

ENGINEER CLARO J. PRECLARO, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 111091. August 21, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On 14 June 1990, petitioner was charged before the Sandiganbayan with a violation of Sec. 3(b) of R.A. No. 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The information against him read as follows:

That on or about June 8, 1990, or sometime prior thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Project Manager/Consultant of the Chemical Mineral Division, Industrial Technology Development Institute, Department of Science and Technology, a component of the Industrial Development Institute (ITDI for brevity) which is an agency of the Department of Science and Technology (DOST for brevity), wherein the Jaime Sta. Maria Construction undertook the construction of the building in Bicutan, Taguig, Metro Manila, with a total cost of SEVENTEEN MILLION SIX HUNDRED NINETY FIVE THOUSAND PESOS (P17,695,000.00) jointly funded by the Philippine and Japanese Governments, and while the said construction has not yet been finally completed, accused either directly requested and/or demanded for himself or for another, the sum of TWO HUNDRED THOUSAND PESOS (P200,000.00), claimed as part of the expected profit of FOUR HUNDRED SIXTY THOUSAND PESOS (P460,000.00) in connection with the construction of that government building wherein the accused had to intervene under the law in his capacity as Project Manager/Consultant of said construction - said offense having been committed in relation to the performance of his official duties.

CONTRARY TO LAW.[1]

On 20 July 1990, during arraignment, petitioner pleaded "not guilty" to the charges against him.

On 30 June 1993, after trial on the merits, the Second Division of the Sandiganbayan rendered judgment finding petitioner guilty beyond reasonable doubt. The dispositive portion reads as follows:

WHEREFORE, judgment is hereby rendered finding accused Claro Preclaro y Jambalos GUILTY beyond reasonable doubt of the Violation of Section 3, paragraph (b) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and he is hereby sentenced to suffer an indeterminate penalty ranging from SIX (6) YEARS and ONE (1) MONTH, as the minimum, to TEN (10) YEARS and ONE (1) DAY, as the maximum, perpetual disqualification from public office and to pay the costs of this action.

SO ORDERED.[2]

The antecedent facts are largely undisputed.

On 1 October 1989, the Chemical Mineral Division of the Industrial Technology Development Institute (ITDI), a component of the Department of Science and Technology (DOST) employed Petitioner under a written contract of services as Project Manager to supervise the construction of the ITDI-CMD (JICA) Building at the DOST Compound in Bicutan, Taguig, Metro Manila.[3]

The contract was to remain in effect from October 1, 1989 up to the end of the construction period unless sooner terminated.[4] Petitioner was to be paid a monthly salary drawn from counter-part funds duly financed by foreign-assisted projects and government funds duly released by the Department of Budget and Management.[5]

In November 1989, to build the aforementioned CMD Structure, DOST contracted the services of the Jaime Sta. Maria Construction Company with Engr. Alexander Resoso, as the company's project engineer.[6]

How petitioner committed a violation of the Anti--Graft & Corrupt Practices Act is narrated in the Comment of the Solicitor General and amply supported by the records. The material portions are hereunder reproduced:

xxx xxx xxx.

3. In the month of May, 1990, Alexander Resoso, Project Engineer of the Sta. Maria Construction Company, was in the process of evaluating a Change Order for some electricals in the building construction when petitioner approached him at the project site (p. 11, 25, Ibid.).

4. Unexpectedly, petitioner made some overtures that expenses in the Change Order will be deductive (meaning, charged to the contractor by deducting from the contract price), instead of additive (meaning, charged to the owner). Petitioner intimated that he can forget about the deductive provided he gets P200,000.00, a chunk of the contractor's profit which he roughly estimated to be around P460,000.00 (pp. 12-13, 22, Ibid.).

5. Having conveyed the proposal to Jaime Sta. Maria, Sr., the owner of Sta. Maria Construction Company, Resoso thereafter asked petitioner if he wanted a rendezvous for him to receive the money. Petitioner chose Wendy's Restaurant, corner E. Delos Santos Avenue and Camias Street, on June 6, 1990 at around 8:00 o'clock in the evening (p. 14, Ibid.).

