



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SPECIAL SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Criminal Case No. SB-11-CRM-0265

Present:

-versus-

FIDEL GARCIA, ALICIA GUDAY,
P/INSP. BENNY ESPARAGOZA,
P/SSUPT. JEROME PAGARAGAN,
and SFO3 DIONESIO
PADUGANAN.

Gomez-Estoesta, J., *Chairperson*
Trespeses, J., and
Jacinto, J.*

Promulgated:

Accused.

August 9, 2018 *ija*

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RESOLUTION

GOMEZ-ESTOESTA, J.:

This resolves the prosecution's *Motion for Reconsideration* dated July 9, 2018 questioning this Court's *Resolution* dated June 26, 2018 which granted the *Demurrer to Evidence*¹ of accused Alicia L. Guday ["accused Guday"]. The decretal portion of the challenged ruling reads:²

WHEREFORE, the Demurrer to Evidence concerning accused Alicia Guday is GRANTED. She is thus ACQUITTED of the crime charged in Criminal Case No. SB-11-CRM-0265.

The cash bond posted by said accused is ordered released subject to the usual audit and accounting procedures. The Hold Departure Order issued by this Court on July 20, 2011 insofar as accused Alicia Guday is concerned is set aside, and the Order issued by the Bureau of Immigration incorporating her name in the Hold Departure List is ordered recalled and cancelled.

* Per Admin Order No. 284-2017 dated August 18, 2017.

¹ Records, Vol. 4, pp. 94-100

² *Id.* at 309

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On the other hand, the Demurrer to Evidence concerning accused P/Insp. Benny C. Esparagoza is DENIED.

He is thus directed to present his evidence on July 18 and 19, 2018, both at 8:30 in the morning and 1:30 in the afternoon, during the out of town hearing of the Court to be held at the Regional Trial Court of Cebu City.

SO ORDERED.

While the prosecution concedes that “accused Guday had not actually fired the turret or water cannon nor physically participated in the actual violent dispersal of the rallyist[s] on August 06, 2006 . . . [her] preceding and succeeding conduct, which was sufficiently proven by the prosecution, is a clear evidence that she conspired with the other accused-public officers who physically participated in the actual violent dispersal of the rallyist[s] on August 06, 2006.”³ The prosecution particularly emphasizes the fact that accused Guday was allegedly present on *both* days of the rally (August 5 and 6, 2006) at Barangay La Fraternidad, Tubay, Agusan del Norte. This was supposedly established by the following evidence:

- **Junie B. Gabisan** [“**Gabisan**”], who personally recorded the video footage of the rally, allegedly averred that accused Guday was present at the rally venue on August 6, 2006. Gabisan pinpointed that she was the person depicted in Image Sequence No. “MOV 09693,” which image had been spliced from his video recording,⁴ and
- The several affidavits⁵ executed by **Father Jenor P. Luis** [“**Fr. Luis**”], one of the organizers of the rally, stated that accused Guday arrived at the rally site on the second day of the rally, August 6, 2006, and together with her co-accused public officers, handed the assembled townspeople a copy of the Dispersal Order signed by accused Fidel Garcia. On the witness stand, Fr. Luis identified accused Guday as among those who “actively pursued” the dissolution of the peaceful meeting of rallyists.⁶

The prosecution thus prays that the Court’s Resolution dated June 26, 2018 be set aside insofar as it granted the Demurrer to Evidence of accused Guday.

For her part, accused Guday counters that her mere presence during the incident does not make her criminally liable under Article 131 of the *Revised Penal Code*. She reiterates that she did not actually fire or order the firing of the water cannon at the assembled people, nor did she act in conspiracy with the other accused. Accused Guday’s presence at the rally site in Barangay La Fraternidad, Tubay was justified by the fact that she was then Punong

³ *Id.* at 321-322

⁴ TSN dated November 22, 2016, p. 16

⁵ Exhibits “U”, “V”, “W”, and “X”

⁶ TSN dated August 15, 2012 p. 18

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Barangay, and as such, she had the duty to be aware of incidents occurring within her area of responsibility. Further, accused Guday underscores that witness Gabisan had testified that she was present only on the first day of the rally, which is August 5, 2006; the dispersal of the rallyists occurred on the second day, August 6, 2006.

The Court's Ruling

The Motion is denied.

The prosecution is burdened to prove the accused's guilt beyond reasonable doubt, failing which courts have the duty to render a judgment of acquittal.⁷

The prosecution insists that accused Guday attended *both* days of the two-day rally from August 5 to 6, 2006 in La Fraternidad, Tubay, Agusan del Norte, which is important because it alleges that she participated in and/or conspired in the violent dispersal of the rallyists on the second day, August 6, 2006.

This is incorrect.

Contrary to the assertions by the prosecution, accused Guday was in fact absent when the water cannon was fired upon the assembled people on August 6, 2006.

While the prosecution heavily relies on the statements of witnesses Fr. Luis and Gabisan who supposedly saw accused Guday on the second day of the rally on August 6, 2006, the totality of its own evidence shows that she attended *only the first day* of the rally on *August 5, 2006*.

Witness **Jecelyn Q. Regala** ["Regala"], one of the participants in the assembly, positively stated that she saw accused Guday at the venue on the *first day*:⁸

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PROS. BATACAN:

Q So, you are referring to Question No. 16, madam witness, when you were asked, "Do you recall having seen any public officials during that meeting on August 5?" Your answer was: "Yes, I recall seeing Superintendent Pagaragan and Chief of Police Esparagoza on the first day. I also saw the Barangay Captain of La Fraternidad, Alicia Guday."

So, which is the correct answer now?

A I only saw Superintendent Pagaragan on the second day, ma'am.

Q And what else do you wish to correct, if any, [in] this Judicial Affidavit?

⁷ *People v. San Jose y Gregorio*, G.R. No. 206916, July 3, 2017

⁸ TSN dated July 9, 2013, pp. 43-45

A I also mentioned there that I saw Alicia Guday on the second day, but actually I saw her on the first day.

Q So, okay. You are referring to Question No. 20, wherein you were asked: "Who are these Police Officers, if you recall that you saw on August 6?" Following Question No. 19, and your answer was: "Superintendent Pagaragan, Inspector Esparagoza, and several other policeman (sic) whose name I do not know. I also saw the Barangay Chairman, Alicia Guday."

So, you are saying now that you did not see Alicia Guday on the second day?

WITNESS:

A No, ma'am.

PROS. BARACAN:

Q So, why did you mention [in] your Judicial Affidavit that you saw Pagaragan on the first day and Alicia Guday on the second day and now you are changing your answer?

A Because that's (sic) happened almost seven (7) years ago and I had things mixed up on what happened. (Emphasis supplied)

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Regala's testimony that accused Guday attended the first day of the rally is corroborated by other evidence on record.

Indeed, when **Gabisan's** video footage of the rally was exhibited in court, he identified accused Guday as among the attendees of the rally, in this wise:⁹

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CHAIRPERSON

(To the prosecutor.)

Okay. Go ahead.

PROS. BATACAN

Q I will go back to the video, Mr. Gabisan.

Can you tell us again what is the image or file name of Ms. Alicia Guday?

WITNESS

A 'Yung (sic) MOV 09693

CHAIRPERSON

Can you flash that? File name what?

PROS. BATACAN

MOV 09693, your Honors.

Q And who is that person depicted in the image?

⁹ TSN dated November 22, 2016, pp. 20-21

WITNESS

A Mrs. Alicia Guday, ma'am. (Emphasis supplied)

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Image Sequence No. "MOV 09693" is shown below:¹⁰



This file is essentially a still image from Gabisan's video at the timestamp of more or less six minutes and forty-four seconds (06:44). However, it must be underscored that the footage taken by Gabisan recorded events on *both* days of the rally. At the point by which accused Guday was identified in the video recording in conjunction with the spliced images, the events shown are still within the first day of the rally.¹¹ Verily, Gabisan himself confirmed that the second day is depicted only from the timestamp of thirty-three minutes and forty-four seconds (33:44) onwards.¹² No other still image of accused Guday was shown at the latter instance.

Still, the prosecution specifically points to the affidavits filed by **Fr. Luis**, which alleged that accused Guday was at the rally in the morning of the second day on August 6, 2006.¹³

Between the affidavit of the witness and his testimony in Court, however, the latter prevails. The presence of the accused during the second day of the rally is a material fact that cannot be overlooked.

In *Garces v. People*, the Supreme Court pronounced:¹⁴

Complainant's failure to testify during her direct examination that her mouth was covered by petitioner when she was pulled out of the barn does not preclude resort to her sworn statement to provide the missing details, since said sworn statement forms part of her testimony. As held in *People v. Servano*:

Evidence in criminal cases is not limited to the declarations made in open court; it includes all documents, affidavits or sworn statements of the witnesses, and other supporting evidence. It comprehends something more than just the mere testimony of a witness. Thus, when a sworn statement has been formally offered as evidence, it forms an integral part of the prosecution evidence which should not be ignored for it complements and completes the

¹⁰ Exhibit "DD-4"

¹¹ TSN dated November 22, 2016, p. 40

¹² *Id.* at 46

¹³ Exhibits "U" and "V"

¹⁴ G.R. No. 173858, July 17, 2007, which cited *People v. Servano*, 454 Phil. 256 (2003)

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testimony on the witness stand. A sworn statement is a written declaration of facts to which the declarant has sworn before an officer authorized to administer oaths. This oath vests credibility and trustworthiness on the document. The fact that a witness fails to reiterate, during trial, the contents of his sworn statement should not affect his credibility and render the sworn statement useless and insignificant, as long as it is presented as evidence in open court. **This is not to say, however, that the sworn statement should be given more probative value than the actual testimony. Rather, the sworn statement and the open court declarations must be evaluated and examined together in toto so that a full and thorough determination of the merits of the case may be achieved.** Giving weight to a witness' oral testimony during the trial should not mean being oblivious to the other pieces of available evidence such as the sworn statement. In like manner, **the court cannot give probative value to the sworn statement to the exclusion of the oral testimony.** In every case, the court should review, assess and weigh the totality of the evidence presented by the parties. It should not confine itself to oral testimony during trial [. . .] (Emphasis supplied)

Fr. Luis's statements in his affidavits do not necessarily prevail over his testimony given in open court. Even though he avers, in his sworn statements, that accused Guday was present on the second day of the rally, Fr. Luis did not affirm that fact when he took the witness stand. Specifically, when questioned during trial if he saw any local officials in attendance at the rally, Fr. Luis testified that he merely *saw* accused Guday who was "asking [the rallyists] to stay out from that place because [they were] causing and delaying the mining operation in that particular area[.]"¹⁵ In other words, it should be highlighted that Fr. Luis was silent as to *which* of the two days he had seen accused Guday at the venue. The context to which it was taken nonetheless even points to her sighting on the first day of the rally.

In contrast, it bears stressing that witnesses Regala and Gabisan were one in categorically stating that accused Guday was only at the first day of the rally, which fact is corroborated by the video footage and still images on record. In particular, **Gabisan** recalled that:¹⁶

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CHAIRPERSON

Q That was the second day, Mr. Witness?

WITNESS

A Yes, your Honor.

Q So, is that video for presentation for the second day, was accused Tugday (sic) there?

A Alicia Guday, your Honor?

Q Yes. Was she there?

¹⁵ TSN dated August 15, 2012, p. 18

¹⁶ TSN dated November 22, 2016, p. 84

A Alicia Guday only in Day 1, your Honor.

Q Day 1?

A Yes, your Honor. August 5, your Honor. (Emphasis supplied)

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Based on the totality of evidence presented, contrary to the position of the prosecution, it is clear that accused Guday was present *only on the first day of the rally*. But this fact alone does not establish her culpability for the offense charged. To state again, We had already found that:¹⁷

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While such testimony indeed showed that accused Guday was present during the rally who has verbally conveyed to the rallyists that they should leave the area because they were "causing and delaying the mining operation in that particular area," these acts, by themselves, fail to establish the second element that accused Guday has prohibited, interrupted, or dissolved the peaceful meeting, or much less, that she was actually part of the conspiracy to commit the crime. The staging of a rally on a road open to public access necessarily alerted the police authorities, the barangay officials included. The rallyists blocked the passage of vehicles on a road leading to the mining site, which conceivably clogged the normal business operations of the mining companies. There was thus a disruption of peace ensuing in accused Guday's jurisdiction. As Punong Barangay, accused Guday was mandated by law to maintain public order and promote the general welfare of La Fraternidad. Under these circumstances, she could not shy away from her duty to settle the conflict between the rallyists and the mining firm. Her presence at the rally site was therefore justified.

As it appeared, however, what became the critical point of contention at this instance was whether a rally permit should have first been obtained and presented. While such legal ramifications were being sorted, all that has been established by the prosecution was the fact that accused Guday had told the rallyists to "stay out from that place because [they were] causing and delaying the mining operation in that particular area." This, however, is not tantamount to prohibition, interruption, or dissolution of a peaceful meeting. To stay out of the area to avoid road blockage and preserve the constant flow of vehicle/foot traffic, regardless of the intention of the rallyists, is perceptively seen as an exercise of discretion that was innate in a barangay chairperson's powers and functions with the goal of maintaining peace and order within the community.

The rallyists may have protested to this kind of action but in the end, no prohibition, interruption, or dissolution of a peaceful meeting was made as far as accused Guday's actions were concerned. As a matter of fact, the rally proceeded in full swing. Gauged from the documentary exhibits presented by the Prosecution, accused Guday may have confronted the rallyists at around 6:30 in the morning of August 5, 2006. Since she failed to move the rallyists to leave the place, she then proceeded to Tubay Police

¹⁷ Records, Vol. 4, pp. 301-302

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Station at around 7:00 in the morning of the same day to seek police assistance.

