



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**REYNALDO H. JAYLO,
WILLIAM VALENZONA and
ANTONIO G. HABALO,**

Petitioners,

- versus -

**SANDIGANBAYAN (FIRST
DIVISION), PEOPLE OF THE
PHILIPPINES and HEIRS OF
COL. ROLANDO DE GUZMAN,
FRANCO CALANOG and
AVELINO MANGUERA,**

Respondents.

G.R. Nos. 183152-54

Present:

SERENO, *CJ*, Chairperson,
VELASCO, JR.,^{*}
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, *JJ*.

Promulgated:

JAN 21 2015

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DECISION

SERENO, *CJ*:

What are the repercussions of the failure of the accused to appear, without justifiable cause, at the promulgation of a judgment of conviction? With the resolution of this singular issue, the Court writes *finis* to the 24-year-old controversy before us.

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court is the Decision¹ of the Sandiganbayan finding petitioners guilty beyond reasonable doubt of the crime of homicide. Petitioners also challenge the Resolution dated 29 November 2007² issued by the same court, which took no action on the motion for reconsideration filed by petitioners, and the Resolution dated 26 May 2008³ denying the motion for reconsideration of the earlier Resolution.

^{*} Designated additional member in lieu of Associate Justice Teresita J. Leonardo-De Castro per raffle dated 22 July 2009.

¹ *Rollo*, pp. 118-219. The Decision dated 17 April 2007 issued by the Sandiganbayan First Division in Criminal Case Nos. 17984-86 was penned by Presiding Justice Teresita J. Leonardo-De Castro (now a Member of this Court), with Associate Justices Diosdado M. Peralta (also a Member of this Court) and Alexander G. Gesmundo concurring.

² *Id.* at 220-221.

³ *Id.* at 222-232. The Resolution dated 26 May 2008 issued by the Sandiganbayan First Division was penned by Associate Justice Alexander G. Gesmundo, with Presiding Justice Diosdado M. Peralta (now a Member of this Court) and Associate Justice Rodolfo A. Ponferrada concurring.

ANTECEDENT FACTS

Petitioners Reynaldo Jaylo (Jaylo), William Valenzona (Valenzona) and Antonio Habalo (Habalo), together with Edgardo Castro (Castro),⁴ were officers of the Philippine National Police Western Police District placed on special detail with the National Bureau of Investigation (NBI).⁵

In June of 1990, the United States Drug Enforcement Agency (US DEA) approached the NBI with information on the sale of a considerable amount of heroin in the Philippines. Jaylo was assigned by then NBI Director Alfredo Lim to head the team that would conduct a buy-bust operation with the aid of US DEA undercover agent Philip Needham (Needham).

From 3 to 8 July 1990, Needham, posing as a member of an international drug syndicate, conducted negotiations for the purchase of 10 kilos of heroin from Estella Arrastia (Arrastia), Franco Calanog (Calanog) and Rolando De Guzman (De Guzman). The exchange was scheduled on the evening of 10 July 1990 at the parking lot of the Magallanes Commercial Center.

Needham arrived at the parking lot on board a taxicab with Arrastia and Philip Manila (Manila), an undercover NBI operative who posed as Needham's bodyguard.⁶ The taxicab was driven by Romeo Noriega (Noriega), another undercover NBI operative.⁷

At the parking lot, Needham and Arrastia met Calanog and Avelino Manguera (Manguera), who both alighted from a blue Volkswagen Beetle; and De Guzman, who alighted from a brown Saab.⁸ Needham approached the Volkswagen and examined the heroin in the backseat.⁹ After some time, he straightened up and walked back towards the taxicab, while executing the prearranged signal of taking out his handkerchief and blowing his nose.¹⁰

It is at this point that the versions of the prosecution and the defense diverged, particularly on the manner of the arrest.

Version of the Prosecution

On board two vehicles, Jaylo, Castro, Valenzona, Habalo, and at least 15 other operatives, rushed in and surrounded De Guzman, Calanog, and Manguera.¹¹

⁴ Edgardo Castro had died before the finality of the judgment of the Sandiganbayan.

⁵ Id. at 119.

⁶ Id. at 189, 162, 160.

⁷ Id. at 162.

⁸ Id. at 152-153.

⁹ Id. at 180.

