

**MAYOR ANWAR BERUA BALINDONG, LT. COL. JALANDONI COTA,
MAYOR AMER ODEN BALINDONG, ALI BALINDONG AND HON.
HERNANDO PEREZ AS SECRETARY OF JUSTICE, PETITIONERS, VS.
THE HON. COURT O...**

G.R. No. 159962. December 16, 2004

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

A shooting incident occurred during the national and local elections of 11 May 1998 at Poblacion Malabang, Lanao del Sur. As a result, two people were killed, and two others were seriously wounded.

The following is an account based on the Affidavit Complaint[1] of Zenaida Limbona, the Joint Affidavits[2] of Corporals Ruel Liong and Dominador Marquez, official military escorts of mayoralty candidate Atty. Cabi Marohom, and the Joint Affidavits[3] of Azis Panda and Kiri Hadji Salic, who both sustained bullet wounds during the said incident. On 11 May 1998, during the release and distribution of ballot boxes between nine and ten o'clock in the morning, a heated exchange took place between the group of herein private petitioners Anwar Berua Balindong, mayoralty candidate Amer Oden Balindong, Ali Balindong, Chief of Police Lt. Col. Jalandoni Cota and PO1 Kennedy Balindong, and the group of another mayoralty candidate, Atty. Cabi Marohom.

Sensing that the Balindong group was about to engage them in a gunfight, Marohom's group decided to leave the area. As they were about to board their vehicles, the Balindong group "indiscriminately fired"[4] against Marohom but failed to hit him. However, two men, Dante Limbona and Ante Magindanao were killed on the spot; another two, Azis Panda and Kiri Hadji Salic, were seriously wounded and would have died "had it not been [for] the timely medical treatment given them by doctors of the Malabang District Hospital." [5] All four casualties were unarmed.

Anwar Balindong and his sons, Amer Oden and Ali, were seen "giving instructions or commanding the armed group to further deploy within the scene of the shooting incident." [6]

Investigating prosecutor Ringcar Pinote conducted the preliminary investigation and found probable cause to indict the private petitioners for the offense of Double Murder with Multiple Frustrated Murder. As a result, an Information[7] was filed in the Regional Trial Court (RTC) of Malabang, Lanao del Sur, Branch 12, charging the petitioners with the crime of Double Murder with Multiple Frustrated Murder.

The herein petitioners filed an urgent motion for reinvestigation.[8] In an Order[9] dated 23 July 1998, Acting Presiding Judge Rasad Balindong granted the petition and ordered the records returned to the Office of the Provincial Prosecutor, Marawi City.

The said office issued a Resolution[10] dated 28 August 1998 modifying the offense charged against Anwar Balindong, Lt. Col. Jalandoni D. Cota, and PO1 Kennedy Balindong to double homicide with multiple frustrated homicide, and dropping the charges against Amer Oden Balindong and Ali Balindong. In the meantime, the

Supreme Court transferred the venue from Lanao del Sur to Cotabato City apparently on the petitioners' motion for inhibition and the private respondent's motion to transfer venue.[11]

The private respondent filed a petition for review[12] of the Provincial Prosecutor's Resolution before the Department of Justice (DOJ) under then Secretary Serafin Cuevas. In a Resolution[13] dated 04 August 1999, the latter modified the said Resolution and directed the filing of two informations for murder with attempted murder, two informations for frustrated murder and an information for attempted murder against all the private petitioners. The petitioners filed a motion for reconsideration on 01 September 1999.[14] Meanwhile, five amended informations[15] were filed on 04 October 1999 for the aforementioned offenses before the RTC of Maguindanao, Cotabato City, docketed as Criminal Cases No. 2503, No. 2573, No. 2574, No. 2575, and No. 2576. On 01 December 1999, the DOJ denied the petitioners' motion for reconsideration.[16]

Subsequently, the venue was again transferred from Cotabato City to Cagayan de Oro City. Criminal Cases No. 2503 and No. 2573, both for Murder with Attempted Murder, were raffled to the RTC of Cagayan de Oro, Branch 19, as a Special Criminal Court, while Criminal Cases No. 2574 and No. 2575 both for Frustrated Murder and Criminal Case No. 2576 for Attempted Murder were raffled to the RTC of Cagayan de Oro, Branch 20.

