EN BANC

[G. R. No. 167011, November 11, 2008]

SPOUSES CARLOS S. ROMUALDEZ AND ERLINDA R. ROMUALDEZ, PETITIONERS, VS. COMMISSION ON ELECTIONS AND DENNIS GARAY, RESPONDENTS.

R E S O L U T I O N

CHICO-NAZARIO, J.:

For resolution is the Motion for Reconsideration filed by petitioner Spouses Carlos Romualdez and Erlinda Romualdez on 26 May 2008 from the Decision of this Court dated 30 April 2008, affirming the Resolutions, dated 11 June 2004 and 27 January 2005 of the COMELEC *En Banc*.

We find that petitioner has not raised substantially new grounds to justify the reconsideration sought. Instead, petitioner presents averments that are mere rehashes of arguments already considered by the Court. There is, thus, no cogent reason to warrant a reconsideration of this Court's Decision.

Similarly, we reject the contentions put forth by esteemed colleagues Mr. Justice Dante O. Tinga in his Dissent, dated 2 September 2008, which are also mere reiterations of his earlier dissent against the majority opinion. Mr. Justice Tinga's incessant assertions proceed from the wrong premise. To be clear, this Court did not intimate that penal statutes are beyond scrutiny. In our Decision, dated 30 April 2008, this Court emphasized the critical limitations by which a criminal statute may be challenged. We drew a lucid boundary between an "on-its-face" invalidation and an "as applied" challenge. Unfortunately, this is a distinction which Mr. Justice Tinga has refused to understand. Let it be underscored that "on-its-face" invalidation of penal statutes, as is sought to be done by petitioners in this case, may not be allowed. Thus, we said:

> The void-for-vagueness doctrine holds that a law is facially invalid if men of common intelligence must necessarily guess at its meaning and differ as to its application. However, this Court has imposed certain limitations by which a criminal statute, as in the challenged law at bar, may be scrutinized. This Court has declared that facial invalidation or an "on-its-face" invalidation of criminal statutes is not appropriate. We have so enunciated in no uncertain terms in *Romualdez v. Sandiganbayan*, thus:
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> In sum, the doctrines of strict scrutiny, overbreadth, and vagueness are analytical tools developed for testing "on their faces" statutes in free speech cases or, as they are called in American law, First Amendment cases. They cannot be made to do service when what is involved is a criminal statute. With respect to such statute, the established rule is that 'one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as

applying to other persons or other situations in which its application might be unconstitutional.' As has been pointed out, 'vagueness challenges in the First Amendment context, like overbreadth challenges typically produce facial invalidation, while statutes found vague as a matter of due process typically are invalidated [only] 'as applied' to a particular defendant.'" (underscoring supplied)

"To this date, the Court has not declared any penal law unconstitutional on the ground of ambiguity." While mentioned in passing in some cases, the void-for-vagueness concept has yet to find direct application in our jurisdiction. In *Yu Cong Eng v. Trinidad,* the Bookkeeping Act was found unconstitutional because it violated the equal protection clause, not because it was vague. *Adiong v. Comelec* decreed as void a mere Comelec Resolution, not a statute. Finally, *Santiago v. Comelec* held that a portion of RA 6735 was unconstitutional because of undue delegation of legislative powers, not because of vagueness.

Indeed, an "on-its-face" invalidation of criminal statutes would result in a mass acquittal of parties whose cases may not have even reached the courts. Such invalidation would constitute a departure from the usual requirement of "actual case and controversy" and permit decisions to be made in a sterile abstract context having no factual concreteness. In *Younger v. Harris,* this evil was aptly pointed out by the U.S. Supreme Court in these words:

"[T]he task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary. The combination of the relative remoteness of the controversy, the impact on the legislative process of the relief sought, and above all the speculative and amorphous nature of the required line-by-line analysis of detailed statutes, x x x ordinarily results in a kind of case that is wholly unsatisfactory for deciding constitutional questions, whichever way they might be decided."

For this reason, generally disfavored is an on-its-face invalidation of statutes, described as a "manifestly strong medicine" to be employed "sparingly and only as a last resort." In determining the constitutionality of a statute, therefore, its provisions that have allegedly been violated must be examined in the light of the conduct with which the defendant has been charged. (Emphasis supplied.)[1]

Neither does the listing by Mr. Justice Tinga of what he condemns as offenses under Republic Act No. 8189 convince this Court to overturn its ruling. What is crucial in this case is the rule set in our case books and precedents that a facial challenge is not the proper avenue to challenge the statute under consideration. In our Decision of 30 April 2008, we enunciated that "the opinions of the dissent which seek to bring to the fore the purported ambiguities of a long list of provisions in Republic Act No. 8189 can be deemed as a facial challenge."[2] On this matter, we held: