

RODOLFO G. VALENCIA, PETITIONER, VS. THE SANDIGANBAYAN, RESPONDENT.

G.R. NO. 165996. October 17, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for certiorari under Rule 65 of the Rules of Court assails the June 14, 2004 Order[1] of respondent Sandiganbayan in Criminal Case No. 25160, which denied petitioner's motion for leave to file demurrer to evidence and set the case for presentation of evidence for the prosecution; as well as its July 28, 2004 Resolution[2] denying petitioner's motion for reconsideration.

The undisputed facts show that on February 10, 1999, petitioner Rodolfo G. Valencia, then governor of Oriental Mindoro was charged before the Sandiganbayan with violation of Section 3(e) of Republic Act (RA) No. 3019, the Anti-graft and Corrupt Practices Act. The information filed against petitioner reads:

That on or about December 1, 1992, or sometime prior or subsequent thereto in the Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Governor of the Province of Oriental Mindoro, while in the performance of his official functions, committing the offense in relation to his office, and taking advantage of his official position, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there wilfully, unlawfully and criminally cause undue injury to the Province of Oriental Mindoro, and at the same time give unwarranted benefits, advantage or preference to one CRESENTE UMBABO, a candidate who ran and lost in the 1992 election, by then and there appointing said Cresente Umbao as Sangguniang Bayan member of Pola, Oriental Mindoro, within the prohibitive period of one (1) year after an election, in flagrant violation of Sec. 6, Art IX B of the Constitution, to the damage and prejudice of the Province of Oriental Mindoro and to the government as a whole.[3]

Upon arraignment on April 13, 1999, petitioner pleaded not guilty.[4]

On March 24, 2003, the parties submitted a Joint Stipulation of Facts, to wit:

1. Mr. Rodolfo G. Valencia, had been the Governor of the Province of Oriental Mindoro, for having won in the gubernatorial race in the May 1992 local and provincial election;
2. During the 1992 election, Mr. Cresente Umbao of Pola, Oriental, Mindoro also ran for the position of councilor in the Municipality of Pola, Oriental Mindoro but he lost;
3. On October 17, 1992, Councilor Antonio Mercene, Jr. of Pola, Oriental, Mindoro died thus creating a permanent vacancy in the membership position of Sangguniang Bayan of Pola, Oriental Mindoro.
4. On December 1, 1992 then Governor Rodolfo G. Valencia of Oriental, Mindoro, appointed Cresente Umbao to the position of a councilor in the Municipal Council of Pola, Oriental Mindoro on the vacancy left by the death of Councilor Mercene.

CONTENTION/ISSUES

The Prosecution contends that this appointment is in violation of Sec. 3(e) of R.A. 3019 as it gives among other, unwarranted benefit to Mr. Cresente Umbao who is disqualified to be appointed within a period of one year after having lost in May 1992 local election for councilor, while the accused, then Governor Rodolfo Valencia, maintains that the appointment of Lumbao was in the performance of his duty and that it was made in good faith pursuant to Sec. 45, Chapter 2, Title 2, of the Local Government Code (R.A. 7160).

The Parties reserve their rights to present documentary evidences as the need arise during the trial.

WHEREFORE, premises considered, the parties respectfully prays that this stipulation of facts be well taken by the Honorable Sandiganbayan for pre-trial purposes.[5]

On March 26, 2003, the Sandiganbayan directed the parties to sign the Joint Stipulation of Facts, thus -

The Court orders both counsels and the accused to sign each and every page of the Joint Stipulation of Facts. Thereafter, let a pre-trial order be issued on the bases of the agreement of both parties as embodied in this Joint Stipulation of Facts.[6]

The Joint Stipulation of Facts however remained unsigned by petitioner. Only the signature of the Special Prosecutor and petitioner's counsel appear on the last page thereof.