On 01 January 2000, the petitioners filed a second motion for reconsideration[17] of Secretary Cuevas's Resolution dated 01 December 1999. This was denied with finality in a Resolution[18] dated 16 March 2000 by then Acting DOJ Sec. Artemio Tuquero, with a warning that no further pleadings would be entertained. Seven months later, on 10 October 2000, the petitioners filed a third Motion for Reconsideration before the DOJ.[19]

In the meantime, for security reasons, Sec. Tuquero requested[20] that the venue of the above cases be transferred from Cagayan de Oro to a Special Criminal Court in Quezon City.

This was granted by the Supreme Court in a Resolution[21] dated 11 July 2000. The petitioners' motion for reconsideration[22] of this Resolution was denied[23] on 10 October 2000. Finally, on 12 December 2000, the Court en banc reiterated[24] its earlier 11 July 2000 Resolution and ordered its immediate implementation. Pursuant thereto, Criminal Cases No. 2503 and No. 2573 were re-raffled to the RTC of Quezon City, Branch 219 and re-docketed as Criminal Cases Nos. Q-01-99892 and Q-01-99893. Criminal Cases Nos. 2574 to 76 were re-raffled to the RTC of Quezon City, Branch 227, and re-docketed as Criminal Cases Nos. Q-01-100542 to 44.

On 12 March 2001, then DOJ Secretary Hernando Perez resolved[25] to grant the petitioners' third motion for reconsideration, thus:

WHEREFORE, the instant Motion for Reconsideration is GRANTED. The Department's Resolution[s] dated August 4, 1999, December 1, 1999 and March 16, 2000 are accordingly, REVERSED and SET ASIDE. The Office of the Provincial Prosecutor of Lanao del Sur is hereby directed to cause the filing of the amended information for double homicide with multiple frustrated homicide against Mayor Anwar Berua Balindong, Lt. Col. Jalandoni Cota and PO1 Kennedy Balindong. While respondents Amer Oden Balindong and Ali S. Balindong are hereby DROPPED from the information.

Notwithstanding the earlier transfer of venue to Quezon City, an amended information[26] was filed by Provincial Prosecutor Paca-ambung Macabando on 19 March 2001 in the RTC of Cagayan de Oro City, Branch 20, pursuant to the DOJ's above Resolution charging the petitioners of Double Homicide with Multiple Frustrated Homicide. Judge Gregorio Pantanosas of the said court granted[27] the application. On the same day, Executive Judge Mamindiara Mangotara of the RTC of Iligan City, Branch 01, accepted[28] petitioner Anwar Balindong's bail bond and ordered his release from custody.

Seeking to have Secretary Perez's 12 March 2001 Resolution annulled, the private respondent filed her own

motion for reconsideration[29] with the DOJ. Upon denial[30] of said motion, the private respondent filed a petition for certiorari[31] under Rule 65[32] in the Court of Appeals. In a Decision[33] dated 22 May 2003, the latter granted the petition for certiorari, reversed the DOJ Resolution dated 12 March 2001 and reinstated the DOJ Resolutions dated 04 August 1999, 01 December 1999 and 16 March 2000.

Meanwhile, the prosecution moved for the issuance of a warrant of arrest against the petitioners in the RTC of Quezon City, Branch 219, where the criminal cases for Murder and Frustrated Murder were pending. The petitioners opposed on the ground that there was a pending motion for reconsideration[34] of the decision of the Court of Appeals, which motion was subsequently denied by the said court in a Resolution[35] dated 23 September 2003.

The petitioners thereupon filed the present petition for certiorari[36] under Rule 45[37] before this Court. Meanwhile, the prosecution reiterated its motion for the issuance of a warrant of arrest. The petitioners opposed the same this time on the ground that there is a pending petition before this Court.

The trial court initially denied[38] respondents' motion for the issuance of a warrant of arrest, but upon reconsideration granted[39] the same. Thus, on 03 December 2003, Pairing Judge Jose Paneda of the RTC of Quezon City, Branch 219, caused the issuance of warrants of arrest[40] against herein petitioners for the above-mentioned cases. The latter moved for the issuance of a temporary restraining order[41] in this Court, which was granted[42] on 18 February 2004 despite vigorous opposition. The temporary restraining order,[43] issued effective immediately and until further orders, enjoined public and private respondents from implementing the 03 December 2003 Resolution of Judge Paneda and required the petitioners to post a P50,000 bond. Petitioners posted said bond the following day.[44]

On 08 March 2004, the private respondent filed a motion for early resolution,[45] and a very urgent second motion[46] for early resolution on 26 July 2004, alleging that in the meantime, petitioner Anwar Balindong had run for mayor and won in the 2004 elections. Private respondent claims that she and the other victims of the shooting incident had been continuously harassed and threatened by the petitioners, the most serious incident being a grenade blast in one of the victims' homes. A clipping of the said incident was attached to the said motion.

