



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-17-CRM-0778 to 0781**
Plaintiff, For: Violation of Sec. 3(e)
of R.A. No. 3019

SB-17-CRM-0782 to 0785
For: Malversation of Public Funds
under Art. 217 of the RPC

SB-17-CRM-0786 to 0922
For: Falsification of Public Document
under Art. 171 of the RPC

Present

- versus -

DATU SAJID ISLAM UY
AMPATUAN, ET AL.,

Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

April 20, 2023 *[Signature]*

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves the *Motion (To Reinstate the Right of the Accused to Avail of Post-Conviction Remedies)*¹ filed by accused Datu Sajid Islam Uy Ampatuan, and the prosecution's *Comment/Opposition (Re: Motion To Reinstate the Right of the Accused to Avail of Post-Conviction Remedies)*.²

In his *Motion*, accused Ampatuan prays that the Court excuse his absence during the promulgation of the Decision on February 9,

¹ Dated February 24, 2023; Record, Vol. 18, pp. 318-321

² Dated March 14, 2023; Record, Vol. 18, pp. 329-332

[Handwritten signatures]

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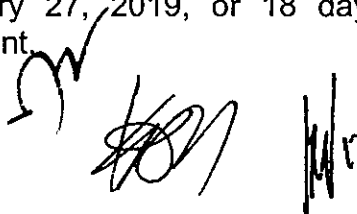
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2023, and allow him to avail of post-conviction remedies which might be available to him. He further prays that he be allowed to post additional bail to enjoy his temporary liberty and for the cancellation of any warrant of arrest issued by the Court. He avers:

1. On February 7, 2023, he filed a Motion praying that the promulgation of judgment scheduled on February 9, 2023 be reset on the ground that he will not be able to attend because he is suffering from acute gastritis (swollen) and swollen knees due to gout (arthritis) which prohibits him from walking and travelling.
2. The Court denied his Motion during the hearing for the promulgation of judgment.
3. The Medical Certificate dated February 3, 2023 indicates that he was advised to rest for 10 days due to swollen gastritis and gout. Therefore, at the time of the hearing for the promulgation of judgment, he could not travel.
4. At present, he is still unable to walk due to his medical condition which renders him incapable of surrendering before the Court and filing a motion for leave of court to avail of the remedies, as provided under Sec. 6 of Rule 120 of the Rules of Court.
5. The attached Medical Certificate dated February 22, 2023 would show that he is not fit to travel. Because of his medical condition, he will be unable to appear before the Court to prove that his absence was for a justifiable cause.

In its *Comment/Opposition*, the prosecution counters:

1. Sec. 6, Rule 120 of the Revised Rules of Criminal Procedure provides for the effect of the absence of an accused during promulgation of judgment. When an accused fails to appear during the promulgation of judgment of conviction, the accused shall lose the available remedies.
2. In *People v. Belicena, et al.*, the Supreme Court held that to regain their standing in court, the accused must: (1) surrender, and (2) file a motion for leave of court to avail of the remedies, stating the reasons for their absence, within 15 days from the date of the promulgation of judgment.
3. Accused Ampatuan should have filed his Motion on or before February 24, 2023. However, his Motion was filed only on February 27, 2019, or 18 days after the promulgation of judgment.



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4. Accused Ampatuan has not yet surrendered.

In the Resolution dated March 22, 2023,³ the Court directed accused Ampatuan to file his reply to the prosecution's *Comment/Opposition*. In his *Reply (to Prosecution's Comment/Opposition re: Motion to Reinstate Right of the Accused to Avail of Post-Conviction Remedies)*,⁴ accused Ampatuan avers that his Motion was timely filed because the last day for filing the same, February 24, 2023, was declared a special non-working holiday.

THE COURT'S RULING

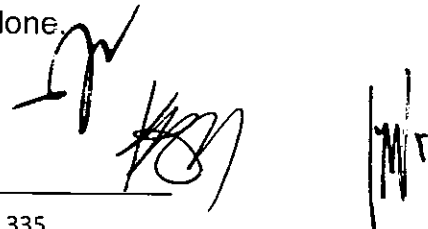
The Court resolves to deny accused Ampatuan's Motion.

Without doubt, accused Ampatuan had notice of the promulgation of judgment scheduled on February 9, 2023. On February 7, 2023, accused Ampatuan filed his *Motion to Reset*,⁵ praying that the promulgation of judgment be reset to a later date, or in the alternative, that his absence be excused. According to him, he can barely walk, much less travel, because of his medical condition. To support his claim, he submitted the Medical Certificate dated February 3, 2023 issued by Dr. Wilkinson B. Gacayan, the pertinent portion of which reads:

DIAGNOSIS AND FINDINGS:

- Acute Gastritis (swollen);
- Complicated Urinary Tract Infection;
- Hypertension Stage 1;
- Both knees are swollen due to gout (arthritis).

SURGICAL PROCEDURE DONE:

None 

³ Record, Vol. 18, p. 335
⁴ Dated March 30, 2023 and filed on March 31, 2023
⁵ Dated February 7, 2023; Record, Vol. 18, pp. 181-184

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REMARKS: Seen and Examined at OPD on February 3, 2023.
Advised to rest February 3 to February 13, 2023.
Follow up check-up after February 13, 2023.

During the hearing for the promulgation of judgment on February 9, 2023, the Court asked accused Ampatuan’s counsel if he can assure the Court that accused Ampatuan will appear if the promulgation is deferred to the succeeding week. However, accused Ampatuan’s counsel could not give any assurance. The pertinent portion⁶ of the TSN reads:

CHAIRPERSON FERNANDEZ:

Okay. Since you are asking for a deferment on the ground supposedly of certain ailment of the accused, can you assure the Court of the accused[s] presence next week if we defer it?

ATTY. NUESTRO:

I am sorry, Your Honor. I cannot commit because of his sickness, Your Honor the arthritic gout has been going on for about more than a month already, Your Honor.

CHAIRPERSON FERNANDEZ:

Yes, but the [sic] based on the medical certificate issued by the Doctor, the physician only recommended bed rest. It did not say that the accused cannot travel or that when he travels, it will be detrimental to his health. You confirm that?

ATTY. NUESTRO:

Yes, Your Honors. It was indicated in the medical certificate, Your Honors. So, for next week, Your Honor. Maybe it’s too soon Your Honors. If it’s next week?

X X X

CHAIRPERSON FERNANDEZ:

But can you assure the Court that he will appear under your lawyer’s oath?

ATTY. NUESTRO:

I will try my best, Your Honors to ask him to appear physically, Your Honors if he can.

CHAIRPERSON FERNANDEZ:

Okay, so that’s not an assurance, noh, that’s just a promise that you will try your best.

⁶ TSN, February 9, 2023, pp. 5-6

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As seen from the foregoing, there was no indication of accused Ampatuan’s intention to appear before the Court. Further considering that the Medical Certificate dated February 3, 2023 did not state that accused Ampatuan could not travel and merely advised bed rest,⁷ the Court ruled that accused Ampatuan’s absence was not justifiable and denied accused Ampatuan’s *Motion to Reset*. The Court then proceeded with the promulgation of the Decision convicting accused Ampatuan of four (4) counts of Violation of Sec. 3(e) of R.A. No. 3019, four (4) counts of Malversation of Public Funds, and one hundred twenty-six (126) counts of Falsification under Art. 171 of the Revised Penal Code.⁸

A convicted accused who fails to appear during the promulgation of judgment without justifiable cause loses standing in court and loses the remedies available under the Rules of Court. Such accused may regain standing in court and may be allowed to avail of the said remedies upon compliance with the requirements under the last paragraph of Sec. 6, Rule 120 of the Rules of Court. To wit:

Sec. 6. Promulgation of judgment. – x x x

x x x

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

In *Jaylo v. Sandiganbayan (First Division)*,⁹ the Supreme Court further explained:

It is well to note that Section 6, Rule 120 of the Rules of Court also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies available to them against the judgment of conviction. In order to regain their standing in court, the accused must do as follows: 1) surrender and 2) file a motion for leave of court to avail of the

⁷ TSN, February 9, 2023, p. 15
⁸ Order dated February 9, 2023
⁹ G.R. Nos. 183152-54, January 21, 2015

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remedies, stating the reasons for their absence, within 15 days from the date of the promulgation of judgment.

In *Villena v. People*, we stated that the term "surrender" contemplates the act by the convicted accused of physically and voluntarily submitting themselves to the jurisdiction of the court to suffer the consequences of the judgment against them. Upon surrender, the accused must request permission of the court to avail of the remedies by making clear the reasons for their failure to attend the promulgation of the judgment of conviction.

Clearly, the convicted accused are the ones who should show that their reason for being absent at the promulgation of judgment was justifiable. If the court finds that the reasons proffered justify their nonappearance during the promulgation of judgment, it shall allow them to avail of the remedies. Thus, unless they surrender and prove their justifiable reason to the satisfaction of the court, their absence is presumed to be unjustified.

(underscoring supplied)

Applying the foregoing, the Court may allow accused Ampatuan to avail of the remedies under the Rules of Court if he is able to show that his absence during the promulgation of judgment was for a justifiable cause. However, before the Court may determine the same, accused Ampatuan must first surrender to the Court within fifteen (15) days from the date of the promulgation of judgment.

The fourth paragraph of Sec. 6, Rule 120 of the Rules of Court provides:

Sec. 6. Promulgation of judgment. – x x x

x x x

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

x x x

In *Pascua v. Court of Appeals*,¹⁰ the Supreme Court explained that the essential elements for the validity of the promulgation of judgment *in absentia* are: (a) that the judgment be recorded in the

¹⁰ G.R. No. 140243, December 14, 2000

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criminal docket; and (b) that a copy thereof shall be served upon the accused or counsel. Here, the electronic copy of the Court’s Decision was made available for download from the Sandiganbayan’s website. A copy of the same was served upon accused Ampatuan’s counsel on February 10, 2023,¹¹ and the judgment was recorded in the Division Clerk of Court’s criminal docket on February 9, 2023, and in the Judicial Records Division’s criminal docket on February 13, 2023. Therefore, accused Ampatuan had fifteen (15) days from February 13, 2023, or until February 28, 2023, within which to surrender and file a motion for leave of court to avail of the remedies.

Although accused Ampatuan filed his instant Motion well within the said period, he has not yet surrendered to the Court. Thus, the requirements for allowing a convicted accused to regain standing and to avail of the remedies under the Rules of Court have not been complied with. There being no motion for reconsideration or notice of appeal filed within the said fifteen (15)-day period, the Court’s judgment has now become final and executory.

WHEREFORE, accused Ampatuan’s *Motion* is hereby DENIED for lack of merit.

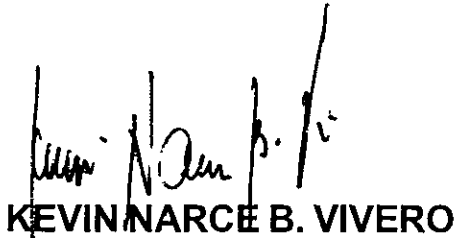
The Court reiterates its directive for the issuance of a warrant of arrest against accused Ampatuan in the Order dated February 9, 2023.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

¹¹ Record, Vol. 18, p. 316