

FIRST DIVISION

[G.R. No. 164015, February 26, 2009]

**RAMON A. ALBERT, PETITIONER, VS. THE SANDIGANBAYAN,
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for certiorari^[1] of the Resolutions dated 10 February 2004^[2] and 3 May 2004^[3] of the Sandiganbayan. The 10 February 2004 Resolution granted the prosecution's Motion to Admit the Amended Information. The 3 May 2004 Resolution denied the Motion For Reconsideration of petitioner Ramon A. Albert (petitioner).

The Facts

On 24 March 1999, the Special Prosecution Officer (SPO) II of the Office of the Ombudsman for Mindanao charged petitioner and his co-accused, Favio D. Sayson and Arturo S. Asumbrado, before the Sandiganbayan with violation of Section 3(e) of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act in Criminal Case No. 25231. The Information alleged:

The undersigned Special Prosecution Officer II of the Office of the Ombudsman for Mindanao hereby accuses RAMON A. ALBERT, FAVIO D. SAYSON, and ARTURO S. ASUMBRADO for (sic) violation of Section 3(e) R.A. 3019, as amended, committed as follows:

That in (sic) or about May 1990 and sometime prior or subsequent thereto, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, accused RAMON A. ALBERT, a public officer, being then the President of the National Home Mortgage and Finance Corporation, occupying the said position with a salary grade above 27, while in the performance of his official function, committing the offense in relation to his office, taking advantage of his official position, conspiring and confederating with accused FAVIO D. SAYSON, then the Project Director of CODE Foundation Inc. and accused ARTURO S. ASUMBRADO, then the President of the Buhangin Residents and Employees Association for Development, Inc., acting with evident bad faith and manifest partiality and or gross neglect of duty, did then and there willfully, unlawfully and criminally cause undue injury to the government and public interest, enter and make it appear in Tax Declaration Nos. D-3-1-7691 and D-3-1-7692

that two parcels of real property particularly described in the Certificate of Titles Nos. T-151920 and T-151921 are residential lands which Tax Declarations accused submitted to the NHMFC when in truth and in fact, as accused well knew, the two pieces of real property covered by Certificate of Titles Nos. T-151920 and T-151921 are agricultural land, and by reason of accused's misrepresentation, the NHMFC released the amount of P4,535,400.00 which is higher than the loanable amount the land could command being agricultural, thus causing undue injury to the government.

CONTRARY TO LAW.^[4]

On 26 March 1999, a Hold Departure Order was issued by the Sandiganbayan against petitioner and his co-accused.

On 25 May 1999, petitioner filed a Motion to Dismiss Criminal Case No. 25231 on the following grounds: (1) the accused (petitioner) was denied due process of law; (2) the Office of the Ombudsman did not acquire jurisdiction over the person of the accused; (3) the constitutional rights of the accused to a speedy disposition of cases and to a speedy trial were violated; and (4) the resolution dated 26 February 1999 finding the accused guilty of violation of Section 3(e) of RA 3019 is not supported by evidence.^[5]

On 18 December 2000, pending the resolution of the Motion to Dismiss, petitioner filed a Motion to Lift Hold Departure Order and to be Allowed to Travel. The prosecution did not object to the latter motion on the condition that petitioner would be "provisionally" arraigned.^[6] On 12 March 2001, petitioner filed an Urgent Motion to Amend Motion to Lift Hold Departure Order and to be Allowed to Travel. The following day, or on 13 March 2001, the Sandiganbayan arraigned petitioner who entered a plea of "not guilty." In the Resolution dated 16 April 2001, the Sandiganbayan granted petitioner's Urgent Motion to Amend Motion to Lift Hold Departure Order and to be Allowed to Travel.

On 26 November 2001, the Sandiganbayan denied petitioner's Motion to Dismiss and ordered the prosecution to conduct a reinvestigation of the case with respect to petitioner. In a Memorandum dated 6 January 2003, the SPO who conducted the reinvestigation recommended to the Ombudsman that the indictment against petitioner be reversed for lack of probable cause. However, the Ombudsman, in an Order dated 10 March 2003, disapproved the Memorandum and directed the Office of the Special Prosecutor to proceed with the prosecution of the criminal case. Petitioner filed a Motion for Reconsideration of the Order of the Ombudsman.

In a Resolution promulgated on 16 May 2003, the Sandiganbayan scheduled the arraignment of petitioner on 24 July 2003. However, in view of the pending motion for reconsideration of the order of the Ombudsman, the arraignment was reset to 2 October 2003.

In a Manifestation dated 24 September 2003, the SPO informed the Sandiganbayan of the Ombudsman's denial of petitioner's motion for reconsideration. On even date, the prosecution filed an Ex-Parte Motion to Admit Amended Information. During the 2 October 2003 hearing, this ex-parte motion was withdrawn by the prosecution

with the intention of filing a Motion for Leave to Admit Amended Information. The scheduled arraignment of petitioner was reset to 1 December 2003.^[7]

On 7 October 2003, the prosecution filed a Motion for Leave to Admit Amended Information. The Amended Information reads:

The undersigned Special Prosecution Officer I of the Office of Special Prosecutor, hereby accuses RAMON A. ALBERT, FAVIO D. SAYSON, and ARTURO S. ASUMBRADO for (sic) violation of Section 3(e) R.A. 3019, as amended, committed as follows:

That in (sic) or about May 1990 and sometime prior or subsequent thereto, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, accused RAMON A. ALBERT, a public officer, being then the President of the National Home Mortgage and Finance Corporation, occupying the said position with a salary grade above 27, while in the performance of his official function, committing the offense in relation to his office, taking advantage of his official position, conspiring and confederating with accused FAVIO D. SAYSON, then the Project Director of CODE Foundation Inc. and accused ARTURO S. ASUMBRADO, then the President of the Buhangin Residents and Employees Association for Development, Inc., acting with evident bad faith and manifest partiality **and/or** gross **inexcusable negligence**, did then and there willfully, unlawfully and criminally cause undue injury to the government and public interest, enter and make it appear in Tax Declaration Nos. D-3-1-7691 and D-3-1-7692 that two parcels of real property particularly described in the Certificate of Titles Nos. T-151920 and T-151921 are residential lands which Tax Declarations accused submitted to the NHMFC when in truth and in fact, as accused well knew, the two pieces of real property covered by Certificate of Titles Nos. T-151920 and T-151921 are agricultural land, and by reason of accused's misrepresentation, the NHMFC released the amount of P4,535,400.00 which is higher than the loanable amount the land could command being agricultural, thus causing undue injury to the government.

CONTRARY TO LAW.^[8]

Petitioner opposed the motion, alleging that the amendment made on the information is substantial and, therefore, not allowed after arraignment.

The Ruling of the Sandiganbayan

In its Resolution of 10 February 2004,^[9] the Sandiganbayan granted the prosecution's Motion to Admit Amended Information. At the outset, the Sandiganbayan explained that "gross neglect of duty" which falls under Section 3(f) of RA 3019 is different from "gross inexcusable negligence" under Section 3(e), and held thus:

In an information alleging gross neglect of duty, it is not a requirement that such neglect or refusal causes undue injury compared to an information alleging gross inexcusable negligence where undue injury is a constitutive element. A change to this effect constitutes substantial amendment considering that the possible defense of the accused may divert from the one originally intended.

It may be considered however, that there are three modes by which the offense for Violation of Section 3(e) may be committed in any of the following:

1. Through evident bad faith;
2. Through manifest partiality;
3. Through gross inexcusable negligence.

Proof of the existence of any of these modes in connection with the prohibited acts under said section of the law should suffice to warrant conviction.^[10]

However, the Sandiganbayan also held that even granting that the amendment of the information be formal or substantial, the prosecution could still effect the same in the event that the accused had not yet undergone a permanent arraignment. And since the arraignment of petitioner on 13 March 2001 was merely "provisional," then the prosecution may still amend the information either in form or in substance.

Petitioner filed a Motion for Reconsideration, which was denied by the Sandiganbayan in its Resolution of 3 May 2004. Hence this petition.

The Issues

The issues raised in this petition are:

1. WHETHER THE SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ADMITTING THE AMENDED INFORMATION; AND
2. WHETHER THE SANDIGANBAYAN GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FURTHER PROCEEDING WITH THE CASE DESPITE THE VIOLATION OF THE RIGHT OF THE ACCUSED TO A SPEEDY TRIAL.

The Ruling of the Court

The petition has no merit.

On Whether the Sandiganbayan Should Admit the Amended Information

Section 14 of Rule 110 of the Revised Rules of Criminal Procedure provides:

Sec. 14. *Amendment or Substitution.*-- A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a

formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

x x x

Petitioner contends that under the above section, only a formal amendment of the information may be made after a plea. The rule does not distinguish between a plea made during a "provisional" or a "permanent" arraignment. Since petitioner already entered a plea of "not guilty" during the 13 March 2001 arraignment, then the information may be amended only in form.

An arraignment is that stage where in the mode and manner required by the rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him.^[11] The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty. As an indispensable requirement of due process, an arraignment cannot be regarded lightly or brushed aside peremptorily.^[12]

The practice of the Sandiganbayan of conducting "provisional" or "conditional" arraignments is not sanctioned by the Revised Internal Rules of the Sandiganbayan or by the regular Rules of Court.^[13] However, in *People v. Espinosa*,^[14] this Court tangentially recognized such practice, provided that the alleged conditions attached thereto should be "unmistakable, express, informed and enlightened." Moreover, the conditions must be expressly stated in the Order disposing of the arraignment; otherwise, the arraignment should be deemed simple and unconditional.^[15]

In the present case, the arraignment of petitioner is reflected in the Minutes of the Sandiganbayan Proceedings dated 13 March 2001 which merely states that the "[a]ccused when arraigned entered a plea of not guilty. The Motion to Travel is granted subject to the usual terms and conditions imposed on accused persons travelling (sic) abroad."^[16] In the Resolution of 16 April 2001,^[17] the Sandiganbayan mentioned the arraignment of petitioner and granted his Urgent Motion to Amend Motion to Lift Hold Departure Order and to be Allowed to Travel, setting forth the conditions attendant thereto which, however, were limited only to petitioner's itinerary abroad; the setting up of additional bailbond; the required appearance before the clerk of court; and written advice to the court upon return to the Philippines. Nothing on record is indicative of the provisional or conditional nature of the arraignment. Hence, following the doctrine laid down in *Espinosa*, the arraignment of petitioner should be deemed simple and unconditional.

The rules mandate that after a plea is entered, only a formal amendment of the Information may be made but with leave of court and only if it does not prejudice the rights of the accused.

Petitioner contends that replacing "gross neglect of duty" with "gross inexcusable negligence" is a substantial amendment of the Information which is prejudicial to his rights. He asserts that under the amended information, he has to present evidence that he did not act with "gross inexcusable negligence," evidence he was not required to present under the original information. To bolster his argument, petitioner refers to the 10 February 2004 Resolution of the Sandiganbayan which ruled that the change "constitutes substantial amendment considering that the