

EN BANC

[G.R. No. 108251, January 31, 1996]

**CEFERINO S. PAREDES, JR. AND MANSUETO J. HONRADA,
PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN, SECOND
DIVISION; HONORABLE ANIANO DESIERTO, IN HIS OFFICIAL
CAPACITY AS SPECIAL PROSECUTOR; HONORABLE CONRADO M.
VASQUEZ, IN HIS OFFICIAL CAPACITY AS OMBUDSMAN; AND
TEOFILO GELACIO, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari, prohibition and injunction, seeking to set aside the resolution dated December 9, 1992 of the Office of the Ombudsman, denying petitioner's motion for the reinvestigation of three cases of falsification of public documents which had been filed against petitioners and to restrain the Second Division of the Sandiganbayan from hearing the cases.

The cases originated in a complaint filed on January 23, 1990 by Teofilo Gelacio, then vice mayor of San Francisco, Agusan del Sur. Charged with petitioner Paredes, Jr., who was then the provincial governor, were petitioner Mansueto J. Honrada, clerk of court of the Municipal Circuit Trial Court of San Francisco, Agusan del Sur, and Atty. Generoso Sansaet, counsel of petitioner Paredes, Jr. in Criminal Case No. 1393 of the MCTC.

In his complaint Gelacio alleged that MCTC clerk of court Honrada, in conspiracy with petitioner Paredes, Jr. and the latter's counsel Atty. Sansaet, certified as true a copy of a Notice of Arraignment dated July 1, 1985 and of the Transcript of Stenographic Notes on July 9, 1985, showing that an arraignment had been held in Criminal Case No. 1393 and issued a certification dated March 24, 1986 to that effect when in truth no arraignment had been held in that case. In support of his allegation, Gelacio submitted a Certification issued by Judge Ciriaco C. Ariño of the MCTC to the effect that Criminal Case No. 1393 had "never reached the arraignment stage" before it was dismissed on motion of the prosecution.^[1]

A preliminary investigation of the complaint was conducted by Public Prosecutor Albert Axalan who had been deputized to assist the Deputy Ombudsman for Mindanao. Petitioners and Atty. Sansaet, as respondents in the case, filed their respective counter-affidavits. Paredes, Jr. denied the charges. He alleged that their filing was politically motivated and that the complainant, Teofilo Gelacio, was being used by his political enemies to harass him. For his part, Honrada maintained that an arraignment had indeed been held in Criminal Case No. 1393 as certified by him. His claim was corroborated by Atty. Generoso Sansaet, who stated in an affidavit that he was present during the arraignment, being the counsel of Paredes, Jr. Sansaet called Judge Ariño's Certification, denying that there was an arraignment,

the product "of a faltering mind."^[2]

Prosecutor Axalan submitted his resolution to the Deputy Ombudsman for Mindanao, but before it could be acted upon, Atty. Sansaet, one of the respondents, retracted his earlier statement to the effect that Paredes, Jr. had been arraigned before the case against him was dismissed. In an Affidavit of Explanations and Rectifications dated July 29, 1991, Sansaet claimed that there was really no arraignment held in Criminal Case No. 1393 and that Honrada made false certifications which were used to support the dismissal (on the ground of double jeopardy) of Criminal Case No. 13800 which was then pending against Paredes, Jr. in the Sandiganbayan.^[3]

As a result of this development, Paredes, Jr. and Honrada, were required to comment. Paredes, Jr. claimed that the Sansaet's aboutface was the result of their political estrangement.^[4] For his part Honrada insisted that an arraignment in Criminal Case No. 1393 had indeed been held and that in making the certifications in question he stated the truth.

On the basis of the evidence of the parties, Gay Maggie Balajadia-Violan, Graft Investigation Officer of the Office of the Deputy Ombudsman, recommended on February 24, 1992 that petitioners and Atty. Sansaet be charged with Falsification of Public Documents. Her recommendation was indorsed by Deputy Ombudsman Cesar Nitorreda to Ombudsman Conrado Vasquez, Who, upon the recommendation of Erdulfo Querubin of the Office of the Special Prosecutor, approved the filing of three informations for falsification of public documents against Paredes, Jr., Honrada and Sansaet with the Sandiganbayan.^[5] The cases were docketed as Criminal Case Nos. 17791, 17792 and 17793.

On July 9, 1992, petitioners moved to quash the informations. Their motion was denied by the Sandiganbayan in its resolution of August 25, 1992, as was the motion for reconsideration they subsequently filed.

