



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 12, 2021 which reads as follows:

“G.R. No. 214297 (*People of the Philippines v. Honorable Sandiganbayan [Fifth Division] and Hernando B. Perez*). – This Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assails the Decision² dated May 16, 2014 and Minute Resolution³ dated July 24, 2014 of the Sandiganbayan, which granted the demurrer to evidence filed by Hernando B. Perez (Perez) in relation to the Information for falsification of public documents filed against him.

Facts of the Case

This case stemmed from the allegation of private complainant Mark Jimenez (Jimenez) that Perez extorted from him US\$2,000,000.00. The Office of the Ombudsman conducted an independent investigation regarding the matter and recommended the filing of various cases against Perez including violations of Republic Act No. (R.A.) 3019, otherwise known as the “*Anti-Graft And Corrupt Practices Act*,” Robbery under Article 293 in relation to Article 295 of the Revised Penal Code; and this case for the alleged falsification of his 2001 Statement of Assets, Liabilities, and Net Worth (SALN).⁴ The prosecution’s theory is that the amount extorted from Jimenez was transferred to the foreign bank account in the name

¹ *Rollo*, pp. 3-25.

² Penned by Chairperson Roland B. Jurado, with the concurrence of Associate Justices Alexander G. Gesmundo (now a Member of this Court) and Alex L. Quiroz; *id.* at 33-52.

³ *Id.* at 53.

⁴ *Id.* at 6-7.

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of Perez' wife, Rosario S. Perez, which the former failed to disclose in his 2001 SALN.⁵

In an Information dated January 25, 2008, Perez was charged with falsification of public document with the following accusatory portion:

That on or about 18 April 2002, and sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused HERNANDO BENITO PEREZ, a high ranking government official, being then the Secretary of the Department of Justice (DOJ), while in the performance of his official function, committing the offense in relation to office and taking advantage thereof, being required by law to file a sworn Statement of Assets, Liabilities and Networth (SALN), did then and there willfully, unlawfully and feloniously falsify or cause to be falsified his Statement of Assets, Liabilities and Networth (SALN) for the year ending December 31, 2001, by deliberately failing to disclose his and/or his wife Rosario S. Perez' bank deposit of U.S. Dollars One Million Seven Hundred Thousand (US\$1,700,000.00), more or less, in Bank Account Nos. 338 118 and 348 118 at EFG Private Bank SA, which amount he is legally bound to disclose in his said SALN thereby concealing his true assets, thus making untruthful statement in a narration of facts, to the damage and prejudice of public service.

CONTRARY TO LAW.⁶

Perez pleaded not guilty. Thereafter, pre-trial and trial ensued.

The prosecution presented four witnesses, namely: (1) Ma. Olivia Roxas (Roxas), Graft Investigation and Prosecution Officer of the Office of the Ombudsman; (2) Melchor Arthur Carandang (Carandang), then Consultant of the Office of the Ombudsman; (3) Assistant Secretary Jaime Victor Ledda (Ledda), Diplomat of the Department of Foreign Affairs; and (4) Hedeliza Encabo (Encabo), Acting Chief of the Personnel Division of the Department of Justice (DOJ).⁷

⁵ Id. at 7-8.

⁶ Id. at 36.

⁷ Id. at 7-11.

Roxas testified that the complaint against Perez was based on the documents from Coutts Bank, Hongkong, and EFG Private Bank with accompanying letters of authentication from foreign authorities. The bank documents showed that US\$2,000,000.00 (reduced to US\$1,999,965.00 after deduction of bank charges) came from Trade and Commerce Bank at Cayman Islands, where US\$1,700,000.00 of which was transferred to the account of Rosario S. Perez.⁸

