

**DANTE GUEVARRA, AUGUSTUS F. CESAR AND ADRIANO SALVADOR,
PETITIONERS, VS. THE HON. FOURTH DIVISION OF THE
SANDIGANBAYAN, PEOPLE OF THE PHILIPPINES, ZENAIDA P. PIA
AND CRESENCIANO...**

G.R. NOS. 138792-804. March 31, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 assailing the Resolution[1] of the Sandiganbayan, dated April 6, 1999 in Criminal Case Nos. 23082, 23084, 23085, 23086, 23087, 23089, 23090, 23091, 23092, 23093, 23094, 23096 and 23097, ordering the reinstatement of said criminal cases.

Cresenciano Gatchalian and Zenaida Pia, faculty members of the Polytechnic University of the Philippines (PUP), filed a complaint[2] for violation of Republic Act No. 3019 with the Office of the Ombudsman against the administrators of PUP, namely, petitioners Dr. Zenaida A. Olonan, the President, Dr. Dante Guevarra, the Vice-President for Administration and Finance, Atty. Augustus F. Cesar, Administrative Officer V, and Mr. Adriano A. Salvador, the Acting Chief of the Accounting Office. The charges were made in connection with certain questionable transactions entered into by the PUP. A special audit team of the Commission on Audit (COA) had, likewise, conducted a special audit of selected transactions, and its findings were contained in SAO-SOG Report No. 93-19. The case was docketed as COA Case No. 92-290. Petitioner Olonan submitted a copy of the said report, the Memorandum of the COA Review Panel, and her request for reconsideration of the findings of the special audit team in the said report.

An Information was, thereafter, filed in the Sandiganbayan against all the accused, including petitioner Olonan. The accusatory portion of the Information reads:

That on or about 1989 and for a period subsequent thereto, in Sta. Mesa, Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Dr. Zenaida A. Olonan, a public officer, being then the President of the Polytechnic University of the Philippines (P.U.P.), accused Dr. Dante G. Guevarra, likewise a public officer, being then the Vice-President for Administration and Finance, of the P.U.P., accused Atty. Augustus F. Cesar, also a public officer, being then an Administrative Officer V of the P.U.P., and accused Adriano A. Salvador, a public officer too, being then the Acting Chief of the Accounting Division of the P.U.P., taking advantage of their positions and the offense being committed in relation to their office, acting in evident bad faith and manifest partiality with a single criminal intent, and all together, conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally, commit the following acts, to wit:

- After the construction of eight school buildings with a total cost of P20,912,229.31, allow the non-turnover of unused construction materials and scrap construction materials to the P.U.P.;
- Make an overpayment of P1,107,056.45 as terminal leave benefits to Dr. Nemesio Prudente;
- Make a payment of P1.74 Million to 64 employees of the Bureau of Construction (B.O.C.), Department of

Public Works and Highways (DPWH), which amount is over and above the prescribed fees for technical and supervision services, and also make honoraria payments to 19 P.U.P. officials in the amount of P556,367.00 without legal basis;

- Incur an overpayment of P133,200.00 on a parcel of land in Lopez, Quezon Province, by failing to register on time a Deed of Donation covering 1,332 square meters of the aforesated property, which was embodied in a Deed of Sale covering 15,919 square meters of land;

- Make payments in the total amount of P10,646,230.28 based on blind certifications in violation of Sec. 46 of P.D. 1177, the names of creditors submitted to the DBM for purposes of cash allocation, being different from the names of the creditors in the Schedule of Accounts payable;

- Make payment for the purchase of curtains for the C.M. Recto Auditorium, exceeding the required quantity of 159 yards worth P27,462.00;

- Make payments with a total amount of P167,627.13 with the necessary documents to validate payments thereto in the: repainting of the elevated concrete tank; floor sanding and varnishing of the gymnasium; renovation of the four (4) tennis courts; and repair and painting of the Pacia Board High School Building; and

- Make an overpayment of P1.99 Million when six change-work orders in the construction of the library building were imposed with the indirect cost of 19% instead of only 16%;

thus, causing undue injury to the government in the aforesated amounts, to the damage and prejudice of the government.

