

Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-15-CRM-0188 to 0246**
Plaintiff,

-versus-

HABER A. ASARUL **and**
CAMLIAN P. BORJAL,

Accused. **Present:**

LAGOS, J., Chairperson,
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, JJ.

Promulgated:

21 April 2022 *Jed*

X ----- X

RESOLUTION

CORPUS-MAÑALAC, J.:

Before the Court are: (1) the Affidavit¹ dated November 3, 2021 of Nhonoh J. Hadjala, Municipal Treasurer of Sumisip, Basilan; (2) the Compliance with Motion to Reopen the Case² dated January 4, 2022 filed by the prosecution; and (3) the Comment³ [to the Affidavit of Nhonoh J. Hadjala] dated January 3, 2022 filed by Haber A. Asarul himself.

ANTECEDENTS

These cases stemmed from the fifty-nine (59) Informations, docketed as ‘SB-15-CRM-0188 to 0246,’ filed against Haber A. Asarul (Asarul) and Camlian P. Borjal (Borjal), former Municipal Mayor and former Municipal Treasurer, respectively, of Sumisip, Basilan. The charges consisted of:

[1] ‘SB-15-CRM-0188 to 0210’—Twenty-three (23) counts of violation of Section 2.81 of Revenue Regulation No. 2-98 in relation to Section 272(b) of Republic Act No. 8424 or the Tax Reform Act of 1997;

¹ Records, Vol. 2, pp. 378-380.

² Id. at 389-392.

³ Id. at 403-405.

[2] 'SB-15-CRM-0211 to 0227'—Seventeen (17) counts of violation of Section 6(b) of Republic Act No. 8291 or the Revised Government Service Insurance Act of 1977 in relation to Section 52(g) of the same law; and

[3] 'SB-15-CRM-0228 to 0246'—Nineteen (19) counts of violation of Section 5, Rule VI of the Rules and Regulations Implementing Presidential Decree No. 1752 or Home Development Mutual Fund Law of 1980 in relation to Section 23 of the said law, as amended by Republic Act No. 7742.

Both Asarul and Borjal pleaded not guilty to the charges.⁴ Thereafter, trial ensued.

While these cases were on trial, the parties exchanged submissions concerning plea bargaining.

Asarul and Borjal likewise wrote, through their counsel, the Office of the Special Prosecutor a Letter⁵ dated January 22, 2018 proposing to plead guilty to a lesser penalty and/or offense in these cases.

At the February 1, 2018 hearing, the prosecutor manifested that the Office of the Ombudsman had approved the Memorandum⁶ dated January 24, 2018 recommending plea bargaining in these cases. For their part, both Asarul and Borjal, through their counsel, manifested that they are amenable to the terms set forth in the approved Memorandum. However, the defense counsel stated that they still have to work on the memorandum of agreement between the Municipality of Sumisip, Basilan and the Government Service Insurance System (GSIS), for the payment of the unremitted GSIS contributions subject of 'SB-15-CRM-0211 to 0218.' The defense counsel also submitted the affidavit of consent of the private complainants, Abdullah M. Kiman and Ricardo H. Sahirin.⁷

In the Memorandum approved by the Ombudsman, the prosecutor noted that—**except for the unremitted GSIS contributions subject of 'SB-15-CRM-0211 to 0218'**—all taxes withheld and/or premium contributions subject of these cases were already paid only that the payments were made beyond the payment period prescribed under pertinent laws or rules, to wit:

Based on record, **except for the eight unremitted GSIS contributions for October 2007 to May 2008 in SB-15-CRM-0211 to 0218**, all taxes withheld and premium contributions were remitted to BIR, GSIS and PAG-IBIG offices, but beyond the prescribed period. The delay ranges from several days up to several months. The main cause for the delay, according to the defense, is due to security reasons. They also have copies

⁴ Records, Vol. 1, p. 361-362.

⁵ Records, Vol. 2, pp 199-200.

⁶ Id. at 190-198.

⁷ Id. at 203.

of the Affidavits of Desistance of the complainants, Ricardo Sahirin and Abdulla Kiman. (Emphasis supplied)

On May 29, 2018, without objection from the prosecution, Asarul and Borjal withdrew their pleas of not guilty, were re-arraigned, and then pleaded guilty, **except in SB-15-CRM-0210 to 0218 wherein the re-arraignment was conditioned on [1] the execution of the Memorandum of Agreement (MOA) between the Municipality of Sumisip, Basilan and the Government Service Insurance System (GSIS); and [2] the payment of the P3,063,012.19 unremitted GSIS contributions as well as the P7,254,065.13 penalties and interests (related increments), to the Municipality of Sumisip, Basilan upon the execution of the MOA.** Consequently, the Court rendered judgments of conviction and sentenced Asarul and Borjal to each pay P5,000.00 fine for each count in ‘SB-15-CRM-0188 to 0210,’ ‘SB-15-CRM-0219 to 0227,’ and ‘SB-15-CRM-0228 to 0246.’⁸ Both Asarul and Borjal paid the fine.⁹

Subsequently, Asarul and Borjal manifested to the Court that they have fully paid the unremitted GSIS contributions and related increments to the Municipality of Sumisip, Basilan. The total amount was paid in three (3) tranches, as evidenced by the following receipts submitted to the Court:¹⁰

<u>Number</u>	<u>Date</u>	<u>Amount</u>
3642538 R	November 15, 2018	P1,000.000.00
3642539 R	November 26, 2018	2,063,012.19
3642549 R	February 15, 2019	7,254,065.13

On March 15, 2019, without objection from the prosecution, Asarul and Borjal withdrew their respective pleas of not guilty, and when re-arraigned, both pleaded guilty to eight (8) counts of violation of Section 6(b) of RA 8291 in relation to Section 52(g), instead of in relation to Section 52(b), of the same law; then, the Court rendered the judgment of conviction in ‘SB-15-CRM-0211 to 0218,’ and sentenced both Asarul and Borjal to each pay P5,000.00 fine for each count.¹¹ Both paid the fine.¹²

THE PRESENT INCIDENT

On November 29, 2021, or more than two (2) years since the judgment of conviction in ‘SB-15-CRM-0211 to 0218’ was rendered, the Court received a copy of what purports to be a Letter¹³ of Nhonoh J. Hadjala (Treasurer Hadjala), Municipal Treasurer of Sumisip, Basilan, addressed to the Special Prosecutor. Attached to the letter is the Affidavit appearing to be that of Treasurer Hadjala.

⁸ Id. at pp. 249-254.

⁹ Id. at pp. 354-357.

¹⁰ Id. at 336-339.

¹¹ Id. at 349-350.

¹² Id. at pp. 354-357.

¹³ Id. at 377.

In the affidavit, Treasurer Hadjala alleges that Asarul misled the Court and the prosecution into believing that the full amount of the unremitted GSIS contributions had already been paid to the Municipality of Sumisip, Basilan. According to him, Official Receipt No. 3642539 R,¹⁴ which Asarul submitted as proof of payment of a portion of the unremitted GSIS contributions (P2,063,012.19), is spurious. He claims that he neither issued nor authorized anyone to issue the said receipt.

Acting on Treasurer Hadjala's affidavit, the Court directed the parties to file their respective comments.¹⁵

On January 6, 2022, the Court received the prosecution's Compliance with Motion to Reopen the Case.¹⁶

In its compliance with motion, the prosecution relates that it received a letter with an attached affidavit similar to what the Court had received and that it is verifying the veracity of Treasurer Hadjala's claims and will have the matter investigated for possible filing of criminal and administrative charges. It further asserts that the non-payment, if true, is a ground to nullify the judgment of conviction based on the parties' plea bargaining. Hence, in the same submission, it prays for the reopening of the cases and requests that Treasurer Hadjala, Asarul, and Borjal be directed to appear in court or *via* video conference in order to verify who issued the receipt and whether payment had indeed been made to the Municipality of Sumisip, Basilan.

By an Order¹⁷ of January 11, 2022, the Court directed Asarul and Borjal, and/or their counsel, to comment on the prosecution's Compliance with Motion to Reopen.

On February 28, 2022, the Court received Asarul's Comment¹⁸ on the Affidavit of Treasurer Hadjala.

In his comment, Asarul characterizes the statements of Treasurer Hadjala as "fabricated and laden with lies" and politically motivated, only meant to serve the interest of his rival for mayor in the coming May 2022 elections. He further asserts that the decisions of the Court have already attained finality, noting that neither the prosecution nor the Office of the Solicitor General filed an appeal. The cases having attained finality, he argues, cannot be reopened by a mere affidavit of Treasurer Hadjala, who is not even a party to these cases, and without violating his rights to due process and against double jeopardy. Furthermore, contrary to the allegations in the affidavit, he maintains that Mr. Hadjala received the amount he tendered as payment for the unremitted GSIS contributions, for

¹⁴ Id. at 339.

¹⁵ Id. at 384.

¹⁶ Id. at 389-392.

¹⁷ Id. at 394.

¹⁸ Id. at 403-405

which the official receipts, including the receipt in question, were issued. At any rate, he states, if the receipt in question is spurious, separate charges could be filed in connection thereto.

The Court did not receive any comment from Borjal.

RULING

On the Affidavit of
Treasurer Hadjala

The Court merely notes the purported Affidavit dated November 3, 2021 of Nhonoh J. Hadjala, Municipal Treasurer of Sumisip, Basilan.

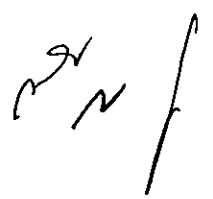
The affidavit, which is attached to the letter addressed to the Office of the Special Prosecutor, was intended for the Special Prosecutor and the Court was merely furnished with a copy of it. Put differently, it is neither a pleading nor a motion that seeks a relief from the Court.

Moreover, it should be noted that Treasurer Hadjala is not a party to and, therefore, has no legal standing in these cases. In criminal cases, the offended party is the State, and only the prosecution or the Office of the Solicitor General, in proper cases, may represent it insofar as the criminal aspect is concerned. On this point, *Yokohama Tire Philippines, Inc. v. Reyes*¹⁹ is instructive:

It is settled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the Office of the Solicitor General (OSG). The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.

The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution such that when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. The private

¹⁹ G.R. No. 236686, February 5, 2020.



offended party or complainant may not take such appeal, but may only do so as to the civil aspect of the case.

Observing the aforesaid rule, in *JCLV Realty & Development Corp. v. Mangali*,²⁰ the Supreme Court denied the petition filed by the private complainant in the criminal case, finding that the petition necessarily requires a review of the criminal aspect of the case and the prayer includes the reversal of the order granting the demurrer to evidence. Similarly, in *Cu v. Ventura*,²¹ the Supreme Court affirmed the Court of Appeals' dismissal of the petition filed by one who is the private complainant in the criminal case, ruling that the said petitioner was not authorized to represent the State in an appeal from a criminal action. Therein it was observed that the petitioner was seeking the reversal of the entire decision of the RTC, in both its criminal and civil aspects.

Here, what is being sought is the revival of the entire criminal case. A reading of the letter to the Special Prosecutor shows that Treasurer Hadjala seeks the reopening of the cases and the re-arrest of Asarul and Borjal, to wit:

May I request in behalf of the Local Government Unit (LGU) of the Municipality of Sumisip, Basilan province to move for the **RE-OPENING** of **Criminal Case Nos. SB-15-CRM-0188 to 0246** before the 5th Division of the Honorable Sandiganbayan and for the immediate **RE-ARREST** of the accused for reasons cited in my Affidavit attached to this letter-request.

On the basis of the foregoing, the Court merely notes the affidavit of Treasurer Hadjala.

On the prosecution's
Motion to Reopen

The Court resolves to deny the present motion.

At this stage, reopening of a case is procedurally infirm.

Rule 119, Section 24 of the Revised Rules of Criminal Procedure, the provision that governs reopening of a criminal case, provides:

Section 24. Reopening. — **At any time before finality of the judgment of conviction**, the judge may, *motu proprio* or upon motion, with hearing in either case, reopen the proceedings to avoid a miscarriage of justice. The proceedings shall be terminated within thirty (30) days from the order granting it. (Emphasis supplied)

²⁰ G.R. No. 236618, August 27, 2020.

²¹ G.R. No. 224567, September 26, 2018.

Evidently, reopening of a case may be allowed after the parties have rested but **before the finality of judgment of conviction** to avoid miscarriage of justice. *Cabarles v. Maceda*²² explains the nature, purpose, and requisites of this remedy as follows:

X x x. Section 24, Rule 119 and existing jurisprudence stress the following requirements for reopening a case: **(1) the reopening must be before the finality of a judgment of conviction**; (2) the order is issued by the judge on his own initiative or upon motion; (3) the order is issued only after a hearing is conducted; (4) the order intends to prevent a miscarriage of justice; and (5) the presentation of additional and/or further evidence should be terminated within thirty days from the issuance of the order.

Generally, after the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only. However, the court, for good reasons, in the furtherance of justice, may allow new evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. A motion to reopen may thus properly be presented only after either or both parties had formally offered and closed their evidence, but before judgment is rendered, and even after promulgation but **before finality of judgment** and the only controlling guideline governing a motion to reopen is the paramount interest of justice. This remedy of reopening a case was meant to prevent a miscarriage of justice. (Emphases supplied)

Thus, in *Hernan v. Sandiganbayan*,²³ the Supreme Court sustained the ruling of the Sandiganbayan which denied the motion to reopen the case filed after nearly three years since the promulgation of the assailed resolution denying the motion for reconsideration. Therein, the Supreme Court stressed that the reopening must be made before the finality of a judgment of conviction.

Here, the judgment of conviction had already attained finality long before the prosecution filed the motion to reopen these cases. From the promulgation of the judgment of conviction in 'SB-15-CRM-0211 to 0218' on March 15, 2019 to the filing of the motion to reopen these cases on January 6, 2022, more than two (2) years had already passed; in the intervening period, neither a motion for reconsideration nor an appeal was filed.²⁴ Such failure to move for reconsideration within fifteen (15) days from notice of the judgment or to perfect an appeal rendered the judgment of conviction final and executory. *Thomas v. Trono*²⁵ is instructive:

. . . a judgment becomes final and executory by operation of law. There is no need for any judicial declaration or performance of an act before the finality takes effect. Finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected, or

²² G.R. No. 161330, February 20, 2007; citations omitted.

²³ G.R. No. 217874, December 5, 2017.

²⁴ Records, Vol. 2, p. 367 (Certification dated May 28, 2019 of the Executive Clerk of Court of the Sandiganbayan, Fifth Division).

²⁵ G.R. No. 241032 (Resolution), March 15, 2022; citations omitted.



motion for reconsideration or new trial is filed. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. In fact, the trial court could not even validly entertain a motion for reconsideration filed after the lapse of the period for taking an appeal. It is of no moment that the opposing party failed to object to the timeliness of the motion for reconsideration. Thereafter, the court loses jurisdiction over the case and not even an appellate court would have the power to review a judgment that has acquired finality.

From the foregoing, it is clear that the prosecution's motion is time-barred and, therefore, failed to meet the first requisite of reopening a case—that it must be filed before the finality of a judgment of conviction.

Moreover, the prosecution theorizes, *albeit* without citing any rule or jurisprudence, that: "If Mr. Hadjala's claim that Official Receipt No. 3642539 R dated November 26, 2018 is not actually paid, this would be a ground to nullify the decision of the court based on the approved plea bargain." That claim hinges on the alleged non-payment of a portion of the unremitted GSIS contributions to the Municipality of Sumisip, Basilan. However, the prosecution itself has yet to make a determination regarding the veracity of the statements in the affidavit; specifically, that Official Receipt No. 3642539 R is spurious, and that the P2,063,012.19 payment supposedly represented by the said receipt did not actually happen. Thus, it stated in its compliance that:

At present, the **prosecution is verifying** the validity of Mr. Hadjala's claim and **would refer this matter for further investigation** so that possible criminal and administrative cases will be instituted if warranted;²⁶ (emphases supplied)

WHEREFORE, the motion of the prosecution to reopen these cases is **DENIED**.

The Affidavit dated November 3, 2021 of Nhonoh J. Hadjala, Municipal Treasurer of Sumisip, Basilan is **NOTED**.


SO ORDERED.



MARYANN E. CORPUS-MAÑALAC
Associate Justice

²⁶ Id. at p. 390 (Prosecution's Compliance with Motion to Reopen the Case, p. 2, par. 7).



WE CONCUR:


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice