

CAYETANO A. TEJANO, JR. PETITIONER, VS. THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 161778. April 07, 2009

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-161778/>

PERALTA, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court filed by petitioner Cayetano A. Tejano, Jr. seeking to reverse the Resolution[1] dated January 26, 2004 of respondent Sandiganbayan which denied his Motion for New Trial in Criminal Case No. 24675, entitled *People of the Philippines v. Dolores Arancillo*, Assistant Regional Administrator Central Bank, Cebu City; Cayetano A. Tejano, Jr., Manager and Vice-President, Amelia Fufunan, Cash Custodian, both of Philippine National Bank (PNB), Cebu Branch, Cebu City.

Petitioner Tejano, Jr. was Vice-President of Philippine National Bank (PNB) and Manager of PNB Cebu (Casino Unit) Branch; and his co-accused Dolores Arancillo and Amelia Fufunan were Central Bank Assistant Regional Administrator and Cashier-Reliever, respectively, of PNB Cebu (Casino Unit) Branch.

On December 8, 1992, a certain "Juan dela Cruz" wrote a letter to then Ombudsman Conrado M. Vasquez seeking the investigation of certain accounts of PNB Cebu Branch, one of which was Jovana Fish Farms, Inc. owned by Arancillo. The letter alleged that Far East Bank & Trust Company (FEBTC) Check No. 742414 dated February 1, 1991, in the amount of P200,000.00, was approved for encashment by petitioner, and remained in his custody and made part of the cash on hand in the PNB-Casino Vault until February 7, 1991. Said check was sent for clearing only after the loan of Jovana Fish Farms, Inc. was approved and the proceeds were released to fund the same.

The letter was treated as a complaint lodged with the Office of the Ombudsman for the Visayas, docketed as OMB-VIS-(CRIM)-96-0363. On October 28, 1996, the Deputy Ombudsman for the Visayas issued an Order requiring accused Arancillo, petitioner, and Ma. Teresita Chan, Assistant Vice-President of PNB Cebu Branch, to submit their respective counter-affidavits, with which they all complied.

In her Counter-Affidavit[2] dated February 18, 1997, accused Fufunan stated that she was informed by another Cashier, Gaudioso Ypanto, that FEBTC Check No. 742414 was signed and approved for encashment by petitioner and was to be considered as cash until it could be deposited on the next banking day. She alleged that she was forced by circumstances to follow the treatment of the check as cash, for to do otherwise would result in a shortage in her Teller's Transfer Form.

In his Counter-Affidavit with Counter-Complaint[3] dated February 26, 1997, petitioner claimed that the grant of loan to Jovana Fish Farms, Inc. had been confirmed in the restructuring of its amount as approved by the Seniro Management Credit Committee, PNB Head Office. He also denied that the said check in the amount of P200,000.00 was allowed to remain as part of the cash on hand of PNB Cebu Branch.

On March 5, 1998, the Office of the Ombudsman for the Visayas rendered a Resolution,[4] the dispositive portion

of which reads:

In sum, there is probable cause that respondents CAYETANO TEJANO, JR. and AMELIA FUFUNAN in the discharge of their official, administrative duties and DOLORES ARANCILLO conspired with each other in the realization of the treatment of subject FEBTC check as "cash" in the PNB-Casino Vault, thereby substituting its face value of P200,000.00 in cash, giving unwarranted benefit with manifest partiality to Dolores Arancillo and prejudicing the government or the PNB in terms of foregone interest; and that their conjoint acts are violative of Sec. 3(e), RA 3019.

Premises considered, it is recommended that an INFORMATION for violation of Section 3(e), RA 3019 be filed against respondents CAYETANO A. TEJANO, JR., AMELIA FUFUNAN and DOLORES ARANCILLO before the Sandiganbayan.

SO RESOLVED.

05 March 1998, Cebu City.

On March 25, 1998, Graft Investigation Officer II Edgemelo C. Rosales of the Office of the Ombudsman for the Visayas filed an Information for violation of Section 3(e) of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act) against petitioner and his co-accused, Amelia Fufunan and Dolores Arancillo, before respondent Sandiganbayan, stating:

That on or about the 1[st] day of February 1991, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, having been duly appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to their office, conniving and confederating together and mutually helping with each other, with deliberate intent, evident bad faith and manifest partiality, did then and there willfully, unlawfully and feloniously accommodate a personal Far East Bank and Trust Company (FEBTC) check bearing SN-742414, dated February 1, 1991, in the amount of P200,000.00, issued by accused Dolores Arancillo, with accused Cayetano A. Tejano, Jr., endorsing the same, and directing accused Amelia Fufunan to place the said check at the PNB-Casino Vault of accused Amelia Fufunan, in lieu of the cash of P200,000.00, Philippine Currency, taken therefrom; which check remained at the said vault until the 7[th] day of February, 1991 and formed part of the cash therein, and treating the substituted check as part of the "operating cash" of the PNB-Casino Unit for a number of days and, thus, accused, in the discharge or performance of their official functions, had given unwarranted benefits and advantage to Dolores Arancillo, to the damage and prejudice of the government.

CONTRARY TO LAW.

Cebu City (for Manila), Philippines.

March 25, 1998.

BAIL BOND RECOMMENDED : P30,000.00 each.[5]

During the arraignment of petitioner on November 12, 1999 and accused Amelia Fufunan on August 13, 2001, both entered a plea of "not guilty" to the crime charged while accused Arancillo remained at large.

The prosecution sought to establish the liability of petitioner and accused Arancillo through the Audit Investigation Report dated October 25, 1993, prepared by the Commission on Audit (COA), and Cash Count Sheet dated February 5, 1991, submitted by Douglasia Canuel, Cashier of PNB Cebu Branch.

The Audit Investigation Report yielded that accused Arancillo temporarily borrowed the amount of P200,000.00, without interest, from the operating cash of the PNB Cebu Branch and issued a personal check, FEBTC Check No. 742414 dated February 1, 1991. On February 3, 1991, Elvira Villamor, then Assistant Cashier of PNB,

discovered the said check together with a note from accused Fufunan stating that the check was to form part of the "cash in vault temporarily," and that petitioner would be taking it back on February 4, 1991. On February 5, 1991, Villamor found that the check in question was still part of the cash in vault. Two days later, or on February 7, 1991, Villamor noticed that the check was no longer in the cash vault.[6]

In her Cash Count Sheet, Douglasia Canuel noted the existence of FEBTC Check No. 742414 as part of the cash in vault on February 5, 1991.[7]

Petitioner, on the other hand, cited Item "G" of the PNB Manual of Policies on Cash as part of his defense:

G. The encashment of checks whose amounts exceed the Teller's authority shall be approved by officers/supervisors, depending [on] the limit of their respective approving authorities.

In considering checks for approval, the Approving Officer/Personnel should be guided by the following:

- Out-of-town checks (except those issued by us) should be accepted by the Bank for deposit/collection only and not for outright encashment. The encashment of these checks is purely an act of accommodation as the Bank is not obliged to pay these checks. Approval of these checks for payment, therefore, should be done on a very selective basis depending on the merits of each case, and always on the Approving Personnel's responsibility.[8]

This document was also adopted by accused Fufunan as part of her defense.

