



Republic of the Philippines
Sandiganbayan
Quezon City

SPECIAL FIFTH DIVISION

MINUTES of the proceedings held on May 8, 2017.

Present:

RAFAEL R. LAGOS ----- Chairperson
MA. THERESA DOLORES C. GOMEZ-ESTOESTA ---- Associate Justice
GERALDINE FAITH A. ECONG ----- Associate Justice

The following resolution was adopted:

CRIMINAL CASE NO. SB-06-CRM-0470

PEOPLE v. ELENITA S. BINAY, et al.

Before the Court are the following:

1. Prosecution's "MOTION FOR RECONSIDERATION (Re: Decision dated 28 October 2016)" dated November 10, 2016;¹
2. Accused Elenita S. Binay's "OPPOSITION" dated December 28, 2016;²
3. Accused Ernesto Aspillaga's "MANIFESTATION AND MOTION" dated January 17, 2016;³ and
4. Prosecution's "REPLY TO OPPOSITION" dated February 13, 2017.⁴

The grant of accused's *Demurrer to Evidence*⁵ in the Decision dated October 28, 2016, tantamount as it is to a judgment of acquittal, should have resonated the *finis* to their trial for the instant charge.

¹ Records, Volume 6, pp. 207-227

² Ibid., pp. 256-287

³ Ibid., pp. 312-314

⁴ Ibid., pp. 319-324

⁵ This referred to the *Demurrer to Evidence* respectively filed by accused Bernadette G. Aquino, Elenita S. Binay, Ernesto Aspillaga and Nicanor V. Santiago

Yet, the prosecution beckons this Court to exercise its inherent power to review said Decision with the filing of its *Motion for Reconsideration* in the hope of correcting any perceived “errors” the Court has committed. While it may be noted that the composition of the members⁶ of the present Division has since changed, with two (2) dissenters remaining, and the incumbent Chairperson as automatic member, a consideration of the present *Motion*, as jurisprudential precepts has shown, has already tied the hands of this Court.

First. Double jeopardy has attached.

The case of *People v. Bans, et al.*,⁷ was clear in its ratiocination:

In terms of substantive law, the Court will not pass upon the propriety of the order granting the Demurrer to Evidence on the ground of insufficiency of evidence and the consequent acquittal of the accused, as it will place the latter in double jeopardy. Generally, the dismissal of a criminal case resulting in acquittal made with the express consent of the accused or upon his own motion will not place the accused in double jeopardy. However, this rule admits of two exceptions, namely: insufficiency of evidence and denial of the right to a speedy trial (*People vs. Declaro*, 170 SCRA 142 [1989]; *People vs. Hon. Rodolfo M. Bellaflor*, G.R. No. 103275, June 15, 1994). In the case before us, the resolution of the Demurrer to Evidence was based on the ground of insufficiency of evidence x x x. Hence, it clearly falls under one of the admitted exceptions to the rule. Double jeopardy therefore, applies to this case and this Court is constitutionally barred from reviewing the order acquitting the accused.

A reading of the questioned Decision not only adduced that the evidence was **insufficient** but went on to conclude that the evidence presented by the prosecution **failed to discharge the burden of proving the charge by proof beyond reasonable doubt**. To quote:

Here, we have ascertained whether the evidence presented by the prosecution suffices to sustain the charges [sic] or justify a verdict of guilt and we find the same insufficient for the purpose. The prosecution failed to discharge this burden of proving that the accused violated Section 3 (e) of RA 3019 by proof beyond reasonable doubt for its failure (1) to satisfactorily establish that the accused public official acted with evident bad faith, x x x founded on its charge of rigged bidding which has not been conclusively shown to have attended the award of PO 11106 to Asia Concept; (2) to prove conspiracy between the accused public officials, on the one hand, and the accused private individuals, on the

⁶ Justice Roland B. Jurado (former Chairperson of the Fifth Division) has retired effective February 1, 2017; Justice Samuel B. Martires has been appointed as Associate Justice of the Supreme Court on March 2, 2017; and Justice Jose R. Hernandez has compulsorily retired on November 22, 2016. Remaining members of the Special Fifth Division are Justice Ma. Theresa Dolores C. Gomez-Estoesta and Justice Geraldine Faith Econg who both rendered their respective Dissenting Opinion. Per En Banc approval on April 3, 2017, the present Chairperson of the Fifth Division, Justice Rafael R. Lagos, automatically became the member.