¹⁰ Id.

¹¹ Id. at 189.

Jaylo pointed his gun at De Guzman. Two other operatives instructed Calanog and Manguera to lie face down on the ground and placed a foot on their backs while training a gun at them. The rest cordoned the area.

Later, a car with passengers Needham, US DEA country attaché Andrew Fenrich (Fenrich), and two armed bodyguards moved out of the cordoned area. When the car was safely on its way, Jaylo and his men shot De Guzman, Calanog, and Manguera. They waited 15 minutes for the victims to bleed out and thereafter loaded them into the vehicles under the ruse of bringing them to the hospital.¹²

Version of the Defense

When he saw Needham executing the prearranged signal, Manila executed the second signal of wiping the right side of his face as confirmation.¹³

Castro, who was driving a Lancer car with Jaylo as his passenger, stepped on the accelerator to block the path of the Volkswagen.¹⁴ Both of them immediately alighted from the vehicle. Jaylo confronted De Guzman in the Saab, while Castro arrested Calanog in the Volkswagen. Meanwhile, Valenzona and Habalo approached Manguera.¹⁵

A speeding blue-green car and a burst of gunfire caught the attention of the operatives while they were approaching their quarries.¹⁶ Taking advantage of the distraction, De Guzman, Calanog, and Manguera reached for their firearms and tried to shoot.

Jaylo was able to move away, so only the window on the driver's side of the Saab was hit and shattered.¹⁷ He retaliated and shot De Guzman twice, hitting him in the left eye and chest.¹⁸

Out of instinct, Castro shoved the gun of Calanog upward and shot him twice.¹⁹ Calanog staggered, but again aimed the gun at him. It was then that Castro shot Calanog two times more, causing the latter to finally fall down.

Valenzona and Habalo saw Manguera in the act of drawing his firearm.²⁰ Both of them fired and hit him.

¹² Id. at 189-190.

¹³ Id. at 168.

¹⁴ Id. at 153.

¹⁵ Id. at 86-87.

¹⁶ Id. at 164, 154, 201-202.

¹⁷ Id. at 164.

¹⁸ Id. at 164-165.

¹⁹ Id. at 154.

²⁰ Id. at 201-202.

The operatives brought De Guzman, Calanog, and Manguera to the hospital.²¹ Upon verifying their identities, the victims were found to be soldiers: Colonel Rolando de Guzman and Major Franco Calanog.²² Manguera was the driver/security aide of Major Calanog.²³

The Elma Committee

President Corazon Aquino issued Administrative Order No. 182²⁴ on 13 July 1990 creating the “Elma Committee.” Headed by Presidential Assistant for Legal and Judicial Affairs Magdangal Elma, with Undersecretary of National Defense Leonardo Quisumbing and Undersecretary of Justice Eduardo Montenegro as members, the Elma Committee was tasked to conduct an investigation of all the facts and circumstances surrounding the seizure of heroin and the shooting incident.

Pursuant to its mandate to submit its findings and recommendations to the President after the completion of its investigation, the Elma Committee recommended the prosecution of Jaylo for the killing of De Guzman, Castro for that of Calanog, and Valenzona and Habalo for that of Manguera.²⁵

However, in three separate Amended Informations dated 8 September 1992 and filed before the Sandiganbayan, Jaylo, Castro, Valenzona and Habalo, together with several John Does, were charged with conspiracy in the murder of De Guzman,²⁶ Calanog,²⁷ and Manguera.²⁸

RULING OF THE SANDIGANBAYAN

In a Decision dated 17 April 2007, the Sandiganbayan found Jaylo, Castro, Valenzona, and Habalo guilty of homicide. Jaylo was convicted for the killing of De Guzman under Criminal Case No. 17984; Castro for that of Calanog under Criminal Case No. 17985; and Valenzona and Habalo for Manguera’s under Criminal Case No. 17986.²⁹ Each of the accused was sentenced to imprisonment of six years and one day of *prision mayor* as minimum to 14 years, eight months and one day of *reclusion temporal* as maximum, and perpetual disqualification from public office. Each was likewise ordered to pay ₱50,000 as damages to the heirs of their respective victims, and a proportionate share in the costs of suit.

²¹ Id. at 165.

²² Id.

