

**IGNACIO R. BUNYE, JAIME R. FRESNEDI, CARLOS G. TENSUAN,
ROMAN E. NIEFES, ROGER C. SMITH, RUFINO B. JOAQUIN, NOLASCO
L. DIAZ, AND RUFINO IBE, PETITIONERS, VS. SANDIGANBAYAN (SEC...**

G.R. No. 122058. May 05, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Docketed as Criminal Case No. 13966 before the Second Division[1] of the Sandiganbayan, the Amended Information charging the herein petitioners with a violation of Section 3, paragraph (e) of R.A. No. 3019,[2] alleges:

"That on or about August 1988, in the Municipality of Muntinlupa, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused all public officers being the Mayor (Ignacio R. Bunye), Vice Mayor (Jaime D. Fresnedi), Municipal Attorney (Victor C. Aguinaldo), Municipal Councilors (Carlos C. Tensuan, Alejandro L. Martinez, Epifanio A. Espeleta, Rey E. Bulay, Lucio B. Constantino, Roman E. Niefes, Nemesio Q. Mozo, Rufino J. Joaquin, Nolasco L. Diaz and Roger C. Smith, Barangay Chairman of Putatan (Rufino Ibe) and Barangay Chairman of Alabang (Nestor Santos), all in the municipality of Muntinlupa, Metro Manila, said accused while in the performance of their official functions in conspiracy with one another and taking advantage of their official positions, did then and there wilfully, unlawfully, and feloniously enact Kapasiyahan Bilang 45 on August 1, 1988, and on the basis thereof, forcibly took possession of the New Public Market in Alabang, Muntinlupa, Metro Manila, and thereafter took over the operation and management of the aforesaid public market starting August 19, 1988, despite the fact that, there was a valid and subsisting lease contract executed on September 2, 1985 for a term of 25 years, renewable for another 25 years, between the Municipality of Muntinlupa, Metro Manila, represented by the former Municipal Mayor Santiago Carlos, Jr. and the Kilusang Bayan sa Paglilingkod ng mga Magtitinda sa Bagong Pamilyang Bayan ng Muntinlupa, Inc. (Kilusang Magtitinda, for brevity), a Cooperative, represented by its General Manager then, Amado G. Perez, and despite also the warnings from COA Chairman Domingo and MMMC Governor Cruz `that appropriate legal steps be taken by the MMC toward the rescission/annulment of the contract xxx to protect the interest of the Government,' and `x x x to evaluate thoroughly and study further the case to preclude possible damages of financial liabilities which the Court may adjudge against that municipality as an off-shoot of the case, which forcible take-over had caused undue injury to the aforesaid Cooperative members, and in effect, the herein accused themselves, unwarranted benefits, advantage or preference in the discharge of their official functions as aforesaid, through evident bad faith or gross inexcusable negligence, considering that, the Cooperative members had introduced improvements, including the construction of the `KBS' Building, RR Section-Phases I and II, asphaltting of the roads surrounding the market place, and for the purpose, the cooperative had invested Thirteen Million Four Hundred Seventy Nine Thousand Nine Hundred Pesos (P13,479,900.00) in connection therewith, which had been deposited in trust to the Municipal Government, and in consideration thereof, the cooperative was extended the above long term lease to manage and operate the public market and to pay a monthly rental of P35,000.00 only -- said offense having been committed by the accused in their performance of official duties." [3]

On July 24, 1992, petitioners interposed a Motion to Dismiss,[4] placing reliance on the September 23, 1991 Decision[5] of the Court of Appeals in CA-G.R. SP No. 16930[6] "that unless and until declared to be unconstitutional and expressly annulled" Resolution No. 45[7] "deserves the presumption of constitutionality and therefore is entitled to obedience and respect." [8]

On September 23, 1992, the respondent court denied petitioners' motion to dismiss on the ground that the C.A. Decision cited by movants did not touch squarely on the constitutionality of the subject Resolution No. 45[9].

