* at 6 (citing Centeno v. Villalon-Pornillos, 236 SCRA 197, 203 (1987)).

115. *Id.* at 6-7.

stand, however, seems to be unsupported by jurisprudence earlier discussed. This Comment agrees with De Castro in that the RPC cannot be made to apply as regards prescription rules under special laws. Even if the RPC is argued to apply to R.A. No. 3019 in a suppletory manner, this contention seems to be unsupported by jurisprudence and legal doctrines.

V. CONCLUSION

However, since the arguments may all be considered valid, there is an urgent need to clarify and supply what is missing or causing conflict in the law. This work suggests that the special law, R.A. No. 3019, be amended to specifically provide absence from the Philippines as a ground to interrupt the prescriptive period in the law. Justice Carpio's argument that a public officer should not be allowed to flee the country, wait out the prescriptive period of a crime allegedly committed, then come back and raise prescription as a defense, is a valid and fair stand. This fact goes against the very essence of public service and the duty of public officers to remain true to the responsibility placed on their shoulders. They cannot and should not be permitted to use the intricacies and ambiguities in the law to avoid punishment when it is both proper and due. As it stands, however, the laws are devoid of any solution to the apparent conflict found in the *Romualdez* case.