Petitioner also averred in his Counter-Affidavit dated February 26, 1997 that he did not violate Section 19 of Executive Order No. 80 (The 1986 Revised Charter of the Philippine National Bank),[9] as the loan to the corporation Jovana Fish Farms, Inc. was not a loan to Arancillo.[10] He explained in his Further Suppletory Affidavit dated October 26, 1998 that his alleged accommodation of FEBTC was not a prohibited act in the performance of his functions because the encashment of checks was covered by the PNB Manual of Policies on Cash, COCI and Deposits Operations,[11] and within his discretionary authority as Manager and Vice-President of PNB.[12]

During the pre-trial conference on August 27, 2001, the prosecution and the defense, petitioner and accused Fufunan, entered into the following stipulation of facts:

- 1) That during the material time and date alleged in the Information, herein accused are all public officers, Cayetano Tezano, Jr., being then the Vice-President of Philippine National Bank and Manager of PNB-Cebu (Casino Unit) Branch; Dolores Arancillo, being then a Central Bank Assistant Regional Administrator; and Amelia Fufunan, a cashier-reliever at the PNB Cebu (Casino Unit) Branch;
- 2) That Cayetano Tezano, Jr., Dolores Arancillo, and Amelia Fufunan admit their identity as the same persons who are accused in this case;
- 3) That sometime in the early part of February, 1991, Cayetano A. Tezano, Jr. accommodated FEBTC Check No. 742414, dated February 1, 1991 in the amount of P200,000.00 of Dolores Arancillo and was kept in the PNB-Cebu (Casino Branch) vault from February 3 to 5, 1991;
- 4) That Amelia Fufunan was assigned as cashier-reliever at the PNB-Cebu (Casino Unit) on February 2, 1991 and prepared a Note addressed to Ms. Elvira M. Villamor to the effect that the attached check (referring to FEBTC Check No. 742414) formed part of the cash on hand;
- 5) That [Douglasia] Canuel conducted a cash count and prepared a cash count sheet, dated February 5, 1991 and duly acknowledged by Ms. Elvira Villamor;
- 6) That State Auditor IV Delia Monte De Ramos conducted an audit and prepared an Audit Investigation

Report dated October 25, 1993;

7) That there exists PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;

8) That on or before February 7, 1991, FEBTC Check No. 74241[4] disappeared and actual P200,000.00 cash appeared in the vault;

9) That after Fufunan, there was another cashier-reliever in the name of Elvira Villamor; and that Elvira Villamor also treated this check of P200,000.00 as part of the cash.

The following documents were also pre-marked by the prosecution, to wit:

Exhibits "A"

-

Audit Investigation Report dated October 25, 1993 conducted and prepared by Ms. Delia Monte De Ramos (COA State Auditor IV), consisting of 29 pages, including attachments;

"A-1"

-

Signature of Delia Monte De Ramos appearing on page 7 of Exh. "A";

"A-2"

-

SEC Reg. Certificate of Jovana Fish Farms;

"A-3"

-

Certified xeroxed copy of FEBTC Check No. 742414 in the amount of P200,000.00, dated February 1, 1991 (back to back);

"A-4"

-

Note of Amelia Fufunan to Ms. Elvira Villamor;

"A-5"

-

Cash Count Sheet dated Feb. 5, 1991, prepared by Douglasia Canuel;

"B"

-

Reply-Affidavit & Reply to Counter-Charge dated April 24, 1997, prepared by Delia Monte De Ramos, consisting of (4) pages, including attachment;

"B-1"

-

Signature of Delia Monte De Ramos, appearing on page 3 of Exh. "B";

"B-2"

-

Sworn Affidavit of Elvira M. Villamor, dated July 27, 1993, attesting to the fact that she saw the subject check inside the vault;

"C"

-

Counter-Affidavit of accused Amelia Fufunan, dated Feb. 18, 1997, attesting to the fact that, indeed, she found Arancillo's FEBTC Check, dated February 1, 1991 in the amount of P200,000.00 inside the PNB vault and further found out that the same was treated as cash;

"D"

-

Further Supplementary Affidavit of Cayetano Tejano, Jr., dated October 26, 1998.

"D-1"

-

Signature of Cayetano Tejano, Jr. appearing on page 3 of Exh. "D."