CONTRARY TO LAW.[3]

The case was docketed as Criminal Case No. 22854 and raffled to the Second Division of the Sandiganbayan. On motion of the Special Prosecutor, the arraignment of the accused was reset to November 14, 1995.[4]

Graft Investigation Officer II Evelina S. Maglanoc-Reyes, recommended that the charges be dismissed.[5] However, the Ombudsman disapproved this recommendation and adopted that of Special Prosecution Officer I Cicero D. Jurado, Jr., dated July 28, 1995, to charge the accused with 17 counts of violation of Section 3(e) of Rep. Act No. 3019.[6] The accused filed a motion for the reconsideration of the Resolution.

Meanwhile, Special Prosecution Officer I Evelyn T. Lucero-Agcaoili reviewed the recommendation of Jurado, and submitted a Memorandum to the Ombudsman recommending that 17 Informations be filed against all the accused, and that the Information in Criminal Case No. 22854 be withdrawn. Hence, the Special Prosecutor filed a Motion to Withdraw Criminal Case No. 22854[7] dated January 8, 1996. Appended thereto were the 17 Informations adverted to by the Special Prosecutor.

On January 12, 1996, the Sandiganbayan granted the motion and dismissed Criminal Case No. 22854. The bond posted by the accused was, likewise, cancelled.[8] On February 28, 1996, Agcaoili submitted a Memorandum[9] to the Office of the Ombudsman recommending that the 17 Informations be maintained.

It appears, however, that the recommendation of Agcaoili was referred to retired Court of Appeals Associate Justice Alfredo Marigomen, a Special Assistant in the Office of the Ombudsman, for review. On May 24, 1996, Justice Marigomen submitted a Report[10] recommending the dropping of some of the charges against petitioner Olonan, and her retention as one of the accused in Criminal Case Nos. 23083, 23088 and 23098. The Ombudsman approved the recommendation.[11]

On June 4, 1996, the COA rendered a decision[12] in Case No. 92-290 granting the motion for reconsideration of petitioner Olonan in SAO-SOG Report No. 93-19 and exonerating her of the charges therein. On August 15,

1996, the Sandiganbayan issued a Resolution[13] requiring the Prosecutor to inform the Court when the Ombudsman received the decision of the COA in Case No. 92-290 and whether the said decision will alter the position of the prosecution.

On November 27, 1997, the Special Prosecutor filed a Manifestation and Motion[14] praying, inter alia, that the arraignment of all the accused in Criminal Case No. 23098 proceed as scheduled. They, likewise, manifested that, based on the recommendation of retired Justice Marigomen, dated May 24, 1996, 13 cases filed against the accused, specifically Criminal Case Nos. 23082, 23084, 23085, 23086, 23087, 23089, 23090, 23091, 23092, 23093, 23094, 23096 and 23097 were recommended for dismissal; he had no objection to the withdrawal of the Information in Criminal Case No. 23097 since it was merely a repetition of Criminal Case No. 23096; and with respect to the remaining four cases, it appears that one of them, specifically Criminal Case No. 23095 (withholding of RATA of Buscaino), was recommended for dismissal; in regard to the three cases, Criminal Case No. 23083 (blind certification); Criminal Case No. 23088 (floor sanding and varnishing of gymnasium) and Criminal Case No. 23098 (irregular payment of salary of COA Auditors), it appears that petitioner Olonan's participation was undisputed.[15] The accused opposed the motion.

During the hearing of November 28, 1997, the graft court consequently, directed the Special Prosecutor to file the appropriate motion with reference to the 13 criminal cases.[16] On January 8, 1998, the Prosecutor filed a Joint Reply to the pleadings of the accused, appending thereto the Report of Justice Marigomen.[17] On January 26, 1998, the graft court issued an Order dismissing Criminal Case Nos. 23082, 23084, 23085, 23086, 23087, and 23089, 23090, 23091, 23092, 23093, 23094 and 23096 to 23097; and, with reference to Criminal Case Nos. 23083, 23088 and 23098, the Office of the Special Prosecutor was given a period of 30 days within which to further review the records of the said cases and to report to the graft court, within the same period, its findings and recommendation, and the Ombudsman's action thereon, more specifically as to whether the said cases should proceed to trial or should be dismissed. The said order was purportedly based on the recommendation of Justice Marigomen which was cited by the Special Prosecutor in his Manifestation and Motion.

