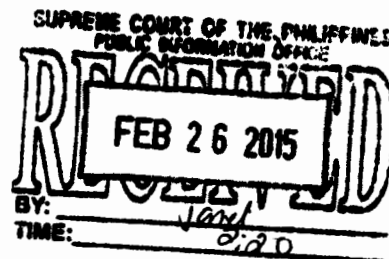




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 12, 2015** which reads as follows:*

**“G.R. No. 213551 (PEOPLE OF THE PHILIPPINES, petitioner versus P/Supt. Jonathan Calixto, P/CINSP. Hermogenes D. Cabe, et al., respondents). -**

This is a petition for review *via* Rule 45 of the Rules of Court assailing the Decision<sup>1</sup> of the Court of Appeals (CA) which held that public respondent Regional Trial Court (RTC) Presiding Judge Jaime M. Guray did not commit any grave abuse of discretion. The petitioner, People of the Philippines, contended that the CA erred in affirming the decision of the RTC for granting the Motion for Leave to File Demurrer to Evidence, which did not contain a notice of hearing.

This case sprung from the infamous “Parañaque shootout” which took place on 5 December 2008 and took the lives of complainant Lilian De Vera’s husband and daughter, Alfonso De Vera (Jun) and Lia Allana De Vera (Lia). On 28 June 2009, Lilian filed a complaint for multiple murder against respondents Special Action Force (SAF) members and Highway Patrol Group (HPG) members who were part of an operation in United Parañaque Subdivision IV.

- over – four (4) pages .....

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<sup>1</sup> Penned by Associate Justice Socorro B. Inting with Associate Justices Mario V. Lopez and Elihu A. Ybañez, concurring.

On 15 March 2010, the Department of Justice filed two (2) sets of Information for the crime of murder of Jun and Lia against respondents SAF and HPG members. The case was raffled to the RTC of Parañaque, Branch 260, presided by Judge Jaime M. Guray. In opposition to the Informations, the respondents filed motions praying for judicial determination of probable cause, deferment of the issuance of warrants of arrest, and quashal of the Informations.

On 16 June 2010, the RTC dismissed the case against the HPG members. Aggrieved, the petitioner filed a motion for reconsideration, which was denied.

On 21 January 2011, the petitioner filed a petition for *certiorari* before the CA, which sought to annul the dismissal of the case and denial of the motion for reconsideration, which the CA granted and ordered the issuance of warrants of arrest against respondents HPG members Police Chief Inspector (P/CINSP) Lawrence B. Cajipe, P/CINSP Joel L. Mendoza, P/INSP Gerardo B. Balatucan, PO3 Jolito P. Mamanao, Jr., PO3 Fernando Rey S. Gapuz, PO2 Eduardo G. Blanco, PO2 Edwin Santos, and PO1 Josil Rey I. Lucena.

Meanwhile, respondents SAF members were arraigned and pleaded not guilty. They filed a petition for bail which was granted by the RTC on the ground that the evidence of guilt is not strong.

After the prosecution's presentation of evidence, the defense filed a Motion for Leave to File Demurrer to Evidence, which was granted by the RTC.

On 8 May 2012, the RTC acquitted respondents SAF members.

Aggrieved, petitioners filed a petition for *certiorari* before the CA alleging that RTC Presiding Judge Guray gravely abused his discretion for granting a defective motion to demurrer to evidence due to lack of notice of hearing and for acquitting respondents SAF members despite the fact that it has established conspiracy between the SAF and HPG members. Petitioners argued that because a demurrer to evidence is in the nature of a motion to dismiss, the rule on motions, *i.e.* Section 4, Rule 15 of the 1997 Rules of Civil Procedure must apply, which dictates that "[e]very written

motion required to be heard [as well as] the notice of hearing shall be served in such manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good reasons sets the hearing on shorter notice". As the motion to demurrer had no notice of hearing, it is deemed a mere scrap of paper.

On 24 July 2014, the CA dismissed the petition. Finding no grave abuse of discretion, the CA held that while a demurrer to evidence is in the nature of a motion to dismiss, the rule on motions under Rule 15 of the 1997 Rules of Civil Procedure which requires a notice of hearing, is inapplicable on the ground that in criminal cases, the processes or procedures is governed by Section 23, Rule 119 of the Rules of Criminal Procedure.<sup>2</sup> As found by the CA, a hearing is not required before the resolution of a demurrer because based on the rules, the prosecution may file its opposition thereto, and if the motion is granted, the prosecution again may file an opposition to the resolution. Stated otherwise, Section 23 does not require the conduct of a hearing, but only requires the filing of opposition.

Section 23, Rule 119 provides for the period within which to file an opposition, *i.e.*, 5 days from receipt of the motion for leave to file demurrer to evidence and 10 days from receipt of the demurrer to evidence. In the case at bar, petitioner was given an opportunity to object to the motion by filing its opposition. It cannot be gainsaid thus, that petitioner was deprived of its opportunity to be heard.

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<sup>2</sup> Section 23. Demurrer to evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)



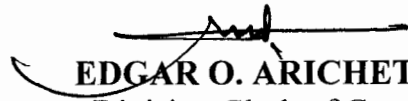
As already held, the rationale for a notice of hearing in a motion is to enable the court to determine whether the adverse party agrees or objects thereto.<sup>3</sup> In the case at bar, petitioner's opposition enabled the court to determine its objections. Petitioner's opposition was duly heard by the court.

Also, the petitioner should have acted on the denial of its opposition right at the first instance. Instead, the petitioner waited until the final judgment of the RTC, which ruled on the acquittal of respondent SAF members. This is clearly a fatal omission on the part of the petitioner. This Court is precluded from determining the innocence or guilt of the accused without transgressing the Constitutional prohibition not to put any person "twice x x x in jeopardy of punishment for the same offense."<sup>4</sup>

**WHEREFORE**, the petition is **DENIED**.

**SO ORDERED.**"

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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The Solicitor General (x)  
Makati City

Court of Appeals (x)  
Manila  
(CA-G.R. SP No. 125510)

Judgment Division (x)  
Supreme Court

Atty. Julieta M. Morales  
Counsel for Respondents  
Fourth Flr., Goldloop Tower A  
J.M. Escriva Drive, Ortigas Center  
1605 Pasig City

The Hon. Presiding Judge  
Regional Trial Court, Br. 260  
1700 Parañaque City (Crim. Case No. 10-0280-81)

Public Information Office (x)  
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Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

SR

<sup>3</sup> *People v. CA*, 357 Phil. 414, 427 (1998), citing *Manila Surety and Fidelity Co. Inc., v. Batu Const. and Co.*, 121 Phil. 1221, 1224 (1965).

<sup>4</sup> Section 21, Article III, 1987 Constitution.