On the part of the accused Tejano, the following documents were pre-marked:

Exhibits "1"

-

PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;

"1-A"

-

Item "G" found on pages 25 and 26 of said Manual of Policies;

"2"

-

Certification issued by the PNB Adjudication Office, dated Aug. 23, 2001;

"2-A"

-

Signature of PNB Senior Vice-President Rosauro Macalagay;

"3"

-

Certification issued by PNB-Cebu, dated July 25, 1995 signed by Jacinto Ovano, Assistant Department Manager I;

"4"

-

Memorandum of Mr. Capistrano, dated August 3, 1993;

"5"

-

Counter-Affidavit of Cayetano Tejano, dated Feb. 26, 1997;

"6"

-

Further Suppletory Affidavit of Cayetano Tejano, dated October 26, 1998.

While on the part of accused Fufunan, the following were the documents pre-marked:

Exhibits "1"

-

Counter-Affidavit of Amelia Fufunan, dated February 18, 1997;

"1-A"

-

Signature of accused Fufunan;

"2"

-

PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;

"2-A"

-

Item "G" found on pages 25 and 26 of said Manual of Policies;

"3"

-

Certification issued by the PNB Adjudication Office, dated Aug. 23, 2002;

"3-A"

-

Signature of PNB Senior Vice-President Rosauro Macalagay;

"4"

-

Certification issued by PNB-Cebu, dated July 25, 1995, signed by Jacinto Ovano, Asst. Department Manager I;

"5"

-

Memorandum of Mr. Capistrano, dated August 3, 1993.

Both parties have the following common issues:

- Whether or not, from the facts, stipulations, and documents, accused are guilty of the crime, as charged?
- Whether or not conspiracy was present in the commission of the crime, as charged?

WHEREFORE, as the Court considered the documents self-explanatory and considering the waiver on admissibility, as manifested by the parties during the pre-trial conference, the documentary exhibits offered both by the prosecution and the defense are hereby ordered admitted. Parties are given thirty (30) days from today within which to file their respective memoranda. After the submission of the same, this case shall be deemed submitted for decision.

SO ORDERED.[13]

On March 17, 2003, respondent Sandiganbayan rendered a Decision[14] finding the petitioner guilty beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, the dispositive portion of which reads:

WHEREFORE, finding the presence of conspiracy in the commission of the crime between the accused Tezano and Arancillo, the former is hereby declared guilty beyond reasonable doubt of violating Section 3(e) of Republic Act 3019 and is hereby sentenced to suffer the indeterminate penalty of imprisonment of 6 years, two months and 1 day, as minimum, to 15 years, as maximum.

The participation of accused Amelia Fufunan in the transaction is purely administrative and does not constitute as an act or omission resorted to as a means to commit a crime. In the absence of unity of purpose with the other accused in the commission of the crime, she is declared innocent of the crime charged and is therefore acquitted.

SO ORDERED.[15]

On March 25, 2003, petitioner Tezano filed a Motion for Reconsideration[16] on the following grounds: (1) that his guilt was not proven beyond reasonable doubt; and (2) that conspiracy was not established by proof beyond reasonable doubt. In its Order[17] dated April 2, 2003, respondent Sandiganbayan denied his motion because it contained averments which were adversarial, and which required the presence of the petitioner before the same could be resolved.

On April 2, 2003, petitioner filed an Omnibus Motion[18] seeking leave of court to file a Motion to Lift or Reconsider the denial of his motion for reconsideration and have the said motion set for hearing, invoking the following grounds: (1) that counsel for petitioner had an accident on the day the Decision promulgated on March 17, 2003 was set for hearing; (2) that the accused had good defense which would warrant a reasonable belief that the result would be otherwise if a reconsideration was to be granted; and (3) that the Motion was not intended to delay the speedy administration of justice.

