G.R. No. 199082 (Jose Miguel T. Arroyo, *Petitioner* v. Department of Justice, Commission on Elections, et al., *Respondents*); G.R. No. 199085 (Benjamin S. Abalos, Sr., *Petitioner* v. Leila de Lima, as Secretary of Justice; Sixto S. Brillantes, Jr., as Comelec Chairman, et al., *Respondents*); and G.R. No. 199118 (Gloria Macapagal-Arroyo, *Petitioner* v. Commission on Elections, et al., *Respondents)*

Promulgated:

SEPTEMBER 18, 2012

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SEPARATE CONCURRING OPINION

MENDOZA, J.:

I am in agreement with the *ponencia* that the arraignment of petitioner Gloria Macapagal Arroyo *(GMA), on her very own motion,* is tantamount to her submission to the jurisdiction of the trial court. The entry of her plea of not guilty to the crime of electoral sabotage can only be deemed as a waiver of her right to question the alleged irregularities committed during the preliminary investigation conducted by the Joint DOJ-COMELEC Preliminary Investigation Committee, headed by the Prosecutor General *(Joint Committee)* and/or Comelec. Consequently, her own actions rendered the issues on probable cause and on the validity of the preliminary investigation as moot and academic.

This mootness, however, does not impinge on the issue of the constitutionality of the Comelec's "sharing" of its jurisdiction with another body, for this is an entirely different matter resting on a sundry of arguments involving not just the rules on criminal procedure, but the Constitution itself. Nevertheless, this very issue has been rendered likewise moot when the Comelec En Banc itself ruled that there was probable cause.

At any rate, in this separate opinion, I shall only dwell on the subject of due process. I find it proper to put on record my views in relation to the rights afforded a respondent in preparation of his defense during a preliminary investigation, *specially considering the gravity of the offense charged.* Had this case been resolved prior to the arraignment of GMA, I would have voted for a remand of the case to the Comelec, not the Joint Committee, to enable the petitioner to submit her counter-affidavit, if only to set things right before the trial court could properly act on the case. Although moot because of petitioner's arraignment and valid entry of plea, I am of the view that there was *undue haste* in the conduct of the preliminary investigation in violation of her right to due process.

The purpose of a preliminary investigation is the appropriate guidepost in this issue. The proceeding involves the reception of evidence showing that, more likely than not, a respondent could have committed the offense charged and, thus, should be held for trial. This underlines the State's right to prosecute the persons responsible and jumpstart the grinding of the wheels of justice. But the same is by no means absolute and does not in any manner grant the investigating officer the license to deprive a respondent of his rights.

The office of a prosecutor does not involve an automatic function to hold persons charged with a crime for trial. Taking the cudgels for justice on behalf of the State is not tantamount to a mechanical act of prosecuting persons and bringing them within the jurisdiction of court. Prosecutors are bound to a concomitant duty *not* to prosecute when after investigation they have become convinced that the evidence available is not enough to establish probable cause. This is why, in order to arrive at a conclusion, the prosecutors must be able to make an objective assessment of the conflicting versions brought before them, affording both parties to prove their respective

positions. Hence, the fiscal is not bound to accept the opinion of the complainant in a criminal case as to whether or not a *prima facie* case exists. Vested with authority and discretion to determine whether there is sufficient evidence to justify the filing of a corresponding information and having control of the prosecution of a criminal case, the fiscal cannot be subjected to dictation from the offended party[1] or any other party for that matter. Emphatically, the right to the oft-repeated preliminary investigation has been intended to protect the accused from hasty, malicious and oppressive prosecution.[2] In fact, the right to this proceeding, absent an express provision of law, cannot be denied. Its omission is a grave irregularity which nullifies the proceedings because it runs counter to the right to due process enshrined in the Bill of Rights.[3]

Although a preliminary investigation is not a trial and is not intended to usurp the function of the trial court, it is not a casual affair.[4] The right to a preliminary investigation is not a mere formal or technical right but a substantive one, forming part of due process in criminal justice.[5] The prosecutor conducting the same investigates or inquires into the facts concerning the commission of a crime to determine whether or not an Information should be filed against a respondent. A preliminary investigation is in effect a realistic appraisal of the merits of the case. Sufficient proof of the guilt of the accused must be adduced so that when the case is tried, the trial court may not be bound, as a matter of law, to order an acquittal.[6] A preliminary investigation has been called a judicial inquiry; it is a judicial proceeding. An act becomes a judicial proceeding when there is an

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[1] *Zulueta v. Nicolas*, 102 Phil. 944 (1958), citing *People vs. Liggayu* , 97 Phil. 865 (1955).
[2] *U.S. vs. Grant,* 18 Phil. 122 (1910).
[3] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
[4] *Ang-abaya v. Ang*, 573 SCRA 129, 146, citing *Sales v. Sandiganbayan,* 421 Phil. 176 (2001).
[5] *Ladlad v. Velasco*, G.R. No. 170270, June 1, 2007, 523 SCRA 318.
[6] *Peres v. Office of the Ombudsman,* 473 Phil. 372 (2004), citing *Cojuangco v. PCGG,* 421 Phil. 176 (2001).

opportunity to be heard and for the production of, and weighing of, evidence, and a decision is rendered thereon.[7]

Granting that the formation of the Joint Committee was valid, as applied to this case, the petitioner should have been given ample opportunity to prepare her defense by allowing her to examine documents purportedly showing the circumstance of how the offense charged was committed. The outright denial of petitioner's Omnibus *Motion Ad Cautelam,* praying that she be furnished with copies of pertinent documents and, at the same time, requesting for an extension of time to file her counter-affidavit, was nothing less of a violation of her right to due process. I cannot discount the fact that the cases were submitted for resolution without her affidavit and those of the other petitioners. Others may perceive these requests as dilatory tactics which might unduly delay the progress of the investigation, but I cannot share this conviction for being unfounded and speculative. It cannot be gainsaid that the right to file a counter-affidavit in a preliminary investigation is a crucial facet of due process. That right is guaranteed under the due process clause. This not only protects a respondent from the vast government machinery under the powers of which he is subdued, but more importantly, it also provides the prosecutor the opportunity to arrive at a fair and unprejudiced conclusion of the case.

The petitioner did not forfeit her right to submit her counter-affidavit when she insisted to be furnished with documents referred to in the complaint. In the normal course of things, this insistence is a naturally expected reaction to the situation.

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[7] *Sales v. Sandiganbayan*, G.R. No. 143802, November 16, 2001, citing *Cojuangco v. PCGG*, G.R. Nos. 92319-20, October 2, 1990, 190 SCRA 226.

It is likewise important to note that in his complaint, Senator Pimentel *adopted* all the affidavits attached to the Fact-Finding Team's Initial Report, which he claimed were unavailable to him. The reference to documents in a complaint, whether attached thereto or not, can influence the mind of the prosecutor. These documents were cited in the complaint precisely to convince the prosecutor of the guilt of petitioner. As far as my logical mind can comprehend, I think it is nothing short of fairness to give the petitioner to opportunity to persuade the prosecutor otherwise. This chance can only be realized by giving her the opportunity to examine the documents and to submit her counter-affidavit.

Granting *arguendo* that GMA is not entitled to the adopted but unattached documents, this does not entail the automatic action of the Joint Committee to proceed and rule on probable cause *sans* the counter-affidavit. Whether or not the unfurnished documents were relevant in the line of defense to be relied on by petitioner, the Joint Committee, in all prudence expected from a body of esteemed membership, should have given the petitioner reasonable time to submit her counter-affidavit after the denial of her Omnibus *Motion Ad Cautelam.* Lamentably, the eagerness to file the complaint in court, at the soonest possible time, prevailed over this path of caution.