Consequently, the graft court held in abeyance the arraignment of petitioners Olonan, Cesar and Salvador in Criminal Case Nos. 23083, 23088 and 23098 until further assignment. Likewise, the consideration of the "Motion to Suspend Accused Pendente Lite" dated December 3, 1995 was held in abeyance until the graft court had received the Memorandum of the Office of the Special Prosecutor containing its findings and recommendations in Criminal Case Nos. 23083, 23088 and 23098, and the Ombudsman's final action thereon.[18]

When the Special Prosecutor received a copy of the Order of January 26, 1998, he filed, on February 20, 1998, a motion for the partial reconsideration of the order contending that, in his report, Justice Marigomen merely recommended that only petitioner Olonan be dropped as one of the accused persons in Criminal Case Nos. 23082, 23084, 23085, 23086, 23087, 23089, 23090, 23091, 23092, 23093, 23094, 23096 and 23097; that the said cases should be maintained as against the three other accused; that the inclusion of accused Olonan in Criminal Case Nos. 23082, 23088 and 23098 remain undisturbed; and that Criminal Case Nos. 23095 should be dismissed.[19]

The Special Prosecutor reasoned out that, as gleaned from the Memorandum of retired Justice Marigomen, the recommendation of dropping of the 13 criminal cases applied only to petitioner Olonan. Hence, there was no legal and factual basis for the dismissal of the 13 criminal cases as against petitioners Guevarra, Cesar and Salvador.[20]

The Special Prosecutor then prayed that the January 26, 1998 Order of the graft court, dismissing the above-mentioned cases against the petitioners, be reconsidered, and the 13 cases filed against them be reinstated.[21]

The petitioners opposed the motion, contending that the January 26, 1998 Order of the graft court had become final and executory. Since no appeal or a motion for reconsideration thereof was filed within the period therefor, the order of the graft court was based on no less than the Manifestation and Motion of the Special Prosecutor.

On April 6, 1999, the Sandiganbayan issued a Resolution granting the motion of the Special Prosecutor and modified its January 26, 1998 Order. The graft court set aside its Order dismissing Criminal Case Nos. 23082, 23084, 23085, 23086, 23087, 23089, 23090, 23091, 23092, 23093, 23094, 23096 and 23097 as against the petitioners and ordered the reinstatement of the said cases as against them.[22]

The graft court declared that, while the motion of the Special Prosecutor was filed three days beyond the period therefor, nevertheless, it granted the motion in the interest of substantial justice.[23]

Hence, the present petition for certiorari, assailing the April 6, 1999 Resolution of the Sandiganbayan where the following issues are raised:

- WHETHER OR NOT RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN REINSTATING THE THIRTEEN (13) CRIMINAL CASES AGAINST THE PETITIONERS ON THE BASIS OF THE MOTION FOR RECONSIDERATION FILED BY THE PROSECUTION FILED BEYOND THE FIFTEEN-DAY REGLEMENTARY PERIOD.
- WHETHER OR NOT RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING THE MOTION FOR RECONSIDERATION ON THE BASIS SOLELY OF THE GROUNDS CITED BY THE PROSECUTION.[24]

The petitioners aver that under Section 7 of Presidential Decree No. 1606 and Rule VIII of the Revised Rules of Procedure of the Sandiganbayan, respondent People of the Philippines, as plaintiff, had only 15 days from notice of the graft court's final order within which to file a motion for the reconsideration thereof. The petitioners also assert that under Section 2, Rule 45, of the 1997 Rules of Civil Procedure, the respondent People of the Philippines, had only 15 days from receipt of notice of the final order or the resolution denying its motion for reconsideration thereof within which to file a petition for review with this Court. The failure of the respondent People of the Philippines to file the said motion within the period therefor rendered the order issued by the graft court final and executory. As such, no matter how erroneous the said orders may have been, it was beyond the jurisdiction of the Sandiganbayan to set aside or nullify them. Citing the ruling of this Court in *Icao v. Apalisok*,[25] the petitioners posit that the rule applies even to criminal cases. They further posit that penal laws should be observed strictly against the State. The petitioners point out that the Special Prosecutor has not cited any justification for his failure to file the motion for partial reconsideration within the period therefore, given the fact that he was present when the graft court issued its order in open court on January 26, 1998, dismissing the 13 cases.

The petitioners further assert that in resolving whether to dismiss the 13 cases or not, it behooved the respondent People of the Philippines and the Sandiganbayan to consider not only the Report of Justice Marigomen, but also the decision of the COA in Case No. 92-290.

In its comment on the petition, respondent People of the Philippines asserts that the general rule that the periods prescribed to do certain acts must be followed is subject to exceptional circumstances. A delay may be excused on grounds of substantial justice and equity, and in the exercise of equity jurisdiction. The respondent emphasized that when the graft court gave a verbal order dismissing the 13 cases during the hearing of January 26, 1998, the Special Prosecutor objected thereto. The respondent argues that the graft court did not commit any grave abuse of its discretion in issuing its April 6, 1999 Resolution, and insists that it acted in the interest of substantial justice when it rectified its January 26, 1998 Order upon realizing that it erred in dismissing the 13 cases on the basis of

the Report of Justice Marigomen since it did not contain any such recommendation of dismissal.

In their reply, the petitioners insist that substantial justice alone without any justification of the respondent's failure to file a motion for reconsideration within the reglementary period should not prevail over the clearly laid down policy on finality of judgment and rules on reglementary period.

The petition has no merit.

The petitioners are correct in claiming that an order or resolution of the Sandiganbayan ordering the dismissal of criminal cases becomes final and executory upon the lapse of 15 days from notice thereof to the parties, and, as such, is beyond the jurisdiction of the graft court to review, modify or set aside, if no appeal therefrom is filed by the aggrieved party. However, if the Sandiganbayan acts in excess or lack of jurisdiction, or with grave abuse of discretion amounting to excess or lack of jurisdiction in dismissing a criminal case, the dismissal is null and void. A tribunal acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where a tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law.[26] A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent.[27] Such judgment or order may be resisted in any action or proceeding whenever it is involved. It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored.[28]

In the present case, we find and so hold that the Sandiganbayan acted with grave abuse of its discretion amounting to excess of its jurisdiction when it issued the Order of January 26, 1998 dismissing the 13 criminal cases based on the Manifestation and Motion of the Special Prosecutor, which was, in turn, based on the report of retired Court of Appeals Justice Marigomen. The records further show that the report of Justice Marigomen was triggered by the Recommendation of Special Prosecution Officer I Cicero Jurado, Jr., dated July 28, 1995, recommending that the 17 charges against the accused be maintained which, in effect, denied the motion for reconsideration of petitioner Olonan. The report of Justice Marigomen did not delve into and resolve the matter of the retention or dismissal of the 13 criminal cases against the petitioners precisely because the same was not referred to him for study and recommendation. Hence, Justice Marigomen merely recommended that petitioner Olonan be dropped as accused in the 13 criminal cases, and that her inclusion in Criminal Case Nos. 23083, 23088 and 23098 be maintained, thus:

WHEREFORE, it is hereby recommended that movant Dr. Zenaida A. Olonan be dropped as one of the accused persons in Criminal Case Nos. 23082, 23084, 23085, 23086, 23087, 23089, 23090, 23091, 23092, 23093, 23094, 23096 and 23097. Her inclusion in Criminal Case Nos. 23083, 23088 and 23098 shall remain undisturbed. The entire Criminal Case No. 23095 should be dismissed.[29]

The Sandiganbayan was well aware of Justice Marigomen's report since the Special Prosecutor appended a copy thereof to his Joint Reply filed on January 8, 1998, in compliance with the graft court's Order of December 10, 1997.

The Sandiganbayan ordered the dismissal of the 13 cases as against the petitioners over the objection of the Special Prosecutor on its erroneous perception that Justice Marigomen recommended in his report the dismissal of the 13 cases against the petitioners. By its Order, the graft court deprived the respondent People of the Philippines of its right to due process. In fine, the Sandiganbayan acted in excess of its jurisdiction and committed grave abuse of its discretion in dismissing the 13 criminal cases against the petitioners.[30] Hence, its Order dated January 26, 1998 dismissing the 13 criminal cases, as against the petitioners, was null and void;[31] it may thus be rectified, as did the graft court, per its Resolution dated April 6, 1999 despite the lapse of fifteen days from notice of the Special Prosecutor of its January 26, 1998 Order. By rectifying its void Order, it cannot be said that the

graft court acted with grave abuse of its discretion, amounting to excess or lack of jurisdiction.

Indeed, in so doing, the Sandiganbayan acted in accord with law. It bears stressing that the State, like the accused, is also entitled to due process of law. Not too long ago, the Court emphasized that:

Indeed, for justice to prevail, the scales must balance; justice is not to be dispensed for the accused alone. The interests of society and the offended parties which have been wronged must be equally considered. Verily, a verdict of conviction is not necessarily a denial of justice; and an acquittal is not necessarily a triumph of justice, for, to the society offended and the party wronged, it could also mean injustice. Justice then must be rendered even-handedly to both the accused, on one hand, and the State and offended party, on the other.[32]

The Special Prosecutor must share the blame with the Sandiganbayan because in his Manifestation and Motion, the Special Prosecutor averred therein that Justice Marigomen recommended the dismissal of the 13 criminal cases against all the accused, without specifically stating therein that the recommendation for dismissal pertained only to petitioner Olonan, and not to the other accused who are the petitioners herein. The Special Prosecutor should have been more precise and forthright so as not to mislead the graft court.

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED. The assailed Resolution of the Sandiganbayan, dated April 6, 1999, is AFFIRMED. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, and Chico-Nazario, JJ., concur.

Tinga, J., no part. Close relation with some parties.

[1] Fourth Division composed of Associate Justice Sabino R. de Leon, Jr., Chairman (later appointed Supreme Court Justice, deceased), Associate Justices Narciso S. Nario and Rodolfo G. Palattao, members.

[2] Rollo, pp. 334-341.

[3] Id. at 48-50.

[4] Id. at 51.

[5] Id. at 342-358.

[6] Id. at 359-362.

[7] Id. at 52-53.

[8] Rollo, p. 105.

[9] Records, pp. 254-255. (Vol. III)

[10] Rollo, p. 112.

[11] See Rollo, p. 116.

[12] Records, pp. 295-298. (Vol. II)

[13] Rollo, p. 111.

[14] Id. at 151-155.

[15] Id. at 151-154.

[16] Records, p. 138. (Vol. III)

[17] Id. at 244-294.

[18] Id. at 160.

[19] Id. at 163.

[20] Id.

[21] Id. at 164.

[22] Id. at 47.

[23] Id. at 45-47.

[24] Id. at 398-399.

[25] 180 SCRA 680 (684).

[26] People v. Court of Appeals, G.R. No. 144332, June 10, 2004, 431 SCRA 610.

[27] Ibid.

[28] Ramos v. Court of Appeals, G.R. No. 42108, 29 December 1989, 180 SCRA 635.

[29] Records, p. 260. (Vol. III)

[30] People v. Gomez, G.R. No. L-22345, 29 May 1967, 20 SCRA 293; People v. Tac-an, G.R. No. 148000, 27 February 2003, 398 SCRA 373; People v. Verra, 432 Phil. 279 (2002).

[31] People v. Puno, G.R. Nos. 61864-69, 8 May 1992, 208 SCRA 550.

[32] Dimatulac v. Villon, G.R. No. 127107, 12 October 1998, 297 SCRA 679.

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