6. However, Sta. Maria, Sr. asked for two (2) more days or until the 8th of June, perceiving financial constraints (Ibid.).

7. Petitioner relented, saying "O.K. lang with me because we are not in a hurry." (P. 15, Ibid.) Petitioner was thereafter asked to bring along the result of the punch list (meaning, the list of defective or correctible works to be done by the contractor) (p. 15, Ibid.; p. 10, TSN, 18 Oct. 1991).

8. On 7 June 1990, Sta. Maria, Sr. and Resoso proceeded to the National Bureau of Investigation (NBI) to report the incident (p. 15, 35, Ibid.).

9. The NBI suggested an entrapment plan to which Sta. Maria, Sr. signified his conformity (p. 16, TSN, 12 Oct. 1990). Accordingly, Sta. Maria, Sr. was requested to produce the amount of P50,000.00 in P500.00 denomination to represent the grease money (p. 37, TSN, 6 Sept. 1990).

10. The next day, or on 8 June 1990, Resoso delivered the money to the NBI. Thereafter, the money was dusted with fluorescent powder and placed inside an attache case (pp. 16-17, Ibid.). Resoso got the attache case and was instructed not to open it. Similarly, he was advised to proceed at the Wendy's Restaurant earlier than the

designated time where a group of NBI men awaited him and his companion, Sta. Maria, Jr. (pp. 17-18, Ibid.).

11. Hence, from the NBI, Resoso passed by the Jade Valley Restaurant in Timog, Quezon City, to fetch Sta. Maria, Jr. (Ibid.).

12. At around 7:35 p.m., Resoso and Sta. Maria, Jr. arrived at the Wendy's Restaurant. They were led by the NBI men to a table previously reserved by them which was similarly adjacent to a table occupied by them (pp. 18-19, Ibid.).

13. Twenty minutes later, petitioner arrived. Supposedly, the following conversation took place, to wit:

JUSTICE BALAJADIA:

q.

When Dave Preclaro arrived, what did he do?

a.

We asked him his order and we talked about the punch list.

q.

What was his comment about the punch list?

a.

He told us that it is harder to produce small items than big ones.

q.

How long did you converse with Engr. Claro Preclaro?

a.

I think thirty minutes or so.

q.

Was Preclaro alone when he came?

a.

Yes, Your Honor.

xxx xxx xxx.

PROS. CAOILI:

q.

When you talk[ed] about his punch list, did you talk about anything else?

a.

Engineer Sta. Maria, Jr., they were conversing with Dave Preclaro and he told [him], "O, paano na."

JUSTICE ESCAREAL:

q.

Who said "Paano na?"

a.

Engineer Sta. Maria, [Jr.]. And then Preclaro told [him], "Paano, How will the money be arranged and can I bring it?" he said.

And then Jimmy Sta. Maria, Jr. told him it was arranged on two bundles on two envelopes.

And then Dave Preclaro told, "Puede" and he asked Jimmy Sta. Maria, Jr. if there is express teller and could he deposit during night time but Engineer Sta. Maria, Jr. told him, "I do not have any knowledge or I do not have any express teller you can deposit. I only know credit card."

PROS. CAOILI:

q.

When Engr. Sta. Maria intervened and interviewed him that way, was there anything that happened?

a.

Jimmy Sta. Maria, Jr. handed two envelopes to Preclaro.

q.

Did Claro Preclaro receive these two envelopes from Engineer Sta. Maria?

a.

Yes, sir. (Pp. 19-21, Ibid., See also pp. 13-14, TSN, 29 Oct. 1990.)

14. From the moment petitioner received the two envelopes with his right hand, thereafter placing them under his left armpit, he was accosted by the NBI men (p. 22, TSN, 12 Oct. 1990).

