

EDGARDO E. LOPEZ, PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION), OFFICE OF THE SPECIAL PROSECUTOR AND ARNULFO M. AGLERON, RESPONDENTS.*G.R. No. 103911. October 13, 1995*

Ponente: HERMOSISIMA, JR., J.

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Down the oft-trodden path in our judicial system, by common sense, tradition and the law, the Judge in trying a case sees only with judicial eyes as he ought to know nothing about the facts of the case, except those which have been adduced judicially in evidence. Thus, when the case is up for trial, the judicial head is empty as to facts involved and it is incumbent upon the litigants to the action to establish by evidence the facts upon which they rely.

Section 1, Rule 129, of the Revised Rules of Court, however, provides that certain facts need not be proved because they are judicially noticed by the Courts. Judicial notice takes the place of proof and is equally as persuasive as actual evidence presented, whether testimonial or documentary.

The issue to be resolved in this case is whether judicial notice can be taken of the fact that Petitioner Mayor Edgardo E. Lopez took his oath as Municipal Mayor of Mati, Davao Oriental, and assumed the position of Municipal Mayor only on February 2, 1988, in the face of the allegation in the Information that the accused was already the Mayor of Mati on December 10, 1987, and, as such Mayor, he connived with Gov. Leopoldo N. Lopez in accepting, receiving and using the ambulance in question.

Mainly sought to be annulled in the herein Petition for Certiorari, upon the ground of grave abuse of discretion amounting to lack of jurisdiction, is the Resolution of the Sandiganbayan (Second Division), denying Petitioner's motion to quash the Information, as amended, in Criminal Case No. 16987, entitled People of the Philippines vs. Edgardo E. Lopez.

Established, as may be gathered from the pleadings of the parties and the prosecutors' reports as to law and the facts on their several preliminary investigations, are the following facts:

The Philippine Charity Sweepstakes Office (PCSO), represented by its General Manager, Fernando O. Carrascoso, executed on December 10, 1987, a Deed of Donation[1] of one (1) cream-white Mitsubishi L-300 van, for use as an ambulance, in favor of the Municipality of Mati, Province of Davao Oriental. The municipality was represented by Provincial Governor Leopoldo N. Lopez, now deceased. The donation was accepted by the said Governor Lopez in the very Deed of Donation itself.

Immediately after the acceptance of the donation, the ambulance was shipped through the Solid Shipping Lines from the North Harbor, Manila, to Davao Oriental via Davao City, a clearance for shipment having been obtained from the Headquarters Constabulary Highway Patrol Group. Freight charges were paid for by Governor Lopez. The Delivery Cargo Receipt, issued by the Terminal Facilities & Services Corporation of Ilang, Davao City,

indicated that the consignee of the ambulance was Governor Lopez.

Hon. Salvador R. Gutierrez was then acting as Officer-In-Charge of the Office of the Mayor of the Municipality of Mati. When turning over the Office of the Mayor to Petitioner Edgardo E. Lopez, who was elected as Mayor in the 1988 elections, Acting Mayor Gutierrez "forgot all about the ambulance"[2] and in effect failed to inform Petitioner Lopez that an ambulance was donated to the Municipality of Mati.

Days after the donation was effected, Governor Leopoldo N. Lopez was purged and Atty. Teodoro Palma Gil was installed as OIC of the Office of the Provincial Governor of Davao Oriental. Mayoralty OIC Gutierrez was made to understand by Acting Governor Palma Gil that the Mitsubishi van, to be converted to an ambulance, was for the use of the Davao Provincial Hospital, but, since the hospital is located in Mati, the Acting Governor asked that the municipality shoulder the expenses for: (1) shipping the ambulance to Mati and (2) its conversion from a simple L-300 van into an ambulance.

The vehicle was insured[3] and registered[4] in the name of the Province of Davao Oriental by the late Governor Lopez. Consequently, it was never turned over to the Municipality of Mati.[5]

On September 17, 1988, while on its way to Davao City, the ambulance was stopped in Barangay Barol, Municipality of Lupon, and set on fire and completely burned by unidentified armed men.

Whereupon, the political adversaries of Governor Lopez, making an issue of it, filed a complaint with the Ombudsman, charging Gov. Leopoldo N. Lopez, the newly-elected Mayor Edgardo E. Lopez, Isedronio G. Espadero, and Agustin F. Montefalcon with the offense of Violation of Republic Act No. 3019, otherwise known as the Anti-Graft & Corrupt Practices Act.

