



Republic of the Philippines
SANDIGANBAYAN
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,

Plaintiff,

SB-18-CRM-0541

For: Violation of Section 3 (e)
of R.A. No. 3019, as
amended.

-versus-

SB-18-CRM-0542

For: Malversation of Public
Funds, defined and penalized
under Article 217 of the
Revised Penal Code.

Present:

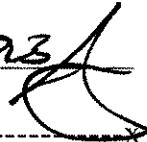
**JAMALODEN HADGI FAISAL and
ALIKAHN M. EBRAHIM,**

Accused.

**CABOTAJE-TANG, A.M.
P.J.,**

Chairperson,
**FERNANDEZ, B.R., J. and
MORENO, R.B. J.**

Promulgated:

OCTOBER 9, 2023


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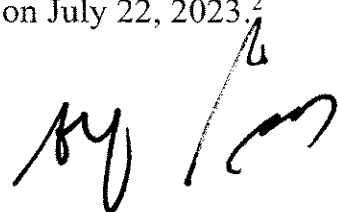
RESOLUTION

Moreno, J.:

For resolution are the following: (1) *Motion for Reconsideration* (Re: *Decision dated 23 June 2023*) filed by accused-movant Jamaloden Hadji Faisal (“Faisal”) on July 7, 2023¹; and (2) the prosecution’s *Opposition (To the Motion for Reconsideration Re: Decision dated 23 June 2023 of Accused Faisal)* received through mail on July 22, 2023.²

¹ Record, Vol. III, pp. 105-115.

² Record, Vol. III, pp. 134-139.



Motion for Reconsideration

(Re: Decision dated 23 June 2023) filed by accused-movant Faisal.

Accused-movant Faisal moved for reconsideration of the Court's *Decision* dated June 23, 2023,³ based mainly on the ground that he was not a public officer at the time material to the commission of the offenses as charged. Accused-movant Faisal supported his conjecture with the following arguments:

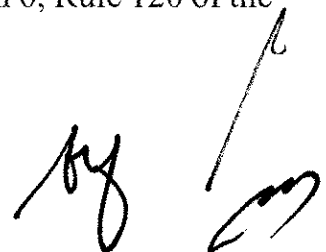
First, the Court's ruling that accused-movant Faisal is a *de facto* public officer of Tugaya Water District within the purview of Section 3(e) was hinged only on the alleged acts of opening the Tugaya Water District Account at PNB and causing the withdrawal of the initial funds. According to Faisal, the alleged acts cannot give rise to the application of the *de facto* doctrine.

Second, there was no evidence presented that accused-movant Faisal has been performing as a general manager of Tugaya Water District in such a desired interval or period/time to support a proposition of a *de facto* officer, primarily because there was no appointment and there was a falsification of appointment papers of Faisal.

Lastly, citing the case of *People of the Philippines v. PO1 Johnny K. Sullano*,⁴ accused-movant Faisal argues that because there are two conflicting views, *i.e.*, one favoring him, while the other against him, the scale of justice should tilt in his favor and his constitutionally guaranteed right to be presumed innocent.

Prosecution's Opposition (to the Motion for Reconsideration
Re: Decision dated 23 June 2023 of accused Faisal)

On July 22, 2023, the Court received through electronic mail the Prosecution's *Opposition*, praying for the denial of the *Motion for Reconsideration* filed by accused-movant Faisal based on the ground that the said motion is procedurally defective. Citing Section 6, Rule 120 of the



³ Record, Vol. III, pp. 17-77.

⁴ G.R. No. 228373, March 12, 2018.

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Revised Rules of Criminal Procedure,⁵ and *Dallo v. People*,⁶ the prosecution argues that since the promulgation of the judgment proceeded *in absentia*, the proper remedy of accused-movant Faisal would have been to surrender and file a motion for leave of court to avail of the remedy available to him within fifteen (15) days from the promulgation of judgment. Since Faisal failed to avail of the said remedy within the reglementary period, he is deemed to have waived his right to the said remedy and the judgment in these cases has become final and executory on July 8, 2023.

RULING OF THE COURT

After due consideration, the Court denies the *Motion for Reconsideration* filed by accused-movant Faisal.

Records show that on the promulgation of judgment scheduled on June 23, 2023, accused-movant Faisal failed to appear in Court despite notice to his counsel, who attempted to request for cancellation of the promulgation. Considering the unjustified absence of accused-movant

⁵ Section 6. Promulgation of judgment. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

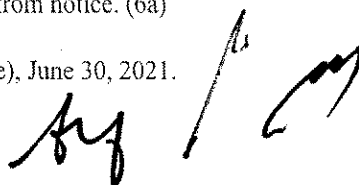
If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

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.

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. (6a)

⁶ G.R. No. 255459 (Notice), June 30, 2021.



Faisal in the scheduled promulgation of judgment, the Court ordered the issuance of a warrant of arrest against him.⁷

Despite the issuance of the warrant of arrest, accused-movant Faisal did not surrender to the Court. Instead, he filed his *Motion for Reconsideration (Re: Decision dated 23 June 2023)* on July 7, 2023, or fourteen (14) days from the date of the promulgation of the judgment against him. Considering that the warrant of arrest was returned unserved, accused-movant Faisal remains at large.⁸

An accused who fails to appear during the promulgation of judgment of conviction 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 Revised Rules of Criminal Procedure, 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.

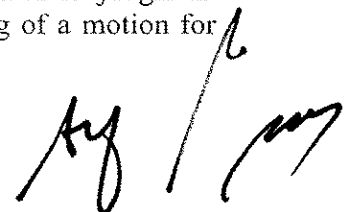
In the case of *Salvador v. Chua*,⁹ the Supreme Court explained the effects of the failure of the accused to appear at the promulgation of a judgment of conviction, as follows:

As the rule expressly indicates, the promulgation of the judgment of conviction may be done *in absentia*. The accused in such case is allowed a period of 15 days from notice of the judgment to him or his counsel within which to appeal; otherwise, the decision becomes final. The accused who fails to appear at the promulgation of the judgment of conviction loses the remedies available under the Rules of Court against the judgment, specifically: (a) the filing of a motion for new trial or for reconsideration (Rule 121), and (b) an appeal from the judgment of conviction (Rule 122). However, the Rules of Court permit [sic] him to regain his standing in court in order to avail himself of these remedies within 15 days from the date of promulgation of the judgment conditioned upon: (a) his surrender; and (b) his filing of a motion for

⁷ Record, Vol. III, pp. 80-81.

⁸ Record, Vol. III, p. 166.

⁹ G.R. No. 212865, July 15, 2015, 764 PHIL 244-256



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leave of court to avail himself of the remedies, stating therein the reason for his absence. Should the trial court find that his absence was for a justifiable cause, he should be allowed to avail himself of the remedies within 15 days from notice of the order finding his absence justified and allowing him the available remedies from the judgment of conviction.

Here, accused-movant Faisal is deemed to have waived his right to file the instant motion for reconsideration for his utter failure to regain his standing in court pursuant to the foregoing provision of the Rules.

First, accused-movant Faisal failed to surrender to the Court. Based on the records, the promulgation of the judgment of conviction was on June 23, 2023; hence, accused-movant Faisal had only until July 8, 2023, within which to surrender and to file a motion for leave of court to avail himself of the remedies, stating therein the reason for his absence. Here, accused-movant Faisal did not surrender despite the order for the issuance of an *alias* warrant of arrest against him, which was ordered in open court and in the presence of his counsel.

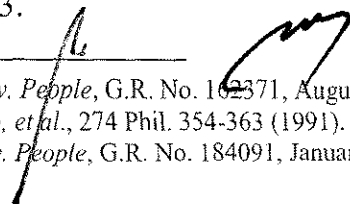
Considering that accused-movant Faisal, was out of bail during the trial, he is deemed to have jumped bail when he failed to appear at the promulgation of his sentence. It is settled that once an accused escapes from prison or confinement, jumps bail, or flees to a foreign country, he loses his standing in court. Unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.¹⁰

In *Villena v. People*,¹¹ the Supreme Court ruled that the term surrender used in the Rules visibly necessitated the physical and voluntary submission of the convict to the jurisdiction of the court to suffer any consequences of the verdict against him. Hence, accused-movant Faisal's mere filing of the instant motion cannot be considered an act of surrender.

Second, accused-movant Faisal did not file the required motion for leave of court within the required reglementary period. While he did file the *Motion for Reconsideration* fourteen (14) days from the date of the promulgation of judgment, it does not qualify as the motion required by the Rules of Court. A judicious review of the instant motion shows that it does not include accused-movant Faisal's intention to avail of the remedies of a motion for a new trial or for reconsideration and an appeal from the judgment of conviction. Moreover, the said motion did not attempt to justify his absence during the promulgation of judgment of conviction on June 23, 2023.

¹⁰ *Estrada v. People*, G.R. No. 162371, August 25, 2005, 505 PHIL 339-352, citing *People v. Mapalao, et al.*, 274 Phil. 354-363 (1991).

¹¹ *Villena v. People*, G.R. No. 184091, January 31, 2011, 656 PHIL 127-137.



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In *Cuyo v. People*,¹² the Supreme Court ruled that absent a motion for leave to avail of the remedies against the judgment, the Court which promulgated the conviction should not entertain the Motion for Reconsideration.

Like an appeal, the right to file a motion for reconsideration is a statutory grant or privilege. As a statutory right, the filing of a motion for reconsideration is to be exercised in accordance with and in the manner provided by law. Thus, a party filing a motion for reconsideration must strictly comply with the requisites laid down in the Rules of Court.¹³ This includes the mandatory requirements of surrender and the filing of the motion for leave of court within the required reglementary period pursuant to Sec. 6, Rule 120 of the Revised Rules of Criminal Procedure.

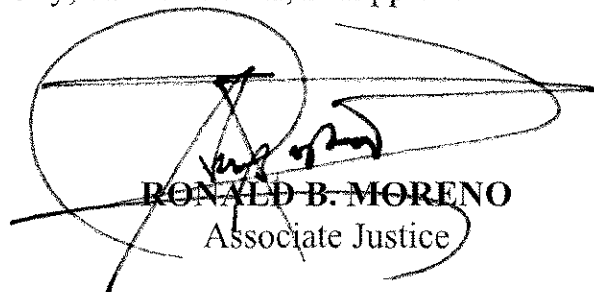
Even assuming that accused-movant Faisal's *Motion for Reconsideration* is proper, the Court finds no cogent reason to deviate from its earlier pronouncements considering that the issues raised in the motion were a mere rehash of the basic issues which were already exhaustively passed upon, duly considered, and resolved in the assailed *Decision*.

Accordingly, for failing of accused-movant Faisal to surrender and file the required motion for leave of court within fifteen (15) days from the date of the promulgation of judgment, no action on the *Motion for Reconsideration* can be taken and the *Decision* dated June 23, 2023, has become final and executory.

WHEREFORE, accused-movant JAMALODEN HADGI FAISAL'S ("FAISAL") *Motion for Reconsideration (Re: Decision dated 23 June 2023)* is hereby **DENIED** for lack of merit. Let the appropriate *alias* warrant of arrest be issued against the said accused.

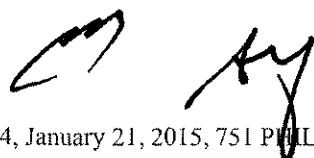
SO ORDERED.

Quezon City, Metro Manila, Philippines.


RONALD B. MORENO
Associate Justice

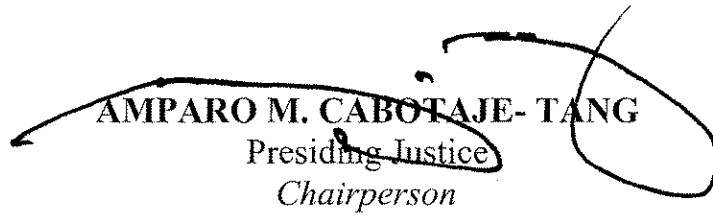
¹² G.R. No. 192164, October 12, 2011, 675 PHIL 81-90

¹³ *Jaylo v. Sandiganbayan (First Division)*, G.R. Nos. 183152-54, January 21, 2015, 751 PHIL 123-145

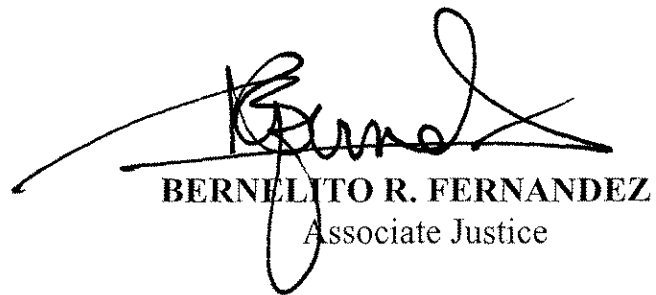


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WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELLITO R. FERNANDEZ
Associate Justice

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