

**RAUL H. SESBREÑO, PETITIONER, VS. HON. COURT OF APPEALS,
HON. SILVESTRE BELLO III, NORBERTO ABELLANA, RONALD
ARCILLA, DEMETRIO BALICHA, FELIPE CONSTANTINO, JUAN
COROMINA, LORETO...**

G.R. NO. 101487. April 22, 2005

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review on certiorari, petitioner Raul H. Sesbreño urges the Court to annul and set aside the Decision dated June 27, 1991[1] of the Court of Appeals in CA-G.R. SP No. 23832, as well as its Resolution dated August 7, 1991, denying petitioner's motion for reconsideration. Challenged by the petitioner in CA-G.R. SP No. 23832 were the letter-resolutions dated October 23, 1990 and December 7, 1990, respectively, of then Justice Undersecretary Silvestre Bello III and then Justice Secretary Franklin Drilon.

The decision under review[2] recites the factual milieu of the case, as follows:

On June 5, 1989, petitioner filed criminal complaints before the Office of the City Prosecutor of Cebu City against respondents Jose Garcia (Jesus Garcia), Juan Coromina, Felipe Constantino, Ronald Arcilla and Demetrio Balicha, to wit:

I.S. No. 89-2642 for Trespass to Dwelling

I.S. No. 89-2643 for Coercion

I.S. No. 89-2644 for Grave Threats

I.S. No. 89-2645 for Incriminatory Machinations

I.S. No. 89-2646 for Falsification thru use of Falsified Documents

I.S. No. 89-2647 for Theft/Robbery

On June 21, 1989, petitioner filed against Norberto Abellana, Juan Coromina, Ronald Arcilla, Felipe Constantino and Demetrio Balicha a complaint for Attempted Estafa Thru Falsification filed as I.S. No. 89-2937.

The following other complaints were filed by petitioner:

I.S. No. 89-3283 for Falsification thru the use of Falsified Document against Samuel Nunez and Loreto Durano, filed on July 10, 1989.

I.S. No. 89-3472 for Libel or Perjury against Samuel Nunez, Loreto Durano, and Jesus Garcia filed on July 24, 1989.

I.S. No. 89-3483 for Attempted Estafa thru Falsification or Reckless Negligence against Samuel Nunez, Loreto Durano and Jesus Garcia filed on July 25, 1989.

I.S. No. 89-3507 for Incriminatory Machination against Samuel Nunez, Loreto Durano, and Jesus Garcia filed on July 26, 1989.

I.S. No. 89-3711 for Theft of Electricity or Violation of B.P. Blg. 876 against Samuel Nunez, Loreto Durano,

Jesus Garcia, Felipe Constantino, Ronald Arcilla, Norberto Abellana and Demetrio Balicha filed on August 7, 1989.

I.S. No. 89-4004 for Falsification against Loreto Durano, Samuel Nunez, and Jesus Garcia filed on August 22, 1989.

I.S. No. 89-4148 for Theft of Electricity or Violation of B.P. Blg. 876, against Vicente Garcia, Jose Garcia, and Angelita Lhuillier.

On July 19, 1989, a letter-complaint, I.S. No. 89-3427-A for violation of B.P. Blg. 876, signed by VECO's counsel, Samuel Nunez, was filed against petitioner.

The criminal complaints I.S. Nos. 89-2642 up to 89-2647 were dismissed by Asst. City Prosecutor Salvador Solima in a resolution dated June 15, 1989. Petitioner sought a review by the Department of Justice of said dismissal.

In a letter-resolution, dated June 5, 1990, Justice Undersecretary Eduardo Montenegro denied the petition for review of the resolution dismissing I.S. Nos. 89-2642 to 89-2647, to wit:

“Summarizing we hold that:

(1) the investigating fiscal has not erred in finding that no probable cause to warrant the filing of criminal charges against the respondents for the crimes of Trespass to Dwelling, Unjust Vexation and/or Coercion, Grave Threats, Incriminatory Machinations, Falsification and/or Use of Falsified Document and Theft or Robbery; and

(2) neither has he erred in not conducting a preliminary investigation.

WHEREFORE, premises considered, the resolution of the 4[th] Assistant City Fiscal of Cebu City, Salvador O. Solima, dismissing your complaint, is hereby AFFIRMED and your Petition for Review accordingly DENIED.”

Justice Undersecretary Montenegro in his letter-resolution of March 5, 1991, denied the motion for reconsideration of said resolution of June 5, 1990.

The other criminal complaints, I.S. Nos. 89-2937, 89-3283, 89-3472, 89-3483, 89-3507, and I.S. No. 89-3427-A were set for preliminary (clarification) investigation on August 28, 1989, and subpoenas were issued to bring the witnesses.

Said other cases were initially jointly investigated by a panel composed of Asst. City Prosecutors Anita de Castro, Bienvenido Mabanto and Dario Rama. On July 26, 1989, however, Asst. City Prosecutor Anita de Castro requested to be inhibited from investigating the criminal complaints. Her request, although initially denied, was subsequently approved.

During the preliminary (clarificatory) investigation held on August 28, 1989, petitioner requested for the postponement of the proceeding on the ground that his witnesses were not available. Said request for postponement was denied and the preliminary (clarificatory) investigation proceeded with the active participation of the petitioner.

Requests for the inhibition of the two-member investigating panel, Dario Rama and Mabanto Bienvenido, were made by petitioner. The said requests for inhibition were denied in an order issued by the City Prosecutor, Jufelinito Pareja.

On March 16, 1990, a joint resolution was issued by Asst. City Prosecutors Bienvenido Mabanto and Dario Rama,

approved by First Assistant City Prosecutor Pedro Montecillo, dismissing I.S. Nos. 89-2937, 89-3283, 89-3472, 89-3483, 89-3507, 89-3711, 89-4004 and 89-4148, and recommending the filing of an information against petitioner for violation of B.P. Blg. 876, in I.S. No. 89-3427-A, to wit:

“A simple reading of the records of these cases would show the undeniable fact that Atty. Raul H. Sesbreño filed a volley of complaints against the herein respondents as a result of the inspection that was conducted by the personnel of the Visayan Electric Company on his residence, which lead to the discovery of a tampered electric meter and for which he as subsequently charged before this Office. One need not stretch his imagination to delve into the right reason why the series of complaints were filed because the reason is very clear. The Visayan Electric Company has sufficient proof that the electric meter installed on the residence of Atty. Raul H. Sesbreño was actually tampered with and since the tampering resulted in the reduction of the registered power consumption, Raul H. Sesbreño who is bound to benefit from the aforesaid reduction is presumed to have done the tampering. With respect to the charges filed by Atty. Sesbreño against Atty. Loreto M. Durano, et als., it is the finding of the undersigned that these cases were purposely filed to obtain leverage.

WHEREFORE, in view of the foregoing and finding a prima facie case for the crime of Violation of Batas Pambansa Bilang 876, it is hereby most respectfully recommended that the proper information be filed against Atty. Raul H. Sesbreño. Finding however lack of prima facie case, I.S. Nos. 89-3927 (2937), 89-3283, 89-3472, 89-3483, 89-3507, 89-3711, 89-4004 and 89-4148 are hereby ordered DISMISSED.”

A petition for review, dated April 16, 1990, of said resolution of March 16, 1990 was filed by petitioner with the Department of Justice.

In a letter-resolution, dated October 23, 1990, Justice Undersecretary Bello dismissed the petition for review, to wit:

“In the light of the foregoing, your contention that the prosecutors were biased against you becomes untenable. Even assuming that one of the respondents was the former superior of some of the prosecutors, such fact alone does not make them biased. To our mind, the issue of impartiality cannot be viewed apart from the evidence. Otherwise stated, if it appears that the findings of the prosecutor are supported by the evidence, any allegation of partiality becomes stale.

Finally, you contend that I.S. No. 89-3427-A should have been suspended due to the pendency of Civil Case Nos. CEB-8044 and CEB-7984. Considering that a resolution has in fact been rendered in the criminal action by the fiscal, your petition for suspension has become academic. Nevertheless, under the rules, you may still file said petition ‘in the same criminal action at any time before the prosecution rests.’

WHEREFORE, premises considered, your appeal is hereby dismissed.”

Petitioner sought a reconsideration of said letter-resolution in letters, dated November 5 and 8, 1990, addressed to Justice Secretary Franklin Drilon, alleging that Undersecretary Bello should have inhibited himself from resolving the former’s appeal and that the jurisdiction to investigate the complaints was vested with the Ombudsman. The reconsideration sought by petitioner was denied [by then Justice Secretary Franklin Drilon] on December 7, 1990, to wit:

“xxx xxx xxx

At any rate, the matter of whether Undersecretary Bello should have inhibited himself is now academic considering that a resolution has already been rendered. The important consideration, at this point, is whether the resolution of your appeal is in accordance with the law and the evidence. We have gone over the records of the case and find no sufficient reason to overturn our findings.

Finally, with respect to the issue of jurisdiction, we can only quote from the ruling of the Court in Tijam vs.

Sibonghanoy, 23 SCRA 29, thus:

‘... a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694 A.L.R. 79).

‘In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the Court is valid and conclusive as an adjudication, but for the reason that such practice cannot be tolerated obviously for reasons of public policy.

‘Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court and in Littleton vs. Burges, 16 Wyo. 58, the Court said that ‘it is not right for a party who has affirmed and invoked the jurisdiction of the court in a particular matter to secure an affirmative relief, to afterwards deny the same jurisdiction to escape a penalty.’

WHEREFORE, premises considered, your motion for reconsideration is hereby denied.”

Petitioner elevated the matter to the Court of Appeals via a petition for certiorari in CA-G.R. SP No. 23832, with prayer for a temporary restraining order (TRO), which said court issued on March 15, 1991.

In the herein assailed Decision dated June 27, 1991, the Court of Appeals partially granted petitioner’s recourse thereto. More specifically, said decision dispositively reads:

“WHEREFORE, the petition for certiorari of petitioner Raul Sesbreño is PARTIALLY GRANTED. The letter-resolution of October 23, 1990 of Justice Undersecretary Silvestre Bello and the letter-resolution of December 7, 1990 of Justice Secretary Franklin Drilon, insofar as the same sustained the joint resolution of March 16, 1990 of the City Prosecutor’s Office of Cebu City, in respect to I.S. No. 89-2937, is SET ASIDE, and I.S. No. 89-2937 is ordered REFERRED to the Ombudsman for proper preliminary investigation/disposition, pursuant to law. The rest of the said resolutions, affirming said joint resolution in I.S. Nos. 89-3283, 89-3472, 89-3483, 89-3507, 89-3711, 89-4004, and 89-4148, except I.S. No. 89-3427-A, which has been ordered by the Secretary of Justice to be reinvestigated, is UPHELD.

IT IS SO ORDERED”. [3]

Petitioner moved for a reconsideration of the aforesaid decision, which motion was similarly partially granted by the Court of Appeals in its equally challenged Resolution[4] dated August 7, 1991, as follows:

PREMISES CONSIDERED, the motion for reconsideration of petitioner is PARTIALLY GRANTED, and our decision of June 27, 1991, for reasons stated above, is AMENDED. Accordingly, the dispositive portion of said decision should read as follows:

“WHEREFORE, the petition for certiorari of petitioner Raul Sesbreño is PARTIALLY GRANTED. The letter-resolution of October 23, 1990 of Justice Undersecretary Silvestre Bello and the letter-resolution of December 7, 1990 of Justice Secretary Franklin Drilon, insofar as the same sustained the joint resolution of March 16, 1990 of the City Prosecutor’s Office of Cebu City, in respect to the related cases, I.S. No. 89-2937 and I.S. No. 89-3483, and I.S. No. 89-3507, are SET ASIDE, and I.S. No. 89-2937 and I.S. No. 89-3483 are ordered REFERRED to the Ombudsman for proper preliminary investigation/disposition, while I.S. 89-3507 is ordered REFERRED to the City Prosecutor’s Office of Cebu City, for the proper filing of an information with the metropolitan trial court of Cebu City for preliminary determination.

The rest of the said letters-resolutions, affirming the joint resolution in I.S. Nos. 89-3283, 89-3472, 89-3711, 89-4004, 89-4148, except I.S. No. 89-3427-A, which has been ordered by the Secretary of Justice to be reinvestigated, is UPHELD.”

IT IS SO ORDERED.

Still unsatisfied, petitioner is now with this Court via the instant recourse for the purpose already announced at the threshold hereof.

The petition was given due course and the parties required to file their respective memoranda, to which they complied.

After due deliberation, the Court finds no merit in the petition.

It must be noted that the subject matter of the Court of Appeals' decision now subject of review is the October 23, 1990 Letter-Resolution^[5] of the Department of Justice, through then Undersecretary Silvestre Bello III, which included only the following cases:

1. I.S. No. 89-2937

- Attempted Estafa Thru Falsification and/or Reckless Imprudence/Negligence

2. I.S. No. 89-3283

- Falsification Thru the Use of Falsified Document

3. I.S. No. 89-3472

- Libel/Perjury

4. I.S. No. 89-3483

- Attempted Estafa Thru Reckless Imprudence/Negligence

5. I.S. No. 89-3507

- Falsification or Incriminatory Machination

6. I.S. No. 89-3711

- Theft of Electricity – Batas Pambansa Blg. 876

7. I.S. No. 89-4004

- Falsification or Incriminatory Machination

8. I.S. No. 89-4148

- Theft of Electricity

9. I.S. No. 89-3427-A

- Violation of Batas Pambansa Blg. 876

Among the aforelisted nine (9) cases, the first eight (8) were initiated by petitioner, while the last one, i.e., I.S. No. 89-3427-A, for theft of electricity or violation of B.P. Blg. 876, was filed by respondents against the petitioner. In their Memorandum (at page 32 thereof),^[6] respondents manifested that they are abandoning I.S. No. 89-3427-A because, according to them, petitioner was already convicted for murder, which conviction is now pending review before this Court. In view of such manifestation, all concerns raised by petitioner pertaining to “unlawful search and seizure” of the supposed defective electric power meter which was used as evidence against

him in I.S. No. 89-3427-A, had thereby become moot and academic. The same is true as regards the issue of “prejudicial question”, raised in the same I.S. No. 89-3427-A.

As we see it, despite the very lengthy discussion of petitioner’s arguments, the only valid and relevant issues left for this Court to resolve are the following:

- Disqualification or Inhibition of the handling prosecutors and Undersecretary Bello III; and
- Jurisdiction of the Ombudsman to conduct preliminary investigation in I.S. No. 89-2937 and No. 89-3483, which are the cases where Sgt. Demetrio Balicha is involved.

All the rest of the arguments/issues raised by the petitioner in his memorandum are irrelevant and have no bearing whatsoever in the review of the assailed decision and resolution of the appellate court.

On petitioner’s contention that the prosecutors were not impartial and should have been disqualified from conducting preliminary investigation, the Court of Appeals found no factual or legal basis to rule that then Undersecretary Bello III or then Secretary Drilon committed grave abuse of discretion.

After thoroughly reviewing the entire records of the case vis-à-vis petitioner’s arguments on the matter of inhibition or disqualification of the investigating prosecutors, we find no cogent reason to depart from the findings of then Undersecretary Bello III and then Secretary Drilon.

Suffice it to state that in reviewing decisions of the Court of Appeals in a petition for review on certiorari, the factual findings of that court are generally binding upon this Court. When the administrative bodies’ factual findings have been affirmed by the Court of Appeals, said findings are generally conclusive and binding upon this Court. For it is not the function of this Court to analyze and weigh the parties’ evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result. Our task in an appeal by petition for review on certiorari is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the Court of Appeals[7].

Petitioner has not convinced this Court that this case falls under any of the exceptions to this settled rule. For instance, the denial of a motion for postponement by the investigating prosecutor does not constitute partiality in favor of private respondents which necessitates inhibition from investigating the case. In like manner, absence, as here, of any clear showing of impartiality or undue favors, the sole fact that one of the respondents was the former superior of some of the prosecutors does not necessarily become a basis for disqualification.

We shall now tackle the issue of jurisdiction of the Ombudsman to conduct preliminary investigation in cases cognizable by the Sandiganbayan,[8] as follows:

- I.) Violations of RA 3019 (Anti-graft and Corrupt Practices Law) as amended.
- II.) RA 1379 (Forfeiture of Illegally Acquired Wealth);
- III.) Crimes by public officers or employees embraced in Ch. II, Sec.2 Title VII, Bk. II of the Revised Penal Code (Crimes committed by Public Officers) namely:
 - a) Direct Bribery under Art. 210 as amended by BP 871, May 29, 1985;
 - b) Indirect Bribery under Art. 211 as amended by BP 871, May 29, 1985;
 - c) Qualified Bribery under Art. 211-A as amended by RA 7659, Dec. 13, 1993;
 - d) Corruption of public officials under Art. 212 where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758) specifically including:

a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, provincial treasurers, assessors, engineers and other provincial department heads;

b) City mayors, vice-mayors, members of the sangguniang panglungsod, city treasurers, assessors, engineers and other department heads;

c) Officials of the diplomatic service occupying the position of consul and higher;

d) Philippine Army and Air force colonels, naval captains and all officers of higher rank;

e) Officers of the PNP while occupying the position of Provincial Director and those holding the rank of Senior Superintendent or higher;

f) City and provincial prosecutors and their assistants; officials and the prosecutors in the Office of the Ombudsman and special prosecutor;

g) President, directors or trustees or managers of government owned or controlled corporations, state universities or educational institutions or foundations;

2) Members of Congress and Officials thereof classified as Grade 27 and up under the Compensation and Classification Act of 1989;

3) Members of the Judiciary without prejudice to the provision of the Constitution;

4) Chairmen and members of Constitutional Commissions, without prejudice to the provision of the Constitution;

5) All other national and local officials classified as Grade 27 and higher under the Compensation and Position Classification Act of 1989.

IV.) Other offenses or felonies whether simple or complexed with other crimes committed in relation to their office by the public officials and employees mentioned above;

V.) Civil and Criminal Cases filed pursuant to and in connection with EO 1, 2, 14 & 14-A issued in 1986

VI.) Petitions for issuance of Writ of mandamus, prohibition, certiorari, habeas corpus, injunction and other ancillary writs and processes in aid of its appellate jurisdiction; Provided, jurisdiction is not exclusive of the Supreme Court

VII.) Petitions for Quo Warranto arising or that may arise in cases filed or that may be filed under EO 1, 2, 14 & 14-A

VIII.) OTHERS provided the accused belongs to Salary Grade 27 or higher:

a.) Violation of RA 6713- Code of Conduct and Ethical Standards

b.) Violation of RA 7080- THE PLUNDER LAW

c.) Violation of RA 7659- The Heinous Crime Law

d.) RA 9160-Violation of The Anti-Money Laundering Law when committed by a public officer

e.) PD 46 referred to as the gift-giving decree which makes it punishable for any official or employee to receive directly or indirectly and for the private person to give or offer to give any gift, present or other valuable thing on any occasion including Christmas, when such gift, present or valuable thing is given by

reason of his official position, regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition is the throwing of parties or entertainment in honor of the official or employee or his immediate relatives.

f.) PD 749 which grants immunity from prosecution to any person who voluntarily gives information about any violation of Art.210, 211 or 212 of the Revised Penal Code, RA 3019, Sec.345 of the National Internal Revenue Code, Sec. 3604 of the Customs and Tariff Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned and other laws, rules and regulations penalizing graft, corruption and other forms of official abuse and who willingly testifies against the public official or employee subject to certain conditions.

It should be noted that private individuals can be sued in cases before the Sandiganbayan if they are alleged to be in conspiracy with the public officer.

On June 27, 1991, when the Court of Appeals passed upon this issue of jurisdiction, the prevailing law vested the jurisdiction to conduct preliminary investigation in I.S. Nos. 89-2937 and 89-3711 involving Sgt. Demetrio Balicha, a public officer with salary grade below Salary Grade 27, upon the Ombudsman. However, during the pendency of the case before this Court, the power to conduct preliminary investigation reverted back to the Office of the City Prosecutor by virtue an amendatory law, Republic Act No. 7975 -- "An Act to Strengthen the Functional and Structural Organization of the Sandiganbayan, amending for that purpose Presidential Decree No. 1606, as amended", which took effect on May 6, 1995.

Because of this supervening legislation, the Court of Appeals decision, which was then correct, now has to be accordingly modified, whereby the joint resolution issued by Asst. City Prosecutor Bienvenido Mabanto and Dario Rama, approved by First Asst. City Prosecutor Pedro Montecillo, dismissing I.S. Nos. 89-2937 and 89-3711, and affirmed by then Justice Undersecretary Silvestre Bello III and then Secretary Franklin Drilon, are now hereby reinstated and affirmed.

WHEREFORE, the petition is hereby DENIED. However, the decision appealed from, due to supervening legislative amendment on the jurisdiction of the Sandiganbayan, is accordingly MODIFIED in that the joint resolution dismissing I.S. Nos. 89-2937 and 89-3711 is likewise AFFIRMED. No costs.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Penned by Justice Jaime Lantin [ret.] and concurred in by former Associate Justices Cesar Francisco [ret.] and Reynato Puno, now a member of this Court.

[2] Rollo, Vol. I, pp. 64-81.

[3] Rollo, Vol. I, pp. 80-81.

[4] Rollo, Vol. I, pp. 82-88.

[5] Annex "C" of Respondent Durano's Comment (Rollo, Vol. I, p. 308).

[6] Rollo, Vol. II, p. 602.

[7] Danofrata vs. People, 412 SCRA 357 [2003]

[8] As summarized in its website: www.sandiganbayan.gov.ph

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