

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (FOURTH DIVISION), B/GEN. RAYMUNDO JARQUE, 1ST LT ARTHUR TUPAZ, MAJ. AGUEDO VILCHES, MAJ. BENJAMIN MARCHAN, CAPT. RAMIRO...

G.R. Nos. 137707-11. December 17, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

A judgment of acquittal cannot be reopened or appealed because of the doctrine that nobody may be put twice in jeopardy for the same offense. Hence, even if seemingly erroneous, a judgment of acquittal is the final verdict. But where the court never acquired jurisdiction over the person of the accused, it would be grave abuse of discretion on the part of the court to acquit him.

Assailed in this petition for certiorari is the Decision[1] dated January 20, 1999 of the Sandiganbayan (Fourth Division) in Criminal Cases Nos. 17282-17286 granting the demurrer to evidence filed by the above-named respondents.

The Amended Informations filed against them are quoted below:

Criminal Case No. 17282 for robbery:

“That on or about the 24[th] day of November 1990 in the Municipality of Pulupandan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, RAYMUNDO JARQUE, being then a Brigadier General, ARTHUR TUPAZ, being then a 1[st] Lieutenant, AGUEDO VILCHES and BENJAMIN MARCHAN, both being Majors, all of the Philippine Army and all stationed at the Negros Island Command headed by accused RAYMUNDO JARQUE as its Commanding General, CAPT. RAMIRO DE JOYA, being then the Officer-in-Charge of the 601[st] CIS Provincial Field Office, Bacolod City; SGT. LEOPOLDO MARFIL, being then a Senior Police Officer 2, 331[st] PC Company, Camp Alfredo Montelibano, Jr., Camingawan, Bacolod City; SGT. ALEXIS GONZALES, being then an agent of the PNP-CIS, Bacolod City, and hence, all public officers, while in the performance of their official functions, committing the offense in relation to their office, with evident bad faith, and conspiring and confederating with one another and with MAYOR ANTONIO SUATENGCO and with EDUARDO ABAJA, a civilian agent of the PC-CIS, did then and there willfully, unlawfully, feloniously, and with intent to gain steal, take and carry away without the consent of the owner Magdaleno M. Peña one Baume and Mercier wristwatch valued at P65,000.00, one M-16 Colt with Serial No. 900370, one M-16 Hydramatic with Serial No. 3399912, one 12-gauge Benelli shotgun with Serial No. 201700, and cash amounting to P85,000.00, by forcibly opening the cabinets inside the residential house of Soledad O. Montilla, thus causing damage and prejudice to Magdaleno M. Peña in the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), Philippine Currency.

CONTRARY TO LAW.”[2]

Criminal Case No. 17283 for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act:

“That on or about the 24[th] day of November 1990 in the Municipality of Pulupandan, Province of Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, Raymundo Jarque, being then a Brigadier General, Arthur Tupaz, being then a 1st Lieutenant, Aguedo Vilches and Benjamin Marohan, being then both Majors, all of the Philippine Army and all stationed at the Negros Island Command headed by accused Raymundo Jarque as the Commanding General, Capt. Ramiro de Joya, being then the Officer-in-Charge of the 601[st] CIS Provincial Field Office, Bacolod City; Sgt. Eduardo Jison, being then a Senior Police Officer 2, 601[st] Provincial Field Office, Bacolod City; Sgt. Leopoldo Marfil, being then a Senior Police Officer 2, 331[st] PC Company, Camp Alfredo Montelibano, Camingawan, Bacolod City; Sgt. Alexis Gonzales, being then a Police Corporal, Bacolod Police Station; Sgt. Alexander Tan, being then an Agent of the PNP-CIS, Bacolod City; Sgt. Rico Bondoc & Sgt. Rosenio Bersal, being both members of the CIS-PNP, and hence, all public officers, while the performance of their official functions, committing the offense in relation to their office, with evident bad faith, and conspiring and confederating with one and another and with Mayor Antonio Suatengco, Eduardo Abaja, as civilian agent of the PC-CIS, Jesus Clavecilla, Nelson Alvañez, Manuel Malapitan, Sr., Rodolfo Talabon, Reming Jovenes and Atty. Allan Zamora, all private individuals, did then and there willfully, unlawfully and criminally cause undue injury to one Soledad Oppen Montilla and her attorney-in-fact Magdaleno Peña in the following manner; accused having been restrained by the Court of Appeals in CA-G.R. SP No. 23469 entitled “Soledad Oppen Montilla v. Hon. Marietta Aliño, et al” from implementing the Orders dated October 22, 1990 and November 20, 1990 of the Regional Trial Court of Negros Occidental, Branch 62, Bago City in Civil Case No. 394, and/or despite having prior knowledge of a Temporary Restraining Order to this effect issued by the Court of Appeals, insisted in implementing the aforesaid Orders to reinstate Bonifacio Peña in possession of the residential house belonging to Soledad O. Montilla, in complete disregard of the Temporary Restraining Order issued by the Court of Appeals, and with the use of military vehicles and armaments, with the assistance of 150 military personnel, and without securing a break-open order from the court, the accused succeeded in destroying by means of force a portion of the perimeter fence of the compound where the aforesaid house is situated and thereafter opened the main gate of the compound, and after gaining entry thereto, took over the premises and the residential house therein, which act of defiance and unauthorized enforcement caused undue injury to Soledad Oppen Montilla and Magdaleno Peña.

CONTRARY TO LAW.”[3]

Criminal Case No. 17284 for qualified theft:

“That on or about the 3rd day of January 1991 in the Municipality of Pulupandan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, RAYMUNDO JARQUE, being then a Brigadier General, ARTHUR TUPAZ, being then a 1[st] Lieutenant, AGUEDO VILCHES and BENJAMIN MARCHAN, both being Majors, all of the Philippine Army and all stationed at the Negros Island Command headed by accused RAYMUNDO JARQUE as its Commanding General, CAPT. RAMIRO DE JOYA, being then the Officer-in-Charge of the 601[st] CIS Provincial Field Office, Bacolod City; SGT. LEOPOLDO MARFIL, being then a Senior Police Officer 2, 331[st] PC Company, Camp Alfredo Montelibano, Jr., Camingawan, Bacolod City; SGT. ALEXIS GONZALES, being a Police Corporal in the Bacolod Police Station, while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with one another and with MAYOR ANTONIO SUATENGCO, being then the Municipal Mayor of Pulupandan, Negros Occidental, and in the company of other unidentified military personnel, and after having illegally entered the fishpond of one Soledad Oppen Montilla situated at Barangay Ubay, Pulupandan, Negros Occidental, did then and there willfully, unlawfully, feloniously, and with intent to gain harvest, take and carry away on board a dump truck 2 tons or 2,000 kilos of prawns from the aforesaid fishpond without the consent of said Soledad Oppen Montilla, thereby causing damage and prejudice to her in the amount of TWO HUNDRED SIXTY THOUSAND PESOS

(P260,000.00), Philippine Currency, computed at the prevailing rate of P130.00 per kilo.

CONTRARY TO LAW.”[4]

Criminal Case No. 17285 for qualified theft:

“That on or about the 3rd day of January 1991 in the Municipality of Pulupandan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, RAYMUNDO JARQUE, being then a Brigadier General, ARTHUR TUPAZ, being then a 1st Lieutenant, AGUEDO VILCHES and BENJAMIN MARCHAN, both being Majors, all of the Philippine Army and all stationed at the Negros Island Command headed by accused RAYMUNDO JARQUE as its Commanding General, CAPT. RAMIRO DE JOYA, being then the Officer-in-Charge of the 601[st] CIS Provincial Field Office, Bacolod City; SGT. LEOPOLDO MARFIL, being then a Senior Police Officer 2, 331[st] PC Company, Camp Alfredo Montelibano, Jr., Camingawan, Bacolod City; SGT. ALEXIS GONZALES, being a Police Corporal in the Bacolod Police Station, while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with one another and in the company of other unidentified military personnel, and after having illegally entered the fishpond of one Soledad Oppen Montilla situated at Barangay Ubay, Pulupandan, Negros Occidental, did then and there willfully, unlawfully, feloniously, and with intent to gain harvest, take and carry away on board a dump truck 2.5 tons or 2,500 kilos of prawns from the aforesaid fishpond without the consent of said Soledad Oppen Montilla, thereby causing damage and prejudice to her in the amount of THREE HUNDRED TWENTY FIVE THOUSAND PESOS (P325,000.00), Philippine Currency, computed at the prevailing rate of P130.00 per kilo.

CONTRARY TO LAW.”[5]

Criminal Case No. 17286 for qualified theft:

“That on or about the 3rd day of January 1991 in the Municipality of Pulupandan, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, RAYMUNDO JARQUE, being then a Brigadier General, ARTHUR TUPAZ, being then a 1[st] Lieutenant, AGUEDO VILCHES and BENJAMIN MARCHAN, both being Majors, all of the Philippine Army and all stationed at the Negros Island Command headed by accused RAYMUNDO JARQUE as its Commanding General, CAPT. RAMIRO DE JOYA, being then the Officer-in-Charge of the 601[st] CIS Provincial Field Office, Bacolod City; SGT. LEOPOLDO MARFIL, being then a Senior Police Officer 2, 331[st] PC Company, Camp Alfredo Montelibano, Jr., Camingawan, Bacolod City; SGT. ALEXIS GONZALES, being a Police Corporal in the Bacolod Police Station, while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with one another and with MAYOR ANTONIO SUATENGCO, being then the Municipal Mayor of Pulupandan, Negros Occidental, and in the company of other unidentified military personnel, and after having illegally entered the fishpond of one Soledad Oppen Montilla situated at Barangay Ubay, Pulupandan, Negros Occidental, did then and there willfully, unlawfully, feloniously, and with intent to gain harvest, take and carry away on board a dump truck 500 kilos of prawns from the aforesaid fishpond without the consent of said Soledad Oppen Montilla, thereby causing damage and prejudice to her in the amount of SIXTY FIVE THOUSAND PESOS (P65,000.00), Philippine Currency, computed at the prevailing rate of P130.00 per kilo.

CONTRARY TO LAW.”[6]

When arraigned, the respondents, duly-assisted by counsel, pleaded not guilty to all the charges. Respondents Jesus Clavecilla[7] and Manuel Malapitan, Sr. were never arraigned.

The evidence for the prosecution shows that Soledad Oppen Montilla (now deceased) was the owner of a residential house and a prawn farm in Barangay Ubay, Pulupandan, Negros Occidental. She has two grandsons: brothers Magdaleno and Bonifacio Peña.

Initially, Bonifacio managed Soledad's properties and businesses. He was then in possession of her residential house.

On April 3, 1990, Soledad executed a Special Power of Attorney appointing Magdaleno as her attorney-in-fact and giving him the powers of general supervision, control, and management of her family properties. Consequently, Bonifacio was ejected from her residential house and Magdaleno took possession of it.

Bonifacio then threatened to evict Magdaleno from the residential house. This prompted Magdaleno to file with the Regional Trial Court of Bago City a petition for injunction with prayer for a temporary restraining order (TRO), docketed as Civil Case No. 394.

The trial court, after hearing the case on the merits, issued an Order denying Magdaleno's petition and reinstating Bonifacio "to his possession of the residential house."

Magdaleno filed a motion for reconsideration but it was denied.

After the Order became final and executory, the trial court, on November 23, 1990, issued a writ of execution, designating the Commanding Officer of the Criminal Investigation Services (CIS) at Bacolod City as Special Sheriff to implement the writ. The Commanding General of the Negros Island Command of the Armed Forces of the Philippines was also mandated to give full assistance to the Special Sheriff.

