

**EDGAR PAYUMO, REYNALDO RUANTO, CRISANTO RUANTO,
APOLINARIO RUANTO, AND EXEQUIEL BONDE, PETITIONERS, VS.
HONORABLE SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES,
OFFICE OF THE OMBUDSM...**

G.R. No. 151911. July 25, 2011

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-151911/>

MENDOZA, J.:

Before this Court are two consolidated petitions filed under Rule 65 of the 1997 Rules on Civil Procedure and docketed as G.R. No. 151911 and G.R. No. 154535, respectively. These cases were consolidated by the Court in its Resolution dated January 29, 2003.

G.R. No. 151911 is a petition for certiorari and mandamus which seeks to reverse and set aside the October 24, 2001 Resolution[1] by the Sandiganbayan Special Fifth Division, granting the Omnibus Motion to Set Aside the Decision dated November 27, 1998 and for New Trial, filed by the accused in Criminal Case No. 4219 entitled "People of the Philippines v. Domiciano Cabigao, et al." for Murder with Multiple Frustrated and Attempted Murder. The petition also seeks to compel the Office of the Ombudsman (Ombudsman) and the Office of the Special Prosecutor (OSP) to perform their lawful duties of protecting the interests of the State and the petitioners.

G.R. No. 154535 was filed by Nestor Domacena (Domacena), one of the accused in Criminal Case No. 4219 and one of the respondents in G.R. No. 151911 to nullify the April 12, 2002 Resolution[2] of the Sandiganbayan which denied his Urgent Omnibus Motion to Dismiss. This petition, together with G.R. No. 151911 with respect to Domacena, was later dismissed by the Court in its January 31, 2007 Resolution, after the Sandiganbayan dismissed Criminal Case No. 4219 against this accused, in view of his death.

THE FACTS

The petitions stem from the facts of Criminal Case No. 4219 involving a shooting incident that occurred on February 26, 1980 at around 5:30 o'clock in the afternoon in Sitio Aluag, Barangay Sta. Barbara, Iba, Zambales. A composite team of Philippine Constabulary (PC) and Integrated National Police (INP) units allegedly fired at a group of civilians instantly killing Amante Payumo and wounding Teofilo Payumo, Barangay Captain of Sta. Barbara at Cabatuhan River; Edgar Payumo, Reynaldo Ruanto; Crisanto Ruanto; Apolinario Ruanto; and Exequiel Bonde. The following were indicted for Murder with Multiple Frustrated and Attempted Murder before the Sandiganbayan: Domiciano Cabigao, Nestor Domacena, Rolando Doblado, Ernesto Pampuan, Edgardo Prado, Romeo Dominico, Rodolfo Erese, Ramon Garcia and Carlos Pacheco.

Accused Rodolfo Erese, however, died before the arraignment. When arraigned, the rest of the accused pleaded not guilty to the offense charged.[3] During the trial, the accused interposed the defenses of lawful performance of duty, self-defense, mistake of fact, and alibi. They insisted that the incident was a result of a military operation, and not an ambush as claimed by the prosecution.

After four (4) years of trial, the Second Division of the Sandiganbayan rendered its Decision[4] dated October 5, 1984, penned by Justice Romeo M. Escareal, convicting the accused as co-principals in the crime of Murder with Multiple Frustrated and Attempted Murder. The dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused Domiciano Cabigao y Cabal, Nestor Domacena y Deveraturda, Rolando Doblado y Draguin, Ernesto Pampuan y Santos, Edgardo Prado y Molina, Romeo Dominic y Quitaneg, Ramon Garcia y Dantes and Carlos Pacheco y Dominic GUILTY beyond reasonable doubt as co-principals in the crime of Murder with Multiple Frustrated and Attempted Murder, qualified by abuse of superior strength, and there being no modifying circumstances present, hereby sentences each of them to suffer the penalty of Reclusion Perpetua, with the accessory penalties attached thereto; to indemnify, jointly and severally the heirs of deceased victim Amante Payumo in the amount of P30,000.00; to indemnify, jointly and severally, Reynaldo Ruanto, Crisanto Ruanto, Edgar Payumo, Teofilo Payumo, Apolinario Ruanto and Exequiel Bonde in the amount of P10,000.00, P2,000.00 to Apolinario Ruanto and P1,000.00 to Exequiel Bonde for actual damages, and to pay their proportionate costs of this action.

xxxx

On October 23, 1984, the accused jointly moved for a reconsideration of the aforesaid decision, but the motion was denied by the Second Division in its Resolution dated December 10, 1984 and promulgated on December 11, 1984.