Provincial Prosecutor Salvador Bijis, a regularly deputized Ombudsman prosecutor, was made to conduct the preliminary investigation of the case. He issued a Resolution[6] ordering the dismissal of the complaint for lack of merit.

The Ombudsman for some reason reopened the preliminary investigation and designated Graft Investigating Officer Gay Maggie Balajadia as investigator. In a Resolution,[7] dated June 21, 1991, Graft Investigator Balajadia recommended the filing of an Information for the Violation of R.A. 3019 against Gov. Leopoldo N. Lopez and Mayor Edgardo E. Lopez. The recommended Information was filed on August 3, 1991 before the Sandiganbayan and was docketed as Criminal Case No. 16987. The case was reinvestigated upon motion of both accused, but the prosecution, ironically through another Lopez, Prosecutor Mario Lopez, reinstituted the case by filing the following Amended Information[8] against Mayor Edgardo E. Lopez alone, because, by then, Gov. Leopoldo N. Lopez had already passed away:[9]

"That on or about the 10th day of December, 1987, in the Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Municipal Mayor of Mati, Davao Oriental, while in the performance of his official functions, conspiring and confederating with deceased Leopoldo N. Lopez, who was then the Provincial Governor of Davao Oriental, did then and there wilfully, unlawfully and criminally cause undue injury to the Municipality of Mati through the following acts: deceased Leopoldo N. Lopez, with evident bad faith and after having received without authority an 'Ambulance Van' described as a Cream White Mitsubishi L300 with Engine No. 4G62-DJ2407 donated by the Philippine Charity Sweepstakes Office to the Municipality of Mati, failed to deliver the same to the said municipality and instead registered it in the name of the Province of Davao Oriental and used it as a service vehicle of the Province of Davao Oriental, and accused Edgardo E. Lopez, being fully aware that the aforesaid ambulance van was donated to his municipality for the use of his constituents, through evident bad faith and manifest partiality failed to recover the same from deceased Leopoldo Lopez and instead acknowledged the Province of Davao Oriental as the actual donee and allowed the latter to appropriate the said

ambulance van, thereby causing undue injury to the Municipality of Mati and its residents who were unjustifiably deprived of the ownership, possession and use of the aforesaid vehicle as well as a health service extended to them by the Government.

CONTRARY TO LAW."

Petitioner Mayor Edgardo E. Lopez, as sole defendant in the case, moved to quash the Amended Information upon the following grounds: (1) The Honorable Court (Sandiganbayan) has no jurisdiction over the offense charged; and (2) The criminal liability for the offense charged has been extinguished, the Petitioner contending that, at the time the donation of the ambulance was effected, he was only a member of the Sangguniang Bayan of Mati. The Municipality of Mati then had an Acting Mayor in the person of Hon. Salvador R. Gutierrez. The donated vehicle was accepted and received and used by and in the name of Provincial Governor Leopoldo N. Lopez. Consequently, Petitioner Mayor Lopez had no participation in the acquisition, registration, and use of the vehicle in question.

Accused petitioner, however, was elected as Municipal Mayor of Mati in the 1988 local elections. Thus, on February 2, 1988, Petitioner Edgardo E. Lopez then took his oath of office^[10] as Municipal Mayor and assumed the position of Mayor of the Municipality of Mati, Davao Oriental. He took his oath before Davao Regional Trial Court Judge Roque A. Agton.

Alleging that the Motion to Quash "reveals lack of legal or factual basis to justify the grant thereof", and that the nature, scope and legal consequences of the inculpatory allegations in the Amended Information remain to be ascertained during the trial, the Court a quo gave no merit to the motion and, thus, denied it.