On January 12, 2004, Prosecutor Danilo F. Salindong rested the case based on the Joint Stipulation of Facts and waived the presentation of testimonial or documentary evidence for the prosecution.[7]

Thereafter, petitioner filed on January 19, 2004 a Motion for Leave to File Demurrer to Evidence because the prosecution failed to present, mark or offer evidence that would substantiate the charge against him. Petitioner asserted that the Joint Stipulation of Facts is inadmissible because it lacks his signature. Even if the same be admitted, the information is dismissable for failure of the prosecution to submit evidence to establish the injury caused to the government and the presence of manifest partiality, evident bad faith or gross inexcusable negligence in the appointment of Cresente Umbao, which are among the essential elements of the crime of violation of Section 3(e) of RA No. 3019.[8]

The prosecution, now represented by Prosecutor Agnes B. Autencio-Daquis, filed an Opposition/Comment alleging that petitioner's Motion for Leave to File Demurrer to Evidence is premature because the prosecution has yet to formally offer the Joint Stipulation of Facts.[9]

On February 20, 2004, the Sandiganbayan reiterated its March 26, 2003 Resolution directing petitioner and counsels to sign the Joint Stipulation of Facts.[10] Petitioner filed a Manifestation with Motion for Reconsideration[11] claiming that his former counsel was not authorized to enter into any agreement and that he came to know of the existence of said stipulations only on January 12, 2004.

On March 11, 2004, the Sandiganbayan issued a Pre-trial Order[12] embodying the Joint Stipulation of Facts.

Considering petitioner's refusal to acknowledge the Joint Stipulation of Facts or to sign the Pre-trial Order, the Sandiganbayan issued the assailed June 14, 2004 Order recalling the Pre-trial Order; denying the motion for leave to file demurrer; and setting the case for presentation of the prosecution's evidence, thus -

This afternoon is supposed to be the initial presentation of the defense evidence. Prosecutor Danilo F. Salindong, former handling prosecutor of this case, rested his case on the basis of the Pre-Trial Order issued by this Court. However, accused Rodolfo Valencia refused to sign the pre-trial order as per his motion for reconsideration, to which Prosecutor Agnes Autencio Daquis commented that since the accused refused to sign the pre-trial order, that the same be abrogated and that trial on the merits ensued. Consequently, the Pre-Trial

Order issued by this Court on March 11, 2004 is hereby recalled and set aside. In view of the refusal of the accused to enter into any stipulation of facts, let this case be scheduled for trial on the merits. The presentation of prosecution's evidence is hereby scheduled on August 31 and September 1, 2004 at 2:00 o'clock in the afternoon. The demurrer to evidence filed by the accused is therefore considered premature and is hereby stricken out of the records.[13]

Petitioner's motion for reconsideration was denied on July 28, 2004, as follows:

The "Motion for Reconsideration (of June 14, 2004 Order)" dated June 29, 2004 filed by accused, thru counsels which met vigorous opposition from the prosecution's Comment/Opposition dated July 16, 2004 is denied for lack of merit. As clearly stated in the Order of June 14, 2004, the case for the prosecution was re-opened because of the refusal of accused to sign the pre-trial order on the basis of which the prosecution rested its case. Justice and fairness demand the re-opening of the evidence for the prosecution because of the unwarranted act of the accused in refusing to sign the pre-trial order.[14]

Hence, the instant petition contending that the Sandiganbayan gravely abused its discretion in issuing the assailed June 14, 2004 Order and July 28, 2004 Resolution.

Meanwhile, there being no temporary restraining order nor preliminary injunction issued by this Court, the prosecution proceeded with the presentation of its evidence.[15]

The issues for resolution are (1) was petitioner's Motion for Leave to File Demurrer to Evidence premature? (2) may the prosecution be allowed to present evidence after it orally manifested its intention to rest its case? (3) was petitioner denied his right to speedy trial?

Section 23, Rule 119 of the Rules of Court, provides:

SEC. 23. Demurrer to evidence. - After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

Corollarily, Section 34, Rule 132 of the Rules of Court states:

SEC. 34. Offer of evidence. - The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

A demurrer to evidence tests the sufficiency or insufficiency of the prosecution's evidence. As such, a demurrer to evidence or a motion for leave to file the same must be filed after the prosecution rests its case. But before an evidence may be admitted, the rules require that the same be formally offered, otherwise, it cannot be considered by the court. A prior formal offer of evidence concludes the case for the prosecution and determines the timeliness of the filing of a demurrer to evidence.