As was thus established, accused Guday merely urged the rallyists to leave the area and proceed to another where public access is not affected. Accused Guday was not accused of having issued any threat to the rallyists to disperse them. What concrete action she may have done further to effectively prohibit, interrupt, or dissolve the peaceful meeting was no longer amplified by any of the prosecution witnesses. What remained clear was that the rally was able to run its full course even after accused Guday had spoken to them. This cannot be deemed a felonious act within the purview of Article 131 of the Revised Penal Code. (Citations omitted)

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In essence, what constitutes a violation of Article 131 of the *Revised Penal Code* is the prohibition, interruption, or dissolution of a peaceful meeting by a public officer. As the evidence stands, it has not been adequately shown by the prosecution that accused Guday had committed any of said acts. Neither has the prosecution proven that accused Guday had conspired with her co-accused. To emphasize, mere presence without active participation in the furtherance of a common design or purpose does not make accused Guday a co-conspirator.¹⁸ The grant of her Demurrer to Evidence was thus warranted under the circumstances.

In any case, the prosecution's *Motion* will not prosper in view of the accused's constitutional right against double jeopardy.

Republic v. Gimenez teaches, as a rule, that "[w]hen a criminal case based on demurrer to evidence is dismissed, the dismissal is equivalent to an acquittal . . . any further prosecution of the accused would violate the constitutional proscription on double jeopardy."¹⁹

People v. Nazareno, et al. explains the nature and effect of a judgment of acquittal thus:²⁰

Section 21, Article III of the Constitution provides that "*no person shall be twice put in jeopardy of punishment for the same offense.*" Section 7, Rule 117 of the Rules of Court, which implements this particular constitutional right, reads:

SEC. 7. *Former conviction or acquittal; double jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense

¹⁸ *People v. Jesalva*, G.R. No. 227306, June 19, 2017

¹⁹ G.R. No. 174673, January 11, 2016

²⁰ G.R. No. 168982, August 5, 2009

178

which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.

A judgment of acquittal is final and is no longer reviewable. It is also immediately executory and the State may not seek its review without placing the accused in double jeopardy. xxx" (Emphasis supplied; italics in the original)

Lejano v. People further elaborates:²¹

But, as a rule, a judgment of acquittal cannot be reconsidered because it places the accused under double jeopardy.

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Of course, on occasions, a motion for reconsideration after an acquittal is possible. But the grounds are exceptional and narrow as when the court that absolved the accused gravely abused its discretion, resulting in loss of jurisdiction, or when a mistrial has occurred. In any of such cases, the State may assail the decision by special civil action of certiorari under Rule 65.

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Ultimately, what the complainant actually questions is the Court's appreciation of the evidence and assessment of the prosecution witnesses' credibility. He ascribes grave error on the Court's finding that Alfaro was not a credible witness and assails the value assigned by the Court to the evidence of the defense. In other words, private complainant wants the Court to review the evidence anew and render another judgment based on such a re-evaluation. This is not constitutionally allowed as it is merely a repeated attempt to secure Webb, et al.'s conviction. The judgment acquitting Webb, et al. is final and can no longer be disturbed. (Emphases supplied)

The prosecution's *Motion* raises arguments pertaining to this Court's appreciation of evidence. Accused Guday's right against double jeopardy actually prevents this Court from revisiting *facts it may have missed or evidence it may have inadvertently misappreciated*. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*.²²

²¹ *Resolution on Motion for Reconsideration*, G.R. Nos. 176389 and 176864, January 18, 2011

²² *People v. Judge Hernando*, G.R. No. L-55213, October 9, 1981

171

All told, the arguments raised by the prosecution fail to raise strong, cogent reasons which would warrant the modification of the challenged ruling. Consequently, a departure from this Court's previous legal stand is not justified.

WHEREFORE, the prosecution's *Motion for Reconsideration* dated July 9, 2018 is **DENIED**.

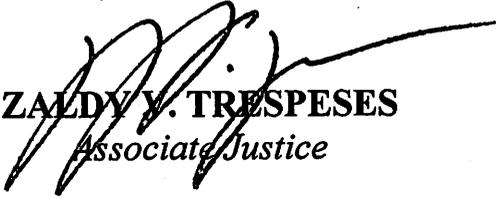
SO ORDERED.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA

Associate Justice

Chairperson

WE CONCUR:


ZALDY V. TRESPESES

Associate Justice


BAYANI H. JACINTO

Associate Justice