Since a preliminary investigation is designed to screen cases for trial, only evidence presented must be considered. While even raw information may justify the initiation of an investigation, the stage of preliminary investigation can be held only after sufficient evidence has been gathered and evaluated warranting the eventual prosecution of the case in court.[8] The fact that evidentiary issues can be better threshed out during the trial cannot justify deprivation of a respondent's right to refute allegations thrown at him

[8] *Olivas v. Office of the Ombudsman*, G.R. No. 102420, December 20, 1994, 239 SCRA 283.

during the preliminary investigation. Neither will an extension of a few days to enable him to submit his counter-affidavit mock the constitutional right to speedy disposition of cases because the very reason for granting such extension holds greater significance than the latter right.

Next, although the Comelec's vital function of guarding the people's right to suffrage is recognized by the Court, I cannot carelessly shun the chronology of events which preceded the filing of this case.

From the denial of petitioner's Omnibus *Motion Ad Cautelam* on November 15, 2011, it took the Joint Committee only *a day* or on November 16, 2011, to issue a Joint Resolution recommending the filing of Information against the respondents.[9] The said issuance was later indorsed to the Comelec, which hastily stamped its imprimatur on it *two days after*, or on the morning of November 18, 2011, despite the voluminous record. In the Comelec proceeding that morning of November 18, 2011, one Commissioner took no part in the vote because he could not decide on the merits of the case as he had yet to read in full the resolution of the Joint Committee.

Wasting no time, on the *same day*, at 11:22 o'clock in the morning, the Comelec's Law Department filed an Information with the RTC Pasay City. The trial court, after *a few hours from receipt* of the Information, proceeded to issue the warrant of arrest.

Due process demands that the Comelec should have given the petitioner the opportunity to submit her counter-affidavit. And if its resolution would be adverse, as was the case, she should have been given time to file a motion for reconsideration before the Comelec. True, under Rule 13 of the Comelec Rules of Procedure, a motion for reconsideration of

[9] Gloria Macapagal-Arroyo, Benjamin Abalos, Sr. Lintang H. Bedol, Datu Andal Ampatuan, Sr. and Peter Reyes.

an en banc ruling, resolution, order or decision is generally proscribed. In *"election offenses cases,"*[10] however, such motions are allowed.

This display of alacrity, at the very least, caused nagging thoughts in my mind considering that allegations of bias and partiality on the part of the Chairman of the Comelec[11] have plagued this issue way before it had come to a conclusion. Stripped-off of the media-mileage received by this case, rest evades my mind at the thought of how the situation was handled. True, "speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be attributed to injudicious performance of functions."[12] When other factors, however, are taken into account, like claims of failure to review records by a commissioner due to the very short time given due to the conduct of the proceedings in whirlwind fashion, this swiftness garners a negative nuance that unfortunately affects the neutral façade which a judicial and quasi-judicial body must maintain. This earns my reluctance to fully concur with the *ponencia*.

Lest it be misunderstood, this separate position is not a brief for the petitioner, whose fate is up for the trial court to decide. Rather it is a

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[10] Rule 13 - Prohibited Pleadings
Section 1. *What Pleadings are not Allowed.* - The following pleadings are not allowed:
(a) motion to dismiss;
(b) motion for a bill of particulars;
(c) motion for extension of time to file memorandum or brief;
(d) **motion for reconsideration of an en banc ruling, resolution, order or decision except in election offense cases;**
(e) motion for re-opening or re-hearing of a case;
(f) reply in special actions and in special cases; and
(g) supplemental pleadings in special actions and in special cases. [Emphases supplied]

[11] The Chairman was alleged to be the counsel of another presidential candidate in the 2007 Elections and the one who made statements to the press that the petitioner would be behind bars before Christmas of 2011.

[12] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 606.

statement on my belief that the Bill of Rights enshrined in our Constitution, particularly the right to due process,[13] should be held sacred and inviolable.

JOSE CATRAL MENDOZA
Associate Justice

[13] Due process of law means giving opportunity to be heard before judgment is rendered. It is a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial. *(Amarillo v. Sandiganbayan*, G.R. Nos. 145007-08, January 28, 2003, 396 SCRA 434).