Meanwhile, Magdaleno filed with the Court of Appeals a petition for certiorari with prayer for a TRO, docketed as CA-G.R. SP No. 23469, assailing the trial court's Order dated October 22, 1990.

On November 23, 1990, (the day the trial court issued the writ of execution), the Court of Appeals granted Magdaleno's prayer for a TRO.

The following day, November 24, 1990, Magdaleno's counsel furnished the Provincial Commander of the Philippine Constabulary-Integrated National Police (PC-INP) a copy of the TRO from the Court of Appeals. In turn, the latter apprised the CIS and the Commanding General of the Negros Island Command about the same TRO.

Respondents (military and police officers) nonetheless proceeded to enforce the writ. They forcibly entered Soledad's residential house. Respondent Brigadier General Raymundo Jarque directed the operation through a radio. Inside the compound, Magdaleno showed them a copy of the TRO issued by the Court of Appeals, but they disregarded it. The civilian respondents, Pulpandan Mayor Antonio Suatengco, Atty. Alan Zamora, Jesus Clavecilla and Manuel Malapitan, Sr., joined the men in uniform. The respondents then forced open several cabinets and took a Baume & Mercier watch, two M-16 assault rifles, a Benelli shotgun, and P85,000.00 in cash. Magdaleno then left the compound.

Respondents occupied the premises from November 24, 1990 to January 3, 1991. On November 27, 1990, they entered Soledad's fishpond located some two (2) kilometers from the residential house and harvested 2.5 tons of prawns. Despite the directive of former President Fidel V. Ramos, then the Secretary of National Defense, to respondents to comply with the TRO, they remained obstinate and harvested more prawns on December 6, 1990 and January 3, 1991.

Meanwhile, on May 30, 1991, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 23469 in favor of Magdaleno, restraining and prohibiting Bonifacio from taking possession of the residential house, thus:

"WHEREFORE, the petition is GRANTED. The orders of October 22, 1980, November 20 and 21, 1990 are declared null and void. The preliminary injunction is made permanent, and private respondent Bonifacio M. Peña is hereby restrained and prohibited from entering in, and interfering with the use, occupation, and

enjoyment of, petitioner's residential house and compound in Barrio Ubay, Pulupandan, Negros Occidental.

SO ORDERED.”[8]

At the instance of Magdaleno, the Office of the Ombudsman filed with the Sandiganbayan, the Informations (earlier mentioned) for robbery, violation of the Anti-Graft and Corrupt Practices Act, and three (3) counts of qualified theft against herein respondents.

After the prosecution had rested its cases, the defense filed, without leave of court, a demurrer to evidence on the ground that the prosecution failed to prove the guilt of respondents beyond reasonable doubt.

On January 20, 1999, the Sandiganbayan rendered its Decision granting respondents' demurrer to evidence and acquitting all the respondents for insufficiency of evidence, thus:

“WHEREFORE, premises considered, for insufficiency of evidence, the Demurrer to Evidence is hereby granted. For failure of the prosecution to adduce evidence to overturn the presumption of innocence enjoyed by the herein accused, all the Informations in the above-entitled cases are hereby dismissed. As all the accused were already arraigned, any dismissal at this stage of the proceedings will be tantamount to an acquittal. Consequently, all the accused namely: B/GEN. RAYMUNDO JARQUE, ARTHUR TUPAZ, AGUEDO VILCHEZ, BENJAMIN MARCHAN, CAPT. RAMIRO DE JOYA, SGT. EDUARDO JISON, SGT. LEOPOLDO MARFIL, SGT. ALEXIS GONZALES, SGT. ALEXANDER TAN, SGT. RICO BONDOC, SGT. ROSENDO BERSAL, EDUARDO ABAJA, MAYOR ANTONIO SUATENGCO, JESUS CLAVECILLA, NELSON ALVAÑEZ, MANUEL MALAPITAN, SR., RODOLFO TALABON, REMING JOVENES, and ATTY. ALLAN ZAMORA are hereby acquitted of the crimes charged. The bail bonds for their provisional liberty are hereby cancelled.

SO ORDERED.”[9]

In acquitting respondents, the Sandiganbayan held that they were only seeking to implement a lawful order of the trial court. They came to know of the TRO issued by the Court of Appeals only after they had implemented the writ of execution. The charges were fabricated to enable Magdaleno to get even with the respondents for implementing the writ.

The Sandiganbayan's ratiocination is quoted as follows:

“The crime of Robbery, defined and punished under Articles 293 and 294 contemplates of two (2) situations, the taking of personal property with the use of force against persons or the employment of force upon things.

Apparently, herein accused are charged of having committed robbery with the use of force upon things, referring to the opening of the cabinets inside the bedroom of Magdaleno Peña on the 24[th] day of November 1990 while inside a residential house owned by Soledad Montilla. The Information alleges the taking of a Baume & Mercier wristwatch valued at P65,000.00; one (1) M-16 armalite rifle with serial number 900370 valued at P25,000.00; one (1) 12-gauge Benelli shotgun; and cash amounting to P85,000.00, for a total value of P200,000.00. When computed accurately, it should only be P175,000.00.

They are likewise charged of Qualified Theft defined and penalized under Article 310 of the Revised Penal Code.

On the three (3) cases of Qualified Theft, defined and punished under Article 310 of the Revised Penal Code, what is punished as qualified theft is the taking of fish from a fishpond or fishery. What is alleged in the three (3) Informations is the taking of kilos of prawns which definitely is not defined and punished under Article 310 of the Revised Penal Code. The allegations in the three (3) Informations, however, support the crime of Theft, defined and punished under Article 308 of the Revised Penal Code. And finally, some of the herein accused allegedly in conspiracy with private individuals violated Sec. 3 (e) of R.A. 3019, otherwise known as the

Anti-Graft and Corrupt Practices Act.

x x x

The quarrel between Atty. Magdaleno Peña, representing Soledad Oppen Montilla in this case and Bonifacio Peña is unquestionably a family feud. The Order of October 22, 1990 issued by Judge Alinio is legal nicety, inexorably unacceptable to Atty. Magdaleno Peña, the fiduciary complainant in this case but who ended up a villain. Anyone, therefore, who identified with his brother Bonifacio Peña was an instant enemy. Reminiscent of the biblical enmity between Cain and Abel. The herein accused found themselves in deep legal problem, whether to obey a Court Order or to honor an alleged Recall Order from the Honorable Court of Appeals. Evidence shows that the Order of the Honorable Court of Appeals came to the knowledge of the herein accused only after they have attempted to implement the Decision of Judge Alinio. Under Article 11 of the Revised Penal Code, fulfillment of a duty is a justifying circumstance. Obedience to an Order coming from a superior officer for some lawful purpose is likewise a justifying circumstance. General Jarque acted in obedience to a Court Order. Capt. De Joya and his men also acted in obedience to a Court Order. In order, however, that they may not put up the defense of legal duty, it was made to appear that several kilos of prawns, guns, and money were taken when the Court Order was implemented.”[10]

x x x

“On December 4, 1990, Montilla, represented by Atty. Magdaleno Peña, filed a Motion for contempt directed against Bonifacio Peña, Brig. General Jarque, Capt. Bobby de Joya, 1st Lt. Tupaz, Sgt. Jison, Eddie Abaja, Sgt. Marfil, Sgt. Alexis Gonzales, Sgt. Alexander Tan and other military personnel whose identities complainant could not yet ascertain.

x x x

The Court notes that the Motion to cite herein accused for contempt covered the period from November 23, 1990 to January 3, 1991. Notwithstanding the number of Affidavits presented to prove the contempt proceedings against herein accused, the photographs and the other documents submitted to the Court of Appeals, no allegation whatsoever was attributed to the herein accused that they committed robbery, three (3) cases of Qualified Theft and Violation of Sec. 3(e), otherwise known as the Anti-Graft and Corrupt Practices Act. The filing, therefore, of the present complaint for alleged violation of the Revised Penal Code or the Anti-Graft & Corrupt Practices act was an afterthought, perceived, conceived and apparently fabricated to get even with the herein accused for their acts in implementing the Writ of Execution issued in connection with Civil Case No. 394.

The series of acts attributed to the herein accused were intentionally done in order to attain the desired purpose of filing several cases for Violation of the Revised Penal Code and the Anti-Graft & Corrupt Practices Act.

This is not allowed under our jurisdiction. If ever herein accused are to be charged of the criminal offense, it must be for only one crime. It is called a continuous crime. A continued, continuous, and continuing crime is a single crime, consisting of a series of acts arising from one criminal resolution and is therefore, a complex crime x x x Regularity in the performance of a duty is presumed. A person is presumed innocent, unless proven otherwise. Proof to sustain a verdict of conviction must pass the test of reason. Suspicion of guilt, no matter how strong, must not be permitted to sway judgment. In view thereof, there appears no cogent reason to maintain these cases against the herein accused.”[11]

The basic issue raised by petitioner is whether the Sandiganbayan, in granting respondents’ demurrer to evidence, acted without jurisdiction or with grave abuse of discretion.

The petition is partly meritorious.

Records show that two of the respondents, Jesus Clavecilla and Manuel Malapitan, Sr., were never arraigned

before the Sandiganbayan. Nor were they ever arrested. Hence, the Sandiganbayan did not acquire jurisdiction over them.[12] Basic is the rule that before a court can act upon the case of an accused, it must first acquire jurisdiction over his person. Jurisdiction over the accused is acquired by (a) his arrest, or (b) his voluntary submission.[13] If the accused is a fugitive from justice, the court cannot even proceed with a trial in absentia, unless he has been previously arraigned.[14] We thus hold that the Sandiganbayan committed grave abuse of discretion in acquitting both respondents for lack of jurisdiction over their persons. Clearly, they could not validly file a demurrer to evidence.

With respect to the rest of the respondents, we rule that the Sandiganbayan did not abuse its discretion in granting their demurrer to evidence. Section 15, Rule 119 of the 1985 Rules on Criminal Procedure then applicable provides:

“SEC. 15. Demurrer to evidence. – After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (n)” (As amended by Resolution of the Supreme Court, dated July 7, 1988)

The above Rule authorizes the trial court to dismiss a criminal case *motu proprio* or upon motion of the accused provided that the prosecution has been given an opportunity to be heard. In the instant cases, there is no question that the prosecution had presented its evidence in support of the charges against the accused.

Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion.[15] Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its Decision to grant or deny the demurrer may not be disturbed.

Grave abuse of discretion is the capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act in contemplation of law.[16] We have carefully scrutinized the records of Criminal Cases Nos. 17282-86 and found that none of these was committed by the Sandiganbayan in granting the demurrer to evidence.

First, petitioner’s theory that the Sandiganbayan “totally disregarded” the prosecution’s evidence in granting the demurrer has no basis. Petitioner points out that the assailed Decision did not cite any transcript of stenographic notes or any of the prosecution’s documentary evidence. A decision need not be a complete recital of the evidence presented. It is sufficient if it states the facts as found by the court. To test the adequacy of the challenged Decision, the proper yardstick is Section 14 of Article VIII of the Constitution which states in part that “no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.” The purpose of this provision is to inform the parties of how the court reached its conclusion after considering the pertinent facts and the applicable laws.[17] The losing party is entitled to know why he lost and following analysis of the decision, he may elevate what he considers its errors to a higher tribunal for review. The fact that the Sandiganbayan did not cite any transcript of stenographic notes or documentary proof does not mean that it “totally disregarded” the prosecution’s evidence. In its ratiocination, the court discussed the issues as borne by the evidence and cited the laws applicable. Simply stated, its conclusion is based on the evidence presented by the prosecution and the laws applicable.