As held in *Aquino v. Sison*,^[16] the motion to dismiss for insufficiency of evidence filed by the accused after the conclusion of the cross-examination of the witness for the prosecution, is premature because the latter is still in the process of presenting evidence. The chemistry report relied upon by the court in granting the motion to dismiss was disregarded because it was not properly identified or formally offered as evidence. Verily, until such time that the prosecution closed its evidence, the defense cannot be considered to have seasonably filed a demurrer to evidence or a motion for leave to file the same.

In the present case, petitioner's motion for leave to file demurrer to evidence is premature because the prosecution had yet to formally rest its case. When the motion was filed on January 19, 2004, the latter had not yet marked nor formally offered the Joint Stipulation of Facts as evidence. It is inconsequential that petitioner received by mail on January 27, 2004, a motion and formal offer of evidence dated January 20, 2004 from Prosecutor Salindong,^[17]

because, as aptly observed by the Office of the Ombudsman, the records of the Sandiganbayan bear no such motion or formal offer of evidence filed by the prosecution. The motion and formal offer found in the records are those attached as Annex "B"[18] to petitioner's Manifestation with Motion for Reconsideration[19] and not copies filed by the prosecution. Under Section 12, Rule 13 of the Rules of Court, the filing of a pleading or paper shall be proved by its existence in the case records. The absence of the motion to rest the case in the records of the Sandiganbayan and the failure to offer the Joint Stipulation of Facts prove that the prosecution did not formally rest or conclude the presentation of its evidence, rendering petitioner's motion for leave to file demurrer to evidence, premature.

At any rate, had the prosecution actually filed said motion and formally offered the evidence before the Sandiganbayan, the motion for leave to file demurrer to evidence still suffers prematurity because it was filed on January 19, 2004, or one day before the date of the motion and offer, i.e., January 20, 2004. In fact, even petitioner admitted in his motion for leave to file demurrer to evidence that the prosecution failed to mark and offer any evidence against him.[20]

Anent the second issue, we find that the trial court did not abuse its discretion in granting the prosecution's request to present additional evidence. Admission of additional evidence is addressed to the sound discretion of the trial court. Considerable latitude is allowed and such discretion will not be disturbed absent a finding that the accused was denied due process of law. As early as the 1907 case of *United States v. Cinco*,[21] the Court has consistently upheld such prerogative of the trial court, thus -

... The judges of the Courts of First Instance are judges of both fact and law, and after hearing all the evidence adduced by the attorneys, if the court is not satisfied, we see no reason why he should not be permitted to call additional witnesses for the purpose of satisfying his mind upon any questions presented during the trial of the case.

Indeed, in the furtherance of justice, the court may grant the parties the opportunity to adduce additional evidence bearing upon the main issue in question.[22] Thus, in *Hon. Vega, etc., et al. v. Hon. Panis, etc., et al.*,[23] the Court sustained the order of the trial court allowing the prosecution to present additional evidence after it had offered its evidence and rested its case and after the defense filed a motion to dismiss. It was stressed therein that while the prosecution had rested, the trial was not yet terminated and the case was still under the control and jurisdiction of the court. Hence, in the exercise of its discretion, the trial court may receive additional evidence.

We also held in *People v. Januario*,[24] that strict observance of the order of trial or trial procedure outlined in Rule 119 of the Rules of Court depends upon the circumstance obtaining in each case at the discretion of the trial judge. Citing *United States v. Alviar*,[25] the Court explained -

... The orderly course of proceedings requires, however, that the prosecution shall go forward and should present all of its proof in the first instance; but it is competent for the judge, according to the nature of the case, to allow a party who had closed his case to introduce further evidence in rebuttal. This rule, however, depends upon the particular circumstances of each particular case and falls within the sound discretion of the judge, to be exercised or not as he may think proper.

Hence, the court may allow the prosecutor, even after he has rested his case or after the defense moved for dismissal, to present involuntarily omitted evidence....[26]

It must be emphasized that the primary consideration in allowing the reopening of a case is for the accused to have his day in court and the opportunity to present counter evidence. Thus -

... As a rule, the matter of reopening of a case for reception of further evidence after either prosecution or defense has rested its case is within the discretion of the trial court. However, a concession to a reopening must

not prejudice the accused or deny him the opportunity to introduce counter evidence.

... In *U.S. vs. Base*, we held that a trial court is not in error, if it opts to reopen the proceedings of a case, even after both sides had rested and the case submitted for decision, by the calling of additional witnesses or recalling of witnesses so as to satisfy the judge's mind with reference to particular facts involved in the case. A judge cannot be faulted should he require a material witness to complete his testimony, which is what happened in this case. It is but proper that the judge's mind be satisfied on any and all questions presented during the trial, in order to serve the cause of justice.

Appellant's claim that the trial court's concession to "reopen" the case unduly prejudiced him is not well taken. We note that appellant had every opportunity to present his evidence to support his case or to refute the prosecution's evidence point-by-point, after the prosecution had rested its case. In short, appellant was never deprived of his day in court. A day in court is the touchstone of the right to due process in criminal justice. Thus, we are unable to hold that a grave abuse of discretion was committed by the trial court when it ordered the so-called "reopening" in order to complete the testimony of a prosecution witness.[27]

In the case at bar, petitioner cannot claim denial of due process because he will have the opportunity to contest the evidence adduced against him and to prove his defenses after the prosecution concludes the presentation of its evidence. Moreover, the order of the trial court granting the reception of additional evidence for the prosecution is not technically a "reopening" of the case inasmuch as the latter had yet to formally rest its case. A motion to reopen presupposes that either or both parties have formally offered and closed their evidence.[28] If the Court sanctions the admission of additional evidence after the case had been submitted for resolution but before judgment, with more reason therefore that we should sustain the introduction of additional evidence in the present case because the prosecution had not yet concluded the presentation of its evidence. The State is also entitled to due process in criminal cases, that is, a fair opportunity to prosecute and convict. The Court has always accorded this right to the prosecution, and where the right had been denied, had promptly annulled the offending court action.[29]

Furthermore, the haphazard manner by which Prosecutor Salindong handled the case for the State will not pass unnoticed by the Court. It is the duty of the public prosecutor to bring the criminal proceedings for the punishment of the guilty. Concomitant with this is the duty to pursue the prosecution of a criminal action and to represent the public interest.[30] With these standards, we thus find Prosecutor Salindong remiss in the performance of his responsibilities. He gravely abused his discretion by resting the case without adducing evidence for the State and without ensuring that petitioner had signed the Joint Stipulation of Facts before it was submitted to the Sandiganbayan. As a result, the prosecution was denied due process.

In light of the foregoing, the Sandiganbayan was therefore correct in allowing the State to adduce additional evidence. The State should not be prejudiced and deprived of its right to prosecute cases simply because of the ineptitude or nonchalance of the Special Prosecutor.[31] A contrary ruling would result in a void proceedings.

In *Merciales v. Court of Appeals*,[32] the Court annulled the acquittal of the accused based on the demurrer to evidence filed by the defense. It was held that the prosecutor's failure to present sufficient evidence to convict the accused and the indifference displayed by the trial court in not requiring the prosecutor to present additional evidence resulted in the denial of the State's right to due process warranting the reversal of the judgment of acquittal on the ground of absence of jurisdiction. Thus -

... [T]he public prosecutor knew that he had not presented sufficient evidence to convict the accused.... he deliberately failed to present an available witness and thereby allowed the court to declare that the prosecution has rested its case.... he was remiss in his duty to protect the interest of the offended parties.... [and] was guilty of blatant error and abuse of discretion, thereby causing prejudice to the offended party...

By refusing to comply with the trial court's order to present evidence, the public prosecutor grossly violated the above-quoted rule. Moreover, the public prosecutor violated his bounden duty to protect the interest of the offended party.... After the trial court denied his motion to discharge Nuada as a state witness, he should have proceeded to complete the evidence of the prosecution by other means. Instead, he willfully and deliberately refused to present an available witness, i.e., the NBI Agent who was present in court on that date and time. The public prosecutor was duty-bound to exhaust all available proofs to establish the guilt of the accused and bring them to justice for their offense against the injured party.

Likewise guilty for serious nonfeasance was the trial court. Notwithstanding its knowledge that the evidence for the prosecution was insufficient to convict, especially after the public prosecutor tenaciously insisted on utilizing Nuada as state witness, the trial court passively watched as the public prosecutor bungled the case. The trial court was well aware of the nature of the testimonies of the seven prosecution witnesses that have so far been presented. Given this circumstance, the trial court, *motu proprio*, should have called additional witnesses for the purpose of questioning them himself in order to satisfy his mind with reference to particular facts or issues involved in the case.

Based on the foregoing, it is evident that petitioner was deprived of her day in court. Indeed, it is not only the State, but more so the offended party, that is entitled to due process in criminal cases. Inasmuch as the acquittal of the accused by the court *a quo* was done without regard to due process of law, the same is null and void. It is as if there was no acquittal at all, and the same cannot constitute a claim for double jeopardy.

In the same vein, the right to speedy trial cannot be successfully invoked where to sustain the same would result in a clear denial of due process to the prosecution. While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends upon circumstances. It secures rights to the accused, but it does not preclude the rights of public justice. Also, it must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.[33]

As significant as the right of an accused to a speedy trial is the right of the State to prosecute people who violate its penal laws.[34] The right to a speedy trial is deemed violated only when the proceeding is attended by vexatious, capricious and oppressive delays.[35] In the instant case, allowing the prosecution to present additional evidence, is a lawful exercise of due process and is certainly not intended to vex or oppress the petitioner. In the balancing test used to determine whether an accused had been denied speedy disposition of cases, the scales tilt in favor of allowing the prosecution to adduce further evidence. Slowly but surely, justice and due process would be afforded to the prosecution and to petitioner as well who would have the chance to present counter evidence. On the other hand, to erroneously put premium on the right to speedy trial in the instant case and deny the prosecution's prayer to adduce additional evidence would logically result in the dismissal of the case for the State. There is no difference between an order outrightly dismissing the case and an order allowing the eventual dismissal thereof. Both would set a dangerous precedent which enables the accused, who may be guilty, to go free without having been validly tried, thereby infringing the interest of the society.

Neither can petitioner capitalize on the pendency of his case since 1998. Note that the 1994 anonymous complaint[36] against petitioner was indorsed for investigation by the Office of the Ombudsman to the National Bureau of Investigation which submitted its findings in 1995. On March 15, 1996, the Ombudsman for Luzon recommended the filing of a complaint for violation of Section 3(e) of RA No. 3019,[37] followed by another recommendation from the Graft Investigation Officer on July 14, 1998 for the institution of an Information against petitioner.[38] After Ombudsman Aniano Desierto's approval of said resolution on February 5, 1999,[39] the Special Prosecutor filed the Information on February 10, 1999. The arraignment on April 13, 1999, was

followed by seven (7) requests of petitioner to travel abroad, all of which were granted by the Sandiganbayan.[40] On June 28, 2002, the latter directed the counsels to submit a Joint Stipulation of Facts, which was presented on March 24, 2003.[41] Considering the difficulty of obtaining a quorum in the Sandiganbayan due to the retirement of the Justices, the presentation of the prosecution's evidence scheduled on May 19 & 20 and July 8 & 9, 2003, were moved to September 8 & 9[42] and November 10 & 11, 2003. On the latter dates, however, the prosecution witnesses failed to appear, prompting the Special Prosecutor to manifest his intention to rest the case on January 12, 2004.

All this time, however, petitioner never invoked his right to speedy trial. In *Guerrero v. CA*,[43] it was held that failure to seasonably raise the right to speedy trial precludes the accused from relying thereon as a ground to dismiss the case. He is deemed to have slept on his rights by not asserting the right to speedy disposition at the earliest possible opportunity. The Court explained its ruling in this wise:

In the case before us, the petitioner merely sat and waited after the case was submitted for resolution in 1979. It was only in 1989 when the case below was re-raffled from the RTC of Caloocan City to the RTC of Navotas-Malabon and only after respondent trial judge of the latter court ordered on March 14, 1990 the parties to follow-up and complete the transcript of stenographic notes that matters started to get moving towards a resolution of the case. More importantly, it was only after the new trial judge reset the retaking of the testimonies to November 9, 1990 because of petitioner's absence during the original setting on October 24, 1990 that the accused suddenly became zealous of safeguarding his right to speedy trial and disposition.

...

... It is fair to assume that he would have just continued to sleep on his right - a situation amounting to laches - had the respondent judge not taken the initiative of determining the non-completion of the records and of ordering the remedy precisely so he could dispose of the case. The matter could have taken a different dimension if during all those ten years between 1979 when accused filed his memorandum and 1989 when the case was re-raffled, the accused showed signs of asserting his right which was granted him in 1987 when the new constitution took effect, or at least made some overt act (like a motion for early disposition or a motion to compel the stenographer to transcribe notes) that he was not waiving it. As it is, his silence would have to be interpreted as a waiver of such right.

In *Dela Peña v. Sandiganbayan*,[44] the Court denied a petition seeking to quash the Information holding that the silence of the accused amounted to laches. In the said case, the investigatory process was set in motion on August 14, 1992 and the Information was filed on May 6, 1997. After the arraignment was set sometime in December 1999, the accused filed a motion to quash on December 21, 1999, based on the violation of his right to due process and prompt disposition of cases. In sustaining the Sandiganbayan's denial of the motion to quash, the Court ratiocinated that:

Moreover, it is worthy to note that it was only on 21 December 1999, after the case was set for arraignment, that petitioners raised the issue of the delay in the conduct of the preliminary investigation. As stated by them in their Motion to Quash/Dismiss, "[o]ther than the counter-affidavits, [they] did nothing." Also, in their petition, they averred: "Aside from the motion for extension of time to file counter-affidavits, petitioners in the present case did not file nor send any letter-queries addressed to the Office of the Ombudsman for Mindanao which conducted the preliminary investigation." They slept on their right - a situation amounting to laches. The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they were not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in *Alvizo*, the petitioner therein was "insensitive to the implications and contingencies" of the projected criminal prosecution posed against him "by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay

seems to have been without his objection, [and] hence impliedly with his acquiescence.

The foregoing doctrines were reiterated in *Bernat v. Sandiganbayan*,^[45] where the claim of denial of the right to a speedy disposition of his criminal case was brushed aside by the Court considering that the accused waited eight years before complaining of the delay in the disposal of his case.

The rule as consistently applied in this jurisdiction is that objections to the sluggish disposition of the case must be positively invoked by the accused and a demand therefor must be openly made. The Court ruled in *Corpuz v. Sandiganbayan*,^[46] that dismissal of a case is not justified simply because the prosecutor had gone to sleep at the switch while the defendant and his counsel rested in silence. The accused must not be rewarded by the dismissal of the case and the State and society punished by the neglect of the prosecutor unless the accused himself calls the attention of the court on the matter.

We see no reason to deviate from the jurisprudential holdings and treat the instant case differently. Petitioner never contested the prosecutorial proceedings nor timely challenged the pendency of the case after arraignment. It was only in the Motion for Reconsideration of the June 14, 2004 order denying the demurrer to evidence and setting the case for reception of additional evidence for the prosecution, that petitioner insisted on his right to speedy trial. Under Section 9, Rule 119 of the Rules of Court, failure of the accused to move for dismissal prior to trial constitutes a waiver of his right to speedy trial. His failure therefore to timely question the delay in the disposition of the case amounted to an implied acceptance of such delay and a waiver of the right to question the same. Like any other right conferred by the Constitution or statute, except when otherwise expressly so provided, the speedy trial right may be waived when not positively asserted. Thus, if there was a delay in the disposition of the case, petitioner is not entirely without blame.^[47]

Then too, while petitioner is free to acknowledge or reject the Joint Stipulation of Facts, the trial court cannot be said to have abused its discretion in ordering petitioner to sign the same considering that said stipulation was not yet formally offered by the prosecution. At that stage, said document cannot yet be considered "officially" an evidence for the prosecution. The refusal therefore of petitioner to affix his signature in the said stipulation or in the Pre-trial Order embodying the same is sufficient justification for the trial court to recall the latter and in the exercise of its sound discretion, set the case for presentation of the prosecution's evidence.

Finally, if petitioner disagrees with the denial of his motion for leave to file demurrer to evidence, his remedy is not to file a petition for certiorari but to proceed with the presentation of his evidence and to appeal any adverse decision that may be rendered by the trial court. The last sentence of Section 23, Rule 119 of the Rules of Court, provides that "the order denying a motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or certiorari before judgment."

WHEREFORE, the petition is DISMISSED. The June 14, 2004 Order of respondent Sandiganbayan in Criminal Case No. 25160 which denied petitioner's motion for leave to file demurrer to evidence and set the case for presentation of evidence for the prosecution; as well its July 28, 2004 Resolution denying petitioner's motion for reconsideration are AFFIRMED.

The instant case is REMANDED to the Sandiganbayan for further proceedings.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 57.

[2] Id. at 58.

[3] Id. at 59.

[4] Records, Vol. I, p. 52-A.

[5] Rollo, pp. 61-62.

[6] Records, Vol. I, p. 257.

[7] Rollo, p. 249.

[8] Id. at 68-79.

[9] Id. at 89-91.

[10] Id. at 88.

[11] Id. at 237-241.

[12] Id. at 97-99.

[13] Id. at 57.

[14] Id. at 58.

[15] One of the witnesses presented by the prosecution was Cresente Umbao, the appointee allegedly granted unwarranted benefit by petitioner. (Records, Vol. II, p. 376) Petitioner who is now the Representative of the First Congressional District of Oriental Mindoro, was suspended pendente lite by the Sandiganbayan in its resolution dated July 14, 2005. (See Records, Vol. II, pp. 382-386)

[16] G.R. No. 86025, November 28, 1989, 179 SCRA 648, 651-652.

[17] Rollo, pp. 80-84.

[18] Records, Vol. II, pp. 28-32.

[19] Id. at 21-25.

[20] Rollo, p. 71.

[21] 8 Phil. 388, 390 (1907).

[22] *United States v. Gallegos, et al.*, 37 Phil. 289, 293-294 (1917).

[23] 202 Phil. 587 (1982).

[24] 335 Phil. 268 (1997).

[25] 36 Phil. 804 (1917).

[26] *People v. Januario*, supra at 291.

[27] *People v. Tee*, G.R. Nos. 140546-47, January 20, 2003, 395 SCRA 419, 444-445.

[28] Id. at 444.

[29] *People v. Navarro*, G.R. Nos. L-38453-54, March 25, 1975, 63 SCRA 264, 272-273.

[30] *Merciales v. Court of Appeals*, 429 Phil. 70, 78-79 (2002).

- [31] Corpuz v. Sandiganbayan, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 321.
- [32] Supra at 79-81.
- [33] Corpuz v. Sandiganbayan, supra at 312-313.
- [34] People v. Tampal, 314 Phil. 35, 41 (1995).
- [35] Hipolito v. Court of Appeals, G.R. Nos. 108478-79, February 21, 1994, 230 SCRA 191, 201.
- [36] Records, Vol. I, p. 10.
- [37] Id. at 7.
- [38] Id. at 6-9.
- [39] Id. at 5.
- [40] Id. at pp. 53, 71, 89-90, 115-116, 147-148, 165-166 and 186.
- [41] Id. at 253.
- [42] Id. at 279 and 284.
- [43] 327 Phil. 496, 507-509.
- [44] 412 Phil. 921, 932 (2001).
- [45] G.R. No. 158018, May 20, 2004, 428 SCRA 787, 789-791.
- [46] Corpuz v. Sandiganbayan, supra at 318.
- [47] SPO1 Sumbang, Jr. v. Gen. Court Marcial PRO-Region 6, 391 Phil. 929, 936 (2000).

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