Petitioners next moved for a reinvestigation of the cases. They complained (1) that the resolution, recommending the filing of the cases, was not prepared by Public Prosecutor Axalan, who had conducted the preliminary investigation, but by GIO II Gay Maggie Balajadia-Violan, who allegedly had no hand in the investigation; (2) that Violan relied solely on the retraction of Atty. Generoso Sansaet and the Certification of Judge Ciriaco C. Ariño and disregarded evidence in favor of petitioners; and (3) that Prosecutor Erdulfo Q. Querubin, who reviewed Violan's recommendation, could not be expected to act fairly because he was the prosecutor in Criminal Case No. 13800 in connection with which the allegedly falsified records were used and in fact appealed the dismissal of the case to this Court.^[6]

Although these grounds were the same ones invoked by petitioners in their motion to quash, which the Sandiganbayan had denied, the Sandiganbayan nonetheless directed the prosecution to conduct a reinvestigation of the cases. Accordingly, the Office of the Ombudsman required complainant, the herein respondent Teofilo Gelacio, to comment on petitioners' Motion for Reinvestigation.

In a resolution dated December 9, 1992, Special Prosecution Officer Carlos D. Montemayor recommended denial of petitioners' motion. He noted that the matters raised in the motion were the same ones contained in petitioners' motion to quash

which had already been denied and that in fact "a cursory examination of the resolution of GIO II Gay Maggie Balajadia-Violan shows that the existence of a prima facie case has been duly established and the same was reviewed by SPO III Erdulfo Querubin and also the approval of Honorable Conrado M. Vasquez." He held that as no newly-discovered evidence or denial of due process had been shown, there was no basis for petitioners' request for a reinvestigation.

Montemayor's recommendation was approved by Special Prosecutor Aniano Desierto and Ombudsman Conrado Vasquez. Accordingly the Sandiganbayan set the cases for trial.

The present petition for certiorari, prohibition and injunction was then filed to enjoin the trial of the criminal cases. Petitioners pray that:

(1) Upon the filing of this petition and before its final resolution, to issue a temporary restraining order immediately ordering the Sandiganbayan, Second Division, to cease and desist from proceeding with the scheduled hearing of this case;

(2) After due hearing, to adjudge that respondents Honorable Special Prosecutor Aniano A. Desierto and Honorable Ombudsman Conrado M. Vasquez have committed grave abuse of discretion, amounting to lack of jurisdiction, in issuing and approving the questioned resolution dated December 9, 1992 and ordering said resolution denying petitioners' motion for reinvestigation be annulled and set aside;

(3) To adjudge that the Sandiganbayan, Second Division, is without jurisdiction to try Criminal Case Nos. 17791, 17792, and 17793 all of which are apparently intended as political harassments against the herein petitioners, particularly as against Ceferino S. Paredes, Jr., and prohibiting the said court from proceeding (with) the hearing of the said cases on January 15, 1993, and likewise ordering the said court to dismiss the said cases, with costs against respondents and Teofilo Gelacio; and

(4) To issue a writ of injunction, thereby making the restraining order permanent, and prohibiting the respondents and complainant Teofilo Gelacio from committing any act or acts tending to harass and to inflict further damage and injury to petitioners, such as but not limited to the continuation and further prosecution of said Criminal Cases Nos. 17791, 17792, and 17793.

Petitioners contend (1) that their constitutional right to due process was violated at various stages of the preliminary investigation; (2) that the prosecutors closed their eyes to the fact that in filing the cases private respondent Teofilo Gelacio engaged in forum-shopping; and (3) that the cases were filed for political harassment and there is in fact no prima facie evidence to hold them answerable for falsification of public documents.^[7]

I.

Anent the first ground, petitioners contend that the filing of charges against them was not recommended by the prosecutor who conducted the preliminary investigation, but by another one who, it is alleged, had no part at all in the investigation.

Petitioners' contention has no basis in fact. It appears that the preliminary investigation of the complaint filed by Teofilo Gelacio was initially conducted by Public Prosecutor Albert Axalan who had been deputized to assist the Deputy Ombudsman for Mindanao in the investigation of graft cases. Axalan prepared a resolution. The records do not show what his recommendation was. What is clear, however, is that no action had been taken on his recommendation in view of the fact that Atty. Generoso Sansaet, one of the respondents in the cases, retracted an earlier statement he had given to the effect that petitioner Ceferino S. Paredes, Jr. had been arraigned in Criminal Case No. 1393 before the case was dismissed. Atty. Sansaet now claimed that no arraignment had been held after all. This new development required the reopening of the investigation (in fact Paredes, Jr. and Honrada were required to comment on the retraction), the reevaluation of the evidence, and the preparation of a new resolution. Gay Maggie Balajadia-Violan, Graft Investigation Officer II of the Office of the Deputy Ombudsman for Mindanao, was designated to conduct the investigation and prepare a report, which she did.

Violan's recommendation was indorsed by Deputy Ombudsman Cesar Nitorreda to Ombudsman Conrado Vasquez, who then referred the matter to Special Prosecution Officer III Erdulfo Querubin for review. Querubin concurred in the recommendation of Violan but suggested that, instead of one, three separate informations for falsification of public documents be filed against respondents (Paredes, Jr., Honrada and Sansaet), considering that three documents were involved.

On June 26, 1992, Ombudsman Conrado Vasquez approved the recommendations of Violan and Querubin. Accordingly three cases were filed against petitioners with the Sandiganbayan, where they were docketed as Criminal Case Nos. 17791, 17792 and 17793.

There is thus no basis for petitioners' claim that the resolution was prepared by one who did not take any part in the investigation. What happened here is similar to the trial of a case by one judge who, without being able to finish the hearing, ceases from office for one reason or another and by necessity the decision is rendered by another judge who has taken over the conduct of the case. Such an arrangement has never been thought to raise any question of due process. For what is important is that the judge who decides does so on the basis of the evidence in record. It does not matter that he did not conduct the hearing of that case from the beginning.

Petitioners nonetheless charge that GIO II Violan and Prosecutor Querubin did not have such cold neutrality of an impartial judge to be trusted to conduct a fair investigation. According to petitioners, Violan gave credence to the Certification issued by Judge Ciriaco C. Ariño when the fact is that Judge Ariño subsequently executed an affidavit, dated November 5, 1990, in which he explained that "he issued the said certificate without expectation that the same would be used as evidence in any case" and that the "use of said certificate . . . is against [his]

conscience." Worse, it is contended, Violan considered the Affidavit of Explanations and Rectifications executed by Atty. Sansaet, which she should have disregarded because it was made in violation of the confidentiality of attorney-client communication under Rule 130, § 24 (b) of the Rules of Court. As for Prosecutor Querubin, they claim that he is the same prosecutor who had handled the prosecution of Criminal Case No. 13800 against petitioner Paredes, Jr. in the Sandiganbayan and after its dismissal, sought review in this Court and, therefore, he was biased against petitioners.

That Violan gave credence to the Certification of Judge Ariño in concluding that no arraignment had been held in Criminal Case No. 1393 is not proof that Violan was biased against petitioners. Although Judge Ariño subsequently gave an Affidavit, he never in that Affidavit repudiated what he had earlier stated. In his Affidavit he merely stated:

1. That I am the incumbent Municipal Circuit Trial Court Judge in the First Municipal Circuit Trial Court of San Francisco-Rosario-Bunawan, Agusan del Sur;
2. That I am the same Ciriaco C. Ariño who issued a certificate in Criminal Case No. 1393 entitled Pp. vs. Ceferino S. Paredes, Jr. which certificate was used as evidence in administrative complaint against Mansueto J. Honrada, in the Administrative Complaint No. A.M. P-90-396 and Criminal Complaint against Mansueto J. Honrada, incumbent Governor Ceferino S. Paredes, Jr. and Atty. Generoso S. Sansaet before the Ombudsman under Criminal Case No. OBM-MIN-90-0053 (sic) entitled Teofilo Gelacio vs. Mansueto J. Honrada, et. al.;
3. That honestly, the said certificate was issued without my expectation that the same be used as evidence in any case and I be a witness;
4. That the use of said certificate as evidence in the above-mentioned cases is against my conscience, more so upon discovery that the cases aforesaid are known to me to be politically motivated and involves [sic] big time politicians in Agusan del Sur about whom I am not at liberty to name names for security reason;
5. That in view of all the foregoing, I am not interested to testify in any investigation to be conducted in connection thereof, either in the administrative or criminal proceedings.

Thus, Judge Ariño never denied his earlier Certification that Criminal Case No. 1393 "never reached the arraignment stage," because having learned that Paredes, Jr. had petitioned the Ministry of Justice for a review of the fiscal's resolution, Judge Ariño suspended action until March 17, 1986 and in fact the fiscal later moved for the dismissal of the case.

The fact that Judge Ariño did not anticipate that his certificate might be used in evidence, much less in the criminal cases now pending in the Sandiganbayan, is not