

**DOMICIANO CABIGAO, NESTOR DOMACENA, ROLANDO DOBLADO,
ERNESTO PAMPUAN, EDGARDO PRADO, ROMEO DOMINICO,
RODOLFO ERESE, RAMON GARCIA, AND CARLOS PACHECO,
APPELLANTS-PETITIONERS, VS....**

G.R. No. 69422. May 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review on certiorari seeks the reversal of the judgment of conviction rendered by the respondent Sandiganbayan on October 10, 1984 in Criminal Case No. 4219 for the crime of murder with multiple frustrated and attempted murder.

The petitioners were each sentenced to suffer the penalty of reclusion perpetua with the accessory penalties attached thereto; to indemnify, jointly and severally, the heirs of the deceased victim in the amount of P30,000.00 and the other victims themselves in the amount of P5,000.00 each; and to pay actual damages plus the costs of the suit.

The information charging the petitioners with other civilians who were later excluded by the respondent court pursuant to Section 4, paragraph 4 of Presidential Decree No. 1606, as amended, reads as follows:

"That on or about February 26, 1980, at sitio Aluag, Barangay Sta. Barbara, in the Municipality of Iba, Zambales, Philippines, and within the jurisdiction of this Honorable Court, accused Domiciano Cabigao, Nestor Domacena, Ernesto Pampaun, Edgardo Prado, Rolando Doblado, all public officers having been appointed as members of the Integrated National Police, Zambales, and accused Romeo Dominico, Rodolfo Erese, Ramon Garcia and Carlos Pacheco, all civilians, conspiring and confederating with no less than four (4) PC soldiers and mutually helping one another, with deliberate intent to kill and without justifiable motive, did then and there wilfully, unlawfully and feloniously with known premeditation and abuse of superior strength, assault, attack and fire indiscriminately with their high-powered firearms and deadly weapons Teofilo R. Payumo, Sr., and (those) aboard (Teofilo's jeep) were (sic) Amante C. Payumo, Edgar Payumo, Reynaldo Ruanto, Crisanto Ruanto, Apolinario Ruanto and Exequiel Bonde, thereby causing the immediate death of Amante C. Payumo, and inflicting physical injuries to the others, as follows:

TEOFILO R. PAYUMO:

- Gunshot wound, numbering three, right anterior axillary line along the level, fourth ICS, fifth ICS and seventh ICS with metallic foreign body;

EDGAR PAYUMO:

- Multiple lacerated wound, temporo-parietal area right;
- lacerated wound, upper portion of right pinna;

- Multiple gunshot wound, right foot, with multiple metallic foreign body;
- Metallic foreign body, right eye, with subconjunctival hemorrhage;

REYNALDO RUANTO:

- Multiple gunshot wound, forehead with metallic foreign body;
- Abrasion one half (1/2) cm. in length, medial aspect right knee;
- Fracture, anterior aspect, distal third, thigh, right;

CRISANTO RUANTO:

- Compound fracture of the calcaneus, third, fourth, and fifth metatarsal bone, first, right-foot;
- Compound fracture, distal third, radius; carpal bones, first second metacarpal bones, left wrist;
- Multiple foreign bodies left facial region;

APOLINARIO RUANTO:

- Gunshot wound, right lateral aspect P3rd leg;
- Multiple linear abrasion anterior aspect right leg;
- Fracture, incomplete;

EXEQUIEL BONDE:

- Multiple abrasion forehead;
- Abrasion one half (1/2) cm. in length, supra-clavicular area, along mid-clavicular line, left;

thus performing all the acts of execution which would have caused the deaths of the aforementioned injured passengers, as consequence, but nevertheless were not produced by reason of some cause independent of the will of the accused, that is, by the timely and able medical intervention preventing their deaths, which offense was committed in relation to their office.

CONTRARY TO LAW."

From the adverse decision of the respondent court, the petitioners filed a motion for reconsideration which was denied in a resolution dated December 10, 1984.