15. A camera flashed to record the event. Petitioner instinctively ducked to avoid the taking of pictures. In such manner, the two envelopes fell (p. 23, Ibid.).

16. The NBI men directed petitioner to pick up the two envelopes. Petitioner refused. Hence, one of the NBI men picked up the envelopes and placed them inside a big brown envelope (p. 27, Ibid.).

17. Petitioner was thenceforth brought to the NBI for examination (p. 28, Ibid.).

18. At the NBI Forensic Chemistry Section, petitioner's right palmar hand was tested positive of fluorescent powder. The same fluorescent powder, however, cannot be detected in petitioner's T-shirt and pants (p. 5, TSN, 29 Oct. 1990).[7]

xxx xxx xxx.

Thus, as brought out at the outset, an information was filed against petitioner which, after due hearing, resulted in his conviction by the Sandiganbayan. Not satisfied with the decision, petitioner instituted the present petition for review, ascribing to the Sandiganbayan the following errors:

1. THE SANDIGANBAYAN ERRED IN TAKING COGNIZANCE OF THE CASE, INSTEAD OF DISMISSING IT FOR LACK OF JURISDICTION, THE [PETITIONER] NOT BEING A PUBLIC OFFICER; and

2. THE SANDIGANBAYAN ERRED IN NOT RULING THAT NOT ALL THE ELEMENTS OF THE

OFFENSE CHARGED HAVE BEEN ESTABLISHED BEYOND REASONABLE DOUBT AND/OR THAT THE GUILT OF THE [PETITIONER] HAS NOT BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

We find the petition unmeritorious.

On the first issue, petitioner asserts that he is not a public officer as defined by Sec. 2(b) of the Anti-Graft & Corrupt Practices Act (R.A. No. 3019 as amended), because he was neither elected nor appointed to a public office. Rather, petitioner maintains that he is merely a private individual hired by the ITDI on contractual basis for a particular project and for a specified period[8] as evidenced by the contract of services[9] he entered into with the ITDI. Petitioner, to further support his "theory," alleged that he was not issued any appointment paper separate from the abovementioned contract. He was not required to use the bundy clock to record his hours of work and neither did he take an oath of office.[10]

We are not convinced by Petitioner's arguments.

Petitioner misconstrues the definition of "public officer" in R.A. No. 3019 which, according to Sec. 2(b) thereof "includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal, from the government...."

The word "includes" used in defining a public officer in Sec. 2(b) indicates that the definition is not restrictive. The terms "classified, unclassified or exemption service" were the old categories of positions in the civil service which have been reclassified into Career Service and Non-Career Service[11] by PD 807 providing for the organization of the Civil Service Commission[12] and by the Administrative Code of 1987.[13]

Non-career service in particular is characterized by -

(1) entrance on bases other than those of the usual test of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.

The Non-Career Service shall include:

- (1) Elective officials and their personal or confidential staff;
- (2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff(s);
- (3) Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;
- (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and
- (5) Emergency and seasonal personnel. (Italics ours.)[14]

From the foregoing classification, it is quite evident that petitioner falls under the non-career service category (formerly termed the unclassified or exemption service) of the Civil Service and thus is a public officer as defined by Sec. 2(b) of the Anti-Graft & Corrupt Practices Act (R.A. No. 3019).

The fact that petitioner is not required to record his working hours by means of a bundy clock or did not take an oath of office became unessential considerations in view of the above-mentioned provision of law clearly including petitioner within the definition of a public officer.

Similarly, petitioner's averment that he could not be prosecuted under the Anti-Graft & Corrupt Practices Act because his intervention "was not required by law but in the performance of a contract of services entered into by him as a private individual contractor,"[15] is erroneous. As discussed above, petitioner falls within the definition of a public officer and as such, his duties delineated in Annex "B" of the contract of services[16] are subsumed under the phrase "wherein the public officer in his official capacity has to intervene under the law." [17] Petitioner's allegation, to borrow a cliché, is nothing but a mere splitting of hairs.