Pertinent portions of the questioned Resolution read:

"A careful and meticulous analysis of the arguments advanced by accused-movant to support the grounds relied upon in his 'Motion to Quash', taken in the light of the prosecution's opposition thereto, as well as the reply of the accused, clearly reveals the lack of legal or factual basis to justify the grant thereof. Running pervasively throughout accused-movant's pleadings are evidentiary matters which are more appropriate for presentation during the trial. There appears to be an apparent tendency on the part of accused-movant to confuse the existence of a prima facie case, as determined after due preliminary investigation, with proof beyond reasonable doubt, which can only be ascertained after trial on the merits."

xxx xxx xxx

"Accused-movant contends that this Court has no jurisdiction over him for the offense charged, citing the date alleged in the Amended Information, which reads, 'that on or about the 10th day of December, 1987', and the fact that he became the Mayor of Mati, Davao Oriental, only on February 2, 1988 when he took his oath of office as the duly-elected mayor after the 1988 elections. However, as found by Prosecutor Mario V. Lopez, who conducted the reinvestigation of this case and who filed the Amended Information, accused-movant's participation is subsequent to December 10, 1987 and continued up to July 15, 1988 and October 5, 1990, during which period, accused-movant had committed the following acts, to wit:

'x x x accused Edgardo E. Lopez, being fully aware that the aforesaid ambulance van was donated to his municipality for the use of his constituents, through evident bad faith and manifest partiality failed to recover the same from deceased Leopoldo Lopez and instead acknowledged the Province of Davao Oriental as the actual donee and allowed the latter to appropriate the said ambulance van, thereby causing undue injury to the Municipality of Mati and its residents who were unjustifiably deprived of the ownership, possession and use of the aforesaid vehicle as well as a health service extended to them by the Government.'

The nature, scope and legal consequences of the inculpatory allegations in the Amended Information, with respect

to accused-movant, remains to be ascertained during the trial. Furthermore, We are of the considered opinion that inasmuch as conspiracy has been alleged between the two (2) accused herein, then there can be no question that this Court has jurisdiction over both or either of them. And inasmuch as it is clearly alleged in the Amended Information, supported by Prosecutor Lopez' Order of December 4, 1991, (Pp. 108-109, *ibid*), accused-movant not only failed but likewise allowed his co-accused (Leopoldo Lopez) to appropriate the ambulance van but also allegedly sent two (2) letters to Gov. Lopez waiving the right of the municipality of Mati to receive said van, which are dated July 15, 1988 and October 5, 1990, without any authorization from the Sangguniang Bayan, during which period of time, the accused-movant was already the municipal mayor, then it is crystal clear that this Court has jurisdiction not only over the offense charged but also over the persons of the accused, including accused-movant. Moreover, there being a charge of conspiracy, the death of any of the alleged co-conspirators does not extinguish the alleged criminal liability of the surviving co-conspirator, which is quite clear and evident from the provisions of Articles 89 and 90 of the Revised Penal Code."

Now comes the herein petition praying for the issuance of a writ of certiorari to annul this resolution of denial of the said Motion to Quash upon the following grounds:

"I.

THE RESPONDENT COURT ACTED ARBITRARILY IN RULING THAT IT HAS JURISDICTION OVER THE OFFENSE CHARGED.

II

THE RESPONDENT COURT ACTED ARBITRARILY IN RULING THAT THE DEFENSES RAISED BY PETITIONER ARE PROPERLY INVOCABLE ONLY DURING TRIAL ON THE MERITS.

III.

THE RESPONDENT COURT ACTED ARBITRARILY IN REFUSING TO PASS UPON THE VALIDITY OF THE DONATION."

The Office of the Solicitor General filed a comment thereto, in an effort to refute the foregoing grounds. We note the reply thereto, the rejoinder, the sur--rejoinder and the Memoranda of the parties.

We find the petition to be impressed with merit.

I

We uphold the submission that the factual defenses of petitioner are matters within the concept of mandatory judicial notice. While it is true that, as pontificated by the Court *a quo*, factual defenses on the part of the accused are evidentiary matters which may be presented only during trial on the merits, the facts alleged by the accused are facts admitted, whether directly or impliedly, in pleadings of the prosecution and in the reports of the Provincial Prosecutor of Davao Oriental and Graft Investigator Gay Maggie Balajadia. Consequently, the disposition of the matter in the questioned Resolution which states that "The nature, scope and legal consequences of the inculpatory allegations in the Amended Information, with respect to accused-movant, remains (*sic*) to be ascertained during the trial," is not at all correct.

Judicial notice may be taken of petitioner's oath taking before the Regional Trial Court Judge of Mati, Davao Oriental, the Hon. Roque A. Agton, as evidenced by a certification from the Records Officer of the office of the Provincial Governor. The oath taking partakes of an official act, while the certification is an official act of an official of the Executive Department of the government.

We had the occasion to make rulings on a similar issue. In *People vs. Navarro & Atienza*, 75 Phil. 516, for example, the accused, the Acting Provincial Governor and the Provincial Warden were charged with Arbitrary Detention for having allegedly committed the private complainant to prison without legal grounds. At pre-trial, it was conceded by the Fiscal that the offended parties were detained by order of the Commanding General, Western Visayas Task Force, United States Army. The accused thereupon filed a Motion to Quash upon the ground that the facts charged in the Information did not constitute an offense. The trial court granted the motion, from which the Solicitor General appealed, alleging that if the Information must be quashed on the ground that the facts charged do not constitute an offense, elementary logic dictates that the signed facts must be examined to determine the sufficiency of the allegations.

In turning down the appeal, We ruled that:

"It must be noted that the section of the rule (sec. 2 [a], Rule 113) permitting a motion to quash on the ground that 'the facts do not constitute an offense' omits reference to the facts 'detailed in the information'. Other sections of the same rule would imply that the issue is restricted to those alleged in the information (see secs. 9 and 10, Rule 113). Prima facie, the 'facts charged' are those described in the complaint, but they may be amplified or qualified by others appearing to be additional circumstances, upon admissions could anyway be submitted by him as amendments to the information. It would seem to be pure technicality to hold that in the consideration of the motion the parties and the judge were precluded from considering the facts which the fiscal admitted to be true, simply because they were not described in the complaint. Of course, it may be added that upon similar motions the court and the fiscal are not required to go beyond the averments of the information, nor is the latter to be inveigled into a premature and risky revelation of his evidence. But we see no reason to prohibit the fiscal from making, in all candor, admissions of undeniable facts, because the principle can never be sufficiently reiterated that such official's role is to see that justice is done: not that all accused are convicted, but that the guilty are justly punished. Less reason can there be to prohibit the court from considering those admission, and deciding accordingly, in the interest of a speedy administration of justice." (*People v. Navarro*, 75 Phil. 516, 518-519).

Reiterating *Navarro*, this Court ruled in *People vs. De la Rosa*, 98 SCRA 191, that:

"As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. However, as held in the case of *People v. Navarro*, 75 Phil 516, additional facts not alleged in the information, admitted or not denied by the prosecution may be invoked in support of the motion to quash." (*People v. De la Rosa*, supra. at 196-197).

And in *Milo vs. Salanga*, 152 SCRA 113, We likewise ruled that:

"This is because a motion to quash is a hypothetical admission of the facts alleged in the information. Matters of defense cannot be proved during the hearing of such a motion, except where the Rules expressly permit, such as extinction of criminal liability, prescription and former jeopardy. In the case of *U.S. v. Perez*, this Court held that a motion to quash on the ground that the facts charged do not constitute an offense cannot allege new facts not only different but diametrically opposed to those alleged in the complaint. This rule admits of only one exception and that is when the facts are admitted by the prosecution." (*Milo v. Salanga*, supra. at 121).

Since the prosecution has admitted the fact that petitioner was not yet the Municipal Mayor on or about December 10, 1987 and that Petitioner Mayor Lopez became the Municipal Mayor only after the date of the commission of the offense charged, such an admission constitutes as a judicial admission which is binding upon the prosecution. It is pointed out by the petitioner that public respondents, in their Comment, dated April 13, 1992, stated that:

"But perhaps, Respondent Court, aside from denying the Motion to Quash should have likewise ordered a further amendment of the Amended Information to reflect the correct date of the commission of the crime considering that (1) the prosecution itself admitted that 'December 10, 1987' was the date the late Governor Lopez accepted the ambulance van donated by the PCSO to municipality of Mati, Davao Oriental x x x" (Comment, p. 14).

II

The accusation indeed avers that the accused Edgardo E. Lopez was the Municipal Mayor of Mati, Davao Oriental, on December 10, 1987; that, on said date, he connived with Provincial Governor Leopoldo N. Lopez: (1) in receiving without authority an "Ambulance Van" donated by the PCSO to the Municipality of Mati, (2) in failing to deliver the vehicle to Mati, and (3) in registering the vehicle in the name of the Province of Davao Oriental.

Considering the admitted fact that, on December 10, 1987, the accused Edgardo E. Lopez was not yet the Municipal Mayor of Mati; that the acceptance of the donation and the receipt of the vehicle in question were acts perpetrated by Governor Leopoldo N. Lopez alone, the accusation of Edgardo E. Lopez has been falsely made. This was the very reason for the dismissal of the case by Provincial Prosecutor Salvador M. Bijis. That the case should be assigned to another prosecutor so that the case can be filed in court smacks of manifest partiality in favor of complainants. The accused claims that the hand of dirty politics and politicians entered the picture.

The facts as stated even in the Amended Information, in the face of the verity that accused Edgardo E. Lopez was not yet the Mayor on December 10, 1987, are such hollow and false allegations that they cannot be proven as against accused Edgardo E. Lopez.

III

We do not see any anomaly in the situation where a motor vehicle, while on paper donated to the Municipality of Mati, is in fact accepted by the Province of Davao Oriental, of which Mati is the capital, through its Provincial Governor; is outfitted by the province into a hospital ambulance; and is used by the Davao Oriental Provincial Hospital located in and serving the people of the Municipality of Mati.

The Provincial Prosecutor of Davao Oriental, after conducting the preliminary investigation of this case, dismissed it for lack of merit, and took occasion to state:

"Looking deeper on some matters not clearly shown by the records, it should be noticed that the Donee, the Municipality of Mati, does not run or have a hospital or medical clinic of its own. The Government Hospital existing in the Municipality of Mati is the Davao Oriental Provincial Hospital. The Deed of Donation speaks of One (1) Ambulance and said Donation was 'pursuant to President Corazon C. Aquino's campaign for better health and medical facilities.' Undoubtedly, the One (1) Ambulance should be for the use of either a Government Hospital or clinic for which the Donee, the Municipality of Mati, has none. The donation of that One (1) Ambulance for the Municipality of Mati is, therefore, for no purpose at all. Inevitably, the Donation was intended for the Davao Oriental Provincial Hospital situated within the territorial area of the Municipality of Mati."

"The donation should have rightfully been made in favor of the Province of Davao Oriental and not of the Municipality of Mati." [11]

It is a strange and convoluted idea to prosecute the public officials involved herein when there was no prejudice to people or country. The ambulance was utilized for public health purposes by the Davao Oriental Provincial Hospital, a public health center located in the very municipality alleged to have been prejudiced by the accused

Governor's failure to deliver the ambulance to Mati.

It is obvious that, while the Mitsubishi L-300 van was on paper donated to the Municipality of Mati, the vehicle was in spirit and in actuality intended for the use of the Davao Oriental Provincial Hospital. President Corazon C. Aquino's Health Services Program called on the PCSO to provide ambulances to municipalities. State government hospitals, it is true, are supposed to be assigned vehicles for use as ambulances to be paid for from their respective budget appropriations, but Governor Lopez was resourceful enough to appropriate a Mitsubishi L-300 van, which, while placed in the name of the Municipality of Mati, was intended for the use of the Davao Oriental Provincial Hospital. Mati has no use for an ambulance because it has no hospital or health clinic of its own. Had the vehicle in question been delivered to the Municipality of Mati, the vehicle was sure to wind up as a service vehicle for the Municipal Mayor because the municipal government could not have used it as an ambulance. Deprived of the use of the vehicle would have been the accused Mayor himself. Thus, it is incongruous to accuse Mayor Lopez for depriving himself of the use of the vehicle.

Consequently, it is our holding that Criminal Case No. 16987 which was filed against the petitioner alone ought to be dismissed for lack of probable cause.

WHEREFORE, the herein Petition for Certiorari is granted. Sandiganbayan Criminal Case No. 16987, entitled People of the Philippines vs. Edgardo E. Lopez, is hereby ordered dismissed, with costs de oficio.

The Temporary Restraining Order heretofore issued is hereby made permanent.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.
Panganiban, J., no part.

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- [1] Deed of Donation, Rollo, p. 36
 - [2] See Gutierrez Affidavit, Rollo, p. 44
 - [3] See Certificate of Cover, Rollo, p. 41
 - [4] See LTO Certification, Rollo, p. 42
 - [5] Certification of the Mati Municipal Treasurer, Rollo, p. 43
 - [6] Resolution of Prosecutor Bijis, Rollo, pp. 49-57
 - [7] Resolution, Rollo, pp. 58-63
 - [8] Rollo, pp. 79-80
 - [9] Gov. Lopez died on August 12, 1991
 - [10] Oath of Office, Rollo, p. 40
 - [11] Rollo, pp. 51-52

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