G.R. NOS. 96027-28 - BRIG. GEN. LUTHER A. CUSTODIO, ET AL. V. SANDIGANBAYAN, ET AL.

G.R. NOS. 96027-28 - BRIG. GEN. LUTHER A. CUSTODIO, ET AL. v. SANDIGANBAYAN, ET AL.

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

[G.R. NOS. 96027-28 : March 08, 2005]

BRIG. GEN. LUTHER A. CUSTODIO* , CAPT. ROMEO M. BAUTISTA, 2nd LT. JESUS D. CASTRO, SGT. CLARO L. LAT, SGT. ARNULFO B. DE MESA, C1C ROGELIO B. MORENO, C1C MARIO E. LAZAGA, SGT. FILOMENO D. MIRANDA, SGT. ROLANDO C. DE GUZMAN, SGT. ERNESTO M. MATEO, SGT. RODOLFO M. DESOLONG, A1C CORDOVA G. ESTELO, MSGT. PABLO S. MARTINEZ, SGT. RUBEN AQUINO, SGT. ARNULFO ARTATES, A1C FELIZARDO TARAN, *Petitioners*, *v.* **SANDIGANBAYAN and PEOPLE OF THE**

PHILIPPINES, *Respondents*.

R E S O L U T I O N

PUNO, *J.*:

Before us is a Motion To Re-Open Case With Leave Of Court filed by petitioners who were convicted and sentenced to *reclusion perpetua* by the Sandiganbayan in Criminal Cases Nos. 10010 and 10011 for the double murder of Senator Benigno Aquino, Jr. and Rolando Galman on August 21, 1983.[1]

Petitioners were members of the military who acted as Senator Aquino's security detail upon his arrival in Manila from his three-year sojourn in the United States. They were charged, together with several other members of the military, before the Sandiganbayan for the killing of Senator Aquino who was fatally shot as he was coming down from the aircraft of China Airlines at the Manila International Airport. Petitioners were also indicted for the killing of Rolando Galman who was also gunned down at the airport tarmac.

On December 2, 1985, the Sandiganbayan rendered a Decision in Criminal Cases Nos. 10010-10011 acquitting all the accused, which include the petitioners. However, the proceedings before the Sandiganbayan were later found by this Court to be a sham trial. The Court thus nullified said proceedings, as well as the judgment of acquittal, and ordered a re-trial of the cases.[2]

A re-trial ensued before the Sandiganbayan.

In its decision dated September 28, 1990, the Sandiganbayan, while acquitting the other accused, found the petitioners guilty as principals of the crime of murder in both Criminal Cases Nos. 10010 and 10011. It sentenced them to *reclusion perpetua* in each case.[3] The judgment became final after this Court denied petitioners' Petition for Review of the Sandiganbayan decision for failure to show reversible error in the questioned decision,[4] as well as their subsequent motion for reconsideration.[5]

In August 2004, petitioners sought legal assistance from the Chief Public Attorney who, in turn, requested the Independent Forensic Group of the University of the Philippines to make a thorough review of the forensic evidence in the double murder case. The petitioners, assisted by the Public Attorney's Office, now want to present the findings of the forensic group to this Court and ask the Court to allow the re-opening of the cases and the holding of a third

trial to determine the circumstances surrounding the death of Senator Benigno Aquino, Jr. and Rolando Galman.

Petitioners invoke the following grounds for the re-opening of the case:

I

Existence of newly discovered pieces of evidence that were not available during the second trial of the above-entitled cases which could have altered the judgment of the Sandiganbayan, specifically:

A) Independent forensic evidence uncovering the false forensic claims that led to the unjust conviction of the petitioners-movants.

B) A key defense eyewitness to the actual killing of Senator Benigno Aquino, Jr.

II

There was a grave violation of due process by reason of:

A) Insufficient legal assistance of counsel;

B) Deprivation of right to counsel of choice;

C) Testimonies of defense witnesses were under duress;

D) Willful suppression of evidence;

E) Use of false forensic evidence that led to the unjust conviction of the petitioners-movants.

III

There was serious misapprehension of facts on the part of the Sandiganbayan based on false forensic evidence, which entitles petitioners-movants to a re-trial.[6]

Petitioners seek to present as new evidence the findings of the forensic group

composed of Prof. Jerome B. Bailen, a forensic anthropologist from the University of the Philippines, Atty. Erwin P. Erfe, M.D., a medico-legal practitioner, Benito E. Molino, M.D., a forensic consultant and Human Rights and Peace Advocate, and Anastacio N. Rosete, Jr., D.M.D., a forensic dentistry consultant. Their report essentially concludes that it was not possible, based on the forensic study of the evidence in the double murder case, that C1C Rogelio Moreno fired at Senator Aquino as they descended the service stairway from the aircraft. They posit that Senator Aquino was shot while he was walking on the airport tarmac toward the waiting AVSECOM van which was supposed to transport him from the airport to Fort Bonifacio. This is contrary to the finding of the Sandiganbayan in the second trial that it was C1C Moreno, the security escort positioned behind Senator Aquino, who shot the latter. The report also suggests that the physical evidence in these cases may have been misinterpreted and manipulated to mislead the court. Thus, petitioners assert that the September 28, 1990 decision of the Sandiganbayan should be voided as it was based on false forensic evidence. Petitioners submit that the review by the forensic group of the physical evidence in the double murder case constitutes **newly discovered evidence** which would entitle them to a new trial under Rule 121 of the 2000 Rules of Criminal Procedure. In addition to the report of the forensic group, petitioners seek to present the testimony of an alleged eyewitness, the driver of the waiting AVSECOM van, SPO4 Ruben M. Cantimbuhan. In his affidavit submitted to this Court, SPO4 Cantimbuhan states that he saw a man in blue uniform similar to that of the Philippine Airlines maintenance crew, suddenly fire at Senator Aquino as the latter was about to board the van. The man in blue was later identified as Rolando Galman.

Petitioners pray that the Court issue a resolution:

1. [a]nnulling and setting aside this Honorable Court's Resolutions dated July 23, 1991 and September 10, 1991;

2. [a]nnulling and setting aside the Decision of the Sandiganbayan (3rd Division) dated September 28, 1990 in People v. Custodio, et al., Case No. 10010-10011[;]

3. [o]rdering the re-opening of this case; [and]

4. [o]rdering the Sandiganbayan to allow the reception of additional defense

evidence/re-trial in the above entitled cases.[7]

The **issue** now is whether petitioners are entitled to a **third trial** under Rule 121 of the 2000 Rules of Criminal Procedure.

The pertinent sections of Rule 121 of the 2000 Rules of Criminal Procedure provide:

> **Section 1.** ***New Trial or reconsideration*****.** - At any time before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration.
>
> **Sec. 2.** ***Grounds for a new trial*****.** - The court shall grant a new trial on any of the following grounds:
>
> (a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;
>
> **(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment**.
>
> xxx
>
> **Sec. 6.** ***Effects of granting a new trial or reconsideration*****. - The** effects of granting a new trial or reconsideration are the following:
>
> (a) When a new trial is granted on the ground of errors of law or irregularities committed during the trial, all the proceedings and evidence affected thereby shall be set aside and taken anew. The court may, in the interest of justice, allow the introduction of additional evidence.
>
> (b) When a new trial is granted on the ground of newly discovered evidence, the evidence already adduced shall stand and the newly-

discovered and such other evidence as the court may, in the interest of justice, allow to be introduced shall be taken and considered together with the evidence already in the record.

(c) In all cases, when the court grants new trial or reconsideration, the original judgment shall be set aside or vacated and a new judgment rendered accordingly. *(emphasis supplied)*

In line with the objective of the Rules of Court to set guidelines in the dispensation of justice, but without shackling the hands that dispense it, the remedy of new trial has been described as "a new invention to temper the severity of a judgment or prevent the failure of justice."[8] Thus, the Rules allow the courts to grant a new trial when there are errors of law or irregularities prejudicial to the substantial rights of the accused committed during the trial, or when there exists newly discovered evidence. In the proceedings for new trial, the errors of law or irregularities are expunged from the record or new evidence is introduced. Thereafter, the original judgment is vacated and a new one is rendered.[9]

Under the Rules, a person convicted of a crime may avail of the remedy of new trial before the judgment of conviction becomes final. Petitioners admit that the decision of the Sandiganbayan in Criminal Cases Nos. 10010 and 10011 became final and executory upon denial of their Petition for Review filed before this Court and their motion for reconsideration. Entry of judgment has in fact been made on September 30, 1991.[10] Nonetheless, they maintain that equitable considerations exist in this case to justify the relaxation of the Rules and re-open the case to accord petitioners the opportunity to present evidence that will exonerate them from the charges against them. We do not find merit in their submission.

Petitioners anchor their motion on the ground of newly discovered evidence. Courts are generally **reluctant** in granting motions for new trial on the ground of newly discovered evidence for it is **presumed** that the moving party has had ample opportunity to prepare his case carefully and to secure all the necessary evidence before the trial. Such motions are **treated with great caution** due to the danger of perjury and the manifest injustice of allowing a party to allege that which may be the consequence of his own neglect to defeat an adverse judgment. Hence, the moving party is often required to rebut a presumption

that the judgment is correct and that there has been a lack of due diligence, and to establish other facts essential to warrant the granting of a new trial on the ground of newly discovered evidence.[11] This Court has repeatedly held that before a new trial may be granted on the ground of newly discovered evidence, **it must be shown** (1) that the evidence was discovered after trial; (2) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) that it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered.[12]

These standards, also known as the **"Berry" rule**, trace their origin to the 1851 case of **Berry v. State of Georgia**[13] where the Supreme Court of Georgia held:

> Applications for new trial on account of newly discovered evidence, are not favored by the Courts. x x x Upon the following points there seems to be a pretty general concurrence of authority, viz; that it is incumbent on a party who asks for a new trial, on the ground of newly discovered evidence, to satisfy the Court, 1st. That the evidence has come to his knowledge since the trial. 2d. That it was not owing to the want of due diligence that it did not come sooner. 3d. That it is so material that it would produce a different verdict, if the new trial were granted. 4th. That it is not cumulative only - viz; speaking to facts, in relation to which there was evidence on the trial. 5th. That the affidavit of the witness himself should be produced, or its absence accounted for. And 6th, a new trial will not be granted, if the only object of the testimony is to impeach the character or credit of a witness. *(citations omitted)*

These guidelines have since been followed by our courts in determining the propriety of motions for new trial based on newly discovered evidence.

It should be emphasized that the applicant for new trial has the **burden** of showing that the new evidence he seeks to present has complied with the requisites to justify the holding of a new trial.

The **threshold question** in resolving a motion for new trial based on newly discovered evidence is whether the proferred evidence is in fact a "newly discovered evidence which could not have been discovered by due diligence." **The question of whether evidence is newly discovered has two aspects:** a **temporal one**, *i.e*., when was the evidence discovered, and a **predictive one**, *i.e*., when should or could it have been discovered. It is to the latter that the requirement of due diligence has relevance.[14] We have held that in order that a particular piece of evidence may be properly regarded as newly discovered to justify new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised **reasonable diligence** in seeking to locate such evidence before or during trial but had nonetheless failed to secure it.[15]

The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case.[16] Nonetheless, it has been observed that the phrase is often equated with "reasonable promptness to avoid prejudice to the defendant." In other words, the concept of due diligence has both a time **component** and a **good faith component**. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him.[17]

Applying the foregoing tests, we find that petitioners' purported evidence does not qualify as newly discovered evidence that would justify the re-opening of the case and the holding of a third trial.

The report of the forensic group may not be considered as newly discovered evidence as petitioners failed to show that it was impossible for them to secure an independent forensic study of the physical evidence during the trial of the double murder case. **It appears from their report that the forensic group used the same physical and testimonial evidence proferred during the trial, but made their own analysis and interpretation of said evidence.** They cited the materials and methods that they used for their study, *viz*:

MATERIALS AND METHODS

MATERIALS:

A. Court records of the case, especially photographs of: a) the stairway where the late Sen. Aquino and his escorts descended; b) the part of the tarmac where the lifeless bodies of the late Sen. Aquino and Galman fell; and c) the autopsy conducted by the NBI Medico-legal team headed by Dr. Mu[Ã±]oz; and the autopsy report of the late Sen. Benigno Aquino[,] Jr. signed by Dr. Mu[Ã±]oz and Dr. Solis;

b. The gun and live ammunitions collected at the crime scene;

c. A reference human skull photos and X-rays of the same to demonstrate wound location and bullet trajectory;

d. The reports of interviews and statements by the convicted military escorts, and other witnesses;

e. Re-enactment of the killing of Aquino based on the military escorts['] version, by the military escorts themselves in the Bilibid Prison and by volunteers at the NAIA Tarmac;

f. Various books and articles on forensic and the medico-legal field[;]

g. Results of Forensic experiments conducted in relation to the case.

METHODS:

A. Review of the forensic exhibits presented in the court;

b. Review of TSNs relevant to the forensic review;

c. Study of and research on the guns, slugs and ammunitions allegedly involved in the crime;

d. Interviews/re-enactment of the crime based on the military's accounts, both in the Bilibid Prison where the convicts are confined and the MIA (now NAIA) stairway and tarmac;

e. Conduct of ocular inspection and measurements on the actual crime scene

(stairway and tarmac) at the old Manila International Airport (now NAIA);

f. Retracing the slug's trajectory based on the autopsy reports and experts' testimonies using an actual human skull;

g. X-rays of the skull with the retraced trajectory based on the autopsy report and experts' testimonies;

h. Evaluation of the presented facts and opinions of local experts in relation to accepted forensic findings in international publications on forensic science, particularly on guns and [gunshot] wound injuries;

i. Forensic experiments and simulations of events in relation to this case.[18]

These materials were available to the parties during the trial and there was nothing that prevented the petitioners from using them at the time to support their theory that it was not the military, but Rolando Galman, who killed Senator Aquino. Petitioners, in their present motion, failed to present any new forensic evidence that could not have been obtained by the defense at the time of the trial even with the exercise of due diligence. If they really wanted to seek and offer the opinion of other forensic experts at the time regarding the physical evidence gathered at the scene of the crime, there was ample opportunity for them to do so before the case was finally submitted and decided.[19]

A reading of the Sandiganbayan decision dated September 28, 1990 shows a thorough study by the court of the forensic evidence presented during the trial, *viz*:

COURT FINDINGS

As to the physical
evidence

Great significance has to be accorded the trajectory of the single bullet that penetrated the head and caused the death of Sen. Benigno Aquino, Jr. Basic to the question as to trajectory ought to be the findings during the autopsy. The prosector in the autopsy, Dr. Bienvenido MuÃ±oz, NBI Medico-Legal Officer, reported in his Autopsy Report No. N-83-22-36, that the trajectory of

the gunshot, the wound of entrance having been located at the mastoid region, left, below the external auditory meatus, and the exit wound having been at the anterior portion of the mandible, was "forward, downward and medially." (Autopsy Report No. N-83-22-36, Exhibit "NNNN-2-t-2")

A controversy as to this trajectory came about when, upon being cross-examined by counsel for the defense, Dr. Bienvenido MuÃ±oz made a significant turn-about by stating that the correct trajectory of the fatal bullet was "upward, downward, and medially." The present position of Dr. MuÃ±oz is premised upon the alleged fact that he found the petrous bone fractured, obviously hit by the fatal bullet. He concluded, in view of this finding, that the fatal bullet must have gone upward from the wound of entrance. Since the fatal bullet exited at the mandible, it is his belief that the petrous bone deflected the trajectory of the bullet and, thus, the bullet proceeded downwards from the petrous bone to the mandible.

This opinion of Dr. Bienvenido MuÃ±oz in this regard notwithstanding, We hold that the trajectory of the fatal bullet which killed Sen. Benigno Aquino, Jr. was, indeed, "forward, downward and medially." For the reason that the wound of entrance was at a higher elevation than the wound of exit, there can be no other conclusion but that the trajectory was downward. The bullet when traveling at a fast rate of speed takes a straight path from the wound of entrance to the wound of exit. It is unthinkable that the bullet, while projected upwards, would, instead of exiting to the roof of the head, go down to the mandible because it was allegedly deflected by a petrous bone which though hard is in fact a mere spongy protuberance, akin to a cartilage.

Clear is proof of the downward trajectory of the fatal bullet; First, as Dr. Pedro Solis and Dr. Ceferino Cunanan, the immediate superiors of Dr. Bienvenido MuÃ±oz, manifested before the Court, that, since the wound of entrance appeared ovaloid and there is what is known as a contusion collar which was widest at the superior portion, indicating an acute angle of

approach, a downward trajectory of the bullet is indicated. This phenomenon indicates that the muzzle of the fatal gun was at a level higher than that of the point of entry of the fatal bullet.

There was no showing as to whether a probe could have been made from the wound of entrance to the petrous bone. Out of curiosity, Dr. Juanito Billote tried to insert a probe from the wound of exit into the petrous bone. He was unsuccessful notwithstanding four or five attempts. If at all, this disproves the theory of Dr. MuÃ±oz that the trajectory was upward, downward and medially. On the other hand, Dr. Juanito Billote and photographer Alexander Loinaz witnessed the fact that Dr. MuÃ±oz' [s] understudy, Alejandrino Javier, had successfully made a probe from the wound of entrance directly towards the wound of exit. Alejandrino Javier shouted with excitement upon his success and Alexander Loinaz promptly photographed this event with Alejandrino Javier holding the protruding end of the probe at the mandible. (Exhibit "XXXXX-39-A")

To be sure, had the main bullet hit the petrous bone, this spongy mash of cartilage would have been decimated or obliterated. The fact that the main bullet was of such force, power and speed that it was able to bore a hole into the mandible and crack it, is an indication that it could not have been stopped or deflected by a mere petrous bone. By its power and force, it must have been propelled by a powerful gun. It would have been impossible for the main bullet to have been deflected form an upward course by a mere spongy protuberance. Granting that it was so deflected, however, it could not have maintained the same power and force as when it entered the skull at the mastoid region so as to crack the mandible and make its exit there.

But what caused the fracture of the petrous bone? Was there a cause of the fracture, other than that the bullet had hit it? Dr. Pedro Solis, maintaining the conclusion that the trajectory of the bullet was downward, gave the following alternative explanations for the fracture of the petrous bone:

First, the petrous bone could have been hit by a splinter of the main bullet, particularly, that which was found at the temporal region; and,

Second, the fracture must have been caused by the kinetic force applied to the point of entrance at the mastoid region which had the tendency of being radiated towards the petrous bone.

Thus, the fracture in the occipital bone, of the temporal bone, and of the parietal bone, Dr. Pedro Solis pointed out, had been caused by the aforesaid kinetic force. When a force is applied to the mastoid region of the head, Dr. Pedro Solis emphasized, a radiation of forces is distributed all over the cranial back, including, although not limited to, the parietal bone. The skull, Dr. Solis explains, is a box-like structure. The moment you apply pressure on the portion, a distortion, tension or some other mechanical defect is caused. This radiation of forces produces what is known as the "spider web linear fracture" which goes to different parts of the body. The so-called fracturing of the petrous portion of the left temporal bone is one of the consequences of the kinetic force forcefully applied to the mastoid region.

The fact that there was found a fracture of the petrous bone is not necessarily indicative of the theory that the main bullet passed through the petrous bone.

Doubt was expressed by Dr. Pedro Solis as to whether the metal fragments alleged by Dr. Bienvenido MuÃ±oz to have been found by him inside the skull or at the wound of exit were really parts of the main bullet which killed the Senator. When Dr. Pedro Solis examined these fragments, he found that two (2) of the fragments were larger in size, and were of such shapes, that they could not have gone out of the wound of exit considering the size and shape of the exit wound.

Finding of a downward
trajectory of the
fatal bullet fatal

to the credibility
of defense witnesses.

The finding that the fatal bullet which killed Sen. Benigno Aquino, Jr. was directed downwards sustains the allegation of prosecution eyewitnesses to the effect that Sen. Benigno Aquino, Jr. was shot by a military soldier at the bridge stairs while he was being brought down from the plane. Rebecca Quijano saw that the senator was shot by the military man who was directly behind the Senator while the Senator and he were descending the stairs. Rebecca Quijano's testimony in this regard is echoed by Jessie Barcelona, Ramon Balang, Olivia Antimano, and Mario Laher, whose testimonies this Court finds likewise as credible.

The downward trajectory of the bullet having been established, it stands to reason that the gun used in shooting the Senator was fired from an elevation higher than that of the wound of entrance at the back of the head of the Senator. This is consistent with the testimony of prosecution witnesses to the effect that the actual killer of the Senator shot as he stood at the upper step of the stairs, the second or third behind Senator Aquino, while Senator Aquino and the military soldiers bringing him were at the bridge stairs. This is likewise consistent with the statement of Sandra Jean Burton that the shooting of Senator Aquino occurred while the Senator was still on the bridge stairs, a conclusion derived from the fact that the fatal shot was fired ten (10) seconds after Senator Aquino crossed the service door and was led down the bridge stairs.

It was the expert finding of Dr. Matsumi Suzuki that, as was gauged from the sounds of the footsteps of Senator Aquino, as the Senator went down the bridge stairs, the shooting of the Senator occurred while the Senator had stepped on the 11^{th} step from the top.

At the ocular inspection conducted by this Court, with the prosecution and the defense in attendance, it should be noted that the following facts were

established as regards the bridge stairs:

"Observations:

The length of one block covering the tarmac - 19 6";

The width of one block covering the tarmac - 10';

The distance from the base of the staircase leading to the emergency tube to the Ninoy marker at the tarmac - 12 6";

There are 20 steps in the staircase including the landing;

The distance from the first rung of the stairway up to the 20th rung which is the landing of stairs - 20 8";

Distance from the first rung of the stairway up to the 20th rung until the edge of the exit door - 23 11";

Distance from the 4th rung up to the exit door - 21';

Distance from the 5th rung up to the exit door - 19 11";

Length of one rung including railpost - 3 4";

Space between two rungs of stairway - 9";

Width of each rung - 11-1/2";

Length of each rung (end to end) - 2 9":

Height of railpost from edge of rung to railing - 2 5".

(underlining supplied)[20]

The Sandiganbayan again exhaustively analyzed and discussed the forensic evidence in its resolution dated November 15, 1990 denying the motion for reconsideration filed by the convicted accused. The court held:

The Autopsy Report No. N-83-2236, Exhibit "NNNN-2-t-2" indicated a downward

trajectory of the fatal bullet when it stated that the fatal bullet was "forward, downward, and medially . . ."

xxx

II

The wound of entrance having been at a higher elevation than the wound of exit, there can be no other conclusion but that the trajectory was downward. The fatal bullet, whether it be a Smith and Wesson Caliber .357 magnum revolver or a .45 caliber, must have traveled at a fast rate of speed and it stands to reason that it took a straight path from the wound of entrance to the wound of exit. A hole indicating this straight path was proven to have existed. If, as contended on cross-examination by Dr. Bienvenido MuÃ±oz, that the bullet was projected upwards, it ought to have exited at the roof of the head. The theory that the fatal bullet was deflected by a mere petrous bone is inconceivable.

III

Since the wound of entrance appeared ovaloid and there is what is known as a contusion collar which was widest at the superior portion, indicating an acute angle of approach, a downward trajectory of the fatal bullet is conclusively indicated. This phenomenon indicates that the muzzle of the fatal gun was at a level higher than that of the point of entry of the fatal bullet.

IV

There was no hole from the petrous bone to the mandible where the fatal bullet had exited and, thus, there is no support to the theory of Dr. Bienvenido MuÃ±oz that the fatal bullet had hit the petrous bone on an upward trajectory and had been deflected by the petrous bone towards the mandible. Dr. Juanito Billote's testimony in this regard had amplified the matter with clarity.

xxx

> These physical facts, notwithstanding the arguments and protestations of counsel for the defense as now and heretofore avowed, compel the Court to maintain the holding: (1) that the trajectory of the fatal bullet which hit and killed Senator Benigno Aquino, Jr. was "forward, downward and medially"; (2) that the Senator was shot by a person who stood at a higher elevation than he; and (3) that the Senator was shot and killed by CIC Rogelio Moreno on the bridge stairs and not on the tarmac, in conspiracy with the rest of the accused convicted herein.[21]

This Court affirmed said findings of the Sandiganbayan when it denied the Petition for Review in its resolution of July 25, 1991. The Court ruled:

> The Court has carefully considered and deliberated upon all the contentions of the petitioners but finds no basis for the allegation that the respondent Sandiganbayan has gravely erred in resolving the factual issues.
>
> The attempt to place a constitutional dimension in the petition is a labor in vain. Basically, only questions of fact are raised. Not only is it axiomatic that the factual findings of the Sandiganbayan are final unless they fall within specifically recognized exceptions to the rule but from the petition and its annexes alone, it is readily apparent that the respondent Court correctly resolved the factual issues.

xxx

> The trajectory of the fatal bullet, whether or not the victim was descending the stairway or was on the tarmac when shot, the circumstances showing conspiracy, the participants in the conspiracy, the individual roles of the accused and their respective parts in the conspiracy, the absence of evidence against thirteen accused and their co-accused Col. Vicente B. Tigas, Jr., the lack of credibility of the witnesses against former Minister Jose D. Aspiras, Director Jesus Z. Singson, Col. Arturo A. Custodio, Hermilo Gosuico, Major

> General Prospero Olivas, and the shooting of Rolando Galman are all factual matters w[h]ich the respondent court discussed with fairness and at length. The petitioners' insistence that a few witnesses in their favor should be believed while that of some witnesses against them should be discredited goes into the question of credibility of witnesses, a matter which under the records of this petition is best left to the judgment of the Sandiganbayan.[22]

The report of the forensic group essentially reiterates the theory presented by the defense during the trial of the double murder case. Clearly, the report is not newly discovered, but rather recently sought, which is not allowed by the Rules.[23] If at all, it only serves to discredit the version of the prosecution which had already been weighed and assessed, and thereafter upheld by the Sandiganbayan.

The same is true with the statement of the alleged eyewitness, SPO4 Cantimbuhan. His narration merely corroborates the testimonies of other defense witnesses during the trial that they saw Senator Aquino already walking on the airport tarmac toward the AVSECOM van when a man in blue-gray uniform darted from behind and fired at the back of the Senator's head.[24] The Sandiganbayan, however, did not give weight to their account as it found the testimonies of prosecution eyewitnesses Rebecca Quijano and Jessie Barcelona more credible. Quijano and Barcelona testified that they saw the soldier behind Senator Aquino on the stairway aim and fire a gun on the latter's nape. As earlier quoted, the Sandiganbayan found their testimonies to be more consistent with the physical evidence. SPO4 Cantimbuhan's testimony will not in any way alter the court's decision in view of the eyewitness account of Quijano and Barcelona, taken together with the physical evidence presented during the trial. Certainly, **a new trial will only be allowed if the new evidence is of such weight that it would probably change the judgment if admitted.**[25] **Also, new trial will not be granted if the new evidence is merely cumulative, corroborative or impeaching**.

As additional support to their motion for new trial, petitioners also claim that they were denied due process because they were deprived of adequate legal assistance by counsel. We are not persuaded. The records will bear out that petitioners were ably represented by Atty. Rodolfo U. Jimenez during the trial and when the case was elevated to this Court. An experienced lawyer in criminal cases, Atty. Jimenez vigorously defended the petitioners' cause throughout the

entire proceedings. The records show that the defense presented a substantial number of witnesses and exhibits during the trial. After the Sandiganbayan rendered its decision, Atty. Jimenez filed a Petition for Review with this Court, invoking all conceivable grounds to acquit the petitioners. When the Court denied the Petition for Review , he again filed a motion for reconsideration exhausting his deep reservoir of legal talent. We therefore find petitioners' claim to be unblushingly unsubstantiated. We note that they did not allege any specific facts in their present motion to show that Atty. Jimenez had been remiss in his duties as counsel. Petitioners are therefore bound by the acts and decisions of their counsel as regards the conduct of the case. The general rule is that the client is bound by the action of his counsel in the conduct of his case and cannot be heard to complain that the result of the litigation might have been different had his counsel proceeded differently.[26] We held in **People v. Umali**:[27]

> In criminal as well as civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court, as a result of the ignorance, inexperience, or incompetence of counsel, does not furnish a ground for a new trial.
>
> If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned.
>
> So it has been held that mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy, materiality, or immateriality of a certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial; and in general the client is bound by the action of his counsel in the conduct of his case, and can not be heard to complain that the result of the litigation might have been different had counsel proceeded differently. *(citations omitted)*

Finally, we are not moved by petitioners' assertion that the forensic evidence may have been manipulated and misinterpreted during the trial of the case. Again, petitioners did not allege concrete facts to support their crass claim.

Hence, we find the same to be unfounded and purely speculative.

IN VIEW WHEREOF, the motion is DENIED.

SO ORDERED.

Davide, Jr., *C.J.*, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, *JJ.*, concur.
Carpio-Morales, *J.*, on leave.

Endnotes:

---

* Deceased.

[1] Rollo Vol. II, pp. 506-563.

[2] Galman v. Sandiganbayan, 144 SCRA 43 (1986).

[3] Rollo Vol. I, pp. 71-260.

[4] Rollo Vol. I, pp. 433-435.

[5] Rollo Vol. I, p. 475.

[6] Rollo Vol. II, pp. 517-518.

[7] Rollo Vol. II, p. 562.

[8] Jose v. Court of Appeals, 70 SCRA 257 (1976).

[9] People v. Tamayo, 86 Phil. 209 (1950).

[10] Rollo Vol. I, p. 477.

[11] 58 Am Jur 2d 393.

[12] People v. Li Ka Kim, G.R. No. 148586, May 25, 2004; People v. Datu, 397 SCRA 695 (2003); People v. Remudo, 364 SCRA 61 (2001); People v. Ebias, 342 SCRA 675 (2000); Amper v. Sandiganbayan, 279 SCRA 434 (1997);

Tumang v. Court of Appeals, 172 SCRA 328 (1989); Jose v. Court of Appeals, 70 SCRA 257 (1976); People v. Mangulabnan, et. al., 99 Phil. 992 (1956); Reyes v. People, 71 Phil. 598 (1941); People v. Luzon, 4 Phil. 343 (1905).

[13] 10 Ga 511 (1851).

[14] Argyrou v. State, 349 Md 587, 709 A. 2d 1194 (1998).

[15] Tumang v. CA, 172 SCRA 328 (1989).

[16] *Ibid.*

[17] Argyrou v. State, *supra,* note 14.

[18] Annex "S," Death On The Tarmac: The Credible View. A Forensic Review and Analysis of Criminal Case Nos. 10010 and 10011 (a.k.a. The Aquino-Galman Case), pp. 12-13; Rollo Vol. II, pp. 1005-1006.

[19] *See* Gaston v. Finch, 246 Iowa 1360, 72 N.W. 2d 507 (1955).

[20] Sandiganbayan Decision dated September 28, 1990, pp. 130-136; Rollo Vol. I, pp. 200-206.

[21] Sandiganbayan Resolution dated November 15, 1990, Crim. Cases Nos. 10010-11, pp. 2-8; Rollo Vol. I, pp. 262-268.

[22] Resolution dated July 25, 1991, Rollo Vol. I, pp. 433-435.

[23] *See* June v. Edward, 69 A.D. 2d 612, 419 N.Y.S. 2d 514 (1979).

[24] Testimonies of Pelagia Hilario, Lydia Morata, Augusto Fred Floresca and Jose Orias, Sandiganbayan Decision dated September 28, 1990, pp. 113-115; Rollo Vol. I, pp. 183-185.

[25] People v. Fajardo, 315 SCRA 283 (1999).

[26] People v. Remudo, 364 SCRA 61 (2001).

[27] 15 Phil. 33 (1910).