Among petitioner's duties as project manager is to evaluate the contractor's accomplishment reports/billings[18] hence, as correctly ruled by the Sandiganbayan he has the "privilege and authority to make a favorable recommendation and act favorably in behalf of the government," signing acceptance papers and approving deductives and additives are some examples.[19] All of the elements of Sec. 3(b) of the Anti-Graft & Corrupt Practices Act are, therefore, present.

Anent the second issue, we likewise find Petitioner's allegations completely bereft of merit.

Petitioner insists that the prosecution has failed to establish his guilt beyond reasonable doubt and that the charges against him should be rejected for being improbable, unbelievable and contrary to human nature.

We disagree.

Proof beyond reasonable doubt does not mean that which produces absolute certainty. Only moral certainty is required or "that degree of proof which produces conviction in an unprejudiced mind." [20] We have extensively reviewed the records of this case and we find no reason to overturn the findings of the Sandiganbayan.

Petitioner enumerates the alleged improbabilities and inconsistencies in the testimonies of the prosecution witnesses. We shall examine the testimonies referred to with meticulousness.

Petitioner asserts that it was improbable for him to have demanded P200,000.00 from Engr. Resoso, when he could have just talked directly to the contractor himself. It is quite irrelevant from whom petitioner demanded his percentage share of P200,000.00 whether from the contractor's project engineer, Engr. Alexander Resoso or directly from the contractor himself Engr. Jaime Sta. Maria Sr. That petitioner made such a demand is all that is required by Sec. 3(b) of R.A. No. 3019 and this element has been sufficiently established by the testimony of Engr. Resoso, thus:

xxx xxx xxx.

Q

You said when you were computing your Change Order Mr. Preclaro or Dave Preclaro whom you identified approached you, what did you talk about?

A

He mentioned to me that we are deductive in our Change Order three and four so after our conversation I told this conversation to my boss that we are deductible in the Change Order three and four and then my boss told me to ask why it is deductive.

Q

Did you ask the accused here, Dave Preclaro why it is considered deductive?

A

Yes, sir.

Q

What was his answer if any?

A

I asked him that my boss is asking me to ask you how come it became deductive when my computation is additive and he told me that I have done so much for your company already and then he picked up cement bag paper bag and computed our alleged profit amounting to One Hundred Sixty Thousand Pesos and then he told me that he used to use some percentage in projects maximum and minimum and in our case he would use a minimum percentage and multiply to 60 and...

JUSTICE ESCAREAL:

Q

What is 460?

A

P460,000.00 and he said take of the butal and get two Hundred Thousand Pesos.

JUSTICE BALAJADIA:

What is the translation now?

WITNESS:

A

And he said disregard the excess and I will just get the P200,000.00. (Underscoring ours.)

PROS CAOILI:

Q

What does he mean by that if you know?

A

I do not know sir.

He just said, I will get the P200,000.00 and tell it to your boss. (Underscoring ours.)

JUSTICE BALAJADIA:

Q

What is P200,000.00?

A

It is Two Hundred Thousand Pesos.

PROS CAOILI:

Q

What did you answer him when he told you that?

A

He told me to forget the deductive and electrical and after that I told my boss what he told me.

Q

Who is your boss?

A

Santa Maria Sr.

Q

What was the reaction of your boss when you relayed the message to Mr. Preclaro?

A

The next day he told me to ask Dave where and when to pick up the money so the next day I asked Dave "Where do you intend to get the money, the Boss wanted to know."

Q

What was the answer of Dave?

A

And he told me, Wendy's Restaurant at 3:00 o'clock.

Q

When?

A

June 6 Wednesday.

Q

When he told you that did you comply with June 6 appointment?

A

I told my boss what he told me again that the meeting will take place at Wendy's Restaurant corner Edsa and Camias Street at around 8:00 o'clock p.m. June 6, Wednesday.

Q

What did your boss tell you?

A

The next day he told me to ask Dave.

Q

What did your boss tell you?

A

My boss told me to ask Dave to postpone the meeting on June 6 to be postponed on June 8 at the same place and same time because my boss is having financial problem.

Q

Did you relay the postponement to Dave Preclaro?

A

Yes sir. I told what my boss told me.

Q

What was his reaction?

A

Dave told me "O.K. lang with me" because we are not in a hurry. Any way we are the ones to sign the acceptance papers and my boss instructed me that on Friday to ask Dave to bring along the result of the punch list and if possible also to bring along the acceptance papers to be signed by Dave, Lydia Mejia and Dr. Lirag the director.

Q

What happened next after meeting with Preclaro to relay the postponement if any?

A

Nothing happened. The next day, Thursday the boss instructed me to go with him to the NBI to give a statement.

Q

Did you go to the NBI and report to the incident to the NBI?

A

Yes sir.

Q

Did you give a statement before any of the agents of the NBI?

A

Yes sir.[21]

xxx xxx xxx.

Likewise, petitioner's alleged refusal to see Mr. Jaime Sta. Maria Sr. when the latter tried to arrange meetings with him regarding his demand[22] does not weaken the cause against petitioner. It does not at all prove that petitioner did not ask for money. Conceivably, petitioner did not muster enough courage to ask money directly from the contractor himself. Getting the amount through the project engineer would be safer because if Mr. Sta. Maria, Sr. had refused to give money, petitioner could always deny having made the demand.

Petitioner contends that the percentage demanded in the amount of P200,000.00 is too high considering that the estimated profit of the contractor from the CMD project is only P460,000.00. In petitioner's words, this would "scare the goose that lays the golden egg." [23] We reject this argument. The aforementioned contractor's profit is

petitioner's own computation as testified to by Engr. Resoso:

xxx xxx xxx.

A

I asked him that my boss is asking me to ask you how come it became deductive when my computation is additive and he told me that I have done so much for your company already and then he picked up cement bag paper bag and computed our alleged profit amounting to One Hundred Sixty Thousand Pesos and then he told me that he used to use some percentage in projects maximum and minimum and in our case he would use a minimum percentage and multiply to 460 and... (Italics ours.)

JUSTICE ESCAREAL:

Q

What is 460?

A

P460,000.00 and it ended to P215 thousand or P20,000.00 and he said take of the butal and get the Two Hundred Thousand Pesos. (Italics ours.)

JUSTICE BALAJADIA:

Q

What is the translation now?

WITNESS:

A

And he said disregard the excess and I will just get the P200,000.00.

PROS CAOILI:

Q

What does he mean by that if you know?

A

I do not know sir.

He just said, I will get the P200,000.00 and tell it to your boss.[24]

x x x

The records, however, do not show the true and actual amount that the Sta. Maria Construction will earn as profit. There is, therefore, no basis for petitioner's contention as the actual profit may be lower or higher than his estimation.

Besides, as related by Engr. Resoso, petitioner considers the P200,000.00 percentage proper compensation since he has allegedly done so much for the Sta. Maria construction company.[25]

Petitioner also argues that:

According to STA. MARIA, SR., they were deductive by P280,000.00 (Id., pp. 34-35).

If STA. MARIA CONSTRUCTION was deductive in the amount of P280,000.00, why would the petitioner still demand P200,000.00 which would increase the contractor's loss to P480,000.00!

It might have been different if the changes were additive where STA. MARIA CONSTRUCTION would have earned more, thereby providing motive for the petitioner to ask for a percentage![26]

But this is precisely what petitioner was bargaining for- P200,000.00 in exchange for forgetting about the deductive[27] and thus prevent the Sta. Maria Construction from incurring losses.

Petitioner's contention that it was impossible for him to make any demands because the final decision regarding accomplishments and billing lies with the DOST technical committee is unacceptable. Petitioner is part of the abovementioned technical committee as the ITDI representative consultant. This is part of his duties under the contract of services in connection with which he was employed by the ITDI. Even, assuming arguendo that petitioner does not make the final decision, as supervisor/consultant, his recommendations will necessarily carry much weight. Engr. Resoso testified thus:

PROS CAOILI:

Q

As a Project Engineer to whom do you present your billing papers accomplishment report or purchase order?

A

The billing paper was being taken care of by the, of our office. I personally do my job as supervision in the construction.

Q

Do you have any counterpart to supervise the project from the government side?

A

Yes, we have.

Yes, the DOST have a technical Committee Infra-Structure Committee and also the ITDI as its own representative.

Q

Who composed the Technical Committee of the DOST?

A

A certain Engineer Velasco, Engineer Sande Banez and Engineer Mejia.

Q

How about the ITDI?

A

The ITDI representative composed of Dave Preclaro.

Q

Who is this Dave Preclaro?

A

He is the consultant of ITDI. (Underscoring ours.)

xxx xxx xxx.

ATTY. CAOILI:

Q

As Project Engineer do you consult to any body regarding your job?

A

First if there is any problem in the site I consult my boss.

PROS CAOILI:

Q

How about with the other consultants representing the ITDI and DOST?

A

In the construction site we have meeting every Monday to discuss any problem.

Q

With whom do you discuss this problem?

A

The Infra-structure Committee of DOST and the Infra-structure Committee of ITDI, the architect and the contractor. We had weekly meetings.

Q

What matters if any do you consult with Mr. Claro Preclaro?

ATTY. JIMENEZ:

No basis.

JUSTICE ESCAREAL:

They met on problems on Mondays.

ATTY. JIMENEZ:

But there is no mention of Preclaro specifically.

JUSTICE ESCAREAL:

With the representative of DOST and Preclaro.

ATTY. JIMENEZ:

Does that also mean that Preclaro is also among the representatives he is going to consult with?

Well any way...

JUSTICE ESCAREAL:

Witness may answer the question.

Read back the question.

COURT STENOGRAPHER:

Reading back the question as ordered by the Court.

WITNESS:

A

Every Monday meeting we tackle with accomplishment report the billing papers.[28] (*Italics ours.*)

xxx xxx xxx.

Petitioner also claims that the testimonies of the prosecution witnesses regarding the entrapment itself are conflicting, doubtful or improbable:

(aaa) according to RESOSO, only FOUR (4) P500 bills were dusted with flourescent powder and used in the alleged entrapment.

Contradicting RESOSO, STA. MARIA, SR. said that he gave fifty thousand (P50,000.00) pesos in P500 denomination to the NBI.[29]

There is no such inconsistency. Said witnesses were testifying on two different subjects. Engr. Sta. Maria, Sr.'s testimony touched on the amount he gave the NBI for use in the entrapment while Engr. Resoso's declaration referred only to the number of bills dusted with flourescent powder.

Petitioner, likewise, misappreciated the following testimony of Resoso:

PROS CAOILI:

Q What did he do with the two envelopes upon receiving the same?

A Then he asked Jaime Sta. Maria, Jr. if there is bank teller express, if he could deposit the money but Mr. Sta. Maria said, "I do not have, I only have credit cards." [30]

Petitioner intended to deposit the money in his own account not that of Mr. Sta. Maria, Jr. He was merely inquiring from the latter if there was an express teller nearby where he could make the deposit. Mr. Sta. Maria Jr. himself testified as follows:

A

He asked me if there was express teller. I told him I do not know then he asked me whether it is possible to deposit at the Express Teller at that time. I told him I don't know because I have no express teller card and he asked me how am I going to arrange, how was it arranged if I will bring it, can I bring it. Then I told him that it was placed in two envelopes consisting of 500 Peso bills and then he said "Okay na yan." [31]

The failure of the NBI to take photographs of the actual turn-over of the money to petitioner is not fatal to the People's cause. The transaction was witnessed by several people, among whom were Engr. Resoso, Mr. Sta. Maria Jr. and the NBI agents whose testimonies on the circumstances before, during and after the turn-over are consistent, logical and credible.

According to NBI Agent Francisco Balanban Sr., they purposely took no photographs of the actual turn--over so as not to alert and scare off the petitioner. During cross-examination Agent Balanban Jr. stated:

xxx xxx xxx.

Q

Now, of course, this entrapment operation, you made certain preparation to make sure that you would be able to gather evidence in support of the entrapment?

A

Yes sir.

Q

As a matter of fact you even brought photographer for the purpose?

A

That is right sir.

Q

And that photographer was precisely brought along to record the entrapment?

A

Yes sir.

Q

From the beginning to the end, that was the purpose?

A

At the time of the arrest sir.

ATTY. JIMENEZ:

From the time of the handing over of the envelopes until the entrapment would have been terminated?

A

No sir we plan to take the photograph only during the arrest because if we take photographs he would be alerted during the handing of the envelopes. (Underscoring ours.)

Q

So you did not intend to take photographs of the act of handing of the envelopes to the suspect?

A

We intended but during that time we cannot take photographs at the time of the handing because the flash will alert the suspect. (Italics ours.)

JUSTICE ESCAREAL:

Why did you not position the photographer to a far distance place with camera with telescopic lens?

A We did not Your Honor.

ATTY. JIMENEZ:

So was it your intention to take photographs only at the time that he is already being arrested?

A

Yes sir.[32]

x x x

Petitioner insists that when his hands were placed under ultra-violet light, both were found negative for fluorescent powder. This is petitioner's own conclusion which is not supported by evidence. Such self-serving statement will not prevail over the clear and competent testimony and the report[33] submitted by the forensic expert of the NBI Ms. Demelen R. dela Cruz, who was the one who conducted the test and found petitioner's right palmar hand positive for fluorescent powder, the same hand he used, according to witnesses Resoso and Sta. Maria Jr., to get the money from the latter.

xxx xxx xxx.

Q

Mrs. dela Cruz since when have you been a Forensic Chemist at NBI?

A

Since 1981 sir.

JUSTICE ESCAREAL:

Q

By the way, is the defense willing to admit that the witness is a competent as

ATTY. JIMENEZ:

Admitted Your Honor.

PROS. CAOILI:

Madam Witness did you conduct a forensic examination in the person of one Dave Preclaro y Jambalos?

A

Yes sir.

Q

If that person whom you examined is here in court would you be able to recognize him?

ATTY. JIMENEZ:

We admit that the accused is the one examined by the witness.

ATTY. CAOILI:

Did you prepare the result of the examination in writing?

A

Yes sir.

PROS. CAOILI:

Showing to you Physic Examination No. 90-961 which for purposes of identification has already been marked as Exh. H what relation has this have with the report that you mentioned a while ago?

A

This is the same report that I prepared sir.

Q

How did you conduct such flourescent examination?

A

The left and right hands of the accused were placed under the ultra violet lamp sir.

Q

What was the result?

A

It gave a... under the ultra violent lamp the palmer hands of the suspect gave positive result for the presence of flourescent powder.

Q

What palmar hands?

A

Right hand sir.

Q

What other examination did you conduct?

A

And also the clothing, consisting of the t-shirts and the pants were examined. Under the ultra violet lamp the presence of the flourescent powder of the t-shirts and pants cannot be seen or distinguished because the fibers or the material of the cloth under the ultra violet lamp was flouresce.

Q

Please tell the Court why the t-shirts and pants under the ultra violent lamp was flouresce?

A

The materials or the fibers of the clothings it could have been dyed with flourescent dyes sir.[34]

xxx xxx xxx.