Second, the petitioner submits that inasmuch as Associate Justice Rodolfo G. Palattao did not participate in the hearing of the cases, he committed grave abuse of discretion when he penned the assailed Decision. We find nothing whimsical, capricious, or despotic on his part. It is settled that the decision of the judge who did not try the case is not by that reason alone erroneous,[18] especially when the decision has been deliberated upon by a collegiate court, like the Sandiganbayan. Significantly, the other Justices present during the entire proceedings concurred in the ponencia. The absence of a dissent is telling.

The demurrer to evidence in criminal cases, such as the one at bar, is “filed after the prosecution had rested its case,” and when the same is granted, it calls “for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused.”[19] Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.[20]

The sole office of an extraordinary writ of certiorari is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[21] For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctible through the special civil action of certiorari. To reiterate, the Sandiganbayan, in rendering the challenged Decision, acted with jurisdiction and did not gravely abuse its discretion.

WHEREFORE, the petition is GRANTED IN PART. The assailed Decision of the Sandiganbayan (Fourth Division) dated January 20, 1999 in Criminal Cases Nos. 17282-86 is AFFIRMED with MODIFICATION in the sense that the acquittal of respondents Jesus Clavecilla and Manuel Malapitan, Sr., is SET ASIDE for lack of jurisdiction. The records of these cases are hereby REMANDED to the Sandiganbayan for proper proceedings against Jesus Clavecilla and Manuel Malapitan, Sr. No pronouncement as to costs.

SO ORDERED.

Panganiban, (Chairman), Carpio-Morales, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo, p. 53-69. Penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justice Sabino R. De Leon, Jr., (subsequently a member of the Supreme Court, now deceased) and Narciso S. Nario.

[2] Id. at 210-212.

[3] Id. at 213-217.

[4] Id. at 219-219.

[5] Id. at 222.

[6] Id. at 225.

[7] “Clavecillas” in the assailed decision.

[8] Id. at 203. Penned by Associate Justice Alfredo Marigomen and concurred in by Associate Justices Artemon D. Luna and Fortunato A. Vailoces.

[9] Id. at 68-69.

[10] Decision, Sandiganbayan-Fourth Division, Rollo at 62-66.

[11] Id. at 66-68.

[12] See *Presado v. Genova*, A.M. No. RTJ-91-657, June 21, 1993, 233 SCRA 489, 514.

[13] *Gimenez and Mercado v. Nazareno*, G.R. No. 37933, April 15, 1988, 160 SCRA 1, 5; *Layosa v. Rodriguez*, G.R. No. 46080, November 10, 1978, 86 SCRA 300, 303. *Valdepeñas v. People*, G.R. No. 20867, April 30, 1966, 16 SCRA 871, 875 citing *Nilo v. Romero*, 111 Phil. 540 (1961), *Infante v. Toledo and Santiong*, 44 Phil. 834 (1918), *Banco Español v. Palanca*, 37 Phil. 921 (1918).

[14] See *FERIA & NOCHE, I CIVIL PROCEDURE ANNOTATED* (2001 Ed.) 139.

[15] *People v. Mercado*, G.R. No. 33492, March 30, 1988, 159 SCRA 453, 459.

[16] *246 Corp. v. Daway, et al.*, G.R. No. 157216, November 20, 2003.

[17] *Francisco v. Permskul*, G.R. No. 81006, May 12, 1989, 173 SCRA 324, 327.

[18] *People v. Yatco*, G.R. No. 138398, March 19, 2002, 379 SCRA 432, 444; *People v. Sansaet*, G.R. No. 139330, February 6, 2002, 376 SCRA 426, 431.

[19] *People v. City of Silay*, No. L-43790, December 9, 1976, 74 SCRA 247, cited in *Cruz v. People*, No. L-67228, October 9, 1986, 144 SCRA 677, 680.

[20] Id.

[21] *Ramnani v. Court of Appeals*, G.R. No. 101789, April 28, 1993, 221 SCRA 582, 587-588.

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