



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

- versus -

SHIRLEY CORDERO, et al.
Accused.

X-----X

Criminal Cases Nos. 23815
For: Violation of Article 220 of the Revised Penal Code (Illegal Use of Public Funds)

Criminal Cases Nos. 23819 to 23820
For: Malversation of Public Funds


Criminal Cases Nos. 23829, 23833 to 23840, 23843 to 23844
For: Malversation of Public Funds through Falsification of Public Documents

Criminal Cases Nos. 23831 to 23832
For: Falsification of Public/official Documents

Present:

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B. J. and
FERNANDEZ, S.J.,¹ J.

Promulgated:

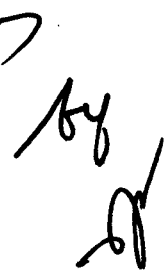
JUNE 29, 2018


X-----X

RESOLUTION

CABOTAJE-TANG, PJ:

¹ Sitting as a special member per Administrative Order No. 262-2018 dated April 30, 2018



Resolution

-2-

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, *et. al.*

x-----x

For resolution is the *Urgent Motion for Reinstatement of Bail Bonds and to be Released on Bail Pending the Resolution of the Supreme Court En Banc on the "Second Motion for Reconsideration" with Entry of Appearance* dated May 24, 2018, filed by accused Rogelio M. Diaz and Marino T. Davila.²

The accused-movants pray for the reinstatement of their bail bonds and for their release under the same bonds pending resolution of their appeal before the Supreme Court. In support of their motion, the accused-movants present the following reasons:

1. The Court's Minute Resolution dated February 13, 2018, which, among others, ordered the cancellation of their bail bonds, is an interlocutory order;
2. The Supreme Court's Minute Resolution dated November 14, 2016 has technically not yet become final and executory because of the pending motions they filed before the Supreme Court; and
3. The proceedings in these cases should be held in abeyance pending the final decision of the Supreme Court on the ground of judicial courtesy.

The Court finds the subject motion bereft of merit.

In its Resolution promulgated on November 14, 2016, the Supreme Court denied the *petition for review on certiorari* filed by the accused-movants and affirmed the Sandiganbayan's *Decision and Resolution* promulgated on January 29, 2015 and August 28, 2015, respectively, in Criminal Case No. 23829 on the ground that the accused-movants failed "to sufficiently show that the Sandiganbayan committed any reversible error in convicting them of the complex crime of malversation through falsification of public documents, as defined and penalized

² pp. 757-804, Vol. X, Record



Resolution

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, *et. al.*

-3-

x-----x

*under Article 217, in relation to the Article 171 of the Revised Penal Code.*³

The accused-movants filed a motion for reconsideration to the said Supreme Court's *Resolution* which was denied by the High Court in its *Resolution* dated July 5, 2017 with the directive that "NO FURTHER pleadings or motions shall be entertained."⁴ Further an entry of judgment had already been issued by the Supreme Court.⁵

According to the accused-movants, they filed the following motions which are allegedly still pending in the Supreme Court: (1) motion for judicial mercy by way of motion for leave to lift entry of judgment; (2) motion to lift entry of judgment; (3) verified omnibus motion; (4) verified second motion for reconsideration; and (5) supplement to verified motion for reconsideration.

The said motions, filed after the denial of the motion for reconsideration and after the issuance of an entry of judgment, are effectively in the nature of a second motion for reconsideration of the Supreme Court's resolution, which is a prohibited motion under Section 2, Rule 52 of the Rules of Court:

Section 2. Second motion for reconsideration.

— No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Also, Section 3, Rule 15 of the Internal Rules of the Supreme Court reiterates the said prohibition:

³ pp. 247-248, Vol. X, Record

⁴ p. 667, Vol. X, Record

⁵ p. 460, Vol. X, Record

Handwritten signatures and initials in black ink, including a large flourish at the top, a signature that appears to be 'BY', and another signature below it.

Resolution

-4-

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, et. al.

x-----x

Section 3. Second motion for reconsideration. —
The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

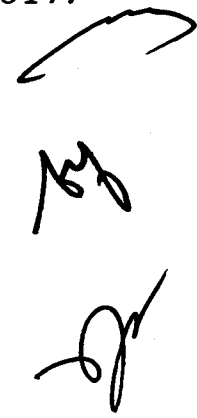
In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.

For the High Court to entertain second motions for reconsideration, the second motions must present "extraordinarily persuasive reasons and only upon express leave first obtained." Once leave to file is granted, the second motion for reconsideration is no longer prohibited.⁶

To be sure, there is no showing that the Supreme Court had acted on the accused-movants' *Verified Omnibus Motion: I. For the Supreme Court En Banc to Take Cognizance of this Case; II. For Leave of the Supreme Court to File Second Motion for Reconsideration; III. TO Admit the Second Verified Motion for Reconsideration Hereto Attached and Herewith Filed; and IV. To Lift the Entry of Judgment, if already issued, per Assailed Resolution of the First Division A Quo dated July 5, 2017.*⁷

⁶ Club Filipino, Inc. vs. Bautista, 745 SCRA 636 (2015)

⁷ pp. 390-410, Vol. X, Record

Handwritten signature and initials in the bottom right corner of the page.

Resolution

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, *et. al.*

-5-

x-----x

In Re: Complainat against Francisco H. Villaruz, Jr.,⁸
the Supreme Court declared that judicial courtesy can no longer be invoked in the execution of a final judgment:

However, the becoming modesty that the Sandiganbayan Justices have exhibited in this case cannot detract from the fact that the judgment of conviction of accused Velasco should have been immediately executed, absent any restraining order from the Court, in violation of the Court's directive in A.M. Circular No. 07-7-12-SC, 25 adopting amendments to Rule 65 of the Rules of Court, *inter alia*. Thus, Section 7 of Rule 65 now states:

SEC. 7. Expediting proceedings; injunctive relief. — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.

The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for certiorari with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

⁸ 688 SCRA 498 (2013)

Handwritten signature and initials in black ink, located at the bottom right of the page.

Resolution

-6-

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, et. al.

x-----x

Thus, judicial courtesy may no longer be invoked by the Sandiganbayan Justices in the execution of the final judgment against accused Velasco. This lapse in judgment on the part of the Sandiganbayan Justices deserves admonition.

Indeed, jurisprudence has settled that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it [will be] made by the court that rendered it or by the highest court of the land. Once a judgment or order becomes final, all the issues between the parties are deemed resolved and laid to rest. No additions can be made to the decision, and no other action can be taken on it, except to order its execution.⁹

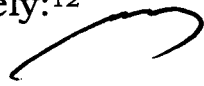
Notably, the issue on the recall of the warrants of arrest and the reinstatement of bail bonds on the ground that accused-movants have pending motions before the Supreme Court had been raised by accused movants in their *Urgent Motion to Recall Warrant of Arrest*¹⁰ as well as in their *Very Urgent Motion Amending the Urgent Motion to Recall date March 7, 2018, by way of a Very Urgent Motion for Modify Sentence and to Approve Application for Probation and other Concommittant Reliefs Prayed for in light of the OCA Circular No. 245-2017 dated December 27, 2017 Re: Hernan v. Sandiganbayan, in relation to Republic Act No. 10951*.¹¹ The aforesaid issue had been considered and thoroughly passed upon by the Court in its Resolution promulgated on April 4, 2018 and Resolution promulgated on May 21, 2018, which denied the accused-movants' urgent motion to recall warrant of arrest and very urgent motion, respectively:¹²

⁹ *Buenavista Properties, Inc. vs. Mariño*, 805 SCRA 548 (2016)

¹⁰ pp. 573-574, Vol. X, Record

¹¹ pp. 673-682, Vol. X, Record

¹² pp. 4-7, Resolution promulgated on April 4, 2018; pp. 712-715, Vol. X, Record; citations omitted



Resolution

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, *et. al.*

-7-

x-----x

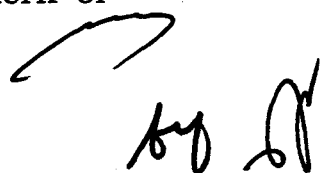
To begin with, it is undisputed that in its *Resolution* promulgated on November 14, 2016, the Supreme Court, First Division, denied the *petition for review on certiorari* filed by the accused-movants and affirmed the Sandiganbayan, Third Division, *Decision* and *Resolution* promulgated on January 29, 2015, and August 28, 2015, respectively in Criminal Case No. 23829 on the ground that the petitioners (now accused-movants) failed “to sufficiently show that the Sandiganbayan committed any reversible error in convicting them of the complex crime of malversation through falsification of public documents, as defined and penalized under Article 217, in relation to the Article 171 of the Revised Penal Code.”

On January 24, 2017, the accused-movants filed a *motion for reconsideration* of the High Court’s denial of their *petition for review*. The same was also denied by the Supreme Court, First Division, in its *Resolution* promulgated on July 5, 2017. On even date, an entry of judgment was issued by the Division Clerk of Court of the Supreme Court, First Division, rendering final and executory the Supreme Court’s *Resolution* promulgated on November 14, 2016.

Thereafter the Court adopted the following *resolution* on February 13, 2018, *viz:*

The Following are **NOTED**:

1. The Letter of Transmittal dated March 16, 2017, of Pagwadan S. Fonancier, SC Assistant Chief, Judicial Records Office, Supreme Court, the Resolution dated April 20, 2016, of the Third Division, Supreme Court, and the Entry of Judgment dated July 7, 2016, thereon of the Third Division, Supreme Court, which were received through mail on July 18, 2017; and,
2. The Letter of Transmittal dated November 3, 2017, of Basilia T. Ringol, Deputy Clerk of



Resolution

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, *et. al.*

x-----x

Court and Chief, Judicial Records Office, Supreme Court, the Resolution dated November 14, 2016, of the First Division, Supreme Court, which were received through mail on December 19, 2017.

Accordingly, let **WARRANT/S OF ARREST** be issued against accused **Marsha S. Cordero, Rogelio M. Diaz** and **Marino T. Davila**, for the execution of judgment in these cases.

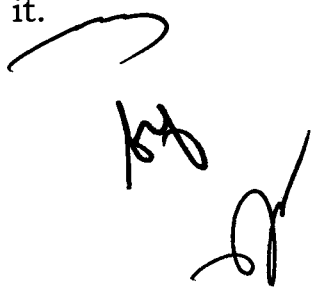
Further, the bail binds posted by the said accused are **CANCELLED**.

...

Plainly, jurisprudence teaches us that where a judgment of a higher court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial act of carrying out the decision and issuing the order of execution. Moreover, a final and executory judgment can no longer be amended by adding thereto a relief not originally included.

Thus, after the Court received the above-mentioned *letters of transmittal*, it issued the corresponding warrants of arrest against the accused and cancelled the bail bonds posted by them for the purpose of executing the judgment in these cases.

Furthermore, a review of the records of these cases reveals that the Supreme Court has not issued any temporary restraining order or a writ of preliminary injunction in relation to the above-mentioned motions purportedly filed by the accused-movants. To be sure, only the Supreme Court, either through a temporary restraining order or a writ of preliminary injunction, can enjoin this Court from proceeding with any case pending before it.

Handwritten signature and initials in black ink, appearing to be 'MS' and a stylized signature.

Resolution

-9-

Criminal Cases No. 23815, 23819 to 23820,
23829, 23833 to 23840, 23843 to 23844 and
23831 to 23832
People vs. Cordero, *et. al.*


x-----x

WHEREFORE, accused Rogelio M. Diaz and Marino T. Davila's *Urgent Motion for Reinstatement of Bail Bonds and to be Released on Bail Pending the Resolution of the Supreme Court En Banc on the "Second Motion for Reconsideration" with Entry of Appearance* dated May 24, 2018, is **DENIED** for lack of merit.

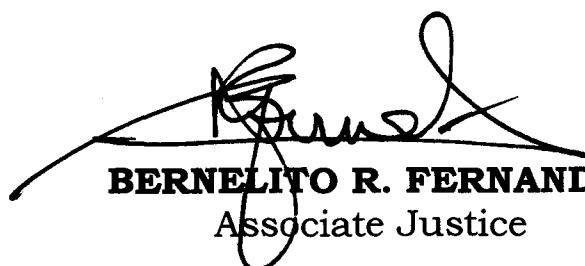
The entry of appearance of Francis H. Tuliao as counsel for accused Rogelio M. Diaz and Marino T. Davila is **NOTED**.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


SARAH JANE T. FERNANDEZ
Associate Justice