What we find improbable and contrary to human experience is petitioner's claim that he was set up by Engr. Sta. Maria Sr. and Engr. Resoso for no other purpose but revenge on account of petitioner's failure to recommend the Sta. Maria Construction to perform the extra electrical works.[35]

The Sandiganbayan has aptly ruled on this matter, thus:

For another, the claim of accused that there was ill-will on the part of the construction company is hardly plausible. It is highly improbable for the company to embark on a malicious prosecution of an innocent person for the simple reason that such person had recommended the services of another construction firm. And it is extremely impossible for such company to enlist the cooperation and employ the services of the government's chief investigative agency for such an anomalous undertaking. It is more in accord with reason and logic to presuppose that there was some sort of a mischievous demand made by the accused in exchange for certain favorable considerations, such as, favorable recommendation on the completeness of the project, hassle-free release of funds, erasure of deductives, etc. Indeed, the rationale for the occurrence of the meeting and the demand for money is infinite and boundless.[36]

As correctly pointed out by the Solicitor General, Engr. Sta. Maria Sr., who was then engaged in the construction of another DOST building, would not risk his business or livelihood just to exact revenge which is neither profitable nor logical. As we aptly stated in *Maleg v. Sandiganbayan*: [37]

It is hard to believe that the complainant who is a contractor would jeopardize and prejudice his business interests and risk being blacklisted in government infrastructure projects, knowing that with the institution of the case, he may find it no longer advisable nor profitable to continue in his construction ventures. It is hardly probable that the complainant would weave out of the blue a serious accusation just to retaliate and take revenge on the accused.

From the foregoing, the conclusion is inescapable that on the basis of the testimonial and documentary evidence presented during the trial, the guilt of petitioner has been established beyond reasonable doubt.

WHEREFORE, the appealed decision of the Sandiganbayan is hereby **AFFIRMED**.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Hermosisima, Jr., JJ., concur.

[1] Rollo, p. 31.

[2] *Id.*, at 65.

[3] Respondents' Comment, Rollo, p. 78; Petition, Rollo, p. 13.

[4] Petition, Rollo, p. 13.

[5] Respondents' Comment, Rollo, p. 79.

[6] Sandiganbayan Decision dated 30 June 1993; Rollo, p. 32.

[7] Respondent's Comment, Rollo, pp. 79-84.

[8] Petition, Rollo, p. 12.

[9] *Id.*, at 12-13.

[10] *Id.*, at 11-12.

[11] de Leon, Hector S. & de Leon, Hector M. Jr., *Law on Public Officers & Election Law* (1990 ed.), pp. 64-66.

[12] Promulgated on 6 October 1975.

[13] Book V, Title I, Subtitle A, Chapter 2, Sec. 6(2).

[14] *Id.*, sec. 9.

[15] Rollo, p. 15.

[16] JOB DESCRIPTION (PROJECT MANAGER)

Check contractor's daily activities to conform with schedule;

Check quality of construction;

Evaluate contractor's accomplishments reports/billings;

Advise on time saving construction method;

Check adequacy of material supply for scheduled construction scope of work;

Advise on adequacy of equipment and manpower.

[17] Sec. 3(b), RA No. 3019, otherwise known as the Anti-Graft & Corrupt Practices Act.

[18] See Note 15.

[19] Rollo, p. 301.

[20] Sec. 2, Rule 133 of the Revised Rules on Evidence.

[21] TSN, 6 September 1990, pp. 12-13.

[22] *Id.*, *Id.* at 41-42.

[23] Rollo, p. 17.

[24] TSN, 6 September 1990, pp. 12-13.

[25] *Id.* at 12.

[26] Rollo, p. 18.

[27] TSN, 6 September 1990, p. 13.

[28] *Id.* at 8-11.

[29] Rollo, p. 20.

[30] TSN, 6 September 1990, p. 21.

[31] TSN, 29 October 1990, p. 13.

[32] TSN, 12 October 1990, pp. 29-30.

[33] Original Records, Exhibits H to H-4.

[34] TSN, 29 October 1990, pp. 4-5.

[35] Rollo, p. 25.

[36] *Id.* at 296-297.

[37] 160 SCRA 623 (1988).

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