On September 8, 2003, petitioner also filed a Motion to Hold in Abeyance the resolution of petitioner's motion for reconsideration on the ground that he was convicted upon facts which were not availing at that time because Arancillo was at-large.[19]

In a Resolution[20] dated September 24, 2003, respondent Sandiganbayan denied the petitioner's motion for reconsideration for lack of merit, stating thus:

x x x [W]e reiterate what we have stated in our assailed decision that we do not question the propriety of granting accommodation to a check, if that is really the case. What we find objectionable is the manner by which the bank's policy on check accommodation was apparently utilized to cover up a prohibited transaction. For as it would appear, the check was placed inside the bank vault in substitution of the cash that was withdrawn, without the transaction being properly recorded in the books. It is immaterial that the transaction was intended to be a temporary arrangement because, in the meantime, the check was made to appear as operating cash for a number of days to the detriment of the bank and in violation of the trust reposed on it by its depositors. Indeed, accused took too much liberty of the discretionary authority granted to him under the bank's policies on cash and deposit operations as he went beyond what was allowed by the said policies. As correctly observed by the prosecution in its Comment, this is not a case of accommodation, as what movant would have it appear, but plain and simple unauthorized loan to Arancillo.

On October 13, 2003, petitioner filed a Motion for New Trial[21] on the grounds that he was not properly advised of his rights in the case by his previous counsel, and that there was newly discovered evidence in view of the arrest, on April 29, 2003, of accused Arancillo, who was later arraigned on August 5, 2003.

In his Amended Motion for New Trial[22] dated October 22, 2003, petitioner included the ground that the evidence was insufficient to justify the judgment of conviction, claiming that there was no concrete evidence presented by the prosecution that petitioner endorsed Arancillo's check for P200,000.00 except for the unauthorized admission by the counsel for the accused.

On December 2, 2003, petitioner filed a Supplemental Motion for New Trial,[23] alleging that: (1) his criminal liability as accommodator of the check in question was dependent on the liability of accused Arancillo; (2) his defense that no proof of inducement or active participation in the criminal act could not be established because said accused was still at-large; and (3) a new trial would afford him protection of his constitutional right to presumption of innocence.

On January 26, 2004, respondent Sandiganbayan issued the assailed Resolution[24] denying the petitioner's Amended Motion for New Trial and directed its Division Clerk of Court to make an entry of judgment. The pertinent portions of the Resolution read as follows:

In the case at bar, accused Tejano admits that on October 10, 2003, he received a copy of the Court's resolution denying his motion for reconsideration of the judgment of conviction. Thus, under the rules (Cf. Section 4, P.D. 1606 as amended by R.A. No. 8249 in relation to Section 2, Rule 45 of the 1997 Rules of Civil Procedure), he had fifteen (15) days therefrom, or until October 25, 2003 within which to perfect an appeal to the Supreme Court. However, instead of seasonably filing the requisite petition for review on certiorari with the Supreme Court, accused Tejano, proceeded to file a motion for new trial and, thereafter, an amended motion for new trial.

The recourse taken by accused Tejano is ill-advised. As his motion for new trial and amended motion for new trial are already barred by the rules, the same will not interrupt the running of the period to appeal his conviction before the Supreme Court. Thus, on October 26, 2003, upon the lapse of the fifteen (15)-day period of appeal, the decision of this Court convicting him of the offense charged became final and executory by operation of law.

WHEREFORE, the subject amended motion for new trial is DENIED DUE COURSE. The Division Clerk of Court shall now make the final entry of the judgment of the decision rendered in this case as against accused Cayetano A. Tejano, Jr. In the meantime, let a Bench Warrant of Arrest be issued against said accused to compel him to serve the sentence imposed by the Court. The cash bond posted by accused Cayetano A. Tejano, Jr. for his provisional liberty is rendered functus officio and said accused is given fifteen (15) days from notice within which to voluntarily surrender his person to this Court for execution of the sentence; otherwise, his cash

bond shall be forfeited in favor of the government.[25]

On January 29, 2004, respondent Sandiganbayan made an Entry of Judgment[26] and, thus, its Decision dated March 17, 2003 became final and executory on October 26, 2003 upon the lapse of the appeal period.

Hence, this present petition for certiorari.

In his petition, petitioner raises the following issues:

I

Respondent Honorable Sandiganbayan committed grave abuse of discretion when it denied due course petitioner's motion for new trial.