A December 24, 1984 motion for extension of time to file petition for review was granted on January 8, 1985.

On January 11, 1985, the petitioners filed with the respondent court a motion for new trial based on: (a) newly discovered evidence under section 2(b), Rule 121 of the Rules of Court; and (b) denial of procedural due process. This motion was denied on January 31, 1985 on the ground of lack of jurisdiction.

On January 21, 1985, a petition for certiorari docketed as G.R. No. 69960 was filed assailing the resolution denying the petitioners' motion for new trial. While awaiting the outcome of their petition for certiorari in G.R. No. 69960, the petitioners, on February 21, 1985, filed before us a manifestation praying that the period for filing their petition for review in G.R. No. 69422 be suspended until final resolution of their subsequent certiorari case considering that prejudicial questions have been raised therein with a direct bearing on the petition for review.

On April 30, 1985, we denied the petition for certiorari in G.R. No. 69960 and on June 4, 1985 we denied the subsequent motion for reconsideration. Hence, this petition for review was filed on July 1, 1985 and later

supplemented on November 19, 1985. On November 7, 1985, the petitioners included a motion for new trial in this petition which we shall now resolve.

In their brief, the petitioners made, among others, the following assignments of errors:

I

RESPONDENT COURT ERRED IN DENYING PETITIONER-APPELLANTS' MOTION FOR NEW TRIAL.

II

RESPONDENT COURT ERRED IN TAKING COGNIZANCE OF THE CASE OF THE PETITIONER-APPELLANTS AND SENTENCING THEM TO RECLUSION PERPETUA THUS DEPRIVING THEM OF THE CONSTITUTIONAL GUARANTY OF EQUAL PROTECTION.

III

RESPONDENT COURT ERRED IN ALLOWING THE CONSTANT AND SUCCESSIVE CHANGING OF THE COMPOSITION OF THE SECOND DIVISION DURING THE HEARING OF PETITIONERS' CASE THUS VIOLATING SECTION 3, RULE VIII OF THE SANDIGANBAYAN RULES AND SECTION 3, PARAGRAPH 2 OF PD 1606 MAKING THE DECISION RENDERED UNDER THE CIRCUMSTANCES NULL AND VOID.

The rest of the assigned errors involve merely questions of fact. Considering our ruling in this petition, it would be premature to pass upon them at this time.

The main thrust of the above assigned errors hinges on the issue of whether or not a new trial is warranted under the circumstances of this case.

The Sandiganbayan did not pass upon the merits of the motion for a new trial. The dispositive portion of the pertinent resolution states that "(W)ithout necessarily delving into the merits and demerits of the accused's Motion For New Trial, the Court resolves to deny the aforesaid motion on the ground that this Court has no more jurisdiction over the case."

The petitioners' motion for a new trial was filed after judgment had been promulgated by the Sandiganbayan but before the decision became final and executory. It was filed with the Sandiganbayan before a petition for review was actually filed with the Supreme Court but after a motion for extension of time to file such a petition had been filed and granted. The Sandiganbayan ruled that since this Court had already assumed jurisdiction over the case when the extension of time to file a petition was granted, the lower court is deemed to have lost its jurisdiction.

The Sandiganbayan did not act with grave abuse of discretion when it declined action on a matter which the petitioners had already stated they were taking up with the Supreme Court and after we had already granted a motion for extension of time to file the petition.

Petitioners' main argument is that the trial of their case before the respondent court was irregular because the frequent changing of the composition of its Second Division during the hearing of the case was violative of section 3, Rule VIII of Presidential Decree 1606, as amended.

The record shows that Criminal Case No. 4219 was initially tried by justice Romeo M. Escareal as Chairman and Justices Moises Kallos and Ramon V. Jabson as members. They composed the Second Division of the respondent court then. On March 11 and 16 and on May 12 and 13, Justice Kallos was substituted by Justice Conrado M.