The sole issue to be resolved before this Court is whether or not the Court of Appeals committed reversible error in setting aside the DOJ Resolution of 12 March 2001. We hold in the negative.

The petitioners' kilometric assignment of error states that:

THE APPELLATE COURT COMMITTED A REVERSIBLE ERROR IN REVERSING AND SETTING ASIDE THE RESOLUTION OF THEN HON. SECRETARY OF JUSTICE HERNANDO PEREZ DATED MARCH 12, 2001, ON THE SOLE GROUND THAT IT WAS ISSUED IN GRAVE ABUSE OF DISCRETION, AS CONTRARY TO ITS FINDING, THERE IS NO GRAVE ABUSE OF DISCRETION COMMITTED BY THE SECRETARY OF JUSTICE IN ENTERTAINING A THIRD MOTION FOR RECONSIDERATION AS HE MERELY RELIED ON SOME DECISION OF THIS HONORABLE COURT WHERE IT ENTERTAINED A THIRD MOTION FOR RECONSIDERATION, AND CONSIDERING THAT THE EVIDENCE BEFORE HIM SHOWS THAT HOMICIDE AND NOT MURDER SHOULD BE FILED AGAINST THE ACCUSED PETITIONERS.[47]

The petitioners argue that the Secretary of Justice has the power to amend, modify or, as in this case, set aside the procedural rules of the DOJ "in the interests of justice." To bolster this argument, the petitioners cite cases wherein the Court entertained second or third motions for reconsideration, and basically argue that if the Court has the power to act on such motions, then the Secretary of Justice should be able to do so as well.

At the onset, we must point out that this Court has long held the “piece-meal” imputation of a judgment by successive motions for reconsideration to be anathema.[48] However, as the final arbiter of all legal questions properly brought before it, our decision in any given case constitutes the law of that particular case,[49] from which there is no appeal. Thus, we have on occasion, for overriding and extraordinarily persuasive reasons, granted second motions for reconsideration. No such limitation, however, exists for the Secretary of Justice in this case. Resolutions or decisions rendered by the said office may be appealed to the Office of the President for offenses punishable by reclusion perpetua to death.[50]

Moreover, this argument is a rehash of petitioners’ Comment,[51] dated 15 February 2002, to the petition for certiorari before the Court of Appeals of herein respondent Limbona, as well as in their motion for reconsideration[52] of the Court of Appeals’ decision.

As the Court of Appeals well states:

Certiorari lies where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. There is excess of jurisdiction where the court has jurisdiction but has transcended the same or acted without any statutory authority. The remedy of certiorari reviews jurisdictional questions having to do with an indifferent disregard of the law. This is what public respondent is guilty of in the case at bar – totally disregarding the clear provision of Section 13, DOJ Circular No. 70 which states:

SECTION 13. Motion for Reconsideration. – The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal, furnishing the adverse party and the Prosecution Office concerned with copies thereof and submitting proof of such service. No second or further motion for reconsideration shall be entertained.

The above provision of the Circular is a mandatory provision of the Rule on Appeal which explains why then Secretary Tuquero warned in his Resolution dated March 16, 2000 that no further pleading or motions for reconsideration shall be entertained.

Likewise, public respondent committed grave abuse of discretion in entertaining the Third Motion for Reconsideration considering that the grounds relied upon by private respondents therein have been previously raised by private respondents in their first and second motions for reconsideration and fully passed upon by two former department heads of the DOJ. Thus, the issues raised in the third motion for reconsideration are [a] mere rehash of the first two motions for reconsideration and the supplements thereto and did not touch upon any new issues which would require a third look. Public respondent gravely erred in giving due course to the third motion for reconsideration of private respondents and eventually granting the same, failing deliberately to consider the clear mandate of the above-cited provision of the rule.

Public respondent granted the disputed third motion for reconsideration allegedly in the interest of justice and as an exception to the above-quoted provision of the rule on appeal. This is erroneous.

Well entrenched is the rule that the common law of justice and equity cannot prevail or be applied when a positive provision of the law is squarely applicable in a case. Thus, equity which has been aptly described as justice outside legality is availed of only in the absence of, and never against, statutory law or judicial pronouncement. Justice and Equity are applied only in the absence of and never against statutory law or judicial rules of procedure. (footnotes omitted)

In view of the fact that specific provision of the rule on appeal is squarely applicable to the issue at hand, public respondent’s reliance on the common law of justice is a patent error. Contrary to public respondent’s pursuit of justice to be realized in the case at bar, his application of the same amounting to injustice and inequity to the petitioner and other private complainants and most significantly to the People of the Philippines in whose behalf

the criminal cases have been filed before the lower court.[53]

The Court sees no reason to deviate from said disquisition.

The petitioners also claim that in failing to seek a reconsideration of the order from the RTC of Cagayan de Oro dated 20 March 2001 admitting the amended information, respondent is deemed to have consented to the same. Consequently, the amended information for double homicide with multiple frustrated homicide takes the place of the five informations filed in the RTC, Branches 219 and 227, of Quezon City.

This is another rehashed argument that the Court of Appeals rightly did not see fit to address. However, to finally settle this matter, we stress that when the RTC of Cagayan de Oro admitted the amended information on 20 March 2001, jurisdiction over the case had already been definitively transferred to the above-mentioned trial courts of Quezon City as early as, and by virtue of, the Resolution of this Court dated 11 July 2000. Consequently, said trial court acquired jurisdiction over any pending incidents relating to the said case, and the RTC of Cagayan de Oro had thus been divested of authority to take cognizance of the same.

The petitioners' absurd logic is that since the records of the case were still in the RTC of Cagayan de Oro, the court could still entertain pleadings on the said case. This is a patent error which Provincial Prosecutor Paca-ambung Macabando is duty bound to explain to the DOJ. The physical location of the records of a case is not determinative of jurisdiction over it, especially so in this case, when as early as 11 July 2000, the Court had very definitely transferred the venue to a Special Criminal Court in Quezon City.[54]

Nor can we appreciate the petitioners' argument that the Secretary of Justice can "impliedly suspend"[55] the DOJ's rules of procedure at anytime. Litigation is not a game of technicalities, but every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved. Hence, rules of procedure must be faithfully followed except only when for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[56] Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to explain its failure to comply with the rules.[57] Procedural law has its own rationale in the orderly administration of justice, namely, to ensure the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism or whimsicality in the settlement of disputes. The enforcement of procedural rules is not antithetical to the substantive rights of the litigants.[58] The policy of the courts is to give effect to both procedural and substantive laws, as complementing each other, in the just and speedy resolution of the dispute between the parties.[59]

At this point, we find it appropriate to reiterate our admonition in *Crespo v. Mogul*,[60] where we said that in order to avoid a situation where the opinion of the Secretary of Justice who reviewed the action of the fiscal may be disregarded by the trial court, the Secretary of Justice should, as far as practicable, refrain from entertaining a petition for review or appeal from the action of the fiscal, when the complaint or information has already been filed in the Court. The matter should be left entirely for the determination of the Court.

Finally, the petitioners unnecessarily argue at great length that no circumstances were proven to exist which would qualify their crime from homicide to murder. These circumstances are evidentiary matters that have yet to be heard in a full-blown trial. As we have said time and again, this Court is not a trier of facts. Moreover, it is premature for petitioners to argue evidentiary matters before us, since this controversy is still centered on the determination of the appropriate crime with which to charge the petitioners herein.

WHEREFORE, the petition is DENIED and the Decision of the Court of Appeals dated 22 May 2003 which annulled the DOJ Resolution dated 12 March 2001 and reinstated its Resolutions issued on 04 August 1999, 01

December 1999 and 16 March 2000 is AFFIRMED. The Temporary Restraining Order issued on 18 February 2004 by this Court is hereby lifted, and the Regional Trial Court of Quezon City, Branch 219, is ORDERED to implement its Resolution dated 03 December 2003 relative to the issuance of warrants of arrest against all the accused. The said Court is directed to submit a report thereon within ten (10) days from receipt hereof.

Let a copy of this Decision be furnished the Department of Justice for its information and appropriate action.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Tinga, JJ., concur.

Callejo, Sr., J., on leave.

[1] CA Rollo, p. 29.

[2] Id., p. 33.

[3] Id., p. 34.

[4] Id.

[5] Id., p. 29.

[6] Id., p. 33.

[7] Id., p. 43.

[8] Id., p. 44.

[9] Id., p. 48.

[10] Id., pp. 49-53.

[11] Manifestation and Comment of Senior State Prosecutors Leah Tanodra-Armamento and Leo Dacera dated 05 November 2001; Rollo, pp. 233-236.

