Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

- versus -

JUVENAL AZURIN y BLANQUERA,
Accused-Appellant.

G.R. No. 249322

Present:

GESMUNDO, *C.J., Chairperson,*
CAGUIOA,
LAZARO-JAVIER,
LOPEZ, M., and
LOPEZ, J., *JJ.*

Promulgated:

SEP 14 2021

x- x

DECISION

CAGUIOA, *J.*:

This is an Appeal,[1] filed pursuant to Section 1(a), Rule XI of the 2018 Revised Internal Rules of the Sandiganbayan[2] (Sandiganbayan Rules), from the Decision[3] dated April 26, 2019 (assailed Decision) and Resolution dated August 14, 2019 (assailed Resolution), both of the Sandiganbayan, Third Division, in SB 16-CRM-0127, which found accused-appellant Juvenal Azurin y Blanquera (Azurin) guilty beyond reasonable doubt of the crime of Grave Threats under Article 282, paragraph 2, of the Revised Penal Code (RPC).

The accusatory portion of the Information against Azurin reads:

> That on November 13, 2013, or sometime prior or subsequent thereto, in Tuguegarao City, Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused JUVENAL AZURIN y BLANQUERA, a public officer, being the Regional Director of Philippine Drug Enforcement Agency (PDEA)-Regional Office No. 2, Camo Adduru, Barangay Caggay, Tuguegarao City, Cagayan, committing the offense herein charged in relation to his office and taking advantage of his position, did then and there, willfully, unlawfully and feloniously

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1 *Rollo*, pp. 18-19.

2 A.M. No. 13-7-05-SB, promulgated on October 9, 2018.

3 *Rollo*, pp. 8-17. Penned by Associate Justice Bernelito R. Fernandez and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Sarah Jane T. Fernandez.

threaten, without condition, his subordinate Jaime J. Clave with the infliction of a wrong amounting to a crime by uttering the following words during their telephone conversation: "***Putang-ina mo Clave ha, putang-ina mo Bobot, papatayin kita***", over office internal matters and conflict, which threatened the said Jaime J. Clave and causing the latter to fear for his life, believing that accused, as PDEA Regional Director, has the capacity and means to carry out the threat.

CONTRARY TO LAW.[4]

Upon arraignment, Azurin pleaded "not guilty".[5] Trial on the merits ensued thereafter.

The Facts

Version of the Prosecution

The prosecution presented as witnesses: 1) private complainant Jaime J. Clave (Clave); 2) Intelligence Officer II April Rose Mendoza (IO2 Mendoza) of the Philippine Drug Enforcement Agency (PDEA) Intelligence Office; 3) Intelligence Officer I Maynard Agleham (IO1 Agleham), likewise a PDEA Intelligence Officer; 4) Rosenia Cabalza (Cabalza); and 5) Senior Police Officer 1 Ricky M. Ramilo (SPO1 Ramilo).

According to Clave, on November 13, 2013, at around 12:00 o'clock midnight, he received a phone call from Azurin, the then Regional Director (RD) of the PDEA-Regional Office (RO) II. The following conversation took place:

Azurin : *Clave, asan ka na?*

Clave : *Andito na sa Tuguegarao, Sir.*

Azurin : *Clave, may sama ka ba ng loob sa akin?*

Clave : *Wala, Sir. Bakit, Sir?*

x x x x

Azurin: *Napagtagpi–tagpi ko na. Apat na tao na. Napagtagpi–tagpi ko na na ikaw lang ang may sama ng loob sa akin. Apat na tao na ang nakausap ko.*

x x x x

Clave, Papatayin kita![6]

Azurin repeated the remark, "*Clave, papatayin kita*" several times during the conversation. Clave suspected that Azurin was upset because Clave had sent a text message to the PDEA Deputy Director General for Administration (DDGA) regarding some office issues pertaining to

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4 Id. at 8-9.
5 Id. at 9.
6 Id. at 5-6.

operational funds. Clave feared for his life as he knew that Azurin, being a PDEA RD who had an office-issued firearm, a former Navy officer and a member of the *Magdalo* group, was capable of carrying out his threats.

Later, Clave went to the police station to report the incident and took photographs of his cellphone to record the calls he received, the name of the callers and the duration of the calls. Thereafter, he filed an administrative complaint against Azurin before the Internal Affairs Services Office of the PDEA and a criminal complaint with the Office of the Ombudsman (OMB).[7]

Clave testified that he had been an agent of the PDEA since 2007 and was the team leader in Isabela prior to the incident. During the subject phone call, Azurin informed him that he was being relieved as team leader and designated him as a member of the PDEA team in Quirino and Nueva Vizcaya.[8]

Prosecution witness IO2 Mendoza testified that in the afternoon of November 15, 2013, Clave narrated the phone call made to him by Azurin, wherein Clave was berated repeatedly by the latter, his life was threatened and he was challenged to a fight. On November 16, 2013, IO2 Mendoza reported to Azurin and the latter told him "*namura ko si Bobot (Clave)*" and "*kung ano yong nangyari sa amin ni Bobot personal na namin yon.*"[9]

Prosecution witness IO1 Agleham testified that, prior to the incident, he and Azurin had a conversation regarding the reassignment of their team leader, Clave. Azurin mentioned that Clave would be relieved because of an incident which occurred between them.[10]

Prosecution witness Cabalza testified that she received Office Order No. 213-00234 dated November 15, 2013, relieving her as Administrator of the Intelligence and Investigation Division Section of PDEA-RO II and designating her as member of the Arson team. The Order likewise pertained to the reliefs of Clave and Oliver Madriaga (Madriaga). She also stated that she received a missed call from Azurin around the time of the subject phone call of Azurin to Clave. After the incident, she was likewise informed by Clave of the subject phone call made to him by Azurin.[11]

Version of the Defense

The lone witness for the defense, Azurin, testified that while he did place a phone call to Clave on the night of the incident, it was only to inform the latter of his reassignment to Nueva Vizcaya. Azurin admitted that he was informed by the PDEA DDGA about a complaint on some operational issues made through text messages and that this upset and disappointed him. Three years after the incident, Clave regretted filing the instant case and that later,

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7 Id. at 5-7.
8 Id. at 12.
9 Id. at 7-8.
10 Id. at 8.
11 Id. at 9.

Clave issued an Affidavit of Desistance, which was submitted to the Sandiganbayan along with a motion to dismiss.[12]

The Ruling of Sandiganbayan

In the assailed Decision, the Sandiganbayan found Azurin guilty beyond reasonable doubt of the crime of Grave Threats, thus:

> **WHEREFORE**, this Court finds accused Juvenal B. Azurin **GUILTY** beyond reasonable doubt of the crime of grave threats, as defined and penalized in Article 282, paragraph 2 of the Revised Penal Code, as amended, and in default of any modifying circumstance in attendance, hereby sentences him to suffer a straight penalty of imprisonment of Two (2) months and a fine in the amount of Five Hundred Pesos ([₱]500.00), with subsidiary imprisonment in case of insolvency[,] and to pay costs.
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> **SO ORDERED.**[13]

The Sandiganbayan found all three elements of grave threats (not subject to a condition) present. It gave credence to the version of facts of the prosecution and ruled that although the threats were only made in a telephone conversation, hence with no independent corroboration, the immediate reaction of Clave after the conversation coupled with the testimonies of the prosecution witnesses on antecedent and succeeding events were sufficient to support a finding of guilt against Azurin.[14]

Hence, this Appeal.

Azurin filed an Appellant's Brief[15] dated June 22, 2020, wherein he maintains that the prosecution failed to prove his guilt because, at most, what was proven by the prosecution was merely the occurrence of the phone conversation between him and Clave, but not the substance of said conversation.[16] He insists that he made the phone call merely to inform Clave of the latter's reassignment. He asserts, in gist, that the attending circumstances of the case are inconsistent with a finding of his guilt beyond reasonable doubt. Instead, they show that Clave filed the instant case as a form of revenge against Azurin because of the former's reassignment.[17] Azurin likewise asserts that the prosecution's evidence is purely hearsay and its witnesses' testimonies were mere afterthought.[18] Finally, he claims that the photograph of Clave's phone was inadmissible in evidence[19] as it was not properly authenticated in accordance with the Rules on Electronic Evidence (REE).[20]

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12 Id. at 10-12.
13 Id. at 16. Emphasis in the original.
14 Id. at 14.
15 Id. at 27-34. Excluding Annexes.
16 Id. at 28.
17 Id. at 28-30.
18 Id. at 30.
19 Id. at 31-32.
20 A.M. No. 01-7-01-SC, entitled, "RE: EXPANSION OF THE COVERAGE OF THE RULES ON ELECTRONIC EVIDENCE," approved on September 24, 2002.

The People, through the OMB Office of the Special Prosecutor (OSP), filed its Plaintiff-Appellee's Brief[21] (Appellee's Brief) dated August 26, 2020. It argues that Azurin availed of the wrong mode of appeal and that, as such, the period to appeal had already lapsed, rendering the Sandiganbayan's judgment of conviction final and immutable.[22] Further, assuming *arguendo* that Azurin availed of the correct mode, the Sandiganbayan correctly found him guilty beyond reasonable doubt of the crime charged.[23]

Issues

The present issues may be summarized, thus: 1) whether Azurin availed of the correct mode of appeal from the Sandiganbayan to the Court; and 2) whether the Sandiganbayan correctly found him guilty beyond reasonable doubt of the crime charged.

The Court's Ruling

The Appeal lacks merit.

The proper mode of appeal from the Sandiganbayan's judgment of conviction in the exercise of its original jurisdiction to the Supreme Court is via a Notice of Appeal pursuant to the Sandiganbayan Rules.

On the first issue, the Court rules that Azurin resorted to the proper remedy of appealing the Sandiganbayan's assailed Decision, which was issued in the exercise of its original jurisdiction, to the Court by filing a notice of appeal with the former. This is pursuant to Section 1(a), Rule XI of the Sandiganbayan Rules which provide:

> **REVIEW OF JUDGMENTS AND FINAL ORDERS**
>
> ***Section 1. Methods of Review.*** –
>
> (a) ***In General.*** – **The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by notice of appeal filed with the Sandiganbayan** and by serving a copy thereof upon the adverse party.
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> x x x x (Emphasis and underscoring supplied)

The People challenges this mode of appeal taken by Azurin and asserts that the correct remedy is a petition for review on *certiorari* pursuant to Rule 45 of the Rules of Court (Rules)[24] and Presidential Decree No.

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21 *Rollo*, pp. 50-74.
22 Id. at 63-68.
23 Id. at 68-72.
24 Per Resolution of the Supreme Court in Bar Matter No. 803 adopted on April 8, 1997 and made effective on July 1, 1997.

(P.D.) 1606[25] otherwise known as the Sandiganbayan Law. Rule 45 of the Rules provides:

RULE 45

Appeal by Certiorari to the Supreme Court

SECTION 1. *Filing of Petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the **Sandiganbayan**, the Court of Tax Appeals, the Regional Trial Court or other courts **whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari***. x x x [The petition] shall raise only questions of law which must be distinctly set forth. *(As amended by A.M. No. 07-7-12-SC.)* (Emphasis supplied)

Section 7 of P.D. 1606,[26] provides:

Section 7. *Form, Finality and Enforcement of Decisions.* –

x x x x

Decisions and final orders of the *Sandiganbayan* shall be appealable to the Supreme Court by **petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court**. Whenever, in any case decided by the Sandiganbayan, the penalty of *reclusion perpetua* or higher is imposed, the decision shall be appealable to the Supreme Court in the manner prescribed in the Rules of Court. In case the penalty imposed is death, review by the Supreme Court shall be automatic, whether or not the accused filed an appeal. (Emphasis supplied)

Indeed, the foregoing legal provisions vary as to the mode of appeal of criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction. Under the Sandiganbayan Rules, it is by notice of appeal filed with the Sandiganbayan while under the Rules and P.D. 1606, it is by petition for review on *certiorari* filed with the Court. Azurin took the former mode while the People argues it should be the latter. Which is correct?

This issue is not novel as it was already settled in the case of *People v. Talaue*[27] *(Talaue)* involving similar procedural facts as the present case.

In *Talaue*, the accused-appellant, who was a municipal mayor when the crime was committed, was convicted by the Sandiganbayan, at the first instance, of violation of R.A. 8291,[28] for failing to timely remit to the Government Service Insurance System (GSIS) several premium

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25 Entitled, "REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS 'SANDIGANBAYAN' AND FOR OTHER PURPOSES," signed on December 10, 1978.

26 As amended by Republic Act (RA) No. 7975 entitled "AN ACT TO STRENGTHEN THE FUNCTIONAL AND STRUCTURE ORGANIZATION OF THE SANDIGANBAYAN, AMENDING FOR THAT PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED," approved on March 30, 1995.

27 G.R. No. 248652, January 12, 2021, accessed at <https://sc.judiciary.gov.ph/16841>.

28 Otherwise known as the "REVISED GOVERNMENT SERVICE INSURANCE ACT OF 1997."

contributions of the municipal government's employees. Talaue filed a notice of appeal with the Sandiganbayan to elevate his case to the Court, pursuant to the Sandiganbayan Rules. The Court upheld this procedural route against the claim of the People that the proper mode is a Rule 45 Petition under the Rules and P.D. 1606. It held:

> Considering that the [Sandiganbayan Rules] specifically provide for the modes of review of judgments and final orders of the Sandiganbayan, the Rules of Court can only apply in a suppletory manner and cannot supplant the procedure set forth in the [Sandiganbayan Rules] which were promulgated specifically to govern actions and proceedings before the Sandiganbayan. Neither can the procedure provided in P.D. No. 1606 nor in any of its amendatory laws prevail over that provided by this Court upon which no less than the fundamental law has bestowed exclusive power to promulgate rules concerning pleading, practice, and procedure in all courts.[29]

Applying *Talaue* to the present case, the mode of appeal taken by Azurin of filing a notice of appeal with the Sandiganbayan pursuant to the Sandiganbayan Rules was proper. The Sandiganbayan Rules prevail over the Rules as it is a later set of rules and a special statute *specifically* providing for modes of review of judgments and final orders of the Sandiganbayan. It is a basic canon of statutory construction that a special law prevails over a general law.[30] As it is, the Sandiganbayan Rules effectively amended the relevant provisions of the Rules and the latter apply only in a suppletory manner.[31] Hence, Rule 45 of the Rules being invoked by the People is unavailing in the present case.

Neither may the People insist that P.D. 1606, as it provides for the functional and structural organization of the Sandiganbayan, applies and could not have been amended by the Sandiganbayan Rules. *Talaue* instructs that the procedural rules provided in P.D. 1606 cannot prevail over those provided in the Sandiganbayan Rules by the Court, which has the exclusive constitutional power to promulgate rules of pleading, practice and procedure.[32]

Likewise erroneous is the People's reference to *Miranda v. Sandiganbayan*[33] (*Miranda*), which ruled that the remedy from a judgment of conviction by the Sandiganbayan is appeal pursuant to Rule 45 of the Rules. The reliance is misplaced because *Miranda* was promulgated prior to the Sandiganbayan Rules, hence, it did not consider the same.[34]

In light of the foregoing, the Court rules that Azurin availed himself of the correct mode of appeal when he filed his notice of appeal with the

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29 *People v. Talaue*, supra note 27, at 11.
30 *Lopez, Jr. v. Civil Service Commission*, G.R. No. 87119, April 16, 1991, 195 SCRA 777, 782.
31 *People v. Talaue*, supra note 27.
32 Id.; *see Carpio-Morales v. Court of Appeals (Sixth Division)*, G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431, 505; *also see* CONSTITUTION, Art. VIII, Sec. 5.
33 G.R. Nos. 144760-61, August 2, 2017, 833 SCRA 614.
34 See *People v. Talaue*, supra note 27.

Sandiganbayan. Having properly filed an appeal, the same tolled the corresponding prescriptive period. Hence, there is no merit in the assertion that the Sandiganbayan's assailed Decision had attained finality and immutability.

The Sandiganbayan correctly found Azurin guilty beyond reasonable doubt of Grave Threats (without a condition) under Article 282, paragraph 2 of the RPC.

Nevertheless, Azurin's appeal, although proper, must fail on its merits. From the records, the prosecution was able to prove his guilt for Grave Threats (without a condition) beyond reasonable doubt. The relevant law is Article 282, paragraph 2 of the RPC, which reads:

> ARTICLE 282. *Grave Threats.* — Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, shall suffer:
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> x x x x
>
> 2. The penalty of *arresto mayor* and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition.

The elements of the crime charged are that (1) the offender threatened another person with the infliction upon his person of a wrong; (2) such wrong amounted to a crime; and (3) the threat was not subject to a condition.[35] This felony is consummated "x x x as soon as the threats come to the knowledge of the person threatened."[36]

Applying these parameters to the instant case, it is evident that Azurin's threats to kill Clave are wrongs amounting to the crime of either homicide or murder. The crime was consummated as soon as Clave heard of the threats during their telephone conversation.

Nevertheless, in the present Appeal, Azurin maintains that the prosecution failed to prove his alleged utterance of threats against Clave. He asserts that he called Clave that fateful night to merely inform the latter of his reassignment. He submits that there are several circumstances which prove that he did not threaten Clave, including Clave's acts immediately following the incident. Azurin alleges that Clave had an axe to grind because of his reassignment order and that this fueled his filing of the criminal and administrative charges against Azurin.[37]

It is clear that what Azurin is assailing are the factual findings of the Sandiganbayan and the credence it gave to the prosecution witnesses over the defense's. Without doubt, Azurin can raise questions of fact in the

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35 *Reyes v. People*, Nos. L-21528 and L-21529, March 28, 1969, 27 SCRA 686, 691.
36 *Paera v. People*, G.R. No. 181626, May 30, 2011, 649 SCRA 384, 389-390.
37 *Rollo*, pp. 28-30.

present ordinary appeal.[38] Nonetheless, the Court is guided by the principles laid down in *People v. Sanchez*[39] when it is confronted with the issue of credibility of witnesses on appeal:

> First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.
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> Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's finding, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.
>
> x x x x[40]

Indeed, it is well-settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court, owing to the latter's peculiar position of observing, first hand, the witnesses as they testified.[41]

In the present case, the Court has assiduously examined the evidence on record and finds that the same proves beyond reasonable doubt the guilt of Azurin for the crime charged. There is no reason to reverse, and the Court thus affirms, the following factual findings of the Sandiganbayan:

> Although it may be said that the alleged threatening statements were only made during the telephone conversation between the [Azurin] and [ ] Clave, hence, with no independent corroboration, the immediate reaction of [ ] Clave after the conversation coupled with the testimonies of the prosecution witnesses showing antecedent events will show that the threats and the incident themselves must be given much credence. This is of course aside from the fact that the accused himself admitted the telephone conversation.
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> Aside from the testimony of [ ] Clave, this Court also gave sufficient weight to the statements of prosecution witness [ ] Cabalza, the then NDIS Administrator of the Intelligence and Investigation Section, PDEA-[RO II], in her Affidavits both dated November 19, 2013 (Exhs. "E" and "F"), where she had a conversation with [Azurin] on November 11, 2013 or prior to the incident in this case, showing [Azurin's] intense anger and propensity to kill the person behind the text message to the [DDGA].
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> x x x x
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> The actual telephone conversation between [Azurin] and [ ] Clave was confirmed by [Azurin] himself to prosecution witness Cabalza during their meeting on December 3, 2013.

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38 *See People v. Talaue*, supra note 27.
39 G.R. No. 197815, February 8, 2012, 665 SCRA 639.
40 Id. at 643. Citations and emphasis omitted.
41 See *People v. Gerola*, G.R. No. 217973, 831 SCRA 469, 478.

x x x x

[Azurin] himself also talked about his anger at [ ] Clave with [IO2 Mendoza] and [IO1 Agleham], whom he summoned to his office on November 16, 2013. During this meeting, [Azurin] mentioned to the two (2) witnesses that "*Namura ko si Bobot*" and "*Kung ano yong nangyari sa amin ni Bobot, personal na naming yon.*"

This Court further considered the demeanor displayed and the actions taken by [ ] Clave after the alleged threatening remarks. Not only did he immediately report the incident to the Tuguegarao City Police Station but also filed a criminal complaint for grave threats with the Office of the Ombudsman and an administrative complaint before the PDEA Internal Affairs. [ ] Clave also testified that he feared for his life every time he goes out of the house and did not even see [Azurin] or visited him in the office immediately after that incident.

These clearly demonstrate[] the normal reaction of a terrified person fearing for his life. It appears that the alleged threatening remarks even produced mental disturbance on [ ] Clave, knowing the capacity of [Azurin], being his superior, to execute the threat to kill and that the accused had firearms and connections, being a former navy officer and member of the *Magdalo* group.

We further found it unusual for [Azurin] to be calling [ ] Clave in the middle of the night to merely inform him of his relief/re-assignment from his current post. This information neither pertains to a serious matter nor requires urgent action. Of note is that the alleged call was made on November 13, 2013 while the Office Order for the relief of Clave was only prepared on November 15, 2013, to take effect on November 18, 2013.

The foregoing circumstances le[a]d Us to the conclusion that the real reason for the late night telephone call was for [Azurin] to confront [ ] Clave on [his] suspicion that [Clave] was the one who texted the [DDGA] regarding some issues on the operational funds of their office.

We also scrutinized the evidence of [Azurin]. However, much of it were either denials or substantially self-serving and uncorroborated.[42]

These findings already address the factual issues raised by Azurin in the present Appeal. Additionally, the Court meets his claim that the prosecution's evidence consisting of the statements of IO2 Mendoza and IO1 Agleham are hearsay, thus inadmissible in evidence against him. To recall, IO2 Mendoza testified that Azurin told her after the incident, "*namura ko si Bobot (Clave)*" and "*kung ano yong nangyari sa amin ni Bobot, personal na namin yon.*"[43] On the other hand, IO1Agleham testified that prior to the incident, he and Azurin had a conversation regarding the change of their team leader and that Azurin had mentioned that Clave was

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42 *Rollo*, pp. 14-16.
43 Id. at 8.

being relieved of his designation as team leader because of an incident that occurred between them.[44]

Contrary to Azurin's claim, these statements are admissible as they are considered independently relevant statements under the Rules, not being intended to establish the truth of the fact asserted in the statement but presented only for the purpose of placing the statement in the record to establish the fact that the statement was made or the tenor of such statement.[45] As held by the Court:

> Thus, while it is true that the testimony of a witness regarding a statement made by another person, if intended to establish the truth of the fact asserted in the statement, is clearly hearsay evidence, it is otherwise if the purpose of placing the statement in the record is merely to establish the fact that the statement was made or the tenor of such statement. Regardless of the truth or falsity of a statement, when the fact that it has been made is relevant, the hearsay rule does not apply and the statement may be shown. As a matter of fact, evidence as to the making of the statement is not secondary but primary, for the statement itself may constitute a fact in issue, or be circumstantially relevant as to the existence of such a fact. For this reason, the statement attributed to Dominga regarding the source of the funds used to purchase the subject property related to the court by Margarita is admissible if only to establish the fact that such statement was made and the tenor thereof. [46]

Hence, from all of the foregoing, the Court finds no reason to reverse the finding made by the Sandiganbayan that Azurin is guilty of the crime charged beyond reasonable doubt. However, the penalty of two (2) months imprisonment imposed by the Sandiganbayan must be amended. There being no modifying circumstance, as the Sandiganbayan had found, the penalty should be taken from the medium period of *arresto mayor*, which ranges from two (2) months and one (1) day to four (4) months. Hence, the Court deems it proper to modify the penalty of imprisonment to two (2) months and one (1) day. The fine, the subsidiary imprisonment and the order to pay the cost of suit are proper and are, thus, affirmed.

WHEREFORE, in view of the foregoing, the Appeal is **DISMISSED** for lack of merit. The Decision dated April 26, 2019 and Resolution dated August 14, 2019, both of the Sandiganbayan, Third Division, in SB 16-CRM-0127 are **AFFIRMED with MODIFICATION** in that accused-appellant Juvenal Azurin y Blanquera is sentenced to suffer the straight penalty of imprisonment of two (2) months and one (1) day.

SO ORDERED.

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44 Id.

45 *People v. Mallari*, G.R. No. 103547, July 20, 1999, 310 SCRA 621, 633.

46 *Comilang v. Burcena*, G.R. No. 146853, February 13, 2006, 482 SCRA 342, 351-352.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

AMY C. LAZARO - JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
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.

ALEXANDER G. GESMUNDO
Chief Justice