After trial on the merits, the Sandiganbayan came out with its July 26, 1995 Decision,[10] finding petitioners guilty of a violation of the Anti-graft and Corrupt Practices Act and sentencing them, thus:

"WHEREFORE, judgment is hereby rendered finding accused Ignacio Bunye y Rivera, Jaime Fresnedi y de la Rosa, Victor Aguinaldo y Duliabi, Carlos Tensuan y Gutierrez, Roman Niefes y Esporlas, Nemesio Mozo y Rillana, Rufino Joaquin y Bunye, Nolasco Diaz y Lampito, Roger Smith y de la Cruz and Rufino Ibe y Lacanilao GUILTY beyond reasonable doubt as co-principals in the violation of Section 3, paragraph (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and each of them are hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from SIX (6) YEARS and ONE (1) MONTH, as the minimum, to TEN (10) YEARS and ONE (1) DAY, as the maximum, to indemnify, jointly and severally, the offended party, the Kilusang Bayan sa Paglilingkod Ng Mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinlupa, Inc. (KBMBPM) in the amount of P13,479,900.00 as actual damages, and to pay their proportionate share of the costs of this action.

xxx

SO ORDERED."

With the denial of their Motion for Reconsideration,[11] petitioners found their way to this Court via the present Petition for Review on Certiorari anchored on the following submissions:

I.

WITH ALL DUE RESPECT, THE HONORABLE COURT'S DECISION PROCEEDS FROM THE GRAVELY ERRONEOUS PREMISE THAT A COURT ACTION IS NECESSARY IN REVOKING AND CANCELLING THE LEASE CONTRACT DATED 02 SEPTEMBER 1985 (EXHIBIT 'D-5') DESPITE THE FACT THAT IT IS INDUBITABLY A VOID CONTRACT;

II.

WITH ALL DUE RESPECT, THE HONORABLE COURT SHOULD HAVE RENDERED A JUDGMENT OF ACQUITTAL SINCE KAPASIYAHAN BILANG 45 (EXHIBIT 'K' and 'K-1') HAS NOT BEEN DECLARED UNCONSTITUTIONAL WHICH IS THEREFORE ENTITLED TO OBEDIENCE AND RESPECT; THUS, ALL OFFICIAL ACTS DONE PURSUANT THERETO, SUCH AS THE CHALLENGED ACTS OF THE ACCUSED-MOVANTS, ARE VALID AND LEGAL.

III.

WITH ALL DUE RESPECT, THE RECORDS SHOW THAT THE ACUSED-MOVANTS DID NOT VIOLATE SECTION 3, PARAGRAPH (E) OF REPUBLIC ACTS NO. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), SINCE ELEMENTS OF THE OFFENSE HAVE NOT BEEN ESTABLISHED.

- THE ACCUSED-MOVANTS DID NOT COMMIT ANY PROHIBITED ACTS.
- NO UNDUE INJURY WAS CAUSED TO ANY PARTY.
- NO UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE WAS GIVEN TO ANY PARTY.

- THE ACCUSED-MOVANTS DID NOT ACT WITH MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE.

- THE ACCUSED-MOVANTS CLEARLY ACTED IN GOOD FAITH IN REVOKING AND CANCELLING THE LEASE CONTRACT DATED 02 SEPTEMBER 1985 (EXHIBIT `D-5') AND IN IMPLEMENTING KAPASIYAHAN BILANG 45 (EXHIBITS `K' AND `K-1').

IV.

WITH ALL DUE RESPECT, THERE IS NO BASIS IN HOLDING THE ACCUSED-MOVANTS LIABLE FOR ACTUAL DAMAGES.

To support its verdict of conviction under scrutiny, the Sandiganbayan ratiocinated:

"Stripped to its barest essentials, the actuation projected by the evidence on record is very much akin to a contract of leasehold with a definite term and fixed consideration, but which the landlord unilaterally decided to revoke and cancel and thereafter physically take over the leased premises. In wanton disregard of existing laws on obligations and contracts, he bypasses the courts wherein the legal issue as to whether or not such revocation or cancellation is justified should be judicially determined.

In the case at bar, the situation is very much worse, aggravated by the accused's wilful and deliberate disregard of pertinent legal advice and directives of the Metro Manila Commission and the Commission on Audit to take the necessary legal steps to rescind the contract of lease and which course of action was even prescribed in the grant of authority to accused Bunye in Kapasiyahan Bilang No. 45. Thus, the conspiracy to take over the management and operation of the new public market was initiated by the enactment of Resolution No. 45 on August 1, 1988, followed by the forcible take-over of the leased premises on August 19, 1988. In the implementation of the conspiracy, the accused acted clearly in evident bad faith, if not with gross inexcusable negligence, totally ignoring the rights of the officers and members of the KBMBPM arising out of a valid and subsisting lease contract which had not been bilaterally cancelled or judicially rescinded and which acts caused undue injury to said cooperative and its members." [12]

Gleanable from the aforecited ratiocination by respondent court is the crucial factual issue of whether or not the unilateral revocation of subject lease contract was effected with evident bad faith?

