

HECTOR C. VILLANUEVA, PETITIONER, VS. SANDIGANBAYAN (SECOND DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 105607. June 21, 1993

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review on certiorari of the decision dated March 25, 1992 of the Sandiganbayan in Criminal Case No. 14192 entitled, "People of the Philip-pines vs. Hector C. Villanueva," which convicted the petitioner of violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act, charged in the follow-ing information:

"That on or about the month of January, 1987, in Bais City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer being then the OIC--Mayor of said City, while in the discharge of his official administrative function, did then and there wilfully and unlawfully, through evident bad faith and with manifest partiality cause undue injury to William Fleischer, operator of the Bais City Cockers Cockpit by then and there denying the latter's application for the renewal of his Mayor's permit to operate a cockpit and instead issuing the same permit to one Milagros Donio-Teves, operator of Jumils Octagonal Garden Cockpit in said City, when accused well knew said Milagros Donio-Teves was not legally entitled to the aforementioned permit thereby manifestly favoring the latter to the damage and preju-dice of William Fleischer.

"Contrary to law." (p. 28, Rollo.)

The facts of the case as recited in the decision of the Sandiganbayan are:

"Milagros Donio-Teves was the owner of Jumils Octagonal Garden Cockpit (hereafter referred to simply as Jumils cockpit) constructed in Bais City in the 1960's. Under Zoning Ordinance No. 62 passed in 1977, the cockpit was within a prohibited district. For this reason, the then Mayor Genaro Goñi refused to renew the mayor's permit applied for by Teves for 1981. Instead, he issued it in favor of William L. Fleischer, the owner of the newly built Bais City Cockers Cockpit (hereafter called Bais cockpit).

"The controversy that ensued reached the Philippine Gamefowl Commission (PGC for short) which ruled in January 1983 that pursuant to PD 449 and the Rules and Regulations, Teves had the right to relo-cate Jumils cockpit to an allowable site and, accordingly, gave her a 'reasonable time' to do so. Since under PD 449, Bais City was permit-ted to have only one cockpit on account of its population being not over 100,000, the PGC cancelled the mayor's permit of Fleischer and the Certificate of Registration of Bais cockpit. The PGC further held:

"In the meantime, no mayor's permit shall be issued until the petitioner [Teves] shall have completed the construction of a new cockpit within an allowable zone, after which petitioner shall be entitled to the issuance of the necessary permit to operate the same.'

"The Court of Appeals affirmed the above decision [of the PGC] in January 1985. [AC-G.R. SP No. 00144,

January 16, 1985.]

"In July 1985, the PGC fixed the 'reasonable time' within which Teves was to relocate Jumils cockpit to one year from February 8, 1985, and said:

"Should you fail to relocate your cockpit within the period allowed, you will be deemed to have abandoned and/or waived your right to operate a cockpit in Bais City.'

Teves failed. Consequently, she was considered to have waived her right.

"The obstacle to Fleischer operating Bais cockpit having been removed, he applied for and was granted by Mayor Goñi on February 10, 1986, a mayor's permit for 1986. However, Fleischer could not remember if he secured from the City Council a resolution confirming the issuance of the mayor's permit, as required by PD 1802.

"On May 2, 1986, accused Hector C. Villanueva became the OIC Mayor of Bais City, replacing Goñi. On that date, Fleischer was already in operation of Bais cockpit, of which the accused was aware. In an indorsement dated May 30, 1986, the Bais City Fiscal informed the accused that the case involving the two cockpits in the city had not yet been finally resolved and advised the City Government to await the decision of PGC as to who of the contending parties should be given a certificate of registration to operate. Apparently acting on the advice, the accused wrote on August 1, 1986, advising Fleischer in turn 'to desist' from holding cockfights in Bais cockpit until he could secure the proper registration certificate from PGC. In response, Atty. Ramon C. Barrameda, counsel for Fleischer, furnished the accused with a copy of the registration certificate of Bais cockpit issued on August 18, 1986, which the Office of the accused received on August 21, 1986.

"On January 2, 1987, despite the fact that she had not relocated Jumils cockpit, as ordered by PGC, Teves applied for a mayor's permit to operate it in 1987. The accused indorsed the application to the City Fiscal who, in his Second Indorsement dated January 5, 1987, stated that per record of his office, the PGC had rendered a resolution, which the Court of Appeals affirmed, granting Teves reasonable time to transfer Jumils cockpit to an allowable zone and, again, advised the accused and the Sangguniang Panglungsod to hold in abeyance the issuance of a permit pending final resolution of PGC as to whose application should be given due course. Learning of the Fiscal's position, Teves wrote the accused on January 20, 1987, requesting approval of her application and observing that to await the final action of PGC would be to withhold the issuance of the permit indefinitely. The next day the accused again referred the matter to the City Fiscal for comment. He did so because of the said Second Indorsement of the City Fiscal advising him to refrain from issuing any permit to Teves. The City Fiscal obliged on January 21, 1987, opining that the accused and the City Council might now give due course to Teves' application for as long as she complied with all the requirements of Sections 11, 12, and 13 of PD 1802 and PGC rules and regulations. No reason was advanced by the Fiscal for his about-face. Thereupon on the same day, January 21, 1987, the accused granted Teves a permit to engage in business as 'Cockpit Operator,' subject to the provisions of Sections 10 to 13 of PD 1802. He did so notwithstanding his knowledge that Jumils cockpit had remained at the site where it was constructed when Bais was not yet a city. Six days later or on January 27, 1987, pursuant to Section 4, PD 1802, the City Council passed and the accused approved Resolution No. 20 confirming the permit to operate, subject to the same sections of PD 1802." (pp. 32--36, Rollo.)

In view of the foregoing circumstances, we find the petition to be impressed with merit. Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, penalizes any public officer for "causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith, or gross inexcusable negligence."

The elements of this offense are:

1. The accused is a public officer discharging administrative or judicial functions;
2. He must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
3. His action caused undue injury to any party, including the Government, or gave any private party "any unwarranted benefit, advantage or preference in the discharge of his functions (Jacinto vs. Sandiganbayan, 178 SCRA 254).

The Solicitor General recommended the acquittal of the petitioner pursuant to the following findings of the Court of Appeals in AC-G.R. SP No. 00144, "Teves vs. Mayor Genaro Goñi and William Fleischer" that:

"(1) Teves has been the owner of the Jumil's Octagonal Garden Cockpit which she has operated since 1962. If other parties, such as Santiago Goñi and William Fleischer, were able to secure a license to operate and maintain a cockpit, it was as lessees of the cockpit in question. Without the lease, they would not be entitled to a license, as the City of Bais is permitted under the law only one cockpit. After the expiration of their leases, Goñi and Fleischer could not apply for a license to operate a cockpit.

"xxx xxx xxx

"It is precisely because Teves is not among the group which finally put up the Bais City Cockers Cockpit that she cannot be considered to have abandoned Jumil's Octagonal Garden Cockpit. As the prior operator and owner of the only cockpit in the city, she was entitled to continue in operation. The fact that her cockpit is within a residential area did not furnish a ground for denying her a license but only for requiring her to relocate it outside that area. Section 1 of PD 1535, promulgated on June 11, 1978 provides:

"Owners, lessees or operators of cockpits which are now in existence and have not conformed with the zoning requirements prescribed by law or ordinance are given two (2) more years from date of effectivity of this Decree to comply herewith.'

"It is quite evident that the law recognizes the right of the prior operator to continue in business by giving him the option to relocate his cockpit in another place in order to comply with local zoning laws. Between Teves who has owned the only cockpit in town since 1962 and Fleischer who only started operation in 1981, the former was entitled to the issuance of a license. This consideration underlies the grant of a permit by the Philippine Constabulary in 1979 to Herminio Teves, the nephew of Milagros Teves, and its refusal to issue a permit in 1980 to Santiago Goñi. If in 1981 Fleischer succeeded in obtaining a permit to operate another cockpit (Bais City Cockers Cockpit), it was only because by then the power to license cockpits had been transferred from the Philippine Constabulary to the mayors with the concurrence of the Sanggunians or local councils.

"xxx xxx xxx

"(2) This brings us to the second contention of the appellants that Teves has made no effort to relocate her cockpit so as to comply with PD 449, section 5(a), in relation to ordinance 62 of the city of Bais, prohibiting the operation of cockpits within a residential area. In this case, there is no dispute as to the fact that the Jumil's Octagonal Garden Cockpit is within a residential district. However, it is equally true that under the rules and regulations of the commission, Teves had until December 31, 1981 within which to comply with the zoning ordinance. Therefore, in issuing a permit to William Fleischer on September 28, 1981 to operate a new cockpit the mayor in effect denied Teves's right to continue the old cockpit. Indeed, the evidence tends to show that the mayor's decision was intended to favor the new cockpit put up by Santiago Goñi and William Fleischer. As the Commission observed in its decision, Mayor Goñi never required Santiago Goñi when the latter was still operating the Jumil's Octagonal Garden Cockpit, to relocate the cockpit outside the residential district. Instead, in 1979, when the mayor indorsed to the PC the application for renewal of license of Santiago Goñi the mayor precisely required the applicant to 'transfer the holding of cockfights from Jumil's Octagonal Cockpit to

another cockpit, now being constructed... Otherwise, this permit shall be considered automatically revoked.' No clearer proof of an intention to favor the new cockpit can be shown than this condition in the so-called recommendatory permit issued by the mayor on March 28, 1979. It is no justification that the Bais City Cockers' Cockpit was established precisely to comply with the zoning ordinance. For the fact is that Teves, as owner of the old cockpit, had under the law the right to relocate her cockpit and continue its operation. Consequently, the grant of a permit to the Bais City Cockers' Cockpit was equivalent to a denial of Teves's right to continue. That right cannot be terminated without proof that the prior operator failed to comply with the condition imposed on her or has signified her intention to quit from the business.' (Underscoring supplied.)" (pp. 21-24, Manifestation and Motion filed by Solicitor General.)

As gathered from the above-quoted decision, Fleischer was able to obtain a license to operate a cockpit because he leased Jumil's cockpit from Teves and operated it. After the expiration of his lease, his license also expired. But despite Teves' refusal to renew the lease because she desired to operate her cockpit herself, Mayor Goñi issued to his son-in-law (Fleischer) a license to operate Jumil's Cockpit. From the time the lease contract expired in 1979 up to the time that the Court of Appeals rendered its decision on January 16, 1985 in AC-G.R. SP No. 00144, Teves was not able to operate her cockpit due to Mayor Goñi's refusal to grant her a license. During all that time, Fleischer was operating Jumil's cockpit and was able to use his earnings therefrom to put up the Bais City Cocker's Arena.

Under Section 1 of PD 1535, owners were given two (2) years from the effectivity (June 11, 1978) of the Decree to comply with the zoning requirements. Petitioner pointed out that the two (2) year period within which to relocate should be reckoned from the finality of the decision of the Court of Appeals in AC--G.R. SP No. 00144 which was promulgated on January 16, 1985. Therefore, the issuance by the petitioner, Hector Villanueva, to Teves of a license to operate her cockpit on January 21, 1987 was well within the two-year period.

Furthermore, petitioner did not act inadvisedly on Teves' application for a license. He sought the counsel of the City Fiscal of Bais on the matter. The City Fiscal opined that Teves' application may be granted subject to certain conditions imposed by the PGC and the decision of the Court of Appeals. In fact, the petitioner's grant of a mayor's permit to Fleischer was conditioned on Teves' failure to comply with the legal requirements. It may not be said therefore that he acted with "manifest partiality and evident bad faith" in granting a permit (subject to certain conditions) to Teves.

In *Marcelo vs. Sandiganbayan* (185 SCRA 346, 349--350) we held that:

"Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud (*Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self interest or ill will for ulterior purposes. (*Air France v. Carrascoso*, 18 SCRA 155, 166-167). Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.

"Applying these very same definitions, we feel that the petitioner cannot in fairness be held liable under the indictment. We are persuaded from a study of the evidence that he was not actuated by a dishonest purpose or ill will partaking of a fraud or some furtive design or ulterior purpose to do wrong and cause damage."

In view of the foregoing, we find that the guilt of the petitioner was not proven beyond reasonable doubt, hence, he should be acquitted of the crime charged.

WHEREFORE, the petition for review is GRANTED. The challenged decision of the Sandiganbayan is REVERSED and the petitioner, Hector C. Villanueva, is ACQUITTED of the crime charged. Costs de oficio.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on leave.

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