

SECOND DIVISION

[G.R. NOS. 160929-31, August 16, 2005]

**RENE P. PONDEVIDA, PETITIONER, VS. THE HON.
SANDIGANBAYAN (THIRD DIVISION) AND THE PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

On April 11, 2003, the Sandiganbayan rendered judgment in Criminal Cases Nos. 24375 to 24377 convicting petitioner Rene Pondevida, the Municipal Treasurer of Badiangan, Iloilo, of three counts of the complex crime of malversation of public funds through falsification of commercial documents, and sentencing him to suffer the penalty of *reclusion perpetua* and perpetual special disqualification for each count. The *fallo* of the decision reads:

WHEREFORE, in Criminal Case No. 24375, the Court hereby finds the accused RENE P. PONDEVIDA **GUILTY** beyond reasonable doubt of the complex offense of Malversation of Public Funds thru Falsification of commercial document defined and penalized under Arts. 48, 171 and 217 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA and PERPETUAL SPECIAL DISQUALIFICATION in accordance with Art. 31 of the Revised Penal Code and to pay a fine of P213,700.00 and indemnify the Municipal government of Badiangan the sum of P213,700.00, with costs.

For insufficiency of evidence and for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DONATO M. AMIGABLE and VICTOR N. GRANDE are hereby ACQUITTED of the offense charged in this case, and their bail bonds posted for their provisional liberty are hereby ordered cancelled.

In Criminal Case No. 24375, the Court hereby finds the accused RENE P. PONDEVIDA GUILTY beyond reasonable doubt of the complex offense of Malversation of Public Funds through Falsification of commercial document defined and penalized under Arts. 48, 171 and 217 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUAL and PERPETUAL SPECIAL DISQUALIFICATION in accordance with Art. 31 of the Revised Penal Code and to pay a fine of P503,287.89 and indemnify the Municipal government of Badiangan the sum of P503,287.89, with costs.

For insufficiency of evidence and for failure of the prosecution to prove his guilt beyond reasonable doubt, accused DONATO M. AMIGABLE is hereby ACQUITTED of the offense charged in this case, and the bail bond posted for his provisional liberty is hereby ordered cancelled.

In Criminal Case No. 24377, the Court hereby finds the accused RENE P. PONDEVIDA GUILTY beyond reasonable doubt of the complex offense of Malversation of Public Funds thru Falsification of commercial document defined and penalized under Arts. 48, 171 and 217 of the Revised Penal Code and hereby sentences the said accused to suffer the penalty of RECLUSION PERPETUA and PERPETUAL SPECIAL DISQUALIFICATION in accordance with Art. 31 of the Revised Penal Code and to pay a fine of P115,153.55 and indemnify the Municipal government of Badiangan the sum of P115,153.55, with costs.

For insufficiency of evidence and for failure of the prosecution to prove his guilt beyond reasonable doubt, accused DONATO M. AMIGABLE is hereby ACQUITTED of the offense charged in this case, and the bail bond posted for his provisional liberty is hereby ordered cancelled.

Considering that accused NORMA B. TIU is still-at-large, let Criminal Case No. 24376 be ARCHIVED until her arrest.^[1]

The anti-graft court granted the petitioner an extension of time within which to file a motion for reconsideration of its decision, until May 10, 2003. The said motion was filed on May 9, 2003 which the said court resolved to deny on September 5, 2003. The petitioner received a copy of the said resolution on September 16, 2003, and filed his Notice of Appeal^[2] on September 23, 2003 "pursuant to paragraph (b), Section 1 of Rule X of the Revised Internal Rules of the Sandiganbayan." In a Resolution^[3] dated October 3, 2003, the Sandiganbayan denied due course to the petition for having been filed out of time, thus:

FROM THE FOREGOING, the Notice of Appeal shall no longer prosper considering that it was filed out of time and considering further that the Decision rendered in these cases, promulgated on April 11, 2003, in so far as Rene P. Pondevida is concerned, has already become final and executory on September 18, 2003.

Atty. Lily V. Biton, the Division Clerk of Court, is ordered to furnish the Director of Prison, National Penitentiary, Muntinlupa City, a copy of this Resolution for his perusal, and to issue the corresponding Commitment Order for Rene P. Pondevida's service of sentence.

The Sandiganbayan ruled that under Section 6, Rule 122 of the Revised Rules of Criminal Procedure, Pondevida had only until September 17, 2003 within which to file his notice of appeal, but did so only on September 23, 2003; by then, its decision had become final and executory.

The petitioner received a copy of the said resolution on October 14, 2003. On December 15, 2003, he filed his petition for *certiorari* before this Court, alleging that

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I

THE SANDIGANBAYAN HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DENIED THE

PETITIONER'S NOTICE OF APPEAL BECAUSE THE NOTICE OF APPEAL HAS BEEN FILED WITHIN THE REGLEMENTARY PERIOD.

II

PETITIONER WAS DEPRIVED OF DUE PROCESS.

III

THE APPEAL IS SUPPORTED BY MERITORIOUS GROUNDS AND THE CASE IS ENTITLED TO BE REVIEWED BY THE APPELLATE COURT.^[4]

On January 10, 2005, this Court resolved to give due course to the petition and required the Sandiganbayan to elevate the records of the cases.^[5] The Sandiganbayan complied and forthwith elevated the records to this Court.

The petitioner maintains that his notice of appeal was filed on time. He posits that the Sandiganbayan should have applied Section 1(b), Rule X of its Revised Internal Rules, instead of Section 6, Rule 122 of the Revised Rules of Criminal Procedure. The petitioner argues that since Section 1(b), Rule X of the Revised Internal Rules of the Sandiganbayan does not provide a period within which to appeal a decision or final order rendered by it, the applicable rule is that provided in Section 1(a) of the said Internal Rules, in relation to Rule 45 of the Rules of Civil Procedure. The petitioner avers that under the latter rule, he had fifteen (15) days from receipt of notice of the September 5, 2003 Sandiganbayan Resolution (on September 16, 2003), or until October 1, 2003, within which to file his notice of appeal. Hence, his notice of appeal filed on September 23, 2003 was timely filed.

For its part, the Office of the Special Prosecutor (OSP) avers that under Section 1, Rule X of the Internal Rules of the Sandiganbayan, in relation to Rule 45 of the Rules of Court, an appeal from a Sandiganbayan judgment where the accused is sentenced *reclusion perpetua* or life imprisonment is via petition for review on *certiorari*; the period for appeal is that provided for in Section 6, Rule 122 of the Revised Rules of Criminal Procedure, thus:

1.c. As aptly stated by petitioner, the method of appeal in this case is by petition for review on certiorari. This, indeed, is confirmed by Section 1, Rule X of the Revised Internal Rules of the Sandiganbayan, *i.e.*, "A party may appeal from a judgment or final order of the Sandiganbayan imposing or affirming a penalty less than death, life imprisonment or *reclusion perpetua* in criminal cases, and in civil cases, by filing with the Supreme Court a petition for review on *certiorari* in accordance with Rule 45 of the 1997 Rules of Civil Procedure."^[6]

The OSP cited the ruling of this Court in *Formilleza v. Sandiganbayan*^[7] to support its position.

The petitioner's contention, that the remedy from the Sandiganbayan decision which sentenced him to *reclusion perpetua* is via notice of appeal under Section 1(b), Rule X of the Revised Internal Rules of the Sandiganbayan, is correct. The rule reads:

- (b) Exception. - Where the judgment or final order of the Sandiganbayan, in the exercise of its original jurisdiction, imposes the penalty of life imprisonment or *reclusion perpetua* or where a

lesser penalty is imposed involving offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the appeal shall be taken by filing a notice of appeal with the Sandiganbayan and serving a copy thereof to the adverse party.

Under Rule 45 of the Rules of Court, a petition for review on *certiorari* to this Court (from a Sandiganbayan decision) is proper only where, as provided for in Section 1(a), Rule X of the Revised Internal Rules of the Sandiganbayan, the penalty imposed is less than death, life imprisonment or *reclusion perpetua*:

- (a) In General. - A party may appeal from a judgment or final order of the Sandiganbayan imposing or affirming a penalty less than death, life imprisonment or *reclusion perpetua* in criminal cases, and in civil cases, by filing with the Supreme Court a petition for review on *certiorari* in accordance with Rule 45 of the 1997 Rules of Civil Procedure.

Since Section 1(b), Rule X of the Revised Internal Rules of the Sandiganbayan does not provide for a period to appeal, Section 6, Rule 122 of the Revised Rules of Criminal Procedure shall apply:

Sec. 6. Rule 122. When appeal to be taken. - An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.

This is so because under Section 2, Rule 1 of the Revised Internal Rules of the Sandiganbayan, the Rules of Court applicable to the Regional Trial Court (RTC) and Court of Appeals (CA) shall, likewise, govern all proceedings in the Sandiganbayan insofar as applicable:

SEC. 2. Coverage. - These Rules shall apply to the internal operations of the Sandiganbayan.

The Rules of Court, resolutions, circulars, and other issuances promulgated by the Supreme Court relating to or affecting the Regional Trial Courts and the Court of Appeals, insofar as applicable, shall govern all actions and proceedings filed with the Sandiganbayan.

Under Section 6, Rule 122 of the Revised Rules of Criminal Procedure, the petitioner had only until September 17, 2003 within which to file his notice of appeal, considering that he received the September 5, 2003 Resolution of the Sandiganbayan on September 16, 2003. However, he filed his notice of appeal only on September 23, 2003, long after the reglementary period. Hence, the Sandiganbayan acted in accord with its Revised Internal Rules and the Rules of Criminal Procedure in denying the petitioner's appeal.

The ruling of this Court in *Formilleza* is not applicable in the case at bar. What was

involved in that case was Presidential Decree No. 1606, under which the decisions of the Sandiganbayan may be reviewed on petition for *certiorari* by this Court:

Presidential Decree No. 1606, as amended, governs the procedure through which cases originating from the Sandiganbayan are elevated to this Court. Under Section 7 thereof, the decisions and final orders of the Sandiganbayan are subject to review on *certiorari* by the Supreme Court in accordance with Rule 45 of the Rules of Court. This Court has ruled that only questions of law may be raised in a petition for *certiorari* under Rule 45, subject to certain rare exceptions. Simply stated, one way through which a decision or final order of the Sandiganbayan can be elevated to the Supreme Court is a Petition for *certiorari* under Rule 45 and, as a general rule, only questions of law may be raised therein. The Solicitor General cites the case of *Peñaverde v. Sandiganbayan* in support of this view.^[8]

The petitioner, however, pleads that even if he filed his notice of appeal beyond the period therefor, the Sandiganbayan should have subordinated the rigid application of procedural rules to the attainment of substantial justice; hence, his appeal should have been given due course. After all, he submits, the Court has allowed appeals even if there were delays of four, six and even seven days.^[9] The appeal should not be dismissed simply because he followed, in good faith, Section 1(b), Rule X of the Internal Rules of the Sandiganbayan, in relation to Rule 45 of the Rules of Civil Procedure.

The petitioner argues that he was sentenced to suffer three counts of *reclusion perpetua*; it would be the apex of injustice if he would be deprived of his right to appeal and suffer the penalty, considering that the prosecution failed to prove his guilt beyond reasonable doubt. He pleads for the Court to determine whether his appeal has *prima facie* merit, so as to avoid a travesty of justice.

The petitioner avers that in the face of the records, he is not criminally liable for malversation under Article 217 of the Revised Penal Code because (a) the prosecution failed to prove that, before he was charged with malversation complexed with falsification of commercial documents in the Office of the Ombudsman, the Office of the Provincial Auditor had demanded the refund of the amounts of the three checks; and (b) the Sandiganbayan ignored the cash deposit slips issued by the Land Bank of the Philippines (LBP)^[10] showing that he deposited P1,533,050.26 on June 15, 1995 which increased to P2,286,550.26 when he made an additional deposit on June 21, 1995, as stated in his letter to the Provincial Auditor, dated June 21, 1995, which included the total amount of the three checks.^[11]

The petitioner further avers that the charges against him were barred by the decision^[12] of the Regional Trial Court (RTC) of Iloilo City in Criminal Case No. 48093 promulgated on April 5, 2002, convicting him of malversation of P1,176,580.59; the P893,890.87, which is the total amount of the three checks subject of the cases before the Sandiganbayan, is included in the P1,176,580.59 he had deposited with the LBP. The petitioner appended to his petition a copy of the decision of the RTC.

Elaborating further, the petitioner avers that it was incumbent on the prosecution to