[12] CA Rollo, pp. 54-64.

[13] Id., pp. 72-74.

[14] Id., pp. 75-76.

[15] Id., pp. 99-108.

[16] Id., pp. 97-98.

[17] Id., pp. 109-119.

[18] Id., p. 142.

[19] Id., pp. 143-162.

[20] In a Letter to Chief Justice Hilario Davide dated 30 June 2000, Re: Request for Transfer of Venue of Crim. Cases Nos. 2503, 2573 to 76, A.M. Matter No. 00-7-301-RTC (Rollo of A.M. No. 00-7-301-RTC, pp. 1-2).

[21] Id., p. 3.

[22] Id., pp. 4-5.

- [23] Resolution, Id., p. 10.
- [24] Id., p. 16.
- [25] Rollo, p. 36.
- [26] CA Rollo, p. 274.
- [27] Id., p. 276, in an Order dated 20 March 2001.
- [28] Id., p. 277, in an Order dated 20 March 2001.
- [29] Id., pp. 165-168.
- [30] Id., p. 27, in a Resolution dated 24 July 2001.
- [31] Id., pp. 2-20.
- [32] Rules of Court.
- [33] CA Rollo, pp. 333-344.
- [34] Id., pp. 346-356.
- [35] Id., pp. 409-410.
- [36] Rollo, pp. 3-30.
- [37] 1997 Rules on Civil Procedure.
- [38] Rollo, pp. 268-269, in an Order dated 17 October 2003.
- [39] Id., pp. 292-295.
- [40] Id.
- [41] Id., pp. 261-267.
- [42] Id., pp. 379-380.
- [43] Id., pp. 381-383.
- [44] Id., pp. 405-409.
- [45] Id., pp. 410-414.
- [46] Id., pp. 416-420.
- [47] Id., p. 11.
- [48] *Ortigas and Company Limited Partnership v. Velasco*, G.R. No. 109645, 04 March 1996, 254 SCRA 234.
- [49] *Kabigting v. Acting Director of Prison*, G.R. No. L-15548, 30 October 1962, 116 Phil. 589.
- [50] Memorandum Circular No. 1266, in relation to Mem. Circ. No. 1294 dated Nov. 4, 1993:

"In the interest of the speedy administration of justice and in order to avoid undue and unnecessary involvement of the Presidency in adversary suits before the courts, the following guidelines are hereby prescribed in appeals/reviews of resolutions in preliminary investigations of criminal cases.

When complainants and/or respondents' petition for an appeal/review by the President of investigations conducted by Provincial/City Fiscals and resolved on appeal by the Ministry of Justice, the petition shall not be given due course and shall be forthwith denied, except that in offenses punishable by reclusion perpetua to death wherein new and material issues are raised which were not previously presented before the Ministry of Justice and were not ruled upon in the subject resolution by the Ministry of Justice, the President may order the Ministry of Justice to reopen/review the case provided that the prescription of the offense is not due to lapse within six (6) months from notice of the questioned resolution, and provided further that the petition for appeal/review is filed within thirty (30) days from such notice." Cited in *Perez v. Hagonoy Rural Bank, Inc.*, G.R. No. 126210, 09 March 2000, 327 SCRA 588, citing *Dee v. Court of Appeals*, G.R. No. 111153, 21 November 1994, 238 SCRA 254.

[51] *Rollo*, pp. 182-203.

[52] *Id.*, pp. 182-207.

[53] *Rollo*, pp. 38-40.

[54] Venue in criminal cases is jurisdictional.

[55] Petitioners' Motion for Reconsideration, *Id.*, p. 96.

[56] *Sebastian v. Morales*, G.R. No. 141116, 17 February 2003, 397 SCRA 549.

[57] *Heirs of Padilla v. Court of Appeals*, G.R. No. 147205, 10 March 2004, citing *Sebastian v. Morales*, G.R. No. 141116, 17 February 2003, 397 SCRA 509, citing *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, G.R. No. 132703, 23 June 2000, 334 SCRA 305.

[58] *Sebastian v. Morales*, *supra*.

[59] *Oriental Media, Inc. v. Court of Appeals*, G.R. No. 80127, 06 December 1995, 250 SCRA 647, citing *Limpot v. Court of Appeals*, G.R. No. 44642, 20 February 1989, 170 SCRA 367.

[60] G.R. No. L-53373, 30 June 1987, 151 SCRA 462.

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