

ELIAS C. QUIBAL AND ANTONIO U. DENIEGA, PETITIONERS, VS. THE HON. SANDIGANBAYAN (SECOND DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 109991. May 22, 1995

Ponente: PUNO, J.

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PUNO, J.:

Petitioners ELIAS C. QUIBAL and ANTONIO U. DENIEGA, the mayor and treasurer, respectively, of the municipality of Palapag, Northern Samar, and Eduardo C. Guevarra, a private individual, were charged with violation of Section 3 (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

The Information[1] against them reads:

"That on or about February 16, 1988, or sometime prior or subsequent thereto, in Palapag, Northern Samar, within the jurisdiction of this Honorable Court, the accused public officers, namely, ELIAS C. QUIBAL, Municipal Mayor of Palapag, Northern Samar, and ANTONIO U. DENIEGA, then Municipal Treasurer of Palapag, Northern Samar, while in the discharge of their public functions, through evident bad faith and manifest partiality in conspiracy with EDUARDO C. GUEVARRA, a private contractor representing Floters Construction, did then and there wilfully and unlawfully cause undue injury, by effecting payment in the amount of P650,000.00, when the actual cost of the public market of Palapag, Northern Samar, was only P301,754.65, thereby giving unto the said private contractor unwarranted benefits to the damage and prejudice of the government in the total amount of P348,345.35."

Only accused Elias C. Quibal and Antonio U. Deniega were arrested, tried and convicted. Accused Eduardo C. Guevarra remains at large.

The evidence on record established the following:

On November 27, 1987, the municipality of Palapag, Northern Samar, represented by its OIC vice-mayor Teodoro C. Bello, entered into a contract[2] with the Floters Construction Company, represented by accused Eduardo C. Guevarra, for the construction of the municipal public market. The period for the completion of the project was one hundred (100) days. The price was P652,562.60.

From February 16, 1988 to April 12, 1988, accused Mayor Quibal and Municipal Treasurer Deniega, issued four (4) PNB checks in favor of the contractor in the total amount of P650,000.00. However, sometime in June 1988, after receipt of said payments, the contractor abandoned the project.

On August 31, 1988, a COA Special Audit Team composed of Provincial Auditor Marissa Bayona and Engineers Bienvenido Bayani and Robert Bajar inspected the progress of the construction of the Palapag municipal market.[3] It discovered several irregularities. It found out that only about 36.24% of the construction of the municipal market has been completed despite the lapse of the contract period of 100 days. The actual cost of the

finished work on the project was only P301,746.65. Unfinished work on the municipal market, as evaluated, cost P348,235.35. It was also established that the contractor had already been paid P650,000.00 despite the non-completion of the building. The vouchers accompanying said payments were not properly filled-up and the required supporting documents were not attached. The disbursement vouchers (Exhibits "E" to "E-3") submitted by municipal treasurer Deniega to Provincial Auditor Bayona were unsigned. Likewise, the payment to the contractor in the amount of P340,000.00 was not accompanied by any Certificate of Acceptance issued by the COA. COA rules require such certificate of acceptance if the disbursement involves more than P200,000.00.

In a letter[4] dated January 26, 1989, Provincial Auditor Marissa Bayona submitted an inspection report to the COA Regional Director recommending that appropriate legal action be taken against the municipal mayor, treasurer and the contractor in connection with the construction of the Palapag public market. In a letter[5] dated April 7, 1989, the Ombudsman informed Mayor Quibal of the charges filed against him by the COA. On May 12, 1989, Mayor Quibal requested the COA Regional Director for a re-audit of the cost valuation of the said construction project.[6] His request was denied.

Sometime in November 1989, petitioners still continued the construction of the municipal market using the stockpile of materials previously purchased by the contractor and the contractor's retention fee. They completed the construction at the end of December 1989. The municipal government then started leasing the market stalls in January 1990.

The two (2) accused public officers testified in their defense. Accused Deniega, municipal treasurer, admitted that he disbursed the total amount of P650,000.00 to the contractor, viz:

- a) P340,000.00, released on February 16, 1988, based on the voucher (Exhibit "F-3") presented to him by the contractor, which was duly approved by the mayor.
- b) P60,000.00, released on February 26, 1988, based on the voucher presented to him by the contractor (Exh. "F-2");
- c) P200,000.00, released on March 14, 1988, also based on a voucher (Exh. "F"); and
- d) P50,000.00, released on April 22, 1988 (Exh. "F-1"), also based on a similar voucher.

But he claimed that he submitted complete and signed vouchers and the required supporting documents to the Office of the Provincial Auditor. He insisted that the unsigned vouchers presented in court by the prosecution were not the vouchers which supported the payments they made.

For his part, accused mayor Quibal explained that he paid the contractor more than his accomplished work to enable the latter to immediately purchase construction materials which were then selling at a low price. He further maintained that the audit team should have included the value of these construction materials (still unused at the time of audit) in its evaluation of the project. He urged that these unused materials were worth approximately P348,235.35, which would justify his payments to the contractor in the total amount of P650,000.00.

After trial on the merits, the Sandiganbayan (Second Division) promulgated a Decision[7] finding accused public officials guilty beyond reasonable doubt as co-principals of the crime charged. The dispositive portion reads:

"WHEREFORE, premises considered, the Court finds accused Elias Quibal y Capati and Antonio Deniega y Ubas GUILTY beyond reasonable doubt as co-principals for violation of Section 3, paragraph (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, in relation to Section 9 (a) thereof, and applying Act No. 4103, as amended, otherwise known as the Indeterminate Sentence Law, the Court imposes upon each accused the penalties of imprisonment ranging from SIX (6) YEARS and ONE (1) MONTH to TEN (10) YEARS and ONE (1) DAY; perpetual disqualification from public office; and, to

indemnify the Municipality of Palapag, Northern Samar, jointly and severally, the amount of P348,345.35 without subsidiary imprisonment in case of insolvency.

"With costs.

"Considering that their co-accused Eduardo C. Guevarra has not yet been brought within the jurisdiction of this Court up to this date, let this case be archived as against him without prejudice to its revival in the event of his arrest or voluntary submission to the jurisdiction of this Court.

"SO ORDERED."[8]

The two (2) accused moved for a reconsideration. It was denied. Hence this petition.

Petitioners contend that:

I

RESPONDENT SANDIGANBAYAN (SECOND DIVISION) ERRED IN NOT UPHOLDING THE CONSTITUTIONAL RIGHT OF PETITIONERS TO "DUE PROCESS" BY NOT ALLOWING RE-EXAMINATION AND RE-AUDIT OF THE PROJECT WHICH HAS ALREADY BEEN COMPLETED AND UTILIZED FOR PUBLIC USE.

II

RESPONDENT SANDIGANBAYAN (SECOND DIVISION) ERRED IN NOT RESOLVING THAT THE GUILT OF THE PETITIONERS HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT BECAUSE -

a) NO UNDUE INJURY HAS BEEN CAUSED TO THE GOVERNMENT WITH THE FULL COMPLETION OF THE PROJECT.

b) PETITIONERS DID NOT ACT WITH MANIFEST PARTIALITY, EVIDENT BAD FAITH AND GROSS INEXCUSABLE NEGLIGENCE.

We affirm petitioners' conviction.

Petitioners were charged with a violation of Section 3 (e) of R.A. 3019, viz:

"SEC. 3. Corrupt practices by public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practice of any public officer and are hereby declared to be unlawful:

x x x x x x x x

"(e)

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. This provision shall apply to officers and employees of offices of government corporations charged with the grant of licenses or permits or other concessions."

Violation of Section 3 (e) of R. A. 3019 requires proof of the following facts, viz:

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;

2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith or gross, inexcusable negligence; and
4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage or preference to such parties.[9]

Petitioners insist that their guilt has not been proved beyond reasonable doubt for they did not act with manifest partiality, evident bad faith or gross, inexcusable negligence nor did they cause any injury or damage to the municipal government for the construction of the municipal market was eventually completed.

We reject these contentions.

The construction of the municipal market should have been finished on March 7, 1988. At the time of the audit on August 31, 1988, however, only 36.24% of the construction of the market has been completed. Yet, out of the contract price of P652,562.60, petitioners already paid the contractor a total of P650,000.00. In so doing, petitioners disregarded the provision in the contract that payment should be based on the percentage of work accomplishment. Moreover, the contract provided that in case of delay in the completion of the project, the contractor shall be liable for liquidated damages at the rate of 1/10 of 1% of the contract price per day of delay.[10] Petitioners did not impose this provision against the contractor. By their acts, petitioners clearly acted with manifest partiality and evident bad faith relative to the construction of the municipal market.

Petitioners' acts and omissions are, to say the least, grossly negligent. Gross negligence is the pursuit of a course of conduct which would naturally and reasonably result in injury. It is an utter disregard of or conscious indifference to consequences.[11] In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[12]

In the case at bench, petitioners' acts and omissions demonstrated an utter lack of care in enforcing the contract for the construction of the public market and a reckless disregard of the COA rules and regulations regarding disbursement of municipal funds. Petitioners contend that they released P650,000.00 of the contract price to enable the contractor to take advantage of the low cost of construction materials prevailing at that time. Plainly, petitioners' act violates the provision of the contract requiring that payment shall be made on the basis of the percentage of completion of the project. Moreover, as correctly pointed out by the Sandiganbayan:

x x x "The escalation of prices of construction materials which allegedly prompted QuibaI to pay the contractor prematurely is not a justification that would absolve the accused public officers from criminal liability. The parties could have included an escalation clause in the contract x x x. Moreover, there is a law which authorizes the adjustment of contract price (R. A. 5979, as amended by PD No. 454).

x x x"

Petitioners also insist that no undue injury or damage was caused to the municipal government considering the later completion of the public market.

We cannot share this myopic view. The construction of the municipal market was completed only at the end of December 1989 when it should have been finished by March 7, 1988. This unnecessary delay of almost two (2) years caused considerable monetary loss to the municipal government in the form of monthly rentals. The least that petitioners should have done was to enforce the penalty clause of the contract (providing for payment of liquidated damages in case of breach) when the contractor failed to meet his deadline on March 7, 1988. Instead of doing so, petitioners even made two (2) additional payments to the contractor (on March 14 and April 22,

1988) in the total sum of P250,000.00. Thus, it cannot be successfully argued that the acts and omissions of petitioners did not cause damage or injury to the municipal government.

Finally, to bolster their claim of denial of due process, petitioners cite the case of *Tinga v. People of the Philippines*.^[13] Petitioners' reliance on the *Tinga* case is misplaced. In said case, we ruled that *Tinga* was denied due process when the Commission on Audit refused to conduct a re-evaluation of the accountabilities of *Tinga*. The ruling was based on the Court's finding that COA's evaluation of *Tinga*'s accountabilities was replete with errors, thus:

'The Sandiganbayan Decision is replete with findings of errors in the audit made of petitioner's accountability. Thus, it said: (a) 'We are not prepared to repeat the same mistake as the audit team and prefer to credit Catalino Y. Tinga for said sum of P12,654.80 deductible from his alleged shortage' x x x; (b) the claim of the defense that *Tinga* was a victim of robbery is fully supported x x x resulting in a total loss of P10,708.14 x x x. The COA auditing team ought to have credited the accused in this amount in his total accountability for the accused never pocketed to his benefit this amount lost' x x x; (c) 'Court records indubitably attest to the fact that Laurencio R. Masong, collection clerk of the Municipal Treasurer's office of *Bogo, Cebu*, failed to turn over to the accused collections in the total sum of P7,398.30 in October 1976, for which reason said employee was charged and convicted of the crime of Malversation of Public Funds x x x. Why then should the COA auditors include the said sum in the accountability of *Tinga*? x x x; (d) 'We find it relevant to observe that a careful examination of Exh. 'L-1' shows that the entry for withdrawal of voucher no. x x x has two circles with a cross inside before and after the entry, indicating a cancellation or mistake thereat. x x x Thus, the sum of P30,000 appears to be honestly disputed, which also served as basis for the accused to insist on a review or re-audit' x x x; (e) 'Such conclusion of the COA arose from many errors committed during the audit examination x x x'.

x x x

'By the denial of the re-audit, petitioner was, as claimed by him, not given the right to be fully heard before the charge was filed against him at a time when the records were still available and past transactions still fresh in the memory of all concerned. He was given the chance to defend himself before the Sandiganbayan, yes, but as said Court itself observed '*Tinga* continued to pursue his quest for a re-audit in his honest belief that he had not malversed any government funds. In the process, many but not all disbursement vouchers were located in the office of the Municipal Treasurer of *Bogo, Cebu*, xxx.' Perhaps, if he had been re-audited and his accountability reviewed, a different result may have been produced."

Petitioners also claim that considering the value of the unused stockpile of construction materials and supplies, a re-audit would prove that the payment they made was justified and that the actual cost of the project at the time of the initial inspection is indeed P650,000.00. We hold that the suggested re-audit would not exonerate the petitioners. The re-audit cannot blur the fact that undue damage has already been caused to the municipal government in view of the delay in the construction of the municipal market and the failure of the petitioners to enforce the penalty clause in the construction contract.

IN VIEW WHEREOF, the appealed Decision is hereby **AFFIRMED** in toto. Costs against petitioners.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Mendoza, JJ., concur.

[1] Original Records, pp. 1-2.

[2] Original Records, pp. 41-42.

[3] Per Office Order No. 15-27, dated August 3, 1988, issued pursuant to the resolution of the Sangguniang Bayan of Palapag, Northern Samar, to evaluate the progress of the construction of the municipal market.

[4] Exhibit "H".

[5] Exhibit "13".

[6] Exhibit "10".

[7] Penned by Associate Justice Narciso T. Atienza and concurred in by Associate Justices Romeo M. Escareal and Augusto M. Amores; Annex "A", Petition, Rollo, pp. 25-46.

[8] Ibid, at p. 46.

[9] Villanueva v. Sandiganbayan, G.R. No. 105607, June 21, 1993, 223 SCRA 543, Jacinto v. Sandiganbayan, G.R. No. 84571, October 2, 1989; Medija v. Sandiganbayan, G.R. No.102685, January 29, 1993, 218 SCRA 219, Ponce de Leon, et, al., v. Sandiganbayan, G.R. Nos. 89785-98, June 25, 1990, 186 SCRA 745.

[10] Article II, Exhibit "C".

[11] Marinduque Iron Mines Agents, Inc. v. Workmen's Compensation Commission, 99 Phil., at p. 485, citing 38 Am. Jur., at p. 691.

[12] Juan v. Arias, 72 SCRA, at p. 410.

[13] No. L-57650, April 15, 1988, 160 SCRA 483.

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