⁷ G.R. No. 104147, December 8, 1994

other; and (3) to fully establish undue injury to the government, or unwarranted benefits to Asia Concept, through the accused private individuals, Beda Aquino and Bernadette G. Aquino, by reason of the award of PO 11106 to them.

Indeed, as earlier discussed, the conduct of rigged bidding has not been sufficiently established; hence, the alleged rigged bidding would not constitute proof beyond reasonable doubt that the accused acted with evident bad faith, manifest partiality or gross inexcusable negligence which is an essential element of the crime charged. In any event, whether there was rigged bidding or a regular bidding is not the core/ultimate issue but whether undue injury was caused the government and/or unwarranted benefits given Asia Concept. Being the very acts contextually punishable under Section 3 (e) of RA 3019, the said acts [of causing undue injury and/or giving unwarranted benefits to private individuals] therefore need be proven beyond reasonable doubt. In this case, the said punishable acts have not been so proven. Hence, the dismissal of this case is clearly in order.⁸

The conclusion inevitably carried in itself the imposition that a re-examination of the case cannot be made. For an order granting an accused's demurrer to evidence is a resolution of the case on the merits, and it amounts to an acquittal. Generally, any further prosecution of the accused after an acquittal would violate the constitutional proscription on double jeopardy.⁹

This is mirrored in the litany of cases cited by accused Elenita S. Binay in her *Opposition*,¹⁰ the application of which are beyond question.

In *People v. Laguio, Jr.*,¹¹ the Supreme Court qualified that the celebrated case of *Galman v. Sandiganbayan* presented one exception to the rule on double jeopardy, which is, when the prosecution is denied due process of law. It was an instance where "a sham trial and verdict and travesty of justice" was not allowed to stand unrectified. The Supreme Court surmised that the doctrine of double jeopardy cannot be invoked against this Court's setting aside of the trial court's judgment of dismissal or acquittal where the prosecution which represents the sovereign people in criminal cases is denied due process.

The recognized exception, however, does not apply at this instance. The prosecution never decried at the outset that it has been denied due process. This rings true until the present. Hence, the rule on double jeopardy should only be observed.

⁸ *Vide:* at pages 87-88 of the Decision

⁹ *People v. Laguio, Jr., et al.*, G.R. No. 128587, March 16, 2007

¹⁰ Records, pp. Volume 6, pp. 256-287 ; The Opposition was adopted by accused Ernesto Aspillaga in his *Manifestation and Motion* dated January 17, 2017

¹¹ *Ibid.*

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Second. Even in the guise of erroneous grounds and misinterpretation of law and jurisprudence, a review of the Court's questioned Decision is not available to the People.¹²

The *Motion for Reconsideration* filed by the prosecution reels with "errors" ascribed to this Court, to wit:

I. The Court gravely erred in resolving the Demurrer to Evidence of the accused based on proof beyond reasonable doubt;

II. The Court gravely erred in ignoring important facts in the determination of the sufficiency of evidence presented by the prosecution:

a. That the prosecution has sufficiently established rigged/simulated bidding;

b. That the prosecution has sufficiently established that accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and

c. That the prosecution has sufficiently established undue injury to the Government or any private party, or gave unwarranted benefits, advantage or preference in favor of Asia Concept International, Inc. by reason of the acts of the accused.

III. The Court gravely erred in not giving weight and full credence to the findings of the Commission on Audit.

A consideration of such grounds would necessitate this Court to recalibrate and re-examine the probative value and weight of the evidence adduced by the prosecution that may possibly alter the result of the questioned Decision. This cannot be done, as this Court can no longer subject to its own review any error of judgment made in the resolution of the demurrer.