On September 2, 1985, a lease contract denominated as Contract To Manage and Operate the New Muntinlupa Public Market [13] was entered into by the Municipal Government of Muntinlupa, represented by the then Mayor Santiago V. Carlos, Jr., and the Kilusang Bayan sa Panglilingkod ng mga Magtitinda ng Bagong Pamilihan Bayan ng Muntinlupa, Inc., (KBMBPM), represented by its former General Manager Amado G. Perez.

The said contract stipulated, among others:

"That the term of this Contract shall be for TWENTY FIVE (25) years to commence on September 2, 1985 renewable for another twenty five (25) years unless sooner terminated and/or rescinded by the mutual agreement of the parties;

That the GOVERNMENT and the COOPERATIVE have agreed that the latter shall pay unto the former a monthly consideration of THIRTY FIVE THOUSAND (P35,000.00) PESOS, Philippine Currency, payable in advance within the first five (5) days of every month, provided that the consideration herein agreed shall be increased by ten percent (10%) each year during the first five years only;

That the GOVERNMENT shall assist the COOPERATIVE in the maintenance of peace and order and in such other facilities as may be necessary and requested by the latter for the effective management and operation of the market;

That the COOPERATIVE shall at all times and at its exclusive expense maintain the following:

- Health and sanitation of the market in accordance with existing laws and rules and regulations and those which the GOVERNMENT shall promulgate from time to time;
- Payment of electric bills;
- Security problems and orderliness with the market premises;
- Payment of monthly dues as herein before mentioned; and
- As the sole spokesman and representative of the market vendors in the New Muntinlupa Public Market, to adapt such rules and regulations not contrary to existing laws and regulations for the successful operation and mangement of the market."

Section 149, paragraph (3) of Batas Pambansa Blg. 337,[14] the law in force at the time of the execution of subject contract, provides:

"When any ferry, market, or slaughterhouse belonging to a municipality is to be leased to a private party, it shall be awarded to the highest bidder for a period of not less than one year but not exceeding five years. The lease may be reviewed for a period not exceeding the original lease and under such terms as the sangguniang bayan may impose."

Explicit in the aforecited provision of law is the requirement of public bidding before a government contract may be awarded, and the term of the contract is not to exceed five (5) years.

The term of twenty-five (25) years of the lease contract involved violates Section 149, paragraph (3) of B.P. Blg. 337. In *Spouses Terrado vs. Court of Appeals*,[15] the Court held:

"Neither can the Municipality grant the exclusive privilege of fishing for a period more than five (5) years, whereas in the instant case, the period granted the Manager-Administrator was for twenty-five (25) years, renewable for another twenty-five (25) years.

xxx

Since Ordinance No. 8 granted fishery privileges exclusively to the private respondent without the benefit of public bidding and for a period exceeding (5) years, the said ordinance and the contract of management executed in accordance therewith were null and void ab initio xxx."

It may be argued that "fishery" is entirely different or distinct from "market" to warrant the application of the laws regulating the former to the latter. In the case of *Municipality of San Luis vs. Ventura*,[16] this Court ruled:

"... [W]hen the council grants the exclusive privilege of fishery or the right to conduct a fish-breeding ground to any private property, it should do so through a public auction, letting it to the highest bidder, in the same manner as is being done in exploiting a ferry, a market, or a slaughterhouse belonging to the municipality."

In its assailed Resolution, the respondent Sandiganbayan concluded that the absence of public bidding did not render the lease contract in question null and void because "the KBMBPM, being a duly-registered cooperative under P.D. No. 175, [it] is exempted from bidding requirements pursuant to Regulation No. 40 of Letter of Implementation (LOI) No. 23..."[17]

But there is tenability in petitioners' submission that subject lease contract was grossly disadvantageous to the government. For instance, the monthly rental paid thereunder by the KBMBPM to the Municipal government of Muntinlupa amounted to a measly five percent (5%) of the total monthly income of KBMBPM. The lease contract stipulated for a monthly rental of Thirty-Five Thousand (P35,000.00) Pesos only although records show that in 1987, the monthly income of the public market contracted for was no less than Seven Hundred Thousand

(P700,000.00) Pesos. While the said contract had a provision for a ten (10%) percent increase in the rental each year during the first five (5) years, the same contract was silent on any increase of the rent during its remaining twenty (20) years. The Court not being unmindful of economic realities, such as inflation and the depreciation of the Philippine peso which diminish the purchasing value of the local currency, it perceives that the projected monthly rental of P51,243.50[18] in 1990 would have been greatly reduced by year 2015, when the lease contract would have ended if not earlier rescinded. Indeed, the rescinded lease contract was grossly disadvantageous to the Municipality of Muntinlupa, which later metamorphosed into a metropolis.

What is more, too evident to be overlooked is the failure of KBMBPM to comply with the contractual stipulations under the Health and Sanitation Clause[19] of subject lease contract. In open court, accused Ignacio Bunye (petitioner here) testified:

"x x x

ATTY. ALAMPAY :

Q: The other portion of Exhibit 2 that you said upon review, you concluded disadvantageous to the government was the provision thereof marked as Exhibit 2-c to the effect that the Perez Cooperative undertook to maintain the health and sanitation facilities of the public market. What specifically did you find to be irregular or compelling of redress against this provision?

WITNESS (MAYOR BUNYE):

A: One thing, the garbage are not collected on a regular basis and in our several ocular inspection, we found there were maggots under the pile of garbage and we also found out, there was sno (sic) sufficient ventilation in the market so much so that the odor inside the market sticks to the clothes of the persons inside the market and when you go out, you smell like fish and also we found out that the supply of water was inadequate. There was no running water in the wet section as a result of which, the wet section is always muddy and the remnants of the fish, the scales, the intestines of the fish are found on the floor. There was also no adequate safeguard as far as fire exists are concerned and there was only one toilet and it was ...

Q: Now, after the municipality took over the management and operation thereof specifically the Interim Market Commission, What did you do interim about these problems in the health and sanitation?

A: We took necessary corrective measures as far as water problemis (sic) concerned, the Interim Market Commission directed this over-head water tank, the IMC provided this over-head water tank and the IMC bought high speed spray so that the wet market floor could be washed on a regular basis and in order to improve the ventilation, the commission installed over-head fans and blowers so the stale could be removed regularly and toilets were constructed so that there was regular water rinsing and we provided regular persons to maintain this. We provided fire ... [extinguishers] to safeguard safety against fire. We caused the assignment of one municipal fire truck in the immediate vicinity and lastly, we have this parking area which was provided for the market goers." [20]

In a letter[21] dated March 14, 1988, former COA Chairman Eufemio C. Domingo wrote:

"...[W]e recommend that immediate appropriate legal steps be taken by the Metro Manila Commission (MMC) toward the rescission/annulment of the contract in question to protect the interest of the Government."

The response of then Chairman of Metro Manila Commission Elfren S. Cruz was to the following effect: [22]

... [T]his commission hereby grants the authority to that Municipality to take the necessary legal steps for the cancellation/rescission of above cited contract and make representation, with KBMBPM for the immediate transfer/take-over of the possession, management and operation of the New Muntinlupa Market to the Municipal Government of Muntinlupa. xxx."

In finding and concluding that the accused (petitioners here) acted in evident bad faith in the implementation of the aforesaid directives, the respondent court equated "legal steps" to "legal actions" so much so that the failure of petitioners to sue the Cooperative for the rescission of subject contract was adjudged by the Sandiganbayan as non-compliance with the said directives of the Metro Manila Commission (MMC) and Commission on Audit (COA).

The aforementioned directives of MMC and COA could not be taken as instruction for the bringing of an action against the KBMBPM for the rescission of subject lease contract. Contrary to the conclusion reached by the respondent court, petitioners did not ignore or disregard the said directives of MMC and COA.

As regards the finding a quo that the revocation or rescission of subject contract was effected sans any notice, suffice it to invite attention that prior to the symbolic and ceremonial take-over of the new public market of Muntinlupa by the petitioners herein, a lot of posters[23] announcing the intention of the Municipality of Muntinlupa to take over the management and operation of the New Muntinlupa Public Market, were posted in the vicinity of the market place, where the officers of KBMBPM were then holding office. Moreover, having actively participated in the public hearing on the enactment and implementation of Resolution No. 45, Mr. Amado Perez, the General Manager of KBMBPM at the time, had actual knowledge of the impending take-over[24] of the Muntinlupa public market by the local government. Undoubtedly, KBMBPM was duly notified of such development and could not validly feign any denial of their right to due process.

Section 3, paragraph (e) of Republic Act No. 3019, provides:

"Corrupt Practices of Public Officers - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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 or government corporations charged with the grant of licenses or permits or other concessions."

In *Domingo Ingco, et al. vs. Sandiganbayan*,[25] this court held that the elements of the offense charged are as follows:

- That the accused are public officers or private persons charged in conspiracy with them;
- That said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions;
- That they cause undue injury to any party, whether the Government or a private party;
- That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- That the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

That conviction must be based on evidence beyond reasonable doubt is a well-entrenched principle and doctrine in this jurisdiction. Pursuant thereto, all elements of the accusation must be proved beyond reasonable doubt. Failure or inability of the prosecution to substantiate any of the elements of the offense charged is fatal to the cause of the People; it renders inevitable the acquittal of the accused.

That petitioners are public officers within legal contemplation is beyond cavil. But are the other elements of the

offense complained of attendant?

As regards the amount of P13,479,000.00 allegedly received by the government of Muntinlupa from the market vendors, there is no clear evidence as to its exact nature. While Mr. Amado Perez, former General Manager of KBMBPM, testified that the said amount of P13,479,000.00 was collected as a trust fund,[26] the said witness failed to produce any documentary evidence on the matter because according to him, no receipt therefor was issued. Then, on the witness stand, Mrs. Nayesda Ponzones, Chair of the Board of Directors of KBMBPM, theorized that subject amount represented "[advanced] payment of the stalls they (vendors) want to get"[27]

Records on hand reveal, however, that the contract for the management and operation of the New Muntinlupa Public Market was awarded to "the same KBMBPM but with a new set of duly elected officers." [28] Thus, as it can gleaned unerringly that the business interest of the stallholders concerned has never been adversely affected, and no market vendor was displaced or prevented from operating in the New Muntinlupa Public Market, as a result of the implementation of the challenged Resolution No. 45, it stands to reason and conclude that no undue injury was caused by the petitioners herein to subject market vendors or to the respondent KBMBPM. In light of the foregoing, there is no therefore sustainable basis or ground for requiring the Municipality (now City) of Muntinlupa to reimburse the aforesaid amount of P13,479,000.00 supposedly collected from the market vendors involved. Consequently, the P13,479,000.00 awarded below for actual damages in favor of respondent KBMBPM cannot be upheld.

Absent any undue damage or injury suffered by the KBBPM by reason of the enactment and implementation of Resolution No. 45, the fourth element of the offense charged is wanting.

All things studiedly viewed in proper perspective and it appearing that the inculpatory facts and circumstances are capable of two or more interpretations, one of which is consistent with the innocence of the accused and the other consistent with their guilt, we are of the irresistible finding and conclusion that the evidence cannot hurdle the test of moral certainty required for conviction. (People of the Philippines vs. Danny Godoy, G.R. Nos. 115908-09, December 6, 1995, 250 SCRA 676, 704-705; People of the Philippines vs. Pedro Pagaura y Ticling, G.R. No. 95353, January 28, 1997, 267 SCRA 17, 25)

To the fore, once again, is what Alfonso El Sabio said long time ago, as quoted by the late Justice Conrado V. Sanchez in People vs. Nicolas Cunanan, et al., No. L-17599, April 24, 1967, 19 SCRA 769, 784: "Mas vale que queden sin castigar diez reos presuntos, que se castigue uno inocente."

WHEREFORE, the Petition is GRANTED, the judgment of conviction rendered by the Sandiganbayan in Criminal Case No. 13966 is SET ASIDE and for want of evidence to prove their guilt beyond reasonable doubt, the petitioners, IGNACIO R. BUNYE, JAIME R. FRESNEDI, CARLOS G. TENSUAN, ROMAN E. NIEFES, ROGER C. SMITH, RUFINO B. JOAQUIN, NOLASCO L. DIAZ, and RUFINO IBE, are hereby ACQUITTED of the offense charged. With costs de oficio.

SO ORDERED.

Romero, and Gonzaga-Reyes, JJ., concur.

Vitug, and Panganiban, J., concur in the result.

[1] Sandiganbayan, Second Division composed of Associate Justