

by Hannah Margarette Teves

BRIG. GEN. LUTHER A. CUSTODIO* v. SANDIGANBAYAN, GR NOS. 96027-28, 2005-03-08
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user=fNy85cWVMZnNvekpCcW1aSEdVS3BmUXILMzBrdDRZQXpaK1YwbGNLQ0ZXND0=)

Facts:

a Motion To Re-Open Case With Leave Of Court filed by petitioners who were convicted and sentenced to reclusion perpetua by the Sandiganbayan... for the double murder of Senator Benigno Aquino,... Jr. and Rolando Galman on August 21, 1983.

Petitioners were members of the military who acted as Senator Aquino's security detail upon his arrival in Manila

They were charged,... 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.

Sandiganbayan rendered a Decision... acquitting all the accused

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.

A re-trial ensued before the Sandiganbayan.

In its decision

Sandiganbayan,... found the petitioners guilty as principals of the crime of murder in both Criminal Cases

The judgment became final after this Court denied petitioners' petition for review... as well as their subsequent motion for... reconsideration.

petitioners,... assisted by the Public Attorney's Office, now want to present the findings of the forensic group... to... 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... grounds for the re-opening of the case:

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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.

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

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

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.

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.

Sandiganbayan decision... shows a thorough study by the court of the forensic evidence presented during the trial

Issues:

whether petitioners are entitled to a third trial under Rule 121 of the 2000 Rules of Criminal Procedure.

Ruling:

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... became final and executory

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.

on the ground of newly discovered evidence.

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.

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.

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 proffered during the trial, but made their own analysis and interpretation of said evidence.

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.

there was ample opportunity for them to do so before the case was finally submitted and decided.

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.

claim that they were denied due process because they were deprived of adequate legal assistance by counsel.

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.

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.

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

Also, new trial will not be granted if the new evidence is merely cumulative, corroborative or impeaching.

Principles:

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."

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.

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.