

EN BANC

[G.R. Nos. 216007-09, December 08, 2015]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. LUZVIMINDA S. VALDEZ AND THE SANDIGANBAYAN (FIFTH DIVISION), RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This special civil action for *certiorari* under Rule 65 of the Rules of Court (*Rules*) seeks to nullify and set aside the October 10, 2014 Resolution^[1] of public respondent Sandiganbayan Fifth Division, the dispositive portion of which states:

WHEREFORE, the (i) *Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail* and the (ii) *Urgent Supplemental Motion to the Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail with Additional Prayer to Recall/List Warrant of Arrest* filed by accused Luzviminda S. Valdez, are **GRANTED**.

Let the Order of Arrest issued in Criminal Case Nos. SB-14-CRM-0321, 0322 and 0324 adopting the "no bail" recommendation of the Office of the Ombudsman be **RECALLED**. Instead, let an Order of arrest in said cases be issued anew, this time, fixing the bail for each offense charged in the amount of Two Hundred Thousand Pesos (P200,000.00).

SO ORDERED.^[2]

The case stemmed from the Joint Affidavit^[3] executed by Sheila S. Velmonte-Portal and Mylene T. Romero, both State Auditors of the Commission on Audit Region VI in Pavia, Iloilo, who conducted a post-audit of the disbursement vouchers (D.V.) of the Bacolod City Government. Among the subjects thereof were the reimbursements of expenses of private respondent Luzviminda S. Valdez (Valdez), a former mayor of Bacolod City, particularly:

1. D.V. No. 6 dated January 8, 2004 amounting to P80,000.00;
2. D.V. No. 220 dated March 24, 2004 amounting to P68,000.00;
3. D.V. No. 278 dated April 13, 2004 amounting to P19,350.00; and
4. D.V. No. 325 dated April 30, 2004 amounting to P111,800.00 for Cash Slip No. 193402.^[4]

Based on the verification conducted in the establishments that issued the official receipts, it was alleged that the cash slips were altered/falsified to enable Valdez to claim/receive reimbursement from the Government the total amount of P279,150.00

instead of only P4,843.25; thus, an aggregate overclaim of P274,306.75.

The Public Assistance and Corruption Prevention Office (PACPO), Office of the Ombudsman - Visayas received the joint affidavit, which was thereafter resolved adverse to Valdez.

Consequently, Valdez was charged with eight cases four of which (SB-14-CRM-0317 to 0320) were for Violation of Section 3 (e) of Republic Act No. 3019, while the remaining half (SB-14-CRM-0321 to 0324) were for the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents under Articles 217^[5] and 171,^[6] in relation to Article 48^[7] of the Revised Penal Code (RPC). All the cases were raffled before public respondent.

Since the Ombudsman recommended "no bail" in SB-14-CRM-0321, 0322, and 0324, Valdez, who is still at-large, caused the filing of a Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail.^[8] She argued that the three cases areailable as a matter of right because no aggravating or modifying circumstance was alleged; the maximum of the indeterminate sentence shall be taken from the medium period that ranged from 18 years, 8 months and 1 day to 20 years; and applying Article 48 of the RPC, the imposable penalty is 20 years, which is the maximum of the medium period.

Petitioner countered in its Comment/Opposition^[9] that the Indeterminate Sentence Law (ISL) is inapplicable as the attending circumstances are immaterial because the charge constituting the complex crime have the corresponding penalty of *reclusion perpetua*. Since the offense is punishable by *reclusion perpetua*, bail is discretionary. Instead of a motion to fix bail, a summary hearing to determine if the evidence of guilt is strong is, therefore, necessary conformably with Section 13, Article III of the 1987 Constitution and Section 4, Rule 114 of the Rules.

Due to the issuance and release of a warrant of arrest, Valdez subsequently filed an Urgent Supplemental Motion to the Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail with Additional Prayer to Recall/Lift Warrant of Arrest.^[10] Petitioner filed a Comment/Opposition thereto.^[11] Later, the parties filed their respective Memorandum of Authorities.^[12]

As aforesaid, on October 10, 2014, public respondent granted the motions of Valdez. It recalled the arrest order issued in Criminal Case Nos. SB-14-CRM-0321, 0322 and 0324. In lieu thereof, a new arrest order was issued, fixing the bail for each offense charged in said cases in the amount of Two Hundred Thousand Pesos (P200,000.00). Without filing a motion for reconsideration, petitioner elevated the matter before Us to resolve the lone issue of whether an accused indicted for the complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents involving an amount that exceeds P22,000.00 is entitled to bail as a matter of right.

The Court shall first tackle Valdez's procedural objection. She avers that the petition must be dismissed outright on the ground that it was filed without first filing a motion for reconsideration before public respondent, and that, even if there are exceptions to the general rule, this case does not fall under any of them.

We disagree.

The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.

However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration:

(a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

(b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,

(i) where the issue raised is one purely of law or public interest is involved.^[13]

The issue being raised here is one purely of law and all the argument, *pros* and *cons* were already raised in and passed upon by public respondent; thus, filing a motion for reconsideration would be an exercise in futility. Likewise, as petitioner claims, the resolution of the question raised in this case is of urgent necessity considering its implications on similar cases filed and pending before the Sandiganbayan. As it appears, there have been conflicting views on the matter such that the different divisions of the anti-graft court issue varying resolutions. Undeniably, the issue is of extreme importance affecting public interest. It involves not just the right of the State to prosecute criminal offenders but, more importantly, the constitutional right of the accused to bail.

