

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAPT. MILO D. MAESTRECAMPO, ET AL., ACCUSED.

Ponente: PAREDES, J.

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PAREDES, J.:

The Bill of Rights guarantees the right of an accused to be presumed innocent until the contrary is proved. In order to overcome the presumption of innocence, the prosecution is required to adduce against him nothing less than proof beyond reasonable doubt. If the prosecution fails to discharge its heavy burden, then it is not only the right of the accused to be freed, it becomes the Court's constitutional duty to acquit him[1].

THE CASE

Before Us is an appeal filed by appellants 1LT Lawrence R. San Juan (San Juan) and 1LT Rex C. Bolo (Bolo) (collectively “appellants”) seeking to reverse and set aside the March 22, 2013 Decision[2] of the Regional Trial Court of Makati City, Branch 148, in Criminal Case No. 03-2784, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds both accused 1Lt Lawrence San Juan and 1Lt Rex C. Bolo guilty of the crime of committing coup d'etat as participants and not as leaders and hereby sentences them to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum.

SO ORDERED.[3]

THE ANTECEDENTS

The facts which are pertinent to the instant appeal are as follows:

On July 27, 2003, over 300 junior officers and enlisted men of the Armed Forces of the Philippines (AFP) went to Oakwood Premier Hotel in Makati City to air their grievances against the government.

On August 1, 2003, an Information was filed charging the 300 enlisted men with committing the crime of coup d'etat (defined under Article 134-A and penalized under Article 135 of the Revised Penal Code), which reads, as follows:

That on or about July 27, 2003, or on dates prior and subsequent thereto, in Makati City, a place within the jurisdiction of this Honorable Court, above-named accused, all officers and enlisted men of the Armed Forces of the Philippines (AFP), conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully, feloniously and swiftly attack and seize by means of intimidation, threat, strategy, or stealth the Ayala Center, particularly Oakwood Premier Hotel and its immediate vicinity, a facility needed for the exercise and continued possession of power, and directed against the duly constituted authorities of the Republic of the Philippines, rise publicly and take arms against the Government of the Republic of the Philippines, demanding the resignation of the President and members of her official cabinet and top officials of the AFP and Philippine National Police, for the purpose of seizing or diminishing state power.

CONTRARY TO LAW.[4]

The accused, through counsel, filed a Motion for Preliminary Investigation[5] praying that the case be referred to the Department of Justice (DOJ) for the conduct of proper preliminary investigation, which motion the RTC granted in its Order[6] dated August 13, 2003.

The DOJ, through its Panel of Investigating State Prosecutors (DOJ Panel), conducted a re-investigation/preliminary investigation. On October 30, 2003, the DOJ Panel issued a Resolution[7] finding probable cause against only thirty-one (31), out of the 300 original accused; and, dismissing the case against the rest.

On November 11, 2003, the DOJ filed an Ex-Parte Motion to Admit Attached Amended Information[8] which was granted by the RTC in its Order[9] dated November 18, 2003.

Thus, in the Amended Information, herein appellants San Juan and Bolo, along with twenty-nine (29) enlisted men and officers of the AFP, were charged with the crime of coup d'etat committed, as follows:

That on or about July 27, 2003, and on dates prior and subsequent thereto, in Makati City, a place within the jurisdiction of this Honorable Court, above-named accused, all officers and enlisted men of the Armed Forces of the Philippines (AFP), together with several John Does and Jane Does, conspiring, conniving, confederating and mutually helping one another, each committing individual acts toward a common design or purpose of committing coup d'etat, did then and there, knowingly, willfully, unlawfully, feloniously plan, orchestrate, recruit, instigate, mobilize, deploy and execute said common design or purpose of committing coup d'etat, swiftly attack and seize by means of force, intimidation, threat, strategy, or stealth the facilities of the Ayala Center, particularly Oakwood Premier Hotel and its immediate vicinity, for the exercise and continued possession of power, directed against the duly constituted authorities of the Republic of the Philippines, by then and there, withdraw support and demand the resignation of PRESIDENT GLORIA MACAPAGAL-ARROYO and members of her official cabinet and top officials of the AFP and the Philippine National Police, for the purpose of seizing or diminishing state power.

CONTRARY TO LAW.[10] (Emphasis in the original)

At the arraignment on March 2, 2004, all the accused except Bolo, 2LT Jonnel Sanggalang and Capt. John Andres, refused to enter their pleas, hence the court entered a plea of "Not Guilty"[11]. Bolo asked for a deferment of his arraignment until his Petition for Review before the DOJ has been resolved, Sanggalang did not appear, while Andres was then still at large[12].

On October 12, 2004, the trial court issued its Pre-Trial Order[13], the pertinent portions as to stipulation of facts read:

The prosecution admitted the following proposed stipulation of facts of Atty. Te:

1. No one was killed, injured or maimed as a result of any act performed by accused Orfiano, Acedillo, Billy Pascua, Dagupon, Dongga-as, Sarmiento and Yasay on July 27, 2003.
2. Oakwood Premiere is a privately (sic) commercial venture and is not, in any manner, government owned or controlled; nor is it a military camp or installation, communication network, public utility or other facility needed for the exercise and continued possession of governmental power.
3. There are no government institutions, agencies, bureaus housed within Oakwood Premiere nor are there any governmental functions being discharged from the premises of Oakwood Premiere as of July 27, 2003.
4. The private security force of Ayala Land Inc. and Oakwood Premiere voluntarily and on their own initiative withdrew the security guards from the area of Oakwood Premiere and ordered them disarmed. None of the

accused disarmed or ordered the private security guards to withdraw from the premises of Oakwood Premiere.

5. In the aftermath of the July 27, 2003 uprising, former Secretary of National Defense Angelo Reyes and Chief of the Intelligence Service Armed Forces of the Philippines (ISAFP) General Victor Corpus resigned from their posts.

6. Also, as an aftermath of the July 27, 2003 uprising, an independent Commission to inquire into the Sasa wharf bombing was convened and empowered to investigate the circumstances of the bombing.

Likewise, the prosecution admitted the following proposed stipulation of facts of Atty. Robles:

1. All of the accused are members or soldiers of the Armed Forces of the Philippines (AFP).
2. As members or soldiers of the AFP, all of the accused are authorized to bear arms.
3. Not a single shot was fired either by (sic) the side of the soldiers who assembled at Oakwood Premier Hotel or by (sic) the side of the Government (against one another) during the entire incident.
4. There were no casualties (i.e., dead or injured) on either side during the entire incident.
5. The soldiers who assembled at the Oakwood Premier Hotel voluntarily and peacefully “stood down,” surrendered and/or returned to barracks after negotiations.

The accused who are being represented by Atty. Pulido admitted the following proposed stipulation of facts of the prosecution:

1. That this Honorable Court has jurisdiction over the offense charged.
2. That the thirty one (31) accused are the very same persons named in the Amended Information and charged for coup d'etat.

The accused who are being represented by Atty. Te admitted the following proposed stipulation of facts of the prosecution:

1. That this Honorable Court has jurisdiction over the offense charged.
2. That the thirty one (31) accused are the very same persons named in the Amended Information and charged for coup d'etat.
3. That the exact and entire text of Article 134-A of the Revised Penal Code reads: ((subject to the judicial notice from the Court)
“Art. 134-A. Coup d'etat – How committed. The crime of coup d'etat is a swift attack, accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications networks, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment, with or without civilian support or participation, for the purpose of seizing or diminishing state power.”

The accused who is being represented by Atty. Alvaro admitted the following proposed stipulation of facts of the prosecution:

1. That this Honorable Court has jurisdiction over the offense charged.
2. That the thirty one (31) accused are the very same persons named in the Amended Information and charged for coup d'etat.

The accused who is being represented by Atty. Saguisag admitted only one proposed stipulation of facts of the prosecution, which is the first part of paragraph 10, “that the negotiation with the government emissaries is successful.”

Atty. Garrido, Atty. Robles and Atty. Ligon did not stipulate on the proposed stipulation of facts of the prosecution.[14]

On January 14, 2005, the court a quo issued an Amended Pre-Trial Order[15] correcting some minor errors in its October 12, 2004 Pre-Trial Order, more particularly in the marking of exhibits.

After the prosecution rested its case, on February 27, 2007, Capt. Sergundino P. Orfiano, Jr., 1LT Francisco Ashley Acedillo and 1LT Billy Pascua (Orfiano, et al.) filed a Motion for Leave of Court to File Demurrer to the Prosecution's Evidence[16]. On February 26, 2007, Capt. Gerardo O. Gambala, Capt. Milo D. Maestrecampo, Capt. Albert T. Baloloy, Capt. Alvin Ebreo, Capt. Laurence Louis B. Somera, Capt. John B. Andres, 1LT Warren Lee Dagupon, 1LT Cleo B Dongga-as, 1LT Rex C. Bolo, 1LT Florentino B. Somera, Jr., 2LT Bryan M. Yasay, 1LT Audie S. Tocloy and 1LT Von Rio P. Tayab (Gambala, et al.) also filed a Motion for Leave to File Demurrer to Evidence[17]. Thereafter, the counsel of LtSg. Antonio F. Trillanes IV, LtSg. James Layug, Marine Capt. Gary Alejano, Marine Capt. Nicanor Faeldon, LtSg. Eugene Gonzalez, LtSg. Andy Torrato, LtSg. Manuel Cabochan, LtJg. Arturo Pascua, 2LT Jonnel Sanggalang, Ens. Armand Pontejos, PO3 Julius Mesa and PO3 Cesare Gonzales (Trillanes, et al.) manifested before the trial court that they are adopting the Motion for Leave to File Demurrer to Evidence filed by Atty. Theodore Te and the Law Firm of Lucenario Margate Mogpo and Associates[18]. The counsel for 1LT Nathaniel N. Rabonza (Rabonza) also manifested before the trial court that they are adopting Atty. Robles' motion[19].

Meanwhile, instead of filing a demurrer to evidence, on March 07, 2007, San Juan filed a Motion to Change Plea[20] praying that he be allowed to change his plea of “Not Guilty” to the crime of coup d'etat under Article 134-A of the Revised Penal Code, to “Guilty” of the lesser offense of Conspiracy to Commit Coup d'etat under Article 136 of the Revised Penal Code[21].

On March 29, 2007, the trial court granted leave of court to the defense's motions for leave of court to file demurrer to evidence.[22]

On May 02, 2007, Faeldon filed his Motion for Leave to File Demurrer to Evidence[23], and the Demurrer to Evidence[24] attached to the motion, which was admitted by the trial court in its Order[25] of May 03, 2007.

On May 04, 2007, Trillanes, et al. filed their Demurrer to Evidence[26]. On May 09, 2007, Rabonza filed his Demurrer to Evidence[27].

On May 09, 2007, Orfiano, et al. filed their Motion to Acquit on Demurrer to the Prosecution's Evidence[28].

On May 28, 2007, Gambala, et al. filed their Motion to Dismiss by way of Demurrer to Evidence with leave of court (Section 23, Rule 119, Rules of Court[29].

Thereafter, Rabonza and Gambala et al. filed their respective Supplemental Demurrers to Evidence[30] in light of the DOJ Resolution dated June 22, 2007[31] recommending the dismissal of the complaint for violation of Article 134-A of the Revised Penal Code (coup d'etat) against Senator Gregorio “Gringo” Honasan II (Sen. Honasan), in Criminal Case No. 06-448.

On July 27, 2007, the RTC denied[32] the Demurrers to Evidence.

On even date, the RTC denied[33] San Juan's motion to change his plea of “Not Guilty” to the crime of coup d'etat to “Guilty” to the lesser offense of conspiracy to commit coup d'etat.

