

JOEY P. MARQUEZ, PETITIONER, VS. THE SANDIGANBAYAN 5TH DIVISION AND THE OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS.

G.R. Nos. 187912-14. January 31, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

Through this petition for certiorari, prohibition and mandamus with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction,[1] petitioner Joey P. Marquez (Marquez) assails the [1]] February 11, 2009 Resolution[2] of the 5[th] Division of the Sandiganbayan (SB-5[th] Division) in Criminal Case Nos. 27903, 27904 and 27905; and its [2]] May 20, 2009 Resolution[3] denying his motion for reconsideration.

In the assailed issuances, the SB-5[th] Division denied Marquez's Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation (NBI).

From the records, it appears that as a result of the Report on the Audit of Selected Transactions and Walis Ting-ting for the City of Parañaque for the years 1996 to 1998, conducted by the Special Audit Team of the Commission on Audit (COA), several anomalies were discovered involving Marquez, then City Mayor and Chairman of the Bids and Awards committee of Parañaque City; and Ofelia C. Caunan (Caunan), Head of the General Services Office of said city.

It was found that, through personal canvass and without public bidding, Marquez and Caunan secured the procurement of several thousand rounds of bullets of different calibers that were grossly overpriced from VMY Trading, a company not registered as an arms and ammunitions dealer with either the Firearms and Explosives Division of the Philippine National Police (PNP) or the Department of Trade and Industry (DTI).

Finding the transactions anomalous, the COA Special Audit Team issued Notices of Disallowances for the overpriced ammunitions. Marquez and Caunan sought reconsideration of the findings of the team, but their plea was denied. Aggrieved, they elevated the matter to the COA but their appeal was denied.

At the Office of the Ombudsman (OMB), in answer to the charges filed against them, Marquez and Caunan filed their Joint Counter Affidavit[4] with the Evaluation and Preliminary Investigation Bureau of said office. In the said affidavit, the two insisted on the propriety of the transactions and raised the pendency of their appeal with the COA.

Having found probable cause to indict them for violation of Section 3 (e) of Republic Act (R.A.) No. 3019, the OMB, through the Office of the Special Prosecutor (OSP), filed three (3) informations[5] against Marquez and Caunan. The cases were raffled to the Fourth Division of the Sandiganbayan (SB-4[th] Division).

Before arraignment, on November 24, 2003, alleging discovery of the forged signatures, Marquez sought referral of the disbursement vouchers, purchase requests and authorization requests to the NBI and the reinvestigation of the cases against him.[6] These were denied by the OSP.

Before the SB-4[th] Division, to prove its case, the prosecution presented five (5) witnesses, namely: [1]] COA State Auditor IV Fatima Valera Bermudez; [2]] Elenita Pracale, Chief, Business Permit and Licensing Office, Parañaque City; [3]] Benjamin Cruz; [4]] P/Insp. Rolando C. Columna, Legal Officer, PNP Firearms and Explosive Division; and [5]] Emerito L. Lejano, President, Guns Empire. Documentary evidence consisting of disbursement vouchers, purchase requests and authorization requests were also adduced.

On January 13, 2006, the prosecution filed its Formal Offer of Evidence consisting of Exhibits "A" to "FFFF," and their sub-markings. All of the evidence offered were admitted by the anti-graft court on March 22, 2006.

After the prosecution rested, Caunan testified and partly presented evidence for her defense.

Marquez, on the other hand, in his Omnibus Motion dated April 1, 2008, moved, among others, for the inhibition of Associate Justice Gregory Ong (Justice Ong) and Associate Justice Jose Hernandez (Justice Hernandez) and for the referral of the disbursement vouchers, purchase requests and authorization to the NBI. Associate Justice Hernandez and Associate Justice Ong inhibited themselves but the request of Marquez that the questioned documents be referred to the NBI was not acted upon.

On May 20, 2008, Justice Ong and Justice Hernandez recused themselves from further participating in the cases. The cases were then raffled to the SB-5[th] Division.

Thereafter, on July 4, 2008, Marquez filed the subject Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation. In his motion, he again insisted that his purported signatures on the vouchers were forged.

By way of Comment/Opposition to the motion, the prosecution argued that its documentary exhibits had already been formally offered in January 2006 and had been duly admitted by the anti-graft court. The prosecution added that, when confronted with the questioned transactions during the COA audit investigation, Marquez never raised the defense of forgery. Instead, he insisted on the propriety of the transactions. He did not claim forgery either when he filed his Joint Counter-Affidavit with the OMB. Also, in his verified Motion for Reconsideration dated May 29, 2003 and Supplemental Motion dated July 1, 2003 filed with the COA, no allegation of forgery was made.