This is only consistent with the doctrine that the 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. But while the dismissal order consequent to a demurrer to evidence is not subject to appeal, the same is still reviewable but only by *certiorari* under Rule 65 of the Rules of Court. In such case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void.¹³ Notably, a review of the sufficiency of the evidence

¹² *Prieto v. Alpadi Development Corporation*, G.R. No. 191025, July 31, 2013

¹³ *Dayap v. Sendiong, et al.*, G.R. No. 177960, January 29, 2009

and of the propriety of the acquittal of the accused lies outside of the function of *certiorari* as it intrudes into the prerogatives of Rule 45, under ordinary appeals, where an alleged error of judgment may be subjected to review.¹⁴

As echoed in *People v. Sandiganbayan*:¹⁵

In criminal cases, the grant of a demurrer amounts to an acquittal, and the dismissal order may not be appealed as this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it may be reviewed through *certiorari* under Rule 65.

For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void.

The burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.

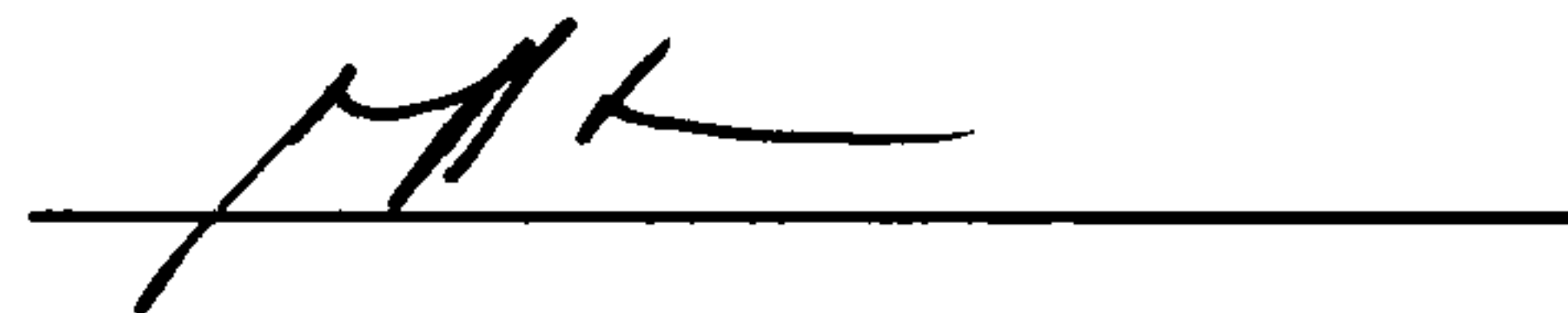
With *certiorari* proceedings as the available remedy, the forum no longer lies with this Court but with the Supreme Court alone.

Verily, motions for reconsideration are allowed to convince the courts that their rulings are erroneous and improper and in so doing, said courts are given sufficient opportunity to correct their errors.¹⁶ This is an instance, however, where the inherent power of the court to review its own ruling is at once proscribed under the doctrine on double jeopardy.

IN VIEW THEREOF, the *Motion for Reconsideration* filed by the People of the Philippines, through the Office of the Special Prosecutor, is **DENIED**.

SO ORDERED.

LAGOS, J. *Chairperson*



GOMEZ-ESTOESTA, J.



ECONG, J.



¹⁴ *People v. Bans*, supra at footnote #3

¹⁵ G.R. No. 197953, August 5, 2015

¹⁶ *Siy v. Court of Appeals*, 138 SCRA 543-544 [1985]; *Guerra Enterprises Co., Inc. v. CFI of Lanao del Sur* (32 SCRA 317 [1970]) cited in *Eternal Gardens Memorial Parks Corporation v. First Special Cases Division Intermediate Appellate Court, et al.*, G.R. No. 73794, September 19, 1988