

EN BANC

[G.R. NOS. 138874-75, August 21, 2005]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO JUAN LARRAÑAGA ALIAS "PACO"; JOSMAN AZNAR;
ROWEN ADLAWAN ALIAS "WESLEY"; ALBERTO CAÑO ALIAS
"ALLAN PAHAK"; ARIEL BALANSAG, DAVIDSON VALIENTE RUSIA
ALIAS "TISOY TAGALOG"; JAMES ANTHONY UY ALIAS
"WANGWANG"; AND JAMES ANDREW UY ALIAS "MM", ACCUSED-
APPELLANTS.**

R E S O L U T I O N

PER CURIAM:

At bar are four (4) motions for reconsideration separately filed by appellants (1) Francisco Juan Larrañaga, (2) Josman Aznar, (3) Rowen Adlawan, Alberto Caño and Ariel Balansag, and (4) James Anthony Uy and James Andrew Uy, assailing our Decision dated February 3, 2004 convicting them of the crimes of (a) special complex crime of kidnapping and serious illegal detention and (b) simple kidnapping and serious illegal detention, the dispositive portion of which reads:

"WHEREFORE, the Decision of the Regional Trial Court, Branch 7, Cebu City in Criminal Cases Nos. CBU-45303 and 45304 is AFFIRMED with the following MODIFICATIONS:

(1) In Criminal Case No. CBU-45303, appellants FRANCISCO JUAN LARRAÑAGA alias 'PACO;' JOSMAN AZNAR; ROWEN ADLAWAN alias 'WESLEY;' ALBERTO CAÑO alias 'ALLAN PAHAK;' ARIEL BALANSAG; and JAMES ANDREW UY alias 'MM,' are found guilty beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with homicide and rape and are sentenced to suffer the penalty of DEATH by lethal injection;

(2) In Criminal Case No. CBU-45304, appellants FRANCISCO JUAN LARRAÑAGA alias 'PACO;' JOSMAN AZNAR; ROWEN ADLAWAN alias 'WESLEY;' ALBERTO CAÑO alias 'ALLAN PAHAK;' ARIEL BALANSAG; and JAMES ANDREW UY alias 'MM,' are found guilty beyond reasonable doubt of the crime of simple kidnapping and serious illegal detention and are sentenced to suffer the penalty of RECLUSION PERPETUA;

(3) In Criminal Case No. CBU-45303, appellant JAMES ANTHONY UY, who was a minor at the time the crime was committed, is likewise found guilty beyond reasonable doubt of the special complex crime of kidnapping and serious illegal detention with homicide and rape and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA; in Criminal Case No. CBU-45304, he is declared guilty of simple kidnapping

and serious illegal detention and is sentenced to suffer the penalty of TWELVE (12) years of prison mayor in its maximum period, as MINIMUM, to seventeen (17) years of reclusion temporal in its medium period, as MAXIMUM;

(4) Appellants are ordered to pay jointly and severally the heirs of Marijoy and Jacqueline, in each case, the amounts of (a) P100,000.00 as civil indemnity, (b) P25,000.00 as temperate damages, (c) P150,000.00 as moral damages, and (d) P100,000.00 as exemplary damages.

Three (3) Justices of the Court maintain their position that RA 7659 is unconstitutional insofar as it prescribes the death penalty; nevertheless, they submit to the ruling of the majority that the law is constitutional and the death penalty can be lawfully imposed in the case at bar.

In accordance with Article 83 of The Revised Penal Code, as amended by Section 25 of RA No. 7659, upon the finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President for the possible exercise of Her Excellency's pardoning power.

SO ORDERED."

Appellants anchor their motions on the following grounds:

A. LARRAÑAGA

"I

THE COURT A QUO ERRED IN BARRING LARRAÑAGA AND THE NATIONAL BUREAU OF INVESTIGATION (NBI) REGIONAL DIRECTOR FLORENCIO VILLARIN FROM TESTIFYING;

II

THE POLICE PLANTED EVIDENCE ON APPELLANTS;

III

LARRAÑAGA SUFFICIENTLY PROVED HIS ALIBI;

IV

THE TRIAL COURT PREVENTED THE INTRODUCTION OF KEY DEFENSE EVIDENCE;

V

THE CORPSE FOUND IN THE RAVINE WAS NOT THAT OF MARIJOY; AND

VI

PROSECUTION WITNESS RUSIA WAS A COACHED WITNESS.”^[1]

B. AZNAR

“I

THE HONORABLE COURT ERRED IN FINDING THAT THE TRIAL COURT DID NOT VIOLATE THE RIGHTS OF THE ACCUSED TO DUE PROCESS OF LAW.

II

THE HONORABLE COURT ERRED IN (A) DISCHARGING DAVID RUSSIA AS STATE WITNESS; AND (B) CONVICTING THE APPELLANTS MAINLY ON THE BASIS OF THE TESTIMONY OF RUSIA.

III

THE HONORABLE COURT ERRED IN REJECTING THE DEFENSE OF APPELLANT AZNAR.

IV

THE HONORABLE COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE APPELLANTS.”^[2]

C. ADLAWAN, BALANSAG, CAÑO

“I

PROSECUTION WITNESS RUSIA IS NOT QUALIFIED TO BE A STATE WITNESS UNDER PARAGRAPHS (D) AND (E), SECTION 17 OF THE REVISED RULES OF CRIMINAL PROCEDURE.

II

RUSIA’S TESTIMONY AND THAT OF THE OTHER PROSECUTION WITNESSES WERE INCREDIBLE, INCONSISTENT, AND UNWORTHY OF

BELIEF.

III

BIAS AND PREJUDICE AGAINST THE DEFENSE WERE GLARINGLY DISPLAYED BY THE COURT A QUO WHICH GREATLY AFFECTED THE OUTCOME OF THE CASE.

IV

THE GUILT OF THE ACCUSED-APPELLANTS FOR THE CRIME CHARGED HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.”^[3]

D. JAMES ANDREW AND JAMES ANTHONY UY

“I

ACCUSED JAMES ANDREW S. UY WAS, LIKE HIS YOUNGER BROTHER JAMES ANTHONY S. UY, A MINOR AT THE TIME THE OFFENSES AT BAR ALLEGEDLY HAPPENED LAST JULY 16, 1997;

II

THE IDENTITY OF THE DEAD BODY OF THE WOMAN FOUND IN TAN-AWAN, CARCAR, CEBU LAST JULY 18, 1997 WAS NEVER CONCLUSIVELY ESTABLISHED THUS THE NEED FOR ITS EXHUMATION FOR DNA TESTING;”^[4]

In his supplemental motion for reconsideration dated March 25, 2004, Larrañaga submitted a separate study of Dr. Racquel Del Rosario-Fortun, Forensic Pathologist, to show that the examination conducted by the prosecution expert witnesses on the body found in Tan-awan, Carcar is inadequate.

In a similar supplemental motion for reconsideration^[5], Aznar submitted to this Court the Affidavit dated February 27, 2004 of Atty. Florencio Villarin, Regional Director of the National Bureau of Investigation, Central Visayas, to show that: (1) the police investigation of this case was flawed; (2) he (Aznar) was arrested in 1997 not because of his involvement in this case but because he had in his possession a pack of shabu and firearms; and (3) David Rusia is not a credible witness.

On July 15, 2004, the Solicitor General filed a consolidated comment^[6] praying that the four (4) motions for reconsideration be denied with finality, there being no new argument raised. He responded to appellants’ assignments of errors by exhaustively quoting portions of our challenged Decision.

In his consolidated comment^[7] to Aznar's supplemental motion for reconsideration, the Solicitor General enumerated the grounds why Atty. Villarín's Affidavit should not be given consideration. On February 15, 2005, Aznar filed a reply alleging that the Solicitor General "read out of context" certain portions of the Affidavit. He argued that the

Affidavit only exposes the flawed investigation of the Chiong case and that, at the time of his arrest, there was no evidence against him. On March 4, 2005, the Solicitor General filed a rejoinder stating that Aznar's reply "actually supports the undersigned counsel's (Solicitor General's) position that Atty. Villarín's Affidavit is utterly inadequate to prove his innocence or at least even acquit them on reasonable doubt," thus, "it would be useless to call for new trial on the basis of such Affidavit." On March 29, 2005, Aznar filed a sur-rejoinder insisting that the Affidavit should be given due consideration.

Except for the motion filed by appellants Uy brothers with respect to James Andrew's alleged minority, we find all the motions bereft of merit.

At the inception, let it be emphasized that the filing of a motion for reconsideration does not impose on us the obligation to discuss and rule again on the grounds relied upon by the movant which are mere reiteration of the issues previously raised and thoroughly determined and evaluated in our Decision being questioned. In *Ortigas and Company Limited Partnership vs. Velasco*,^[8] we ruled that, "this would be a useless formality of ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant."

The foregoing principle applies squarely to the motions filed by appellants Larrañaga, Aznar, Adlawan, Caño and Balansag, it being apparent that the points raised therein are not neoteric matters demanding new judicial determination. They are mere rehash of the arguments set forth in their respective briefs which we already considered, weighed and resolved before we rendered the Decision sought to be reconsidered.

However, in view of the severity of the penalties for the crimes charged, we deem it necessary to stress once more our basis in convicting appellants.

The following is a précis of the issues submitted by appellants in their motions:

This Court erred –

first, in according credence to Rusia's testimony;

second, in rejecting appellants' alibi;

third, in holding that the trial court did not violate their right to due process when it excluded the testimony of other defense witnesses; and

fourth, in holding that the body found in Tan-awan, Carcar was not that of Marijoy.