II

Respondent Honorable Sandiganbayan committed grave abuse of discretion when it failed to appreciate the existence of grounds for new trial and that:

- The petitioner was not properly advised of his rights and/or was denied of his rights to due process;
- The evidence finding the petitioner guilty of the crime charged is insufficient to justify the decision;
- Newly discovered evidence which petitioner could not with reasonable diligence have discovered and produced during the trial and if admitted would probably change the judgment in the case.

III

Respondent Sandiganbayan committed grave abuse of discretion amounting to excess of jurisdiction when it issued an entry of judgment for a decision that has become final and executory.[27]

The Office of the Ombudsman, through the Office of the Special Prosecutor, maintains that respondent Sandiganbayan correctly dismissed petitioner's motion for new trial because such remedy was no longer available to him; that petitioner was not denied due process; that the evidence finding him guilty under Section 3(e) of R.A. 3019 was justified; that there was no newly discovered evidence which would warrant the reversal of the disputed ruling; and that the decision had indeed become final and executory.

The petition has no merit.

In dismissing petitioner's motion for new trial, respondent Sandiganbayan relied on Section 4 of Presidential Decree (P.D.) No. 1606, as amended by R.A. No. 8249, in relation to Section 2, Rule 45 of the Rules of Civil Procedure. Thus,

P.D. 1606, Sec. 4. Jurisdiction - The Sandiganbayan shall exercise:

(a) Exclusive original jurisdiction in all cases involving:

(1) Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code;

x x x

The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals shall apply to appeals and petitions for review with the Sandiganbayan. In all cases elevated to the Sandiganbayan, the Office of the Tanodbayan shall represent the People of the Philippines.

x x x

R.A. 8249, Sec. 7. x x x A petition for reconsideration of any final order or decision may be filed within fifteen (15) days from promulgation or notice of the final order or judgment, and such motion for reconsideration shall be decided within thirty (30) days from submission thereon.

Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court. x x x (emphasis ours)

Rule 45, 1997 Rules of Civil Procedure:

Sec. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may, for justifiable reasons, grant an extension of thirty (30) days only within which to file the petition.

Petitioner alleges that the aforequoted provisions are applicable only when pure questions of law are involved which justified his Motion for New Trial on the ground of newly discovered evidence to be presented by accused Arancillo during the trial.

This Court disagrees. Section 1, Rule 121 of the Rules on Criminal Procedure provides that "the remedies of motion for reconsideration and motion for new trial may be availed of at any time before a judgment of conviction becomes final, which is within fifteen (15) days from the promulgation of the judgment."

In the present case, petitioner had already availed of a motion for reconsideration, which was denied by respondent Sandiganbayan. His next remedy is set forth under Section 7 of P.D. No. 1606, as amended by R.A. No. 8249, which provides that decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court. In *Neypes v. Court of Appeals*,^[28] the Court allowed a fresh period of 15 days within which to file a notice of appeal in the Regional Trial Court to be counted from receipt of the order dismissing a motion for new trial or motion for reconsideration. This "fresh period rule" shall also apply to Rule 45 governing appeals by certiorari to the Supreme Court. Without an appeal, the judgment becomes final upon expiration of the period and execution should necessarily follow.^[29] Unfortunately, petitioner failed to avail of the said remedy within the 15-day period and, instead, filed a motion for new trial. The petitioner cannot be allowed to resort to another remedy as a substitute for an appeal.

Hence, respondent Sandiganbayan correctly ruled that its Decision dated March 17, 2003 became final and executory upon the lapse of the appeal period. Respondent Sandiganbayan promulgated its Decision on March 17, 2003. On March 25, 2003, petitioner moved for reconsideration of the said decision, but the same was denied on September 24, 2003. Petitioner received a copy of the resolution denying his motion for reconsideration and, thus, had 15 days, or until October 25, 2003, within which to file his petition for review on certiorari. Petitioner's procedural misstep of filing a motion for new trial did not produce any legal effect and, therefore, did not operate to suspend the enforcement of his sentence. Perforce, the Decision dated March 17, 2003 of respondent Sandiganbayan became final and executory after the expiration of the 15-day reglementary period without an appeal having been properly taken by the petitioner.

