

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DIR. GEN. CESAR P. NAZARENO, DIR. EVERLINO NARTATEZ, DIR. NICASIO MA. S. CUSTODIO, AND THE SANDIGANBAYAN (FIFTH DIVISION), RESPONDENTS.

G.R. No. 168982. August 05, 2009

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168982/>

BRION, J.:

The People of the Philippines seeks, through this petition for review on certiorari,[1] the reversal of the decision of the Sandiganbayan (Fifth Division) in *People of the Philippines v. Dir. Gen Cesar P. Nazareno (Ret.), Dir. Gen Everlino Nartatez (Ret.), and Dir. Gen Nicasio Ma. S. Custodio (Ret.)*, CRIM. CASE No. 23030. The Sandiganbayan acquitted the respondents Cesar Nazareno, Everlino Nartatez and Nicasio Ma. Custodio (collectively, the respondents) of the charge of violating Section 3(g) of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act.

THE ANTECEDENTS

Three (3) separate but related contracts - between the Philippine National Police (PNP) and Beltra Industries, for the purchase and delivery of Caliber .45 Thompson Brand pistols - spawned the filing of the criminal charge against the respondents. The first of the contracts, covered by Purchase Order (PO) No. 081190-654 dated November 8, 1990, was for the purchase and delivery of 2,822 units at P18,550.30 each, for the total amount of P52,348,946.60. The second was covered by PO No. 0-240-492-185 dated April 24, 1992 for the purchase of 1,617 units for P29,995,835.10. The third was under PO No. 0-050-582-153 dated May 5, 1992, for the purchase of 1,242 units at a total price of P23,039,472.60. The purchase orders were signed by then Director General Nazareno and then Director Nartatez, while the corresponding checks were signed by then Director Custodio.

Allegations of irregularity or overpricing surrounded the procurement, leading then President Fidel V. Ramos to order the creation of a tri-agency investigating committee composed of lawyers from the PNP's Inspector General's Office, the National Police Commission, and the Office of the President. This committee found no overpricing; neither did it find collusion among the officers of the PNP participating in the transactions.

The Commission on Audit, for its part, created a special audit team to look into the same allegations of overpricing. After an investigation that compared the AFP Logistics Command (LOGCOM) purchase price of P10,5873.25 per unit for the same brand and the PNP's purchase of 5,681 units at P18,550.30 per unit, the audit team found that the PNP procurement appeared to have been overpriced; the PNP purchases, if made at the AFP LOGCOM unit price, would have cost P45 Million less.

After due proceedings and based on the report of the special audit team, the Office of the Special Prosecutor filed an information against the respondents with the Sandiganbayan. The information reads:

That on or about January 1, 1991 and May 29, 1992, and for sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the accused Cesar P. Nazareno, then Director General, Philippine National Police (PNP) and Everlino P. Nartatez and Nicasio Ma. S. Custodio, then directors of PNP Logistics Support Command, successively while in the performance of their official functions, taking advantage of their positions and committing the crimes in relation to their offices, did then and there willfully, unlawfully and criminally conspiring with one another, enter in behalf of the said PNP Contract/Document with Beltra Industries, Inc. a private enterprise at PILAND Building, Javier cor. Santillan Street, Makati for the supply of Five Thousand Six Hundred Eighty-One (5,681.00) units of Caliber .45 Pistol in the amount of One Hundred Five Million Three Hundred Eighty Four Thousand Three Hundred Fifty four Pesos and Seventy Centavos (105,384,254.70), under terms and conditions manifestly and grossly disadvantageous to the government.

The respondents pleaded not guilty to the charge.

At the trial, the People presented the members of the special audit team to testify on the overpricing that the team found. Among others, a member of the special audit team testified that there was a big difference between the AFP price and the PNP's; as shown by documents obtained from the Philippine Navy, the AFP purchased the pistols at a unit cost of P10,578.25. The People then presented the documents related to the various contracts and the documents the members of the audit team mentioned in their testimonies.

The Sandiganbayan, in its Decision,[2] graphically presented the claimed price difference as follows:

PNP PO No.

Qty.

Unit Cost

Amount

LOGCOM U/C

Amount

Price Difference

081190-854

2822

P18,550.30

P52,348,946.60

P10,578.25

P29,851,821.50

P22,497,125.10

240492-185

1617

P18,550.30

P29,995,835.10

P10,578.25

P17,105,030.25

P12,890,804.85

050592-153

1242

P18,550.30

P23,039,472.60

P10,578.25

P13,138,186.50

P9,901,286.10

P105,384,254.30

P60,095,038.25

P45,289,216.05

In their defense, the respondents took the basic position that the AFP's unit price could not be the basis for a comparison to support the conclusion that the PNP purchase was overpriced. They presented witnesses[3] who commonly testified that the AFP purchases were made under a foreign military assistance program - the Foreign Military Sales (FMS) program - extended by the United States of America (US) to the Philippines pursuant to the Mutual Defense Treaty and the Military Assistance Agreement of 1953. The FMS program, one of the witnesses testified, was a security assistance program that allowed eligible countries to purchase defense articles, defense services and training from the US government; it was "non-appropriated," which meant that a foreign military financing program was available for loan grants to eligible countries. US laws (specifically, the Arms Export Control Act [AECA]), however, imposed certain limitations, one of which was that the PNP, as a police organization, was not entitled to FMS benefits. Evidence of this (duly marked and presented) was the US JUSMAG Chief's letter to then AFP Chief of Staff Lisandro Abadia. Another witness also claimed that a comparison showed a big difference between the cost of articles acquired through FMS and those through direct commercial sales; a local purchase was 2 to 3 times more expensive than a purchase through FMS, although local procurement was faster than FMS. Still another witness echoed this statement through the declaration that the AFP could not have purchased pistols in the local market at a price or cost similar to the FMS price.

The respondents also presented some of the members of the tri-agency team that investigated the alleged overpricing[4] all of them testified that they found no irregularity in the procurement of the pistols. The respondents completed their case with the presentation of their documentary evidence, including those identified or touched upon in the testimonies of their witnesses.

The Verdict of Acquittal

The Sandiganbayan agreed with the respondents' submissions and acquitted the respondents after trial. It concluded that the AFP prices did not offer sufficient basis for comparison to be able to establish firmly the alleged overpricing in the purchase of the subject firearms by the PNP. The Sandiganbayan based this conclusion on the testimonies of the respondents' witnesses whose competence on the matters they testified on was never questioned or disputed by the prosecution.

The Sandiganbayan further observed that the audit team followed a flawed procedure in reaching its overpricing conclusion. The audit team merely relied on the AFP Supply Issuance and did not conduct any actual canvass of the gun prices. Thus, to the Sandiganbayan, the comparison made between the PNP price and the AFP quoted cost was substantially deficient under the prevailing rules that indispensably required an actual canvass done on different and identified suppliers to show exactly the variances in the prices of similar articles to firm up, for evidentiary purposes and to a reliable degree of certainty, a finding of overpricing. The requirement of actual canvass, according to the Sandiganbayan, was settled law as applied by this Court in *Arriola v. Commission on Audit*[5] and in *National Center for Mental Health Management v. COA*.[6] The Sandiganbayan added that Commission on Audit Memorandum No. 97-012 dated March 31, 1997 imposed stricter requirements on the process of evidence-gathering to support any audit finding of overpricing; it now required that the initial findings be supported by canvass sheets and/or price quotations indicating: (1) the identities/names of the suppliers or sellers; (2) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; (3) the specifications of the items that should match those involved in the overpricing; and (4) the purchase/contract terms and conditions that should be the same as those of the questioned transaction. The Sandiganbayan cited in this regard our ruling in *Sajul v. Sandiganbayan*[7] where we ruled that a basis for comparison had to be established to support a conclusion of overpricing; otherwise, the conclusion would be unfair.

Despite its clearly negative conclusion on the overpricing charge, the Sandiganbayan still proceeded to discuss and reject the allegation of conspiracy between and among the respondents. Noting the respondents' individual participation in the questioned transactions (i.e., the necessity of the respondents' individual signatures in the documents for the purchase of the pistols) and the evidentiary requirement that conspiracy must be proved by evidence of a chain of circumstances and may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest, the Sandiganbayan rejected allegation of conspiracy with the statement that -

X x x the Court finds that the evidence presented by the prosecution, which focused more on documents to prove the alleged overpricing, failed to show that the three accused indeed conspired with one another in entering into the subject supply contracts and in effecting the purchase of firearms through the execution of the purchase orders and the supply contracts.

THE PETITION AND THE RESPONDENTS' COMMENTS

The People filed the present petition under Rule 45 of the Rules of Court, and raised the following ISSUES:

I.

WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN TAKING JUDICIAL NOTICE OF THE ALLEGED LAWS OF THE UNITED STATES OF AMERICA AND IN APPLYING THE SAME TO THE CASE AT BAR

II.

WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN RELYING SOLELY ON THE TESTIMONIES OF DEFENSE WITNESSES AS TO THE EXISTENCE AND EFFECTIVITY OF THE LAWS OF THE UNITED STATES

III.

WHETHER OR NOT THE COURT A QUO GRAVELY ERRED IN NOT APPRECIATING THE EVIDENCE OF THE PROSECUTION WHICH PROVED BEYOND REASONABLE DOUBT THAT THE PNP PURCHASED THE 5,681 UNITS OF PISTOLS AT AN OVERPRICED AMOUNT OF P18,550.30 PER

UNIT

IV.

WHETHER OR NOT DOUBLE JEOPARDY HAS ALREADY ATTACHED TO HEREIN RESPONDENTS AND THUS PROSCRIBES THE RESOLUTION OF THE ISSUES RAISED BY PETITIONER.

Expectedly, the respondents object to the petition mainly because the review sought violates their constitutional right against double jeopardy.[8] They assert that the petition is essentially an appeal from a judgment of acquittal or a review of alleged errors in judgment that throws the case wide open, placing the respondents in danger of being punished twice for the same offense. They also posit that a judgment of acquittal can only be challenged through a petition for certiorari under Rule 65 of the Rules of Court, citing our ruling in *People v. Sandiganbayan*[9] that only a clear showing of grave abuse of discretion or denial of due process to the State can justify a review of a judgment of acquittal through a petition for certiorari. The present petition, according to the respondents, is a Rule 45 appeal that raises errors of judgment, not errors of jurisdiction. On the merits, the respondents claim that the Sandiganbayan did not commit grave abuse of discretion in acquitting them of the criminal charge.

OUR RULING

We resolve to dismiss the petition on the basis of the double jeopardy clause of the Constitution.

Section 21, Article III of the Constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense." Section 7, Rule 117 of the Rules of Court, which implements this particular constitutional right, reads:

SEC. 7. Former conviction or acquittal; double jeopardy. -- When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[10]

A judgment of acquittal is final and is no longer reviewable.[11] It is also immediately executory and the State may not seek its review without placing the accused in double jeopardy.[12] We had occasion to fully explain the reason behind the double jeopardy rule in *People v. Velasco*[13]:

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State x x x." Thus Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right

of repose as a direct consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

The Constitution has expressly adopted the double jeopardy policy and thus bars multiple criminal trials, thereby conclusively presuming that a second trial would be unfair if the innocence of the accused has been confirmed by a previous final judgment.[14] Further prosecution via an appeal from a judgment of acquittal is likewise barred because the government has already been afforded a complete opportunity to prove the criminal defendant's culpability; after failing to persuade the court to enter a final judgment of conviction, the underlying reasons supporting the constitutional ban on multiple trials applies and becomes compelling.[15] The reason is not only the defendant's already established innocence at the first trial where he had been placed in peril of conviction, but also the same untoward and prejudicial consequences of a second trial initiated by a government who has at its disposal all the powers and resources of the State. Unfairness and prejudice would necessarily result, as the government would then be allowed another opportunity to persuade a second trier of the defendant's guilt while strengthening any weaknesses that had attended the first trial, all in a process where the government's power and resources are once again employed against the defendant's individual means. That the second opportunity comes via an appeal does not make the effects any less prejudicial by the standards of reason, justice and conscience.

Thus, the absolute and inflexible rule is that the State is proscribed from appealing the judgment of acquittal through either a regular appeal under Rule 41 of the Rules of Court, or an appeal by certiorari on pure questions of law under Rule 45 of the same Rules.

An instance when the State can challenge a judgment of acquittal is pursuant to the exercise of our judicial power "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,"[16] as implemented through the extraordinary writ of certiorari under Rule 65 of the Rules of Court. In such instance, however, no review of facts and law on the merits, in the manner done in an appeal, actually takes place; the focus of the review is on whether the judgment is per se void on jurisdictional grounds, i.e., whether the verdict was rendered by a court that had no jurisdiction; or where the court has appropriate jurisdiction, whether it acted with grave abuse of discretion amounting to lack or excess of jurisdiction. In other words, the review is on the question of whether there has been a validly rendered decision, not on the question of the decision's error or correctness. Under the exceptional nature of a Rule 65 petition, the burden - a very heavy one - is on the shoulders of the party asking for the review to show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; or of a patent and gross abuse of discretion amounting to an evasion of a positive duty or a virtual refusal to perform a duty imposed by law or to act in contemplation of law; or to an exercise of power in an arbitrary and despotic manner by reason of passion and hostility.[17]

Applying all these principles, the present Rule 45 petition must necessarily fail. Even under our most liberal reading, we cannot treat the petition as a Rule 65 petition, as it raises no jurisdictional error that can invalidate a verdict of acquittal.