Carandang testified that during the investigation of this case, he requested from the DOJ a Mutual Legal Assistance to produce documents from the Hong Kong authorities. At that time, the DOJ did not immediately act on his request because there was no Mutual Legal Assistance Treaty with Hong Kong yet. As soon as the treaty was approved, the DOJ submitted a Mutual Legal Assistance request to its counterpart in Hong Kong, which was given due course. The DOJ received the following documents from Hong Kong: (a) Letter from Deputy Principal Government Counsel; (b) Certification from Consulate General of the Philippines; (c) Certificate of Wayne Walsh, Deputy DOJ of Hong Kong Special Administrative Region; and (d) Affirmation of Wendy Lee Wing Tak. The documents allegedly showed that there was a transfer of funds from the Cayman Islands bank account of Jimenez to the Hong Kong Bank Account of Ernest Escaler, an emissary of Perez.⁹ Carandang likewise made requests for documents from the Swiss Embassy. The Swiss Embassy gave documents pertaining to the bank accounts of Rosario S. Perez, Ramon Arceo, and Ernest Escaler. On cross-examination, Carandang admitted that he had no personal knowledge of the documents presented as well as the contents of the complaint-affidavit of Jimenez.¹⁰

Ledda facilitated the authentication of Swiss documents from the Philippine Embassy in Berne, Switzerland. However, he also admitted that he has no personal knowledge of the contents of the said documents.¹¹

Encabo brought the documents pertaining to the appointment of Perez as Secretary of Justice including his appointment papers, oath of office, service record, and SALN for 2001.¹²

⁸ Id. at 37.

⁹ Id at 38-39.

¹⁰ Id at 39-40.

¹¹ Id at 41-43.

¹² Id. at 43-44.

After the prosecution's presentation of evidence and admission of its documentary exhibits, Perez filed a Motion for Leave to File Demurrer to Evidence with Attached Demurrer to Evidence which was granted by the Sandiganbayan.¹³

According to Perez, the testimonial and documentary evidence adduced by the prosecution are inadequate to prove the charge of falsification of public documents. The failure of Jimenez to testify and his affidavit of desistance makes his complaint-affidavit excludible as hearsay. Perez claimed that the testimonies of the other prosecution witnesses are likewise hearsay because they admitted that they have no personal knowledge of the facts they testified on. The documentary exhibits are also hearsay because the persons who executed them were not presented in court. According to Perez, Account Nos. 338 118 and 348 118 were closed as early as October 31, 2001. Hence, the same is inexistent at the time of the filing of the SALN on December 31, 2001.¹⁴

Ruling of the Sandiganbayan

In a Decision¹⁵ dated May 16, 2014, the Sandiganbayan granted the Demurrer to Evidence and dismissed the case against Perez. The Sandiganbayan agreed with Perez that the complaint-affidavit of Jimenez cannot be admitted because the prosecution failed to present him in the witness stand. Hence, the testimonies of the prosecution witnesses on the complaint-affidavit of Jimenez cannot be given probative value.¹⁶ The Sandiganbayan held that the documents acquired by the prosecution from Hongkong and Switzerland are also hearsay evidence. The prosecution witnesses who testified on the Hong Kong and Switzerland documents are incompetent because they have no direct participation in the preparation and execution thereof. They merely testified that the documents exist but not the veracity thereof. The Sandiganbayan noted that in the Pre-trial order, the prosecution in fact listed the signatories of the Hong Kong and Switzerland documents as witnesses but they failed to present them.¹⁷ The Sandiganbayan concluded that because of being hearsay, the

¹³ Id. at 11-12.

¹⁴ Id. at 48.

¹⁵ *Supra* note 2.

¹⁶ *Rollo*, pp. 48-49.

¹⁷ Id. at 49-50.

prosecution's evidence is not sufficient to prove the elements of falsification of public documents.¹⁸

The prosecution moved for reconsideration which was denied in a Minute Resolution¹⁹ dated July 24, 2014. Because of the denial of the motion for reconsideration, the People, through the Office of the Special Prosecutor (OSP) filed a Petition for *Certiorari*.²⁰ According to the OSP, the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the documentary evidence presented by the prosecution are hearsay despite having been previously admitted.²¹ The OSP insists that the evidence of the prosecution is sufficient to convict Perez for falsification of public documents.²²