Even assuming that the remedy of a motion for new trial is allowed, petitioner has yet to establish the fact that the reappearance of the accused Arancillo, who would testify on certain matters, qualified as newly discovered

evidence. For the Court to grant a new trial on the ground of newly discovered evidence under Section 2, Rule 121 of the Rules of Court, it must be shown that: (a) the evidence was discovered after the trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[30]

Petitioner contends that he is entitled to a new trial because the conviction was based on facts which were then not available during the trial proper as accused Arancillo was at-large. Petitioner argues that the arrest and arraignment of accused Arancillo, who would be testifying that petitioner did not help and cooperate in the perpetration of the crime, constitutes newly discovered evidence which will be the vital testimonial evidence that may lead to his eventual acquittal.

In cases where the accused avails of the remedy of new trial, the accused has the burden of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial.[31] In *Balanay v. Sandiganbayan*,[32] this Court upheld the dismissal by therein respondent Sandiganbayan of therein petitioner's motion for new trial which was not supported by the affidavits of the proposed witnesses, or by a brief narration of the facts to which therein alleged witnesses will testify. Applying the same to the present case, petitioner not only failed to support his claim by not furnishing respondent Sandiganbayan with a copy of the affidavit of accused Arancillo, but he erroneously concluded that since his co-accused pleaded "not guilty," his own criminal liability has also been eradicated.

Likewise, petitioner can hardly claim that he was tried and convicted on a "mere stipulation of facts" as the Pre-Trial Order[33] dated August 27, 2001 clearly stated that the parties gave a waiver of admissibility after respondent Sandiganbayan considered the documents self-explanatory and that they were also given the opportunity to submit their respective memoranda.

Procedurally, petitioner cannot file a petition for certiorari under Rule 65 of the Rules where appeal is available, even if the ground availed of is grave abuse of discretion.[34] A special civil action for certiorari under Rule 65 lies only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law. Certiorari cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, as the same should not be a substitute for the lost remedy of appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[35]

The right to appeal is a purely statutory right. Not being a natural right or a part of due process, the right to appeal may be exercised only in the manner and in accordance with the rules provided therefor.[36] As petitioner failed to exercise this right, he cannot prevent the execution of judgment against him by resorting to a certiorari petition.

WHEREFORE, the petition is DISMISSED. The Resolution dated January 26, 2004 of respondent Sandiganbayan in Criminal Case No. 24675 entitled *People of the Philippines v. Dolores Arancillo*, Assistant Regional Administrator, Central Bank, Cebu City; Cayetano A. Tejano, Jr., Manager and Vice President, Amelia Fufunan, Cash Custodian, both of Philippine National Bank (PNB), Cebu Branch, Cebu City is AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio Morales[*], Chico-Nazario, and Nachura, JJ., concur.

[*] Per Special Order No. 602 dated March 20, 2009.

[1] The Sandiganbayan (Fourth Division) is composed of Associate Justice Gregory S. Ong as Chairperson; and Associate Justices Norberto Y. Germaldez, Member, and Efren N. de la Cruz, Special Member.

[2] Sandiganbayan rollo (Vol. I), pp. 22-23.

[3] Id. at 14-21.

[4] Id. at 4-10.

[5] Rollo, pp. 49-50.

[6] Sandiganbayan rollo (Vol. II), pp. 43-49.

[7] Id. at 71.

[8] Id. at 22-23.

[9] Section 19. Borrowing of directors, officers and employees. Restriction and Limitation. - x x x

The Bank shall not grant, directly or indirectly, any loans or credit accommodations to the head or to any officer or personnel directly exercising supervisory or regulatory authority over the activities of the bank such as those of the Central Bank of the Philippines or of the Commission on Audit.

[10] Sandiganbayan rollo (Vol. II), pp. 28-35.

[11] 3201.2 "Out-of-Town" Checks

Checks and drafts drawn on another PNB office or on other banks, located within or outside the locality which are subject to clearing or for collection.

A. Classification. "Out-of-Town" Checks are further classified as to:

- Local Clearing - drawn on another bank which is a participant directly or indirectly in the local clearing system.
- "Out-of-Town" Clearing - drawn on another PNB office or another bank which is not a participant in the local clearing system.

As a general rule, out-of-town checks shall be accepted only for DEPOSIT or COLLECTION.

xxx xxx xxx

3202. Approving Authority

3202.1 Encashment of Checks

xxx xxx xxx

B. Out of Town and other bank's checks (including non-PNB MDS checks) (Effective November 25, 1991)

Branches

Up to 5,000.00 Cashier

Up to 10,000.00 Asst. Dept. Manager I

Up to 15,000.00 Asst. Dept. Manager II

Up to 20,000.00 Dept. Manager III/Asst. Vice President

[12] Sandiganbayan rollo (Vol. II), pp. 36-38.

- [13] Penned by Associate Justice Rodolfo G. Palattao, with Associate Justices Narciso S. Nario (Chairperson) and Nicodemo T. Ferrer, concurring; rollo, pp. 66-70.
- [14] Penned by Associate Justice Rodolfo G. Palattao, with Associate Justices Gregory S. Ong, Chairperson, and Justice Ma. Cristina G. Cortez-Estrada, designated Special Member, concurring; rollo, pp. 71-86.
- [15] Id. at 84.
- [16] Id. at 87-113.
- [17] Sandiganbayan rollo (Vol. II), p. 203.
- [18] Rollo, pp. 114-123.
- [19] Id. at 136-141.
- [20] Id. at 143-147.
- [21] Id. at 148-158.
- [22] Id. at 159-179.
- [23] Id. at 182-188.
- [24] Supra note 1.
- [25] Rollo, pp. 44-47.
- [26] Id. at 189-190.
- [27] Id. at 22.
- [28] G.R. No. 141524, September 14, 2005, 469 SCRA 633.
- [29] Lubrica v. People of the Philippines, G.R. Nos. 156147-54, February 26, 2007, 516 SCRA 674, 678.
- [30] Dinglasan, Jr. v. Court of Appeals, et al., G.R. No. 145420, September 19, 2006, 502 SCRA 253, 267.
- [31] Cabarlo v. People of the Philippines, G.R. No. 172274, November 16, 2006, 507 SCRA 236, 243.
- [32] 397 Phil. 853 (2000).
- [33] Order dated August 27, 2001, rollo, pp. 66-70.
- [34] Tible & Tible Company, Inc. v. Royal Savings and Loan Association, G.R. No. 155806, April 8, 2008, 550 SCRA 562, 575-576.
- [35] First Corporation v. Former Sixth Division of the Court of Appeals, G.R. No. 171989, July 4, 2007, 526 SCRA 564; Nippon Paint Employees Union-Olalia v. Court of Appeals, G.R. No. 159010, November 19, 2004, 443 SCRA 286, 291; Republic v. Court of Appeals, 379 Phil. 92, 97 (2000).
- [36] Benjamin Bautista v. Shirley G. Unangst and Other Unknown Persons, G.R. No. 173002, July 4, 2008; Republic v. Luriz, G.R. No. 158992, January 26, 2007, 513 SCRA 140, 143, 148; Ciudad Fernandina Food Corporation Employees Union-Associated Labor Unions v. Court of Appeals, G.R. No. 166594, July 20, 2006, 495 SCRA 807, 823, citing Ginete v. Court of Appeals, 357 Phil. 36 (1998); Corporate Inn Hotel v. Lizo, G.R. No. 148279, May 27, 2004, 429 SCRA 573, 577.

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.