The petition itself states that it was formally filed under Rule 45 of the Rules of Court and seeks to reverse and set aside the decision of the Sandiganbayan.[18] Thus, the petition's clear and unequivocal intention to seek a review on the merits of the Sandiganbayan judgment of acquittal puts it on a direct collision course with the

constitutional proscription on double jeopardy. This is more than enough reason to deny the petition.

Additionally, a Rule 45 petition can only address pure questions of law, not factual errors, committed by the tribunal below. In this petition, the People raise factual errors, or to be exact, "appreciation of evidence" errors that the descriptive term "gravely erred" cannot convert into jurisdictional errors. Specifically, the petition alleges: (1) that the Sandiganbayan gravely erred in taking judicial notice of the alleged laws of the US; (2) that the Sandiganbayan gravely erred in relying solely on the testimonies of the defense witnesses as to the existence and effectivity of the laws of the US; and (3) that the Sandiganbayan gravely erred in not appreciating the prosecution's presented evidence on the guilt of the respondents.

We add that any error that the Sandiganbayan might have committed in appreciating the evidence presented at the trial are mere errors of judgment and do not rise to the level of jurisdictional errors despite the allegation that the Sandiganbayan had "gravely erred" in appreciating the evidence. Misapplication of facts and evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.[19] That an abuse itself must be "grave" must be amply demonstrated since the jurisdiction of the court, no less, will be affected.[20] The mere fact, too, that a court erroneously decides a case does not necessarily deprive it of jurisdiction.[21]

We have consistently ruled that a Rule 65 certiorari does not involve the correction of errors of judgment:

Certiorari is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of certiorari.

The supervisory jurisdiction of a court over the issuance of a writ of certiorari cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court - on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of certiorari. Where the error is not one of jurisdiction, but of an error of law or fact - a mistake of judgment - appeal is the remedy.[22]

In this case, the Sandiganbayan's jurisdiction over the nature of the case is not disputed, nor was its jurisdiction over the respondents ever brought into question. Neither does the petition substantively and effectively impute any error based on the Sandiganbayan's grave abuse of discretion in the exercise of its jurisdiction. In other words, the petition, styled as a Rule 45 petition, is not even one that we can liberally treat as a Rule 65 certiorari petition that may permit a review of a verdict of acquittal.[23]

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico- Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., concur.
Quisumbing, J., on official leave.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 80-109.

[3] The witnesses were: (1) Wilfredo Ona, former Chief of the International Logistics Division Office of the Defense Directorate Logistics J-4, General Headquarters, Camp Aguinaldo (see summary of his testimony at pp. 91-93 of the rollo); and (2) Commodore Daniel Trinidad Delgado, former Deputy Chief of Staff for Logistics of the Chief of Staff of the Armed Forces of the Philippines (see summary of his testimony at pp. 95-97 of the rollo).

[4] The following members of the tri-agency team testified: (1) Benjamin Fajardo Valento, then Inspector General of the PNP (see the summary of his testimony at pp. 88-90 of the rollo); (2) Atty. Alexis Canonizado, representative of the National Police Commission (see the summary of his testimony at pp. 90-91 of the rollo) and Retired Colonel Rafael Ivia Jayme of the Office of the Inspector General (see the summary of his testimony at pp. 93-95 of the rollo).

[5] G.R. No. 90364, September 30, 1991, 202 SCRA 147.

[6] G.R. No. 114864, December 6, 1996, 265 SCRA 390.

[7] G.R. No. 135294, November 20, 2000, 345 SCRA 248.

[8] See: (1) Respondents Nazareno and Nartatez' joint comment; rollo, pp. 171-178, and (2) Respondent Custodio's Comment/Opposition; id., pp. 135-155.

[9] G.R. No. 152532, August 16, 2005, 467 SCRA 137.

[10] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338.

[11] *People v. Terrado*, G.R. No. 148226, July 14, 2008.

[12] *People v. Sandiganbayan*, G.R. No. 168188-89, June 16, 2006, 491 SCRA 185.

[13] G.R. No. 127444, September 13, 2000, 340 SCRA 207.

[14] *People v. Sandiganbayan*, *supra* note 12.

[15] *Ibid.*

[16] CONSTITUTION, Article VIII, Section 1, par. 2.

[17] This is how grave abuse of discretion has been defined in jurisprudence; see, for instance, *People v. Sandiganbayan*, *supra* note 12.

[18] Rollo, pp. 47, 73.

[19] *Supra* note 12.

[20] See *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008.

[21] *Supra* note 11.

[22] See *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

[23] See *People v. Terrado* and *People v. Sandiganbayan*, *supra* notes 11 and 12, respectively.

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.