Now, on the main issue:

The controversy is, in fact, not one of first impression. *Mañalac, Jr. v. People*^[14] already resolved that an accused charged with Malversation of Public Funds thru Falsification of Official/Public Documents where the amount involved exceeds P22,000.00 is not entitled to bail as a matter of right because it has an actual imposable penalty of *reclusion perpetua*.

In *Mañalac, Jr.*, the defendants argued that they should be allowed to post bail since *reclusion perpetua* is not the prescribed penalty for the offense but merely describes the penalty actually imposed on account of the fraud involved. It was also posited that Article 48 of the RPC applies "only after the accused has been convicted in a full-blown trial such that the court is mandated to impose the penalty of the most serious crime," and that the reason for the imposition of the penalty of the most serious offense is "only for the purpose of determining the correct penalty upon the application of the Indeterminate Sentence Law." This Court, through the Third Division, however, denied the petition and resolved in the affirmative the issue of whether the constitutional right to bail of an accused is restricted in cases whose imposable penalty ranges from *reclusion temporal* maximum to *reclusion perpetua*. Citing *People v. Pantaleon, Jr., et al.*,^[15] in relation to Section 13, Article III of the Constitution and Section 7, Rule 114 of the Rules, it was held that *Mañalac, Jr.* is not entitled to bail as a matter of right since he is charged with a crime whose penalty is *reclusion perpetua*.

To recall, the amounts involved in *Pantaleon, Jr.* were manifestly in excess of P22,000.00. We opined that the Sandiganbayan correctly imposed the penalty of *reclusion perpetua* and that the ISL is inapplicable since it is an indivisible penalty. The Court's pronouncement is consistent with the earlier cases of *People v. Conwi, Jr.*,^[16] *People v. Enfermo*,^[17] and *People v. Pajaro, et al.*^[18] as well as with the fairly recent case of *Zafra v. People*.^[19]

The rulings in *Pantaleon, Jr.* and analogous cases are in keeping with the provisions of the RPC. Specifically, Article 48 of which states that in complex crimes, "the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." Thus, in Malversation of Public Funds thru Falsification of Official/Public Documents, the prescribed penalties for malversation and falsification should be taken into account. Under the RPC, the penalty for malversation of public funds or property if the amount involved exceeds P22,000.00 shall be *reclusion temporal* in its maximum period to *reclusion perpetua*, aside from perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.^[20] On the other hand, the penalty of imprisonment and a fine not to exceed P5,000.00 shall be imposed for falsification committed by a public officer.^[21] Considering that malversation is the more serious offense, the **imposable** penalty for Malversation of Public Funds thru Falsification of Official/Public Documents if the amount involved exceeds P22,000.00 is *reclusion perpetua*, it being the maximum period of the **prescribed** penalty of *reclusion temporal* in its maximum period to *reclusion perpetua*.

For purposes of bail application, however, the ruling in *Mañalac, Jr.* should be revisited on the ground that *Pantaleon, Jr.* (as well as *Conwi, Jr.*, *Enfermo*, *Pajaro, et al.*, and *Zafra*) was disposed in the context of a judgment of conviction rendered by the lower court and affirmed on appeal by this Court. As will be shown below, the

appropriate rule is to grant bail as a matter of right to an accused who is charged with a complex crime of Malversation of Public Funds thru Falsification of Official/Public Documents involving an amount that exceeds P22,000.00.

Section 13, Article III of the 1987 Constitution states:

SECTION 13. All persons, except those charged with offenses ***punishable*** by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.^[22]

Pursuant thereto, Sections 4 and 7, Rule 114 of the Revised Rules of Criminal Procedure provide:

SEC. 4. Bail, a matter of right; exception. - All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not ***punishable*** by death, *reclusion perpetua*, or life imprisonment. (4a)

SEC. 7. Capital offense of an offense punishable by reclusion perpetua or life imprisonment, not bailable. - No person charged with a capital offense, or an offense ***punishable*** by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)^[23]

The pivotal question is: How should We construe the term "*punishable*" under the provisions above-quoted?

In Our mind, the term "*punishable*" should refer to ***prescribed***, not ***imposable***, penalty. *People v. Temporada*,^[24] which was even cited by petitioner, perceptibly distinguished these two concepts:

The RPC provides for an initial penalty as a general prescription for the felonies defined therein which consists of a range of period of time. This is what is referred to as the "***prescribed penalty***." For instance, under Article 249 of the RPC, the prescribed penalty for homicide is *reclusion temporal* which ranges from 12 years and 1 day to 20 years of imprisonment. Further, the Code provides for attending or modifying circumstances which when present in the commission of a felony affects the computation of the penalty to be imposed on a convict. This penalty, as thus modified, is referred to as the "***imposable penalty***." In the case of homicide which is committed with one ordinary aggravating circumstance and no mitigating circumstances, the imposable penalty under the RPC shall be the prescribed penalty in its maximum period. From this imposable penalty, the court chooses a single fixed penalty (also called a straight penalty) which is the "***penalty actually imposed***" on a convict, i.e., the prison term he has to serve.^[25]