

## EN BANC

[ **A.M. No. 10-11-5-SC, June 14, 2011** ]

**RE: PETITION FOR RADIO AND TELEVISION COVERAGE OF THE MULTIPLE MURDER CASES AGAINST MAGUINDANAO GOVERNOR ZALDY AMPATUAN, ET AL.,**

[**A.M. No. 10-11-6-SC** ]

**RE: PETITION FOR THE CONSTITUTION OF THE PRESENT COURT HANDLING THE TRIAL OF THE MASSACRE OF 57 PERSONS, INCLUDING 32 JOURNALISTS, IN AMPATUAN, MAGUINDANAO INTO A SPECIAL COURT HANDLING THIS CASE ALONE FOR THE PURPOSE OF ACHIEVING GENUINE SPEEDY TRIAL and FOR THE SETTING UP OF VIDEOCAM AND MONITOR JUST OUTSIDE THE COURT FOR JOURNALISTS TO COVER AND FOR THE PEOPLE TO WITNESS THE "TRIAL OF THE DECADE" TO MAKE IT TRULY PUBLIC AND IMPARTIAL AS COMMANDED BY THE CONSTITUTION, A.M. No. 10-11-7-SC RE: LETTER OF PRESIDENT BENIGNO S. AQUINO III FOR THE LIVE MEDIA COVERAGE OF THE MAGUINDANAO MASSACRE TRIAL.**

### RESOLUTION

**CARPIO MORALES, J.:**

On November 23, 2009, 57 people including 32 journalists and media practitioners were killed while on their way to Shariff Aguak in Maguindanao. Touted as the worst election-related violence and the most brutal killing of journalists in recent history, the tragic incident which came to be known as the "Maguindanao Massacre" spawned charges for 57 counts of murder and an additional charge of rebellion against 197 accused, docketed as Criminal Case Nos. Q-09-162148-72, Q-09-162216-31, Q-10-162652-66, and Q-10-163766, commonly entitled *People v. Datu Andal Ampatuan, Jr., et al.* Following the transfer of venue and the reraffling of the cases, the cases are being tried by Presiding Judge Jocelyn Solis-Reyes of Branch 221 of the Regional Trial Court (RTC) of Quezon City inside Camp Bagong Diwa in Taguig City.

Almost a year later or on November 19, 2010, the National Union of Journalists of the Philippines (NUJP), ABS-CBN Broadcasting Corporation, GMA Network, Inc., relatives of the victims,<sup>[1]</sup> individual journalists<sup>[2]</sup> from various media entities, and members of the academe<sup>[3]</sup> filed a petition before this Court praying that live television and radio coverage of the trial in these criminal cases be allowed, recording devices (*e.g.*, still cameras, tape recorders) be permitted inside the courtroom to assist the working journalists, and reasonable guidelines be formulated to govern the broadcast coverage and the use of devices.<sup>[4]</sup> The Court docketed the petition as **A.M. No. 10-11-5-SC**.

In a related move, the National Press Club of the Philippines<sup>[5]</sup> (NPC) and *Alyansa ng Filipinong Mamamahayag*<sup>[6]</sup> (AFIMA) filed on November 22, 2010 a petition praying that the Court constitute Branch 221 of RTC-Quezon City as a special court to focus only on the Maguindanao Massacre trial to relieve it of all other pending cases and assigned duties, and allow the installation inside the courtroom of a sufficient number of video cameras that shall beam the audio and video signals to the television monitors outside the court.<sup>[7]</sup> The Court docketed the petition as **A.M. No. 10-11-6-SC**.

President Benigno S. Aquino III, by letter of November 22, 2010<sup>[8]</sup> addressed to Chief Justice Renato Corona, came out "in support of those who have petitioned [this Court] to permit television and radio broadcast of the trial." The President expressed "earnest hope that [this Court] will, within the many considerations that enter into such a historic deliberation, attend to this petition with the dispatch, dispassion and humaneness, such a petition merits."<sup>[9]</sup> The Court docketed the matter as **A.M. No. 10-11-7-SC**.

By separate Resolutions of November 23, 2010,<sup>[10]</sup> the Court consolidated A.M. No. 10-11-7-SC with A.M. No. 10-11-5-SC. The Court shall treat in a separate Resolution A.M. No. 10-11-6-SC.

Meanwhile, various groups<sup>[11]</sup> also sent to the Chief Justice their respective resolutions and statements bearing on these matters.

The principal accused in the cases, Andal Ampatuan, Jr. (Ampatuan), filed a Consolidated Comment of December 6, 2010 in A.M. No. 10-11-5-SC and A.M. No. 10-11-7-SC. The President, through the Office of the Solicitor General (OSG), and NUJP, *et al.* filed their respective Reply of January 18, 2011 and January 20, 2011. Ampatuan also filed a Rejoinder of March 9, 2011.

### **On Broadcasting the Trial of the Maguindanao Massacre Cases**

Petitioners seek the lifting of the absolute ban on live television and radio coverage of court proceedings. They principally urge the Court to revisit the 1991 ruling in *Re: Live TV and Radio Coverage of the Hearing of President Corazon C. Aquino's Libel Case*<sup>[12]</sup> and the 2001 ruling in *Re: Request Radio-TV Coverage of the Trial in the Sandiganbayan of the Plunder Cases Against the Former President Joseph E. Estrada*<sup>[13]</sup> which rulings, they contend, violate the doctrine that proposed restrictions on constitutional rights are to be narrowly construed and outright prohibition cannot stand when regulation is a viable alternative.

Petitioners state that the trial of the Maguindanao Massacre cases has attracted intense media coverage due to the gruesomeness of the crime, prominence of the accused, and the number of media personnel killed. They inform that reporters are being frisked and searched for cameras, recorders, and cellular devices upon entry, and that under strict orders of the trial court against live broadcast coverage, the number of media practitioners allowed inside the courtroom has been limited to one reporter for each media institution.

The record shows that NUJP Vice-Chairperson Jose Jaime Espina, by January 12, 2010 letter<sup>[14]</sup> to Judge Solis-Reyes, requested a dialogue to discuss concerns over media coverage of the proceedings of the Maguindanao Massacre cases. Judge Solis-Reyes replied, however, that "matters concerning media coverage should be brought to the Court's attention through appropriate motion."<sup>[15]</sup> Hence, the present petitions which assert the exercise of the freedom of the press, right to information, right to a fair and public trial, right to assembly and to petition the government for redress of grievances, right of free access to courts, and freedom of association, subject to regulations to be issued by the Court.

**The Court partially GRANTS *pro hac vice* petitioners' prayer for a live broadcast of the trial court proceedings, subject to the guidelines** which shall be enumerated shortly.

Putt's Law<sup>[16]</sup> states that "technology is dominated by two types of people: those who understand what they do not manage, and those who manage what they do not understand." Indeed, members of this Court cannot strip their judicial robe and don the experts' gown, so to speak, in a pretense to foresee and fathom all serious prejudices or risks from the use of technology inside the courtroom.

A decade after *Estrada* and a score after *Aquino*, the Court is once again faced with the same task of striking that delicate balance between seemingly competing yet certainly *complementary* rights.

The indication of "serious risks" posed by live media coverage to the accused's right to due process, left unexplained and unexplored in the era obtaining in *Aquino* and *Estrada*, has left a blow to the exercise of press freedom and the right to public information.

**The rationale for an outright total prohibition was shrouded, as it is now, inside the comfortable cocoon of a feared speculation which no scientific study in the Philippine setting confirms, and which fear, if any, may be dealt with by safeguards and safety nets under existing rules and exacting regulations.**

In this day and age, it is about time to craft a **win-win situation** that shall not compromise rights in the criminal administration of justice, sacrifice press freedom and allied rights, and interfere with the integrity, dignity and solemnity of judicial proceedings. Compliance with regulations, not curtailment of a right, provides a workable solution to the concerns raised in these administrative matters, while, at the same time, maintaining the same underlying principles upheld in the two previous cases.

The basic principle upheld in *Aquino* is firm ? "[a] trial of any kind or in any court is a matter of serious importance to all concerned and should not be treated as a means of entertainment[, and t]o so treat it deprives the court of the dignity which pertains to it and departs from the orderly and serious quest for truth for which our judicial proceedings are formulated." The observation that "[m]assive intrusion of representatives of the news media into the trial itself can so alter and destroy the constitutionally necessary atmosphere and decorum" stands.

The Court concluded in *Aquino*:

Considering the prejudice it poses to the defendant's right to due process as well as to the fair and orderly administration of justice, and considering further that the freedom of the press and the right of the people to information may be served and satisfied by less distracting, degrading and prejudicial means, live radio and television coverage of court proceedings shall not be allowed. Video footages of court hearings for news purposes shall be restricted and limited to shots of the courtroom, the judicial officers, the parties and their counsel taken prior to the commencement of official proceedings. No video shots or photographs shall be permitted during the trial proper.

Accordingly, in order to protect the parties' right to due process, to prevent the distraction of the participants in the proceedings and in the last analysis, to avoid miscarriage of justice, the Court resolved to PROHIBIT live radio and television coverage of court proceedings. Video footage of court hearings for news purposes shall be limited and restricted as above indicated.<sup>[17]</sup>

The Court had another unique opportunity in *Estrada* to revisit the question of live radio and television coverage of court proceedings in a criminal case. It held that "[t]he propriety of granting or denying the instant petition involve[s] the weighing out of the constitutional guarantees of freedom of the press and the right to public information, on the one hand, and the fundamental rights of the accused, on the other hand, along with the constitutional power of a court to control its proceedings in ensuring a fair and impartial trial." The Court disposed:

The Court is not all that unmindful of recent technological and scientific advances but to chance forthwith the life or liberty of any person in a hasty bid to use and apply them, even before ample safety nets are provided and the concerns heretofore expressed are aptly addressed, is a price too high to pay.

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED.**<sup>[18]</sup>

In resolving the motion for reconsideration, the Court in *Estrada*, by Resolution of September 13, 2001, provided a glimmer of hope when it ordered the audio-visual recording of the trial for documentary purposes, under the following conditions:

x x x (a) the trial shall be recorded in its entirety, excepting such portions thereof as the Sandiganbayan may determine should not be held public under Rule 119, §21 of the Rules of Criminal Procedure; (b) cameras shall be installed inconspicuously inside the courtroom and the movement of TV crews shall be regulated consistent with the dignity and solemnity of the proceedings; (c) the audio-visual recordings shall be

made for documentary purposes only and shall be made without comment except such annotations of scenes depicted therein as may be necessary to explain them; (d) the live broadcast of the recordings before the Sandiganbayan shall have rendered its decision in all the cases against the former President shall be prohibited under pain of contempt of court and other sanctions in case of violations of the prohibition; (e) to ensure that the conditions are observed, the audio-visual recording of the proceedings shall be made under the supervision and control of the Sandiganbayan or its Division concerned and shall be made pursuant to rules promulgated by it; and (f) simultaneously with the release of the audio-visual recordings for public broadcast, the original thereof shall be deposited in the National Museum and the Records Management and Archives Office for preservation and exhibition in accordance with law.<sup>[19]</sup>

Petitioners note that the 1965 case of *Estes v. Texas*<sup>[20]</sup> which *Aquino* and *Estrada* heavily cited, was borne out of the dynamics of a jury system, where the considerations for the possible infringement of the impartiality of a jury, whose members are not necessarily schooled in the law, are different from that of a judge who is versed with the rules of evidence. To petitioners, *Estes* also does not represent the most contemporary position of the United States in the wake of latest jurisprudence<sup>[21]</sup> and statistical figures revealing that as of 2007 all 50 states, except the District of Columbia, allow television coverage with varying degrees of openness.

Other jurisdictions welcome the idea of media coverage. Almost all the proceedings of United Kingdom's Supreme Court are filmed, and sometimes broadcast.<sup>[22]</sup> The International Criminal Court broadcasts its proceedings via video streaming in the internet.<sup>[23]</sup>

On the media coverage's influence on judges, counsels and witnesses, petitioners point out that *Aquino* and *Estrada*, like *Estes*, lack empirical evidence to support the sustained conclusion. They point out errors of generalization where the conclusion has been mostly supported by studies on American attitudes, as there has been no authoritative study on the particular matter dealing with Filipinos.

Respecting the possible influence of media coverage on the impartiality of trial court judges, petitioners correctly explain that prejudicial publicity insofar as it undermines the right to a fair trial must pass the "**totality of circumstances**" test, applied in *People v. Teehanke, Jr.*<sup>[24]</sup> and *Estrada v. Desierto*,<sup>[25]</sup> that the right of an accused to a fair trial is not incompatible to a free press, that pervasive publicity is not *per se* prejudicial to the right of an accused to a fair trial, and that there must be allegation and proof of the impaired capacity of a judge to render a bias-free decision. Mere fear of possible undue influence is not tantamount to actual prejudice resulting in the deprivation of the right to a fair trial.

Moreover, an aggrieved party has ample legal remedies. He may challenge the validity of an adverse judgment arising from a proceeding that transgressed a constitutional right. As pointed out by petitioners, an aggrieved party may early on move for a change of venue, for continuance until the prejudice from publicity is abated, for disqualification of the judge, and for closure of portions of the trial when