The prosecution pointed to Section 4, Rule 129 of the Revised Rules of Court[7] and posited that since Marquez alleged in his pleadings that he had relied on the competence of his subordinates, there could be no "palpable mistake," thus, he was estopped from alleging that his signatures on the subject documents were forged. The prosecution accused Marquez of filing the motion merely to delay the proceedings.[8]

In his Reply, Marquez insisted that he never admitted that his signatures on the disbursement vouchers, purchase requests and authorization requests were his and that his motion was not intended to delay the proceedings.

In its Rejoinder, the prosecution reiterated its earlier arguments and added that Caunan testified and identified the signatures of Marquez in the subject vouchers. It further noted that Marquez moved to refer the documents to the NBI only two and a half (2 ½) years after the formal offer of said documents.

In the subject February 11, 2009 Resolution, the anti-graft court denied the motion of Marquez. Citing Section 22 of Rule 132 of the Rules of Court,[9] it was of the view that while resort to the expert opinion of handwriting experts would be helpful in the examination of alleged forged documents, the same was neither mandatory nor indispensable, since the court can determine forgery from its own independent examination.

The motion for reconsideration of Marquez was likewise denied.

Aggrieved, Marquez interposed this petition for certiorari raising this lone

ISSUE

THAT THE PUBLIC RESPONDENT SANDIGANBAYAN - 5[TH] DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTIONS RESPECTIVELY DATED FEBRUARY 11, 2009 AND MAY 20, 2009 DENYING THE PETITIONER'S MOTION TO REFER PROSECUTION'S EVIDENCE FOR EXAMINATION BY THE QUESTIONED DOCUMENTS SECTION OF THE NATIONAL BUREAU OF INVESTIGATION WHICH DENIAL IS IN VIOLATION OF HIS RIGHT TO PRESENT EVIDENCE AND HIS TWIN CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW.

Those availing of the remedy of certiorari must clearly show that the trial court acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion, it means such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of certiorari to lie, there must be capricious, arbitrary or whimsical exercise of power.[10]

Such circumstance exists in this case.

One of the most vital and precious rights accorded to an accused by the Constitution is due process, which includes a fair and impartial trial and a reasonable opportunity to present one's defense. Under Section 14, Article III of the 1987 Constitution, it is provided that:

(1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (emphasis supplied)

In this connection, it is well settled that due process in criminal proceedings requires that (a) the court or tribunal trying the case is properly clothed with judicial power to hear and determine the matter before it; (b) that jurisdiction is lawfully acquired by it over the person of the accused; (c) that the accused is given an opportunity to be heard; and (d) that judgment is rendered only upon lawful hearing.

While the Constitution does not specify the nature of this opportunity, by necessary implication, it means that the accused should be allowed reasonable freedom to present his defense if the courts are to give form and substance to this guaranty. Should the trial court fail to accord an accused reasonable opportunity to submit evidence in his defense, the exercise by the Court of its certiorari jurisdiction is warranted as this amounts to a denial of due process.

In this case, the defense interposed by the accused Marquez was that his signatures in the disbursement vouchers, purchase requests and authorizations were forged. It is hornbook rule that as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence[11] and the burden of proof lies on the party alleging forgery.[12]

Thus, Marquez bears the burden of submitting evidence to prove the fact that his signatures were indeed forged. In order to be able to discharge his burden, he must be afforded reasonable opportunity to present evidence to

support his allegation. This opportunity is the actual examination of the signatures he is questioning by no less than the country's premier investigative force - the NBI. If he is denied such opportunity, his only evidence on this matter is negative testimonial evidence which is generally considered as weak. And, he cannot submit any other examination result because the signatures are on the original documents which are in the control of either the prosecution or the graft court.

At any rate, any finding of the NBI will not be binding on the graft court. It will still be subject to its scrutiny and evaluation in line with Section 22 of Rule 132. Nevertheless, Marquez should not be deprived of his right to present his own defense. How the prosecution, or even the court, perceives his defense to be is irrelevant. To them, his defense may seem feeble and his strategy frivolous, but he should be allowed to adduce evidence of his own choice. The court should not control how he will defend himself as long as the steps to be taken will not be in violation of the rules.

