G.R. Nos. 216007-09 – **PEOPLE OF THE PHILIPPINES,** *petitioner,* ***versus*** **LUZVIMINDA S. VALDEZ and THE SANDIGANBAYAN (Fifth Division),** *respondents.*

Promulgated:

December 8, 2015

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DISSENTING OPINION

VILLARAMA, JR., *J.*:

Before us is a petition for certiorari under Rule 65 filed by the People of the Philippines, represented by the Office of the Special Prosecutor, Office of the Ombudsman (OMB), assailing the Resolution[1] dated October 10, 2014 of the Sandiganbayan's Fifth Division in Criminal Case Nos. SB-14-CRM-0321, SB-14-CRM-0322 and SB-14-CRM-0324 entitled "*People of the Philippines, plaintiff, versus Luzviminda S. Valdez, accused.*"

Respondent Luzviminda S. Valdez (Valdez) is a former Mayor of Bacolod City. During a post-audit of disbursement vouchers of the City Government of Bacolod, the Commission on Audit found that the Cash Slips used for the reimbursement of expenses of Valdez under Disbursement Voucher Nos. 6, 220, 278 and 325 totalling ₱279,150.00 were falsified and that the actual amount due to her was only ₱4,843.25.[2]

Subsequently, Valdez was indicted for three (3) counts of Malversation of Public Funds thru Falsification of Public Documents under Article 217, in relation to Article 171, paragraph 6, of the Revised Penal Code, as amended. An Order of Arrest was issued by the Sandiganbayan. However, Valdez remains at large and yet caused the filing of a Motion to Set Aside No Bail Recommendation and To Fix the Amount of Bail,[3] arguing that since there are no aggravating or mitigating circumstances alleged in the Informations, the maximum of the indeterminate sentence shall be taken from the medium period, or from 18 years, 8 months and 1 day to 20 years, an imposable penalty which is bailable. She further emphasized that it is oppressive especially for the woman accused, to be jailed at this stage while she is presumed innocent.

In its Comment/Opposition,[4] the Office of the Special Prosecutor argued that the Indeterminate Sentence Law cannot be invoked by Valdez because *reclusion perpetua* is an indivisible penalty. It further asserted that

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1 *Rollo*, pp. 30-40. Penned by Associate Justice Ma. Theresa Dolores C. Gomez-Estoesta with Associate Justices Roland B. Jurado and Alexander G. Gesmundo concurring.

2 Id. at 41-43.

3 Id. at 44-51.

4 Id. at 52-56.

since bail is discretionary in this case, the court cannot dispense with the requirement of a hearing.

Valdez also filed an Urgent Supplemental Motion[5] with the additional prayer for the recall/lifting of the warrants of arrest pending resolution of her motion to set aside the "No Bail" recommendation of the OMB and to fix the amount of bail.

On October 10, 2014, the Sandiganbayan issued the assailed Resolution granting Valdez's motion, as follows:

> WHEREFORE, the (i) *Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail* and the (ii) *Urgent Supplemental Motion to the Motion to Set Aside No Bail Recommendation and to Fix the Amount of Bail with Additional Prayer to Recall/Li[ft Warrant of Arrest* filed by accused Luzvimi[n]da S. Valdez, are **GRANTED**.
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> Let the Order of Arrest issued in Criminal Case Nos. SB-14-CRM-0321, 0322 and 0324 adopting the "no bail" recommendation of the Office of the Ombudsman be **RECALLED**. Instead, let an Order of arrest in said cases be issued anew, this time, fixing the bail for each offense charged in the amount of Two Hundred Thousand Pesos (₱200,000.00).
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> SO ORDERED.[6]

In ruling that Valdez is entitled to bail, the Sandiganbayan explained that in determining whether a person can be admitted to bail as a matter of right, it is the *imposable penalty* prescribed by law for the crime charged which should be considered and not the penalty to be actually imposed. Thus, it held that the penalty imposable for malversation cannot be immediately applied in its maximum period (*reclusion perpetua*) when the case is still at its inception since this will already consider the application of the penalty in the event of conviction.

Hence, this petition raising the sole issue of whether malversation thru falsification of public documents is a bailable offense.

First, we address the procedural flaw pointed out by Valdez as to the failure of the Office of the Special Prosecutor to comply with the requirement of a motion for reconsideration prior to the filing of the present petition.

The well-established rule is that a motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended.[7] However, the rule is not absolute and admits of exceptions entrenched in our jurisprudence:

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5 Id. at 57-59.

6 Id. at 40.

7 *Republic of the Philippines v. Pantranco North Express, Inc.*, 682 Phil. 186, 193 (2012), citing *Ag v. Mejia*, 555 Phil. 348, 353 (2007).

> The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by re-examination of the legal and factual circumstances of the case. There are, however, recognized exceptions permitting a resort to the special civil action for *certiorari* without first filing a motion for reconsideration. In the case of *Domdom v. Sandiganbayan*, it was written:
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> > The rule is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court *a quo* had no jurisdiction; **where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court**; where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency of relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and **where the issue raised is one purely of law** or where public interest is involved. x x x[8] (Emphasis supplied; emphasis in the original omitted)

Here, we recognize the presence of two exceptions, as underscored above. Records confirm that the Sandiganbayan has categorically ruled that Valdez is entitled to bail as a matter of right and forthwith recalled the order of arrest it had issued. Also, the petition undeniably raised a lone question of law: whether an accused charged with malversation thru falsification of public documents may apply for bail. Petitioner is thus allowed by the Rules to file the present certiorari petition even if it had not first moved for reconsideration of the assailed resolution.

The Sandiganbayan set aside the "No Bail" recommendation under the informations filed by the OMB based on its own interpretation of Article 48 that the "maximum period" of the most serious crime, which is *reclusion perpetua* for the more serious charge of Malversation, cannot be considered for purpose of bail because the law speaks of "penalty imposable" and not penalty actually imposed. Acknowledging a contrary position to the 2000 Bail Bond Guide issued by the Department of Justice where no bail is indicated for the complex crime of Malversation thru Falsification of Public Documents when the amount malversed is ₱22,000.00 or higher as alleged in the informations, the Sandiganbayan opined that this interpretation is more favorable to the accused.

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[8] *Pineda v. Court of Appeals (Former Ninth Division)*, G.R. No. 181643, November 17, 2010, 635 SCRA 274, 281-282, cited in *Medado v. Heirs of the Late Antonio Consing*, 681 Phil. 536, 548-549 (2012).

We disagree.

Section 13, paragraph 4, Article III of the 1987 Constitution provides that all persons, except those charged with offenses **punishable** by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released from recognizance as may be provided by law. Likewise, Rule 114, Section 7 of the Revised Rules of Criminal Procedure, as amended, provides that no person charged with a capital offense or an offense punishable by *reclusion perpetua* or life imprisonment when evidence of guilt is strong shall be admitted to bail regardless of the stage of the prosecution.

We find no legal basis for making a distinction between imposable or prescribed penalty and penalty actually imposed and concluding that the maximum period mentioned in Article 48 cannot be considered for bail purposes before conviction. The term "punishable" in the Constitution and the Rules clearly refers only to the prescribed penalty. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[9] Further, it is a cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[10]

The question of actual imposable penalty of malversation thru falsification of public documents has been settled by this Court in *People v. Pantaleon, Jr.*,[11] where we ruled:

> Article 217, paragraph 4 of the Revised Penal Code imposes the penalty of *reclusion temporal* in its maximum period to *reclusion perpetua* when the amount malversed is greater than ₱22,000.00. This Article also imposes the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. Falsification by a public officer or employee under Article 171, on the other hand, is punished by *prision mayor* and a fine not to exceed ₱5,000.00.
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> Since appellant committed a complex crime, the penalty for the most serious crime shall be imposed in its maximum period, pursuant to Article 48 of the Revised Penal Code. This provision states:
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> > ART. 48. *Penalty for complex crimes.* - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.
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> The Sandiganbayan, therefore, correctly imposed on the appellants the penalties of ***reclusion perpetua*** and **perpetual special disqualification** for each count of malversation of public funds through

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9 *Amores v. House of Representatives Electoral Tribunal,* 636 Phil. 600, 609 (2010).

10 Id. at 608, citing *Twin Ace Holdings Corporation v. Rufina and Company*, 523 Phil. 766, 777 (2006).

11 600 Phil. 186 (2009). See also *Manalac, Jr. People of the Philippines*, G.R. Nos. 206194-206207, July 3, 2013 (Unsigned Resolution).

> falsification of public documents, and the **payment of fines** of ₱166,242.72, ₱154,634.27, and ₱90,464.21, respectively, representing the amounts malversed. **The Indeterminate Sentence Law finds no application since *reclusion perpetua* is an indivisible penalty to which the Indeterminate Sentence Law does not apply.**[12] (Additional emphasis supplied)

In the light of all the foregoing, we hold that Valdez is not entitled to bail as a matter of right since she is charged with a crime whose penalty is *reclusion perpetua*. The DOJ's 2000 Bail Bond Guide likewise sets no bail for the said offense where the amount involved exceeds ₱22,000.00. While not controlling, in view of the constitutional prohibition against excessive bail, the said guidelines should have been considered by the Sandiganbayan.[13]

The Sandiganbayan thus gravely erred in setting aside the "No Bail" recommendation of the Special Prosecutor and fixing the amount of bail as prayed for by Valdez. It is settled that the grant of bail to an accused charged with an offense that carries with it the penalty of *reclusion perpetua* is discretionary on the part of the trial court, *i.e.*, accused is still entitled to bail but no longer as a matter of right.[14] Indeed, the determination of whether or not the evidence of guilt is strong is a matter of judicial discretion. This discretion, by the nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing.[15] The Prosecution must be given a chance to show strength of its evidence; otherwise, a violation of due process occurs.[16] As the rule now stands, a hearing upon notice is mandatory before the grant of bail, whether bail is a matter of right or discretion.[17]

I therefore **VOTE**:

1. To **GRANT** the petition; and

2. To **ANNUL and SET ASIDE** the Resolution dated October 10, 2014 of the Sandiganbayan's Fifth Division in Criminal Case Nos. SB-14-CRM-0321, SB-14-CRM-0322 and SB-14-CRM-0324.

MARTIN S. VILLARAMA, JR.
Associate Justice

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12 Id. at 228.
13 See A.M. No. 12-11-2-SC promulgated on March 18, 2014.
14 *Andres v. Beltran*, 415 Phil. 598, 603 (2001).
15 *Ocampo v. Bernabe*, 77 Phil. 55, 58 (1946).
16 *Gacal v. Infante*, 674 Phil. 324, 340 (2011).
17 Id. at 338.