²³ Id. at 8.

²⁴ Constituting a Fact Finding Committee for the Investigation of all the Facts and Circumstances of the Seizure of Ten (10) Kilos of Heroin and the Shooting Incident on July 10, 1990 at the Magallanes Commercial Center, Makati, Metro Manila.

²⁵ *Rollo*, p. 120.

²⁶ Criminal Case No. 17984.

²⁷ Criminal Case No. 17985.

²⁸ Criminal Case No. 17986.

²⁹ *Rollo*, p. 218-219.

The Sandiganbayan noted that the prosecution and the defense were in agreement that the four accused shot and killed the three victims.³⁰ With this established fact, it was only necessary to determine the following:

- a) Whether the accused conspired to kill the victims;
- b) Whether the killing was attended by treachery, evident premeditation and taking advantage of superior strength; and
- c) Whether the killing was justified by the circumstance of fulfillment of duty or lawful exercise of a right or office.

According to the Sandiganbayan, the evidence presented did not show conspiracy or any intention on the part of the four accused to aid one another in the shooting.³¹ They did not demonstrate a preconceived common plan or scheme to liquidate the suspected drug dealers.

The prosecution was also unable to prove the attendance of any of the qualifying circumstances.³² Treachery was not established. The Sandiganbayan ruled that it could not take judicial notice of the statements given before the Elma Committee by Dr. Desiderio Moraleda, who had conducted the autopsy on the victims. Dr. Moraleda died before he could testify before the Sandiganbayan, and his testimony on the trajectory of the bullets and the positions of the assailants relative to those of the victims could not be admitted in evidence without violating the rules on hearsay evidence.

On the allegation that the four accused took advantage of superior strength, the court ruled that there was no evidence showing the use of excessive force out of proportion to the defense available to the victims. In particular, the shooting of Manguera by Valenzona and Habalo only showed numerical superiority, not superior strength.

The prosecution also failed to prove evident premeditation. It was not able to indicate the time when the four accused determined to commit the killing; neither was it able to pinpoint the overt act demonstrating that they adhered to their resolve to commit the crime even after the lapse of enough time “to allow their conscience to overcome the resolution of their will.”³³

For their part, the accused also failed to prove their defense of fulfillment of a duty or lawful exercise of a right or office.³⁴ The Sandiganbayan was not convinced that they had acted within the bounds allowed for an arrest in a buy-bust operation.

For one, the Sandiganbayan highly doubted the existence of the speeding car that distracted the operatives while they were arresting the

³⁰ Id. at 197-204.

³¹ Id. at 204-205.

³² Id. at 206-209.

³³ Id. at 209.

³⁴ Id. at 210-216.

suspected drug dealers. In this regard, it took note of the inconsistent testimonies of Manila and Noriega on one hand and of Needham on the other.

According to Manila, when he heard the gunfire from the speeding car, he covered Needham and ran with him towards the South Superhighway, away from the taxicab driven by Noriega.³⁵ Needham got into the diplomatic car that approached them. When the shooting subsided, he went back to the scene.

According to Noriega, he saw the speeding car going towards the Maranaw Building parking lot and heard three gunshots. Thereafter, he saw Needham run towards his taxi and board it. While Noriega was trying to get Needham away from the area, a diplomatic car blocked their taxicab, and the latter transferred to that car.

According to Needham, however, he immediately walked back to the taxi after executing the prearranged signal for the arrest, got in the cab and left the scene. As the taxicab was leaving, he saw the “rescue” coming in.³⁶ Other than that, he did not notice any commotion or gunfire. He was then picked up by Fenrich, and they went on their way.

The Sandiganbayan also noted that the slugs or shells recovered from the scene all came from short firearms, contrary to Jaylo’s testimony that the shots from the speeding car were from a rifle (an “armalite”).

Further militating against the existence of the speeding car was Jaylo’s incident Report dated 10 July 1990, in which he stated that when they rushed in for the arrest, they were met by a volley of gunfire from the three cars of the suspected drug dealers.³⁷ There was no mention at all of any speeding car.

Considering the failure of the prosecution to prove conspiracy and the attendance of any of the alleged qualifying circumstances, as well as the failure of the defense to prove the justifying circumstance of fulfillment of a duty or lawful exercise of a right or office, the Sandiganbayan ruled that the crime committed was homicide.