Thereafter, nine (9) of the accused, namely: Gambala, Ebreo, Somera, Maestrecampo, Baloloy, Andres, Dongga-as, Somera, Jr. and Yasay were re-arraigned and they pleaded “Guilty” to the crime of coup d’etat; hence, the trial court rendered a Partial Decision on April 8, 2008 finding them guilty of coup d’etat[34]. They were granted conditional pardon by then President Gloria Macapagal Arroyo under General Order No. 10 dated May 12, 2008[35] which the nine (9) accused accepted.[36]

On November 24, 2010, President Benigno S. Aquino III issued Proclamation No. 75, entitled “GRANTING AMNESTY TO ACTIVE AND FORMER PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES, PHILIPPINE NATIONAL POLICE AND THEIR SUPPORTERS WHO MAY HAVE COMMITTED CRIMES PUNISHABLE UNDER THE REVISED PENAL CODE, THE ARTICLES OF WAR AND OTHER LAWS IN CONNECTION WITH THE OAKWOOD MUTINY, THE MARINES STAND-OFF AND THE MANILA PENINSULA INCIDENT.” The rest of the remaining accused, except appellants, applied for, and were granted amnesty[37].

On March 22, 2013, the RTC rendered the assailed Decision finding appellants guilty of coup d’etat.

Aggrieved, appellants filed a Motion for Reconsideration[38] which was denied by the trial court in its Order[39] dated May 21, 2013.

Hence, this joint appeal.

THE ISSUES

- FIRST ASSIGNMENT OF ERROR

The trial court gravely erred when it adapted the ruling in the Demurrer to Evidence that “the sudden occupation of first class hotel in the commercial district of the City of Makati, particularly Oakwood Hotel at Glorietta” constitute the “swift attack”

- SECOND ASSIGNMENT OF ERROR

The trial court gravely erred when it ruled that “the declaration of the leaders of the Coup d’Etat that they are withdrawing their support to the President of the Republic of the Philippines and demanding the resignation of several Cabinet Officials and breaking their adherence to the chain of command can only be viewed as an attack against duly constituted authorities.”

- THIRD ASSIGNMENT OF ERROR

The trial court gravely erred when it finds that: “the same withdrawal of support made by armed military personnel and officers who are bound by the chain of command, to the mind of the court, constitutes an attack to diminish if not to seize state powers.”

- FOURTH ASSIGNMENT OF ERROR

The trial court erred when it failed to consider the Acquittal of the Accused/Appellants following the exoneration of the alleged Adviser Senator Gergorio B. Honasan II by the Department of Justice.

- FIFTH ASSIGNMENT OF ERROR

The trial court grave[ly] erred when it ruled that: “Accused San Juan change of plea from “not guilty” to “guilty” for the lesser crime of conspiracy to commit coup d’etat bolsters the fact that he had knowingly and willingly participated in the commission of the crime charged.[40]

THE COURT'S RULING

The appeal is meritorious.

Article 134-A of the Revised Penal Code states:

Article 134-A. Coup d'etat. — How committed. — The crime of coup d'etat is a swift attack accompanied by violence, intimidation, threat, strategy or stealth, directed against duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communications network, public utilities or other facilities needed for the exercise and continued possession of power, singly or simultaneously carried out anywhere in the Philippines by any person or persons, belonging to the military or police or holding any public office or employment, with or without civilian support or participation for the purpose of seizing or diminishing state power.

The elements of the crime of coup d'etat are: (1) That the offender is a person or persons belonging to the military or police or holding any public office or employment; (2) That it is committed by means of a swift attack accompanied by violence, intimidation, threat, strategy or stealth; (3) That the attack is directed against duly constituted authorities of the Republic of the Philippines or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power; and, (4) That the purpose of the attack is to seize or diminish state power[41].

Appellants assail their conviction for the crime of coup d'etat contending: that the prosecution failed to prove the second, third and fourth elements of coup d'etat under the Revised Penal Code; that their constitutional right to equal protection was violated when Sen. Gregorio Honasan II was exonerated by the DOJ and they were not; and that San Juan's plea bargain of pleading guilty to the crime of conspiracy to commit coup d'etat, which was denied by the RTC, does not ipso facto prove that coup d'etat was indeed committed.

We agree.

It is axiomatic that every criminal conviction requires of the prosecution to prove two things — the fact of the crime, i.e., the presence of all the elements of the crime for which the accused stands charged, and the fact that the accused is the perpetrator of the crime[42]. Hence, it is imperative upon the prosecution to prove that all the elements of coup d'etat are present in this case.

Here, We find that the third and fourth elements are not present.

The third element of coup d'etat requires that the attack be “directed against duly constituted authorities of the Republic of the Philippines or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power.” Oakwood Premier Hotel, as in fact found by the trial court, is “a first class hotel, in the commercial district of the City of Makati”[43]. It is not a military camp or installation, not a form of communication network, not a public utility or a facility needed for the exercise and continued possession of power.

In fact, the prosecution admitted to the following proposed stipulation of facts proposed by Atty. Te:

2. Oakwood Premiere is a privately (sic) commercial venture and is not, in any manner, government owned or controlled; nor is it a military camp or installation, communication network, public utility or other facility needed for the exercise and continued possession of governmental power.

3. There are no government institutions, agencies, bureaus housed within Oakwood Premiere nor are there any governmental functions being discharged from the premises of Oakwood Premiere as of July 27, 2003.[44]

A stipulation of facts in criminal cases is expressly sanctioned by law. In further pursuit of the objective of expediting trial by dispensing with the presentation of evidence on matters that the accused is willing to admit, a stipulation of facts should be allowed not only during pre-trial but also and with more reason, during trial proper itself. Parenthetically, although not expressly sanctioned under the old rules of court, a stipulation of facts by the

parties in criminal cases has long been allowed and recognized as declarations constituting judicial admissions, hence, binding upon the parties[45].

A judicial admission is binding upon the declarant[46]. Section 4 of Rule 129 of the Rules of Court states:

SEC. 4. Judicial Admissions. — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made[47].

There is no showing that the exception applies in the case at bar; thus, the prosecution is bound by its admission at the pre-trial.

The criminal objective of a coup d'etat is to destabilize or immobilize or paralyze the existing government by taking over such facilities and utilities essential to the continued exercise of governmental powers[48]. It is fundamental that all governmental power is vested in the executive, legislative and judicial branches of the government[49]. Oakwood Premier Hotel is not part of any branch of government; hence, it cannot be said that it is “essential to the continued exercise of governmental powers”.

Corollarily, the fourth element which requires “that the purpose of the attack is to seize or diminish state power”, is also absent. Again, Oakwood Premier Hotel is a private hotel, not a facility needed for the exercise and continued possession of power. Moreover, the trial court itself found that the accused only called for the resignation of then President Gloria Macapagal Arroyo and other key officials of the government[50]. The trial court failed to point out in the assailed Decision any showing that the appellants indeed planned to arrogate state power upon themselves or diminish state power.

If at all, appellants' actions at Oakwood Premier Hotel, was a valid and legitimate exercise of their constitutional right to freedom of speech and expression. Freedom of speech and of the press means something more than the right to approve existing political beliefs or economic arrangements, to lend support to official measures, and to take refuge in the existing climate of opinion on any matter of public consequence[51]. When atrophied, the right becomes meaningless[52]. The right belongs as well — if not more — to those who question, who do not conform, who differ⁵³. The ideas that may be expressed under this freedom are confined not only to those that are conventional or acceptable to the majority. To be truly meaningful, freedom of speech and of the press should allow and even encourage the articulation of the unorthodox view, though it be hostile to or derided by others; or though such view “induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”[54] To paraphrase Justice Holmes, it is freedom for the thought that we hate, no less than for the thought that agrees with us[55].

Appellants argue that their constitutional right to equal protection of the laws was violated when Sen. Honasan was exonerated of the crime of coup d'etat and they were not.

We agree.

Equal protection requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others[56]. The guarantee means that no person or class of persons shall be denied the same protection of laws which is enjoyed by other persons or other classes in like circumstances[57]. The “equal protection of the laws is a pledge of the protection of equal laws”[58].

Like Sen. Honasan, appellants were charged with coup d'etat. In fact, Sen. Honasan was being pointed as the mastermind of the Oakwood incident. However, the DOJ dismissed the complaint against Sen. Honasan, ratiocinating:

“Respondent senator's National Recovery Program, his speeches and statements espousing that the use of violence in the overthrow of government appear to be necessary are acts covered by the free speech clause.”[59] (Emphasis supplied)

It is settled that equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed[60]. It requires public bodies and institutions to treat similarly situated individuals in a similar manner[61]. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly-constituted authorities[62]. In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective[63].

Finally, appellants argue that the RTC erred in ruling that San Juan's plea of guilty to Art. 136 of the Revised Penal Code “bolsters the fact that he had knowingly and willingly participated in the commission of the crime as charged”[64].

We agree.

First, it is well to note that the trial court denied San Juan's motion to change his plea from “not guilty” to the crime of coup d'etat, to “guilty” of the crime of conspiracy to commit coup d'etat. The same trial court cannot motu proprio reverse itself and use San Juan's offer of plea bargain against him.

Second, par. 3 of Sec. 27, Rule 130 of the Rules of Court provides that:

“A plea of guilty later withdrawn, or an unaccepted offer of a plea of guilty to a lesser offense, is not admissible in evidence against the accused who made the plea or offer.” (Boldface Ours)

Plea bargaining is a process in criminal cases whereby the accused and the prosecution work out a mutually satisfactory disposition of the case subject to court approval[65]. An unaccepted offer of a plea of guilty to a lesser offense is inadmissible in evidence against the accused who made the offer as the objective of the rule is to provide a plea agreement procedure designed to give “recognition to the propriety of plea discussions and plea agreements provided that they are disclosed in open court and subject to acceptance or rejection by the trial judge”[66].

Third, it has been held that there is no rule which provides that simply because the accused pleaded guilty to a charge that his conviction automatically follows. Additional evidence, independent of the plea, may be considered to convince the judge that it was intelligently made[67]. Moreso here that the accused pleaded guilty to one crime yet was convicted by the trial court of another crime on the basis of his plea.

Conspiracy to commit coup d'etat is defined under Article 136 of the Revised Penal Code, viz:

ARTICLE 136. Conspiracy and proposal to commit coup d'état, rebellion or insurrection. — The conspiracy and proposal to commit coup d'etat shall be punished by prision mayor in its minimum period and a fine which shall not exceed eight thousand pesos (P8,000.00).

The conspiracy and proposal to commit rebellion or insurrection shall be punished, respectively, by prision correccional in its maximum period and a fine which shall not exceed five thousand pesos (P5,000.00), and by prision correccional in its medium period and a fine not exceeding two thousand pesos (P2,000.00).

There is conspiracy to commit rebellion (or in this case, coup d'etat) when two or more persons come to an agreement to rise publicly and take arms against the Government for any of the purposes of rebellion and decide

to commit it[68].

On the other hand, the crime of coup d'etat is defined under Art. 134-A of the Revised Penal Code. A coup consists mainly of military personnel and public officers and employees seizing the controlling levers of the state, which is then used to displace the government from its control of the remainder. As defined, it is a swift attack directed against the duly constituted authorities or vital facilities and installations to seize state power[69].

Clearly, conspiracy to commit coup d'etat and coup d'etat are two separate crimes. The fact that the former is included in the latter does not do away with the rule that in every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused[70]. Furthermore, in criminal cases, the prosecution bears the onus to prove beyond reasonable doubt not only the commission of the crime but likewise to establish, with the same quantum of proof, the identity of the person or persons responsible therefor[71]. This burden of proof does not shift to the defense but remains in the prosecution throughout the trial[72]. Here, as earlier discussed, the prosecution failed to prove the presence of the third and fourth elements of coup d'etat. Corollarily, it is not the duty of the appellants to prove that they are not guilty of coup d'etat.

WHEREFORE, premises considered, the instant appeal is GRANTED. Appellants 1LT Lawrence R. San Juan and 1LT Rex C. Bolo are ACQUITTED of the crime of coup d'etat. The cash bail bonds[73] posted for their provisional liberty are ordered RELEASED to them, or their duly authorized representatives, subject to the usual accounting and auditing procedures.

SO ORDERED.

Dicdican, I. P., Chairperson, and Ybañez, E. A., JJ., concur.

[1] People vs. Wagas, G.R. No. 157943, September 4, 2013.

[2] Rollo, pp. 11-27.

[3] Ibid., p. 27.

[4] Records, Volume 1, p. 11.

[5] Ibid., Volume 1, pp. 132-4.

[6] Ibid., Volume 1, p. 142.

[7] Ibid., Volume 3, pp. 637-60.

[8] Ibid., Volume 3, pp. 602-6.

[9] Ibid., Volume 4, pp. 894-5.

[10] Records, Volume 3, pp. 607-12.

[11] Ibid., Volume 5, p. 1211.

[12] Ibid., Volume 5, p. 1212.

[13] Records, Volume 8, pp. 2279-95.

[14] Records, Volume 8, pp. 2290-2.

- [15] Ibid., Volume 9, pp. 2435-51.
- [16] Ibid., Volume 16, pp. 5111-6.
- [17] Ibid., Volume 16, pp. 5131-5.
- [18] Ibid., Volume 16, pp. 5168-9.
- [19] Ibid., Volume 16, p. 5169.
- [20] Records, Volume 16, pp. 5170-4.
- [21] Ibid., Volume 16, p. 5172.
- [22] Ibid., Volume 16, p. 5272.
- [23] Ibid., Volume 16, pp. 5428-9.
- [24] Ibid., Volume 16, pp. 5430-44.
- [25] Ibid., Volume 16, p. 5450.
- [26] Ibid., Volume 17, pp. 5476-5503.
- [27] Ibid., Volume 17, pp. 5554-66.
- [28] Ibid., Volume 17, pp. 5567-81.
- [29] Ibid., Volume 17, pp. 5659-5706.
- [30] Ibid., Volume 18, pp. 5977-80; pp. 6192-6212.
- [31] Ibid., Volume 18, pp. 6213-31.
- [32] Records, Volume 19, pp. 6307-46.
- [33] Ibid., Vol. 19, pp. 6375-81.
- [34] Ibid., Vol. 24, pp. 8375-8501.
- [35] Ibid., Vol. 24, pp. 8665-6.
- [36] Ibid., Vol. 24, pp. 8667-8.
- [37] Rollo, p. 115.
- [38] Records, Vol. 40, pp. 13867-77.
- [39] Ibid., Vol. 40, pp. 13906-7.
- [40] Rollo, p. 66.
- [41] Reyes, Luis B., Revised Penal Code, Book II, 15th ed (2001), p. 84.
- [42] See Cabugao vs. People, G.R. No. 163879, July 30, 2014.
- [43] Decision, p. 13; Rollo, p. 23.
- [44] Records, Volume 8, p. 2290.
- [45] See People v. Hernandez, G.R. No. 108028, July 30, 1996.

[46] See *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 134467, November 17, 1999.

[47] *Ibid.*

[48] Boado, Leonor D., *Notes and Cases on the Revised Penal Code*, 2[nd] edition, 2002, p. 359.

[49] See *Ynchausti & Co. vs. Wright*, G.R. No. 23601, September 22, 1925.

[50] Decision, p. 16; Rollo, p. 26.

[51] *Chavez vs. Gonzales*, G.R. No. 168338, February 15, 2008 citing *Gonzales vs. Commission on Elections*, 137 Phil. 471, 492 (1969) citing *New York Times Co. v. Sullivan*, 376 US 254, 270 (1964).

[52] *Ibid.*

[53] *Ibid.*

[54] *Ibid.*, citing *Terminiello v. City of Chicago*, 337 US 1, 4 (1949). Emphasis Ours.

[55] *Ibid.*, citing *U.S. v. Schwimmer*, 279 US 644, 655 (1929).

[56] *City of Manila vs. Laguio, Jr.*, G.R. No. 118127, April 12, 2005 citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957).

[57] *Ibid.*, citing 16B Am Jur 2d §779 299 citing *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208 (1938), reh'g denied, 305 U.S. 676, 59 S. Ct. 356, 83 L. Ed. 437 (1939) and mandate conformed to, 344 Mo. 1238, 131 S.W. 2d 217 (1939).

[58] *Ibid.*, *Walker v. Board of Supervisors of Monroe County*, 224 Miss. 801, 81 So. 2d 225 (1955), cert. denied, 350 U.S. 887, 76 S. Ct. 142, 100 L. Ed. 782 (1955); *Preisler v. Calcaterra*, 362 Mo. 662, 243 S.W. 2d 62 (1951).

[59] DOJ Resolution dated June 22, 2007, p. 18; Records, Vol. 18, p. 6230.

[60] *Garcia vs. Executive Secretary*, G.R. No. 198554, July 30, 2012 citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Sison, Jr. v. Ancheta*, G.R. No. L-59431, July 25, 1984, 130 SCRA 654; *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*, G.R. No. 7842, July 14, 1989, 175 SCRA 343, 375.

[61] *Garcia vs. Executive Secretary*, G.R. No. 198554, July 30, 2012 citing *Guino v. Senkowski*, 54 F 3d 1050 (2d. Cir. 1995), cited in Am. Jur. 2d, Vol. 16 (b), p. 302.

[62] *Ibid.*, citing *Edward Valves, Inc. v. Wake Country*, 343 N.C. 426, cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[63] *Ibid.*, citing *Lehr v. Robertson*, 463 US 248, 103 cited in Am. Jur. 2d, Vol. 16 (b), p. 303.

[64] Decision, p. 16; Rollo, p. 26.

[65] *Gonzales III vs. Office of the President of the Philippines*, G.R. No. 196231, September 4, 2012 citing *Daan v. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, citing *People v. Villarama, Jr.*, 210 SCRA 246, 251-252 (1992).

[66] See Francisco, Ricardo J., *Evidence*, Third Edition, 1996, p. 169, citing Advisory Committee Note, Rule of the Federal Rules of Criminal Procedure, 62 F.R.D. 271, 280 (1974), cited in 2 Weinstein's *Evidence*, 410-25.

[67] See *People vs. Mendoza*, G.R. No. 80845, March 14, 1994.

[68] Reyes, Luis B., Revised Penal Code, Book II, 15th ed (2001), p. 91.

[69] See Dissenting Opinion of Justice Ynares Santiago in Honasan II vs. Panel of Investigating Prosecutors of the DOJ, G.R. No. 159747, April 13, 2004.

[70] See People vs. Chua, G.R. No. 187052. September 13, 2012, citing Llamas v. Court of Appeals, G.R. No. 149588, August 16, 2010, 628 SCRA 302, 308.

[71] People vs. Kinok, G.R. No. 104629, November 13, 2001 citing People v. Niño, 290 SCRA 155; People of the Philippines v. Bernie Faustino, G.R. No. 129220, September 6, 2000.

[72] Ibid., citing Bautista v. Sarmiento, G.R. No. L-45137, September 23, 1985; SCRA 587, p. 593.

[73] Records, Vol. 40, pp. 13890-2.

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