Contrary to the assertion of the prosecution, this move of Marquez is not a mere afterthought to delay the prosecution of the case. From the records, it appears that as early as November 24, 2003, even before arraignment, upon his alleged discovery of the forged signatures, Marquez already sought referral of the disbursement vouchers, purchase requests and authorization requests to the NBI and reinvestigation of the cases against him.[13] At that stage, his plea was already denied by the OSP.

Apparently, he did not abandon his quest. In his Omnibus Motion dated April 1, 2008 filed with the SB-4[th] Division, Marquez did not only move for the inhibition of Justice Ong and Justice Hernandez, but also moved for the referral of the disbursement vouchers, purchase requests and authorization to the NBI. Since the latter was not acted upon, he filed the subject Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation reiterating his plea, this time with the SB-5[th] Division.

If this case has been delayed, it is because of the denial of the simple request of Marquez. If it was granted in the first instance, the trial of the case would have proceeded smoothly and would have been over by now. If the Court were to deny this petition and Marquez would be convicted for having failed to prove forgery, he could not be prevented from crying that he was prevented from presenting evidence in his defense.

The fact that Marquez did not raise this issue with the COA is immaterial and irrelevant. His failure or omission to do so may affect the appreciation and weight of his defense, but it should not bar him from insisting on it during his turn to adduce evidence.

In denying said motion, the SB-5[th] Division offered no valid explanation other than the fact that, being the trial court, it may validly determine forgery from its own independent examination of the documentary evidence. While it is true that the appreciation of whether the signatures of Marquez are genuine or not is subject to the discretion of the graft court, this discretion, by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Evidence cannot properly be weighed if not exhibited or produced before the court.[14] Only after evidence is offered and admitted that the court can appreciate and evaluate it. The prosecution had already offered its evidence on the matter. The court should not deny the same right to the defense.

The fact that the documentary exhibits were already formally offered and duly admitted by the anti-graft court cannot preclude an examination of the signatures thereon by the defense. With proper handling by court personnel, this can easily be accomplished by the NBI expert examiners.

In the conduct of its proceedings, a court is given discretion in maintaining the delicate balance between the

demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other. Indeed, both the State and the accused are entitled to due process. However, the exercise of such discretion must be exercised judiciously, bearing in mind the circumstances of each case, and the interests of substantial justice.

Thus, for having denied Marquez the opportunity to be heard and to produce evidence of his choice in his defense, the SB-5th Division committed grave abuse of discretion warranting intervention from the Court. The anti-graft court should allow him to refer the evidence of the prosecution to the Questioned Documents Section of the NBI for examination at the soonest time possible and for the latter to immediately conduct such examination and to submit the results to the court within a reasonable time.

WHEREFORE, the petition is GRANTED. The February 11, 2009 and May 20, 2009 Resolutions of the 5[th] Division of the Sandiganbayan in Criminal Case Nos. 27903, 27904 and 27905 are hereby REVERSED and SET ASIDE. The 5[th] Division of the Sandiganbayan is hereby ordered to allow the petitioner Joey P. Marquez to refer the evidence of the prosecution to the Questioned Documents Section of the National Bureau of Investigation for examination as soon as possible and, after submission of the results to the court and proper proceedings, to act on the case with dispatch.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, p. 5

[2] Penned by Associate Justice Napoleon E. Inoturan with Associate Justice Ma. Cristina G. Cortez-Estrada and Associate Justice Alexander G. Gesmundo, concurring; *id.* at 47-51.

[3] *Id.* at 52-55.

[4] *Id.* at 66-75.

[5] Docketed as Criminal Case Nos. 27903-27905. Other graft cases filed against the petitioner and other officials of the City of Parañaque were docketed as Criminal Case Nos. 27944, 27946, 27952-27954.

[6] Rollo, pp. 154-159.

[7] Sec. 4. Judicial admissions. -- An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

[8] Resolution, Sandiganbayan-5[th] Division, February 11, 2009, pp.1-2, rollo, pp. 47-48.

[9] Sec. 22. How genuineness of handwriting proved. -- The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (23a)

[10] *Salma v. Hon. Miro*, G.R. No. 168362, January 25, 2007, 512 SCRA 724.

[11] *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550.

[12] *Heirs of Severa P. Gregorio v. CA*, G.R. No. 117609, 360 Phil. 753 (1998).

[13] *Rollo*, pp. 154-159.

[14] See *Basco v. Rapatalo*, A.M. No. RTJ-96-1335, 336 Phil. 214 (1997), citing *Ramos v. Ramos*, 45 Phil. 362 (1923).

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