In his Comment,²³ Perez argued that since the alleged extortion from which this case emanated was dismissed by the Sandiganbayan and the dismissal was later affirmed by the Supreme Court due to violation of Perez' right to speedy disposition of cases, it has become the law of the case. Following the dismissal of the extortion case against Perez, this case should also be dismissed.²⁴ In addition, Perez countered that the Sandiganbayan did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in granting the Demurrer to Evidence. According to Perez, the admission by the Sandiganbayan of the evidence presented to it does not include its authority to determine the probative value thereof. The determination of probative value of the evidence presented by the prosecution does not result to an error of jurisdiction but at most, only an error of judgment.²⁵ Perez noted that the Sandiganbayan gave the prosecution several times to produce Jimenez to testify, but to no avail. According to Perez, the Sandiganbayan was correct in ruling that the pieces of evidence presented by the prosecution were merely documents whose contents were not affirmed by those who prepared them, and neither were the purported authors of the documents presented as witnesses before the Sandiganbayan.²⁶

¹⁸ Id. at 49.

¹⁹ Id. at 53.

²⁰ Id. at 3-32.

²¹ Id. at 13.

²² Id. at 15-16.

²³ Id. at 89-102.

²⁴ Id. at 89-95.

²⁵ Id. at 96.

²⁶ Id. at 100.

In its Reply,²⁷ the OSP answered that the principle of the law of the case is inapplicable in this case contrary to the claim of Perez.²⁸

Issue

Whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the Demurrer to Evidence filed by Perez.

Ruling of the Court

After a perusal of the records of the case, this Court resolves to dismiss the Petition for *Certiorari* for failure of the OSP to show that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the Demurrer to Evidence filed by Perez.

A demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.²⁹

It is a settled rule that in resolving the accused's demurrer to evidence, the trial court is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or support a verdict of guilt. The grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of discretion. Significantly, once the court grants the demurrer, such order amounts to an acquittal; and any further prosecution of the accused would violate the constitutional proscription on double

²⁷ Id. at 143-152.

²⁸ Id. at 46.

²⁹ *Singian, Jr. v. Sandiganbayan*, 718 Phil. 455, 471-472 (2013).

jeopardy.³⁰ The finality-of-acquittal doctrine has only one exception: **grave abuse of discretion** that is **strictly limited** whenever there is a **violation of the prosecution's right to due process** such as when it is **denied the opportunity to present evidence** or where the **trial is sham**, rendering the judgment of acquittal void.³¹

In this case, the Sandiganbayan exhaustively examined the testimonial and documentary evidence adduced by the prosecution. The OSP ascribes grave abuse of discretion amounting to lack or excess of jurisdiction on the Sandiganbayan in ruling that the documentary evidence presented by the prosecution are hearsay despite having been previously admitted.

The OSP is mistaken.

The difference between the admissibility of evidence and the determination of its probative weight is undisputed. Admissibility of evidence refers to the question of whether the circumstance (or evidence) is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether it proves an issue. Thus, for example, a letter may be offered in evidence and admitted as such, but its evidentiary weight depends upon the observance of the rules on evidence. Accordingly, the author of the letter should be presented as witness to provide the other party to the litigation the opportunity to question him on the contents of the letter. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect. As earlier stated, hearsay evidence, whether objected to or not, has no probative value.³²

Similarly, in this case, the complaint-affidavit of Jimenez as well as the documents from the Hongkong authorities and Swiss Banks cannot be given probative weight because the affiant and the signatories therein were not presented as witnesses and they were not able to testify on the contents of the said documents. The testimonies of prosecution witnesses are hearsay evidence because of their admission that they do not have personal knowledge of the contents of the documents they testified on. Hence, the Sandiganbayan did not err in refusing to give probative value to these documentary and testimonial evidence presented by the prosecution, albeit having been previously admitted, leading to the dismissal of the case based on the demurrer to evidence.

³⁰ *People v. Sandiganbayan and Velasco*, 426 Phil. 453, 457 (2002)

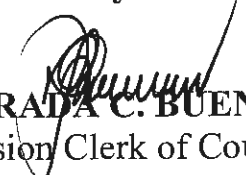
³¹ *People v. Arcega*, G.R. No. 237489, August 27, 2020

³² *Republic v. Sps. Gimenez*, 776 Phil. 233, 284 (2016).

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**.
The Decision dated May 16, 2014 and Minute Resolution dated July 24, 2014 of the Sandiganbayan are **AFFIRMED**.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *pk 5118*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
211-B

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