On January' 11, 1985, the accused filed their Motion for New Trial anchored on the following grounds: (1) Error of law or irregularities have been committed during the trial prejudicial to the substantive rights of the accused; and (2) the accused were denied procedural due process of law.

The accused appealed to this Court the October 5, 1984 Decision of the respondent court through a petition for review on certiorari, which was docketed as G.R. No. 69422 entitled "Domiciano Cabigao v. Sandiganbayan."

In view of the appeal (G.R. No. 69422) before this Court, the Sandiganbayan Second Division issued a Resolution dated January 31, 1985 denying accused's Motion for New Trial on the ground that it no longer had any jurisdiction over the case.

This prompted the accused to file on February 20, 1985 a petition for certiorari before the Court, docketed as G.R. No. 69960, claiming that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the January 31, 1985 Resolution.

The petition in G.R. No. 69960 was later denied by the Court En Banc for lack of merit. A motion for reconsideration was filed by- the accused but was likewise denied by the Court in its Resolution dated June 4, 1985.

On May 29, 1987, this Court rendered its Decision in G.R. No. 69422 granting the petition, setting aside the October 5, 1984 Decision of the Sandiganbayan and remanding the case for a new trial. The dispositive portion of the decision reads:

WHEREFORE, the petition is hereby GRANTED. The questioned decision is set aside and the case is remanded to the court a quo for new trial as prayed for in the petitioner's motion.

Thus, Criminal Case No. 4219 was remanded to the Sandiganbayan and was raffled to the First Division. Meanwhile, upon motion of the accused, the Court clarified in its Resolution dated February 2, 1989 that the conduct of a new trial should not be limited to the mere presentation of newly discovered evidence but "should be full and complete, taking into account the other serious allegations touching on due process." [5] Accordingly, the First Division received anew all the evidence of the parties, both testimonial and documentary.

Later, with the creation of the Fourth and Fifth divisions, Criminal Case No. 4219 was transferred to the Fifth Division.

On February 23, 1999, the Fifth Division promulgated its 92-page judgment[6] dated November 27, 1998, penned by Justice Godofredo T. Legaspi, convicting the accused of the crime of Murder with Multiple Attempted Murder, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused Domiciano Cabigao y Cabal, Nestor Domacena y Deveraturda, Rolando Doblado y Draguin, Ernesto Pampuan y Santos, Edgardo Prado y Molina, Romeo Dominic y Quitaneg, Ramon Garcia y Dantes and Carlos Pacheco y Dominic GUILTY beyond reasonable doubt of the Crime Murder with Multiple Attempted Murder, qualified by abuse of superior strength. Considering that the accused failed to prove any mitigating circumstance, they are hereby sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties attached thereto. They are also hereby ordered to indemnify jointly and severally the heirs of the victim Amante Payumo the amount of P50,000.00 for his death; to jointly and severally indemnify the heirs of Teofilo Payumo, Reynaldo Ruanto, Crisanto Ruanto and Apolinario Ruanto, Edgar Payumo, Exequiel Bonde and Virgilio Abong the amount of P10,000.00 each as moral damages; to pay jointly, and severally the heirs of Teofilo Payumo the amount of P2,000.00, Reynaldo Ruanto the amount of P1,000.00, Crisanto Ruanto the amount of P1,000,000, Exequiel Bonde the sum of P800.00, Apolinario Ruanto the amount of P3,000.00 and Edgar Payumo the amount of P3,000.00, all by way of actual damages, and to pay the costs of this suit.

Considering that, as manifested by Prosecutor Benitez in open court that accused Rodolfo Erese already died, his criminal liability, if any, is deemed extinguished. As regards the civil liability deemed impliedly instituted with the criminal case, pursuant to Sec. 1, Rule III of the Rules of Court, no judgment can be made against his estate, there being no proper substitution made upon his legal representative.

Accordingly, pursuant to Supreme Court Administrative Circular No. 2-92, par. 4, (3) dated January 20, 1990 the bail bonds of accused Cabigao, Domacena, Doblado, Pampuan, Prado, Dominic, Garcia and Pacheco are hereby ordered cancelled. Said accused are hereby ordered confined at the National Bureau of Prisons.

SO ORDERED.[7]

On March 8, 1999, the accused filed their Omnibus Motion to Set Aside Judgment and for New Trial[8] contending that errors of law or irregularities had been committed during and after trial which were prejudicial to their substantive and constitutional rights. Later, the accused filed their Supplemental Omnibus Motion to Set Aside Judgment and for New Trial,[9] and thereafter their Supplemental Omnibus Motion to Re-open Case and to Set for Oral Arguments.[10]

Since the Fifth Division could not reach unanimity in resolving the aforesaid omnibus motion, a Special Fifth Division composed of five (5) members of the Sandiganbayan[11] was constituted pursuant to Section 1 (b) of Rule XVIII of the 1984 Revised Rules of the Sandiganbayan. On September 27, 2001, Special Fifth Division, voting 3-2, issued the subject Resolution promulgated on October 24, 2001, setting aside the November 27, 1998 Decision and granting a second new trial of the case. The dispositive portion of which states:

WHEREFORE, accused's "OMNIBUS MOTION TO SET ASIDE JUDGMENT AND FOR NEW TRIAL" and its supplemental thereto is hereby GRANTED. The grant of the accused's

"SUPPLEMENTAL OMNIBUS MOTION TO REOPEN CASE AND TO SET FOR ORAL ARGUMENTS dated April 5, 1999 thus becomes unnecessary."[12]

xxx

The Special Fifth Division reasoned out that the November 27, 1998 Decision of the Fifth Division penned by

Justice Godofredo T. Legaspi, (Justice Legaspi) could not have been validly promulgated and could not have acquired binding effect since Justice Legaspi had transferred to the Second Division and, hence, he ceased to be a member of the Fifth Division before the Decision was promulgated on February 23, 1999. Further, the Special Fifth Division ruled that a second new trial was necessary because the directive of this Court for the conduct of a trial de novo "has not yet been fully and completely complied with." [13] The testimonies of prosecution witnesses Teofilo Payumo (Teofilo) and Edgar Payumo (Edgar), which had been tainted with the irregularity of "rigodon de juezes" pursuant to the ruling of the Court in the case of *Cabigao v. The Sandiganbayan*, [14] were erroneously admitted during the trial de novo and, as such, had to be stricken out and taken anew. The Special Fifth Division also pronounced that a second new trial would enable it to allow the accused to adduce pertinent evidence including the records of the Judge Advocate General Office (JAGO), Armed Forces of the Philippines, to shed light on the "serious allegations" also referred to in the *Cabigao* case.

Ascribing grave abuse of discretion to the Sandiganbayan amounting to lack or excess of jurisdiction for nullifying the November 27, 1998 Decision and granting new trial, the complainants in Criminal Case No. 4219, Edgar Payumo, Reynaldo Ruanto, Crisanto Ruanto, Apolinario Ruanto, and Exequiel Bonde (petitioners) filed the present petition for certiorari and mandamus with prayer for the issuance of a temporary restraining order and/or injunction to enjoin the Sandiganbayan from proceeding with the scheduled hearings for a second new trial.

In support of their position, petitioners allege that the Ombudsman and OSP negligently failed to protect their interest and that of the State when they did not file any opposition to the Omnibus Motion to Set Aside Judgment and for New Trial and, later, a motion for reconsideration of the challenged resolution dated October 24, 2001. They claim that the Ombudsman and the OSP slept on their lawful duty to protect their interest and that of the State.

ISSUES

Faulting the Special Fifth Division of the Sandiganbayan, petitioners raised the following issues:

FIRST

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING PRIVATE RESPONDENTS' "OMNIBUS MOTION TO SET ASIDE JUDGMENT AND FOR NEW TRIAL."

SECOND

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN SETTING ASIDE THE JUDGMENT OF CONVICTION (DECISION DATED 27 NOVEMBER 1998) ON THE GROUND THAT THE PROMULGATION THEREOF WAS DONE AT THE TIME THE PONENTE WAS ALREADY TRANSFERRED FROM THE FIFTH DIVISION TO THE SECOND DIVISION.

THIRD

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN SETTING ASIDE THE TESTIMONIES OF THE PROSECUTION WITNESSES TEOFILO PAYUMO AND EDGAR PAYUMO WHICH WERE ADOPTED IN THE FIRST NEW TRIAL ON THE GROUND THAT THEIR NON-AVAILABILITY FOR THE FIRST NEW TRIAL DOES NOT DISPENSE WITH THE NEED TO CURE THEIR TAINTED TESTIMONIES OF THE EFFECTS OF THE IRREGULARITIES OF THE "RIGODON DE JUEZES."

FOURTH

WHETHER OR NOT THE RESPONDENT COURT ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ORDERING AND DIRECTING THE PRIVATE RESPONDENTS TO PRESENT EVIDENCE IN CONNECTION WITH THE RECORDS OF INVESTIGATION CONDUCTED BY THE OFFICE OF THE JUDGE ADVOCATE GENERAL RELATIVE TO THE SHOOTING INCIDENT ON FEBRUARY 21, 1980 AND IN DIRECTING THE ISSUANCE OF A SUBPOENA DUCES TECUM FOR THIS PURPOSE.[15]

In a Minute Resolution[16] dated April 29, 2002, this Court denied petitioners' application for the issuance of a restraining order and/or injunction.

On September 29, 2005, Atty. Pascual Lacas filed a Consolidated Manifestation[17] informing this Court of the death of his client, Nestor Domacena, on June 12, 2005, and praying for the dismissal of the aforesaid cases insofar as his deceased client was concerned. Meanwhile, the Sandiganbayan dismissed Criminal Case No. 4219 as against Nestor Domacena in view of his death. Accordingly, on January 31, 2007, the Court in a resolution,[18] dismissed G.R. Nos. 151911 and 154535, and considered said cases closed and terminated with respect to Nestor Domacena in light of his untimely demise.

On October 24, 2007, Atty. Pablito Carpio filed a Manifestation[19] informing the Court of the death of Edgardo Prado y Molina (Prado), another accused in Criminal Case No. 4219 and one of the respondents in G.R. No. 151911, and seeking the dismissal of the case against him. In its Resolution[20] dated March 10, 2008, the Court dismissed G.R. No. 151911 as far as Prado was concerned.

Likewise, the Court issued its July 30, 2008 Resolution[21] dismissing G.R. No. 151911 against another respondent Romeo Dominico, who had also died during the pendency of the case.

In the light of the dismissal of G.R. No. 154535, the present disposition shall pertain only to G.R. No. 151911.

A perusal of the voluminous pleadings filed by the parties leads the Court to the following core issues:

- Whether or not the Sandiganbayan acted in excess of its jurisdiction when it set aside the November 27, 1998 Decision;
- Whether or not the Sandiganbayan acted in excess of its jurisdiction when it granted a new trial of Criminal Case No. 4219;and
- Whether or not grave abuse of discretion attended the non-filing by the Ombudsman and the OSP of an Opposition to private respondents' Omnibus Motion to Set Aside Judgment and for New Trial, a Motion for Reconsideration of the assailed Resolution dated October 24, 2001 and a Petition for Certiorari.

The Court finds the petition for certiorari impressed with merit.

The Sandiganbayan is a special court of the same level as the Court of Appeals (CA), and possessing all the inherent powers of a court of justice, with functions of a trial court.[22] It is a collegial court. Collegial is defined as relating to a collegium or group of colleagues. In turn, a collegium is "an executive body with each member having approximately equal power and authority." [23] The members of the graft court act on the basis of consensus or majority rule. The three Justices of a Division, rather than a single judge, are naturally expected to exert keener judiciousness and to apply broader circumspection in trying and deciding cases.[24] The seemingly higher standard is due in part to the fact that the reviews of judgment of conviction are elevated directly to this Court generally through the discretionary mode of petition for review on certiorari under Rule 45, Rules of Court, which eliminates issues of fact, instead of via an ordinary appeal whereby the judgment of conviction still

undergoes intermediate reviews in the appellate court before ultimately reaching the Court, if at all.

In resolving the private respondents' Omnibus Motion, the majority of the Sandiganbayan Special Fifth Division, declared that after reviewing the case of Consolidated Bank and Trust Corporation v. Intermediate Appellate Court[25], it realized that it might have erred in the promulgation of the November 27, 1998 Decision considering that at the time of its promulgation, the ponente, Justice Legaspi, was no longer a member of the Fifth Division as he already transferred to the Second Division as its Senior Member. According to the Special Fifth Division, the thrust and spirit of the case of Consolidated Bank and Trust Corporation was that a decision could no longer be promulgated after the ponente died because the latter had "already lost that freedom, authority and right to amend or even reverse during the period intervening from the time of his death up to the time of promulgation." [26] The division ruled that the ratio decidendi in the afore-cited case applied mutatis mutandis to the present case where a member of a division was transferred to another division and ceased to be a member of it before the promulgation of a decision. Thus, the cessation of Justice Legaspi's membership in the Fifth Division carried with it the cessation of all his authority and power to continue participating in the resolution of Criminal Case No. 4219 and all other cases assigned to said division, which included the authority and right to change or amend the November 27, 1998 Decision up to the time of its promulgation.

The Court does not agree.

A judgment of a division of the Sandiganbayan shall be promulgated by reading the judgment or sentence in the presence of the accused and any Justice of the division which rendered the same.[27] Promulgation of the decision is an important part of the decision-making process. Promulgation signifies that on the date it was made, the judge or justices who signed the decision continued to support it which could be inferred from his silence or failure to withdraw his vote despite being able to do so. A decision or resolution of the court becomes such, only from the moment of its promulgation.[28]

A final decision or resolution becomes binding only after it is promulgated and not before.[29] It is an elementary doctrine that for a judgment to be binding, it must be duly signed and promulgated during the incumbency of the judge who penned it.[30] In this connection, the Court En-Banc issued the Resolution dated February 10, 1983 implementing B.P. 129[31] which merely requires that the judge who pens the decision is still an incumbent judge, that is, a judge of the same court, albeit now assigned to a different branch, at the time the decision is promulgated.[32] In *People v. CFI of Quezon, Branch X*,[33] it was clarified that a judge who died, resigned, retired, had been dismissed, promoted to a higher court or appointed to another office with inconsistent functions, would no longer be considered an incumbent member of the court and his decision written thereafter would be invalid. Indeed, one who is no longer a member of the court at the time the final decision or resolution is signed and promulgated cannot validly take part in that decision or resolution.[34] Much less could he be the ponente of the decision or resolution. Also, when a judge or a member of the collegiate court, who had earlier signed or registered his vote, has vacated his office at the time of the promulgation of the decision or resolution, his vote is automatically withdrawn or cancelled.[35]

Guided by the foregoing principles, the judgment of conviction dated November 27, 1998 penned by Justice Legaspi must be declared valid. Apparently, it was not necessary that he be a member of the Fifth Division at the time the decision was promulgated since he remained an incumbent justice of the Sandiganbayan. What is important is that the ponente in a collegiate court remains a member of said court at the time his ponencia is promulgated because, at any time before that, he has the privilege of changing his opinion or making some last minute changes therein for the consideration and approval of his colleagues. After all, each division is not separate and distinct from the other divisions as they all constitute one Sandiganbayan. Jurisdiction is vested in the court, not in the judges or justices.[36] Thus, when a case is filed in the Sandiganbayan, jurisdiction over the

case does not attach to the division or justice alone, to the exclusion of the other divisions.

Moreover, the other two[37] members then of the Fifth Division signed and adopted the judgment of conviction dated November 27, 1998, and continued to support it until its promulgation on February 23, 1999. The members reached their conclusion in consultation and, accordingly, rendered it as a collective judgment after due deliberation. Hence, there was no procedural defect.

Besides, the presumption that the three justices had regularly performed their official function has not at all been rebutted by contrary evidence. Not an iota of evidence was adduced to show that the three justices were either impelled by malice or corrupt motive or inspired by an intention to violate the law or well-known legal rules in promulgating the judgment of conviction. At any rate, the decision penned by Justice Legaspi cannot be said to be a decision of another court, but of the same Sandiganbayan and of which the ponente was an incumbent justice when he wrote the decision until its promulgation.

Notably, the 1984 Revised Rules of the Sandiganbayan, its prevailing rules at the time the challenged October 24, 2001 Resolution was issued, did not provide the procedure to be followed in case the ponente would be transferred to another division at any time before the promulgation of the decision. This time, however, under the 2002 Revised Internal Rules of the Sandiganbayan which was approved by the Court En Banc in the Resolution dated August 28, 2002 and issued in A.M. No. 02-6-07-SB, the situation contemplated in this controversy has been covered. Section 4 (k) of Rule XII thereof provides:

SEC. 4. Cases Submitted for Decision; Assignment to Ponente.

xxxx

(k) If the justice to whom the case is assigned for study and report is transferred to another Division as its permanent member, he shall bring with him and write his report of the cases assigned to him in his original Division together with the other members of the Division to which the case was submitted for decision.

The Division from which the Justice to whom the case is assigned for study and report came shall be known as a Special Division.

xxxx xxxx xxxx xxxx

On the propriety of the grant by the Special Fifth Division of the motion for new trial in Criminal Case No. 4219, the Court finds the same to be devoid of any legal and factual basis.

The majority of the Special Fifth Division granted a new trial on the following grounds: (1) serious irregularity during the trial due to the erroneous admission of the testimonies of Teofilo and Edgar, which according to the Sandiganbayan, were tainted with irregularities of the "too frequent rotation of Justices hearing the case"[38] and, thus, had to be taken anew; and (2) to afford the accused the opportunity to present in evidence the records of the JAGO relative to the incident that happened on February 26, 1980 in Sitio Aluag, Brgy. Sta Barbara, Iba, Zambales to shed light on the crucial issue as to whether the shooting incident was an ambush or the result of a military operation.

The Court cannot sustain it.

Rule 121, Section 2 of the 2000 Rules on Criminal Procedure enumerates the grounds for a new trial, to wit:

Sec. 2. Grounds for a new trial. The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment

Records disclosed that during the conduct of a new trial in the First Division of the Sandiganbayan, the testimonies of the prosecution and defense witnesses were retaken with the exception of those of prosecution witnesses, Teofilo and Edgar. The prosecution instead filed a Motion to Admit Former Testimonies of Prosecution Witnesses stating that Teofilo had died as shown by the attached death certificate and that Edgar was out of the country. The defense filed no opposition thereto. On September 14, 1989, the First Division issued a resolution allowing the adoption of said witnesses' testimonies. Thereafter, the defense filed a motion for reconsideration of the aforesaid resolution, which was denied by the First Division.[39]

Granting arguendo that the First Division erred in admitting the testimonies of the Payumos given during the first trial, which proceedings were nullified by this Court in the Cabigao case, the same would still not justify a new trial. It must be emphasized that an erroneous admission or rejection of evidence by the trial court is not a ground for a new trial or reversal of the decision if there are other independent evidence to sustain the decision, or if the rejected evidence, if it had been admitted; would not have changed the decision.[40] In the case at bench, a meticulous reading of the November 27, 1998 Decision reveals that the combined testimonies of the other complainants, namely, Reynaldo Ruanto, Crisanto Ruanto, Apolinario Ruanto, and Exequiel Bonde, have sufficiently established the commission of the crime charged in the information and the participation of the accused in the said crime. Seemingly, it- would not debilitate the cause of the prosecution even if the testimonies of the Payumos would be expunged from the records.

Neither would the presentation in evidence of the records of the JAGO warrant a new trial.

To begin with, the records of the JAGO relative to the February 26, 1980 incident do not meet the criteria for newly discovered evidence that would merit a new trial. A motion for new trial based on newly-discovered evidence may be granted only if the following requisites are met: (a) that the evidence was discovered after trial; (b) that said evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (c) that it is material, not merely cumulative, corroborative or impeaching; and (d) that the evidence is of such weight that, if admitted, would probably change the judgment.[41] It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it.[42] In this case, however, such records could have been easily obtained by the accused and could have been presented during the trial with the exercise of reasonable diligence. Hence, the JAGO records cannot be considered as newly discovered evidence. There was nothing that prevented the accused from using these records during the trial to substantiate their position that the shooting incident was a result of a military operation.

Secondly, the non-presentation of the JAGO records, if they are indeed vital to the acquittal of the accused, speaks of negligence, either on the part of the accused themselves, or on the part of their counsels. In either instance, however, this negligence is binding upon the accused. It is a settled rule that a party cannot blame his counsel for negligence when he himself was guilty of neglect.[43] A client is bound by the acts of his counsel, including the latter's mistakes and negligence.[44]

Lastly, the matter of presentation of evidence for the defense is not for the trial court to decide. Considering that the defense counsels have control over the conduct of the defense, the determination of which evidence to present rests upon them. The Court notes that the defense presented a substantial number of witnesses and exhibits during trial de novo to belie the accusation against the accused and to prove the defenses they interposed. It has been held that the mistakes of the attorney as to the competency of a witness, the sufficiency, relevancy, materiality or

immateriality of a certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial.[45]

All told, the Court finds and so rules that the Sandiganbayan Special Fifth Division acted in excess of its jurisdiction when it nullified the November 27, 1998 Decision and granted a new trial for Criminal Case No. 4219. There is excess of jurisdiction where the respondent court, being clothed with the power to determine the case, oversteps its authority as determined by law.[46] Accordingly, the assailed Resolution dated October 24, 2001 must be set aside.

Finally, the Court finds the petition for mandamus to be bereft of merit. Petitioners failed to adduce clear and convincing proof to substantiate their submission that the Ombudsman and the OSP unlawfully neglected the performance of their duty. In any event, the determination of what pleadings should be filed for the People, as well as the necessity of filing them to protect and advance the prosecution's cause, clearly involves the exercise of discretion or judgment. Either the Ombudsman or the OSP cannot be compelled by mandamus to file a particular pleading when -it determines, in the exercise of its sound judgment, that it is not necessary. As an extraordinary writ, the remedy of mandamus lies only to compel an officer to perform a ministerial duty, not a discretionary one. Mandamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[47]

WHEREFORE, the petition for certiorari is GRANTED. Accordingly, the assailed Resolution dated October 24, 2001 of the Sandiganbayan Special Fifth Division is hereby SET ASIDE and the November 27, 1998 Decision is REINSTATED.

The prayer for the issuance of a Writ of Mandamus is DENTED.

The case is hereby ordered REMANDED to the Sandiganbayan for appropriate proceedings. The Sandiganbayan shall notify the parties of the reinstatement of the November 27, 1998 Decision. The period of appeal shall be reckoned from the date of receipt of notice by the accused.

SO ORDERED.

Carpio[*], Velasco, (Chairperson), Peralta and Abad, JJ., concur.

[*] Designated as additional member of the Third Division per Special Order No. 1042 dated July 6, 2011.

[1] Rollo (G.R. No. 15911), pp. 38-55. Penned by Associate Justice Anacleto D. Badoy, Jr. with Associate Justices Raoul V. Victorino and Nicodemo T. Ferrer, concurring and Associate Justices Minita V. Chico- Nazario and Ma. Cristina G. Cortez-Estrada, dissenting.

[2] Id. (G.R. No. 154535), pp. 16-20. Penned by Associate Justice Ma. Cristina G. Cortez-Estrada with Associate Justices Minita V. Chico-Nazario and Francisco PI. Villaruz, Jr., concurring.

[3] Id. (G.R. No. 151911), p. 345.

[4] Id at 8.

[5] Id. at 47.

[6] Id. at 83-173.

[7] Id. at 372-173.

[8] Id. at 174-182.

[9] Id. at 202-206.

[10] Id. at 196-201.

[11] Justice Minita V. Chico-Nazario, Justice Ma. Cristina G. Cortez-Estrada, Justice Anacleto D. Badoy, Jr., Justice Raoul V. Victorino, and Justice Nicodemo T. Ferrer

[12] Id. at 54.

[13] Id. at 51.

[14] 234 Phil. 476(1987).

[15] Rollo (G.R. No. 151911), pp. 13-14 .

[16] Id. at 2 12.

[17] Id. at 483-486.

[18] Id. at 506-507.

[19] Id. (G.R. No. 151911), pp. 521-523.

[20] Id. at 532.

[21] Id. at 545.

[22] R.A. No. 8249, Section 2, empowers the Sandiganbayan to "hold sessions xxx for the trial and determination of cases filed with it.

[23] Webster's Third New World International Dictionary, 445 (1993)

[24] Jamsani-Rodriguez v. Justice Ong, A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626, 646.

[25] G.R. Nos. 13777-78, September 12; 1990, 189 SCRA 433.

[26] Rollo (G.R. No. 151911), p. 40.

[27] Rule VII, 1984 Revised Rules of the Sandiganbayan.

[28] Consolidated Bank and Trust Corporation v. Intermediate Appellate Court, *supra* note 25 at 438.

[29] Ambil, Jr. v. Commission on Elections, 398 Phil. 257, 279 (2000).

[30] People v. Labao, 220 SCRA 100, 102 (1993); Lao v. To-Chip, 241 Phil. 1040, 1044 (1988).

[31] "1. Cases already submitted for decision shall be decided by the Judge to whom they were submitted, except cases submitted for decision to judges who were promoted to higher courts or to those who are no longer in the service."

[32] ABC Davao Auto Supply, Inc. v. Court of Appeals, 348 Phil. 240, 245 (1998).

[33] G.R. No. 48817, October 29, 1993, 227 SCRA 457, 462.

[34] Araneta v. Dinglasan, 84 Phil. 368, 433 (1949).

[35] Jamil v. Commission on Elections, 347 Phil. 630, 651 (1997).

[36] *Idolor v. Court of Appeals*, 490 Phil. 808, 815 (2005).

[37] Justice Minita Chico-Nazario and Justice Anacleto Badoy, Jr.

[38] *Rollo* (G.R. No. 151911), p. 46.

[39] *Id.* at 47-48.

[40] *People v. Bande*, 50 Phil. 37, 41 (1927); *Regalado*; *Remedial Law Compendium*, Vol. II, 10th Rev. Ed. (2004), p. 825

[41] *ReynaldoDe Villa v. Director, New Bilibid Prisons*, 485 Phil. 368, 388-389 (2004).

[42] *Colinares v. Court of Appeals*, 394 Phil. 106, 118 (2000).

[43] *Villanueva v. People*, 386 Phil. 912, 921 (2000)

[44] *Id.* at 920.

[45] *Brig. Gen. Custodio v. Sandiganbayan*, 493 Phil. 194, 237 (2005).

[46] *Corpuz v. Sandiganbayan*, 484 Phil. 899, 912 (2004).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.