Molina. From August to September 1982, Justice Kallos was back but Justice Francisco J. Consolacion took the place of Justice Jabson. On the 25th of October of the same year, although Justice Jabson was present, the other Member, Justice Kallos, was not, and, therefore, Justice Romulo S. Quimbo sat in to complete the division. From February up to December 1983, Justices Escareal, Kallos and Consolacion tried the case. At the onset of the following year, the original Members of the division under consideration were substituted by Justices Consolacion and Quimbo. From February 21 up to April 1984, the division had Justice Jabson back in the place of Justice Consolacion. In September 1984, Justices Escareal, Molina, and Jabson sat in. When the decision was finally promulgated on October 10, 1984, it was signed by Justices Escareal, Jabson and Quimbo. The petitioners contend that there was a "rigodon de Juezes", to use their terminology, although it was Justice Escareal who consistently acted as Chairman of the Second Division throughout the duration of the petitioners' case before the respondent Court.

The Solicitor General submits that the frequent changing of the respondent court's justices during the trial of petitioners' criminal case deprived all the accused therein of their inherent right to have the same three justices hear and decide the case against them as much as possible.

Unlike in other courts, it is incumbent upon a Sandiganbayan justice trying a case assigned to his division to, as much as possible, hear all the witnesses who testify before it so that he can personally observe their demeanor while they are so testifying. The appreciation of facts with respect to cases brought before the Sandiganbayan is a more sensitive task considering that the court's present procedure does not admit of any intermediate appeal to the Court of Appeals. Both the Sandiganbayan and the Court of Appeals have by law been given the same rank. Decisions of the Sandiganbayan are reviewed only by the Supreme Court and the inquiry into factual findings looks only into substantial error or abuse of discretion.

As a general rule, changes in the composition of a court's membership during the trial or consideration of a case do not warrant a new trial. If the judge who conducted a trial and heard the testimony of witnesses is promoted, retired, dies, or is transferred or removed, it does not necessarily follow that the judge who replaces him cannot validly pronounce judgment on the basis of the evidence already adduced. The same is true of collegiate courts. Changes in the membership of the tribunal do not preclude the incumbent judges after a case is submitted for decision from including evidence they did not personally hear, among the bases for the court's judgment.

There are, however, special circumstances of this case which impelled the Solicitor General to manifest as he did and this Court to give credit to his submission.

In the first place, the petitioners are assailing the decision of the Sandiganbayan, in its capacity as a trial court.

In the interest of justice, it would be preferable for every decision of a trial court in criminal cases to pass through an intermediate appeal. The appellate inquiry into questions of fact is rather limited in petitions for review on certiorari elevated directly to this Court. Only where there is palpable error as when a factual finding is not supported by substantial evidence or when the finding results in a denial of substantial justice do we set aside the lower court's findings of facts and determine what are the true facts of the case.

The issue on absence of intermediate appeal in the Sandiganbayan as a denial of due process was earlier resolved in the leading case of *Nunez v. Sandiganbayan* (111 SCRA 433). The circumstances of the instant petition do not warrant a re-examination of the doctrine. The discussions in *Nunez v. Sandiganbayan*, however, especially in the dissenting opinions emphasize the need for more scrupulous attention to the basic rules of fairness in Sandiganbayan procedure. The Sandiganbayan was created as part of the program to restore public faith and confidence in the manner public officers perform their duties. The Constitution is unusually pre-occupied with problems of inefficiency, graft, corruption, and irresponsibility in public office. There would be no need for the

various constitutional commissions and agencies dedicated to good government had there been no negative image of the trustworthiness and performance of public officers. For this reason, it is, therefore, not enough to avoid irregularities in the course of Sandiganbayan trials. The slightest taint of unfairness should likewise be avoided.

We do not share the petitioners' interpretation which would call for a designation by the President every time a temporary vacancy in a Sandiganbayan decision is caused by illness, inhibition, or similar causes.

Section 3(2) of Presidential Decree 1486 as amended by Presidential Decree 1606 and Presidential Decree 1629 provides:

"Divisions of the Courts; Quorum. The Sandiganbayan shall sit in three divisions of three Justices each. The three divisions may sit at the same time.

"Three Justices shall constitute a quorum for sessions in division; Provided, that when the required quorum cannot be had due to the legal disqualification or temporary disability of a Justice or of a vacancy occurring therein, the President shall, upon recommendation of the Presiding Justice, designate any Justice of the Court of Appeals or Judge of the Court of First Instance or of the Circuit Criminal Court of the judicial district concerned to sit temporarily therein."

The rules of the Sandiganbayan implementing the above provision state:

"Sec. 3 Quorum. Five Justices shall constitute a quorum for sessions en banc, and three Justices for sessions in division: Provided, That when a quorum and/or the votes required for a resolution or decision of the Sandiganbayan, either en banc or in division, or the trial or hearing of cases cannot be had due to the legal disqualification or temporary disability of a Justice or of a vacancy occurring therein, the President shall, upon recommendation of the Presiding Justice, designate any Justice of the Court of Appeals, Judge of the Court of First Instance or of the Circuit Criminal Court to sit temporarily therein."

Under the above provision of P.D. 1486 as amended, the need for a presidential designation arises only when there is no member of the Sandiganbayan who is available to make up a quorum in another division. Temporary vacancies in a division occasioned by sickness, inhibition, travel, or other short-term reasons are quite frequent. The President's designation is not legally necessary nor is it desirable to secure her action everytime a two or three day vacancy is created. Pulling out a trial judge or a member of the Court of Appeals from his heavy caseloads to listen for a few days to a Sandiganbayan trial when there is another Sandiganbayan Justice available could not have been contemplated by the law.

At the same time, the too frequent rotation of Justices hearing this particular case borders on unfairness. The Sandiganbayan should devise a better system whereby, as much as possible, the same Justices who hear a case shall be the ones to decide it. The procedure in the Court of Appeals cannot be used as a precedent. Except in some isolated instances provided in Batas Pambansa Blg. 129, the Court of Appeals reviews and decides cases on the basis of the records and does not conduct trials. In reducing temporary changes in its divisions to the barest minimum, the Sandiganbayan also reduces the possibility of one Justice who hears all the witnesses, influencing the findings of the Justices who did not have the same opportunity.

There is merit in the Solicitor General's submission that a new trial is warranted in this case. In addition to the newly discovered evidence, there are serious allegations in the petition which call for a more thorough examination. Among them are:

"(1) The Philippine Constabulary soldiers who led the team looking for NPA Kumander Marcelo Garcia and who fired at the group of Teofilo Payumo, Sr. were never tried in court. Yet the policemen who were merely obeying orders from the PC officers leading them, the civilians who claim they were not even there, and the petitioners who allege they arrived four hours after the incident have been convicted.

“(2) The Fiscal who originally investigated the case ruled that ‘the shooting incident was a result of military operations and that there is no evidence on record that the shooting was otherwise.’ The petitioners were charged with criminal conspiracy for premeditated murder characterized by treachery and not for merely tagging along during routine military operations against rebels.

“(3) The petitioners allegedly arrived four hours after the shooting as part of a reenforcement group under Major Orpilla.

“(4) The statements of Narciso Boda, a relative of NPA Kumander Marcelo Garcia and of Perlita de Leon, a resident of the late Payumo's barangay surfaced only after trial. The statements appear to be both material and relevant.

The newly discovered evidence is alleged to shed light on the truth or falsity of the above allegations.

Considering all the foregoing, we agree with the Solicitor General who recommends that the petitioners' motion for a new trial be granted and that the decision under review be set aside.

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

SO ORDERED.

Yap, Fernan, Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., in the result.

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