During the promulgation of the Sandiganbayan’s judgment on 17 April 2007, none of the accused appeared despite notice.³⁸ The court promulgated the Decision *in absentia*, and the judgment was entered in the criminal docket. The bail bonds of the accused were cancelled, and warrants for their arrest issued.

³⁵ Id. at 211.

³⁶ Id. at 212.

³⁷ Id. at 214.

³⁸ Id. at 220.

On 30 April 2007, counsel for Jaylo, Valenzona, and Habalo filed a Motion for Partial Reconsideration³⁹ of the Decision. In the assailed Resolution dated 29 November 2007, the Sandiganbayan took no action on the motion and ordered the implementation of the warrants for the arrest of the convicted accused.⁴⁰ The court ruled that the 15-day period from the promulgation of the judgment had long lapsed without any of the accused giving any justifiable cause for their absence during the promulgation. Under Section 6 of Rule 120 of the Rules of Court,⁴¹ Jaylo, Valenzona and Habalo have lost the remedies available under the Rules against the Sandiganbayan's judgment of conviction, including the filing of a motion for reconsideration.

In an *Ad Cautelam* Motion for Reconsideration⁴² dated 25 January 2008, counsel for the three urged the Sandiganbayan to give due course to and resolve the Motion for Partial Reconsideration. The Sandiganbayan issued the second assailed Resolution dated 26 May 2008. The court ruled that for the failure of the three to surrender and move for leave to avail themselves of a motion for reconsideration within 15 days from the date of promulgation, the judgment has become final and executory, and no action on the motion for reconsideration can be taken.⁴³ It then reiterated its order to implement the warrants for the arrest of the three.

ISSUE

On 19 June 2008, petitioners Jaylo, Valenzona and Habalo, by counsel, filed the instant petition assailing the Sandiganbayan Decision dated 17 April 2007 and Resolutions dated 29 November 2007 and 26 May

³⁹ Id. at 233-272.

⁴⁰ Id. at 220-221.

⁴¹ SECTION 6. *Promulgation of judgment.* — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (6a) (Emphasis supplied)

⁴² *Rollo*, pp. 273-288.

⁴³ Id. at 231.

2008. Regarding the Decision dated 17 April 2007, petitioners argue that the Sandiganbayan erred in ruling as follows:

1. The negative finding of a conspiracy did not lead to the positive finding of the justifying circumstance of fulfillment of duty.
2. There was a contradiction between the testimonies of Manila and Noriega on one hand and Needham on the other.
3. The existence of the speeding car was highly doubtful.
4. The inconsistency in the testimony of Jaylo was determinative of his lack of credibility.
5. There should be conclusive physical evidence to prove the justifying circumstance of fulfillment of duty.
6. The admissions of petitioners before the Elma Committee were admissible in evidence.
7. Petitioners are guilty of homicide even in the absence of their positive identification as the ones who committed the crimes charged.

Anent the Resolutions dated 29 November 2007 and 26 May 2008, petitioners argue:

1. Section 6 of Rule 120 of the Rules of Court cannot diminish, increase or modify substantive rights like the filing of a motion for reconsideration provided under Presidential Decree No. (P.D.) 1606.⁴⁴
2. The conditions under Section 6 Rule 120 of the Rules of Court do not obtain in the instant case.

As stated at the outset, the resolution of the instant case hinges on the question regarding the effects of the nonappearance of the accused, without justifiable cause, in the promulgation of the judgment of conviction. In the interest of judicial economy, we shall proceed with a discussion on this question. For reasons that will be expounded on below, the application in this case of the law and rules on the nonappearance of the accused, without justifiable cause, in the promulgation of the judgment of conviction shall determine for us the propriety of conducting a review of the Sandiganbayan Decision dated 17 April 2007.

OUR RULING

Section 6, Rule 120, of the Rules of Court provides that an accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available against the said judgment.

⁴⁴ Revising Presidential Decree No. 1486 Creating a Special Court to be known as “Sandiganbayan” and for other Purposes.

Section 6, Rule 120, of the Rules of Court states:

SECTION 6. *Promulgation of judgment.* — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried *in absentia* because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (6a) (Emphasis supplied)

Except when the conviction is for a light offense, in which case the judgment may be pronounced in the presence of the counsel for the accused or the latter's representative, the accused is required to be present at the scheduled date of promulgation of judgment. Notice of the schedule of promulgation shall be made to the accused personally or through the bondsman or warden and counsel.

The promulgation of judgment shall proceed even in the absence of the accused despite notice. The promulgation *in absentia* shall be made by recording the judgment in the criminal docket and serving a copy thereof to the accused at their last known address or through counsel. The court shall also order the arrest of the accused if the judgment is for conviction and the failure to appear was without justifiable cause.⁴⁵

⁴⁵ *Pascua v. Court of Appeals*, 401 Phil. 350 (2000).

If the judgment is for conviction and the failure to appear was without justifiable cause, the accused shall lose the remedies available in the Rules of Court against the judgment. Thus, it is incumbent upon the accused to appear on the scheduled date of promulgation, because it determines the availability of their possible remedies against the judgment of conviction. When the accused fail to present themselves at the promulgation of the judgment of conviction, they lose the remedies of filing a motion for a new trial or reconsideration (Rule 121) and an appeal from the judgment of conviction (Rule 122).⁴⁶

The reason is simple. When the accused on bail fail to present themselves at the promulgation of a judgment of conviction, they are considered to have lost their standing in court.⁴⁷ Without any standing in court, the accused cannot invoke its jurisdiction to seek relief.⁴⁸

Section 6, Rule 120, of the Rules of Court, does not take away substantive rights; it merely provides the manner through which an existing right may be implemented.

Petitioners claim that their right to file a motion for reconsideration or an appeal has a statutory origin, as provided under Section 7 of P.D. 1606, to wit:

Section 7. Form, Finality and Enforcement of Decisions. — All decisions and final orders determining the merits of a case or finally disposing of the action or proceedings of the Sandiganbayan shall contain complete findings of the facts and the law on which they are based, on all issues properly raised before it and necessary in deciding the case.

A petition for reconsideration of any final order or decision may be filed within fifteen (15) days from promulgation or notice of the final order or judgment, and such motion for reconsideration shall be decided within thirty (30) days from submission thereon. (Emphasis supplied)

X X X X

According to petitioners, Section 7 of P.D. 1606 did not provide for any situation as to when the right to file a motion for reconsideration may be deemed lost. Thus, it is available at all times and the Rules promulgated by the Supreme Court cannot operate to diminish or modify the right of a convicted accused to file a motion for reconsideration.⁴⁹ Furthermore, they

⁴⁶ *Villena v. People*, G.R. No. 184091, 31 January 2011, 641 SCRA 127.

⁴⁷ *People v. Mapalao*, 274 Phil. 354 (1991).

⁴⁸ *Id.*

⁴⁹ CONSTITUTION, Article VIII, Section 5 provides:

SECTION 5. The Supreme Court shall have the following powers:

X X X X

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal

argue, the right to file a motion for reconsideration is a statutory grant, and not merely a remedy “available in [the] Rules,” as provided under Section 6 of Rule 120 of the Rules of Court. Thus, according to them, their absence at the promulgation of judgment before the Sandiganbayan cannot be deemed to have resulted in the loss of their right to file a motion for reconsideration.

Petitioners’ argument lacks merit.

Like an appeal, the right to file a motion for reconsideration is a statutory grant or privilege. As a statutory right, the filing of a motion for reconsideration is to be exercised in accordance with and in the manner provided by law. Thus, a party filing a motion for reconsideration must strictly comply with the requisites laid down in the Rules of Court.⁵⁰

It bears stressing that the provision on which petitioners base their claim states that “[a] petition for reconsideration of any final order or decision **may** be filed within fifteen (15) days from promulgation or notice of the final order or judgment.”⁵¹ In *Social Security Commission v. Court of Appeals*,⁵² we enunciated that the term “may” denotes a mere possibility, an opportunity, or an option. Those granted this opportunity may choose to exercise it or not. If they do, they must comply with the conditions attached thereto.⁵³

Aside from the condition that a motion for reconsideration must be filed within 15 days from the promulgation or notice of the judgment, the movant must also comply with the conditions laid down in the Rules of Court, which applies to all cases and proceedings filed with the Sandiganbayan.⁵⁴

Petitioners insist that the right to file a motion for reconsideration under Section 7 of P.D. 1606 is a guarantee, and no amount of Rules promulgated by the Supreme Court can operate to diminish or modify this substantive right. Aptly citing *Fabian v. Desierto*,⁵⁵ the Sandiganbayan was correct in rejecting the argument of petitioners in this wise:

cont...

assistance to the underprivileged. **Such rules** shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and **shall not diminish, increase, or modify substantive rights**. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court. (Emphasis supplied)

⁵⁰ *Mejillano v. Lucillo*, 607 Phil. 660 (2009).

⁵¹ P.D. 1606, Section 7.

⁵² 482 Phil. 449 (2004).

⁵³ *Id.*

⁵⁴ P.D. 1606, Section 9 states:

Section 9. *Rules of Procedure*. — The Rules of Court promulgated by the Supreme Court shall apply to all cases and proceedings filed with the Sandiganbayan. The Sandiganbayan shall have no power to promulgate its own rules of procedure, except to adopt internal rules governing the allotment of cases among the divisions, the rotation of justices among them, and other matters relating to the internal operations of the court which shall be enforced until repealed or modified by the Supreme Court.

⁵⁵ 356 Phil. 787 (1998).

Fabian v. Desierto lays down the test for determining whether a rule prescribed by the Supreme Court, for the practice and procedure of the lower courts, abridges, enlarges or modifies any substantive right, to wit:

“...whether the rule really regulates procedure, that is, the *judicial process for enforcing rights and duties recognized by substantive law* and for justly determining remedy and redress for a disregard or infraction of them. If the rule takes away a vested right, it is not procedural. If the rule creates a right such as the right to appeal, it may be classified as a substantive matter; but *if it operates as a means of implementing an existing right then the rule deals merely with procedure.*

Applying the *Fabian v. Desierto* test, it appears indubitable that Section 6, Rule 120 of the Rules of Court (ROC) clearly applies to the Sandiganbayan.

Section 6, Rule 120, ROC as well as Section 4, Rule VIII of the *Revised Rules of the Sandiganbayan* (which makes applicable Section 6, Rule 120, ROC when the accused is absent during promulgation of judgment) merely regulates the right to file a motion for reconsideration under P.D. 1606. These are mere rules of procedure which the Supreme Court is competent to adopt pursuant to its rule-making power under Article VIII, Section 5(5) of the Constitution. And, contrary to the view espoused by the accused, said rules do not take away, repeal or alter the right to file a motion for reconsideration as said right still exists. The Supreme Court merely laid down the rules on promulgation of a judgment of conviction done *in absentia* in cases when the accused fails to surrender and explain his absence within 15 days from promulgation. The Supreme Court can very well do this as the right to file a motion for reconsideration under P.D. 1606 is not preclusive in character. Indeed, there is nothing in P.D. 1606 which prevents the Supreme Court from regulating the procedure for promulgation of decisions in criminal cases done *in absentia*.⁵⁶

Section 6, Rule 120, of the Rules of Court, does not take away *per se* the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment.

It is not correct to say that Section 6, Rule 120, of the Rules of Court diminishes or modifies the substantive rights of petitioners. It only works in pursuance of the power of the Supreme Court to “provide a simplified and inexpensive procedure for the speedy disposition of cases.”⁵⁷ This provision protects the courts from delay in the speedy disposition of criminal cases – delay arising from the simple expediency of nonappearance of the accused on the scheduled promulgation of the judgment of conviction.

⁵⁶ *Rollo*, pp. 225-226.

⁵⁷ CONSTITUTION, Article VIII, Section 5(5).

In this case, petitioners have just shown their lack of faith in the jurisdiction of the Sandiganbayan by not appearing before it for the promulgation of the judgment on their cases. Surely they cannot later on expect to be allowed to invoke the Sandiganbayan's jurisdiction to grant them relief from its judgment of conviction.

It is incumbent upon the accused to show justifiable cause for their absence at the promulgation of the judgment of conviction.

According to petitioners, even if we were to apply Section 6, Rule 120, the conditions under which an accused loses the remedies available in the Rules of Court do not obtain in this case. It is argued that for the provision to apply, it must be shown that 1) the accused was notified of the scheduled date of promulgation, and that 2) the accused failed to appear at the promulgation of the judgment of conviction without justifiable cause.

Petitioners insist that the Sandiganbayan did not bother to determine whether their absence at the promulgation of judgment was without justifiable cause. In other words, as petitioners would have it, it was incumbent upon the Sandiganbayan to take pains to find out whether their absence at the promulgation was without justifiable cause, and only then could the court conclude that petitioners have lost the remedies available in the Rules of Court against the judgment of conviction.

It is well to note that Section 6, Rule 120, of the Rules of Court also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies available to them against the judgment of conviction. In order to regain their standing in court, the accused must do as follows: 1) surrender and 2) file a motion for leave of court to avail of the remedies, stating the reasons for their absence, within 15 days from the date of the promulgation of judgment.⁵⁸

In *Villena v. People*,⁵⁹ we stated that the term "surrender" contemplates the act by the convicted accused of physically and voluntarily submitting themselves to the jurisdiction of the court to suffer the consequences of the judgment against them. Upon surrender, the accused must request permission of the court to avail of the remedies by making clear the reasons for their failure to attend the promulgation of the judgment of conviction.

Clearly, the convicted accused are the ones who should show that their reason for being absent at the promulgation of judgment was

⁵⁸ *Villena v. People*, supra; *People v. De Grano*, 606 Phil. 547 (2009).

⁵⁹ Supra.

justifiable. If the court finds that the reasons proffered justify their nonappearance during the promulgation of judgment, it shall allow them to avail of the remedies.⁶⁰ Thus, unless they surrender and prove their justifiable reason to the satisfaction of the court, their absence is presumed to be unjustified.

On the scheduled date of promulgation on 17 April 2007, the Sandiganbayan noted that only Atty. Francisco Chavez, counsel for petitioners, appeared.⁶¹ Jaylo was not served notice of the promulgation, because he was no longer residing at his given address. Valenzona and Habalo were duly notified. Castro had died on 22 December 2006.⁶²

Petitioners did not surrender within 15 days from the promulgation of the judgment of conviction. Neither did they ask for leave of court to avail themselves of the remedies, and state the reasons for their absence. Even if we were to assume that the failure of Jaylo to appear at the promulgation was due to failure to receive notice thereof, it is not a justifiable reason. He should have filed a notice of change of address before the Sandiganbayan.

The Sandiganbayan was correct in not taking cognizance of the Motion for Partial Reconsideration filed by counsel for petitioners. While the motion was filed on 30 April 2007, it did not operate to regain the standing of petitioners in court. For one, it is not an act of surrender that is contemplated by Section 6, Rule 120, of the Rules of Court. Moreover, nowhere in the Motion for Partial Reconsideration was it indicated that petitioners were asking for leave to avail of the remedies against the judgment of conviction, or that there were valid reasons for their absence at the promulgation.

For the failure of petitioners to regain their standing in court and avail themselves of the remedies against the judgment of conviction, the Decision of the Sandiganbayan attained finality 15 days reckoned from 17 April 2007.

In view thereof, this Court no longer has the power to conduct a review of the findings and conclusions in the Decision of the Sandiganbayan. The Decision is no longer subject to change, revision, amendment, or reversal.⁶³ Thus, there is no need to pass upon the issues raised by petitioners assailing it.

WHEREFORE, the petition is **DENIED**. The Sandiganbayan Resolutions dated 29 November 2007 and 26 May 2008 in Criminal Case Nos. 17984-86 are **AFFIRMED**. The Sandiganbayan Decision dated 17 April 2007, having attained finality, stands.

⁶⁰ Supra note 58.

⁶¹ *Rollo*, p. 228.

⁶² Id. at 233.

⁶³ *Bongcac v. Sandiganbayan*, 606 Phil. 48 (2009).

SO ORDERED.



MARIA LOURDES P. A. SERENO

Chief Justice, Chairperson

WE CONCUR:



PRESBITERO J. VELASCO, JR.

Associate Justice



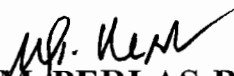
LUCAS P. BERSAMIN

Associate Justice



JOSE PORTUGAL PEREZ

Associate Justice



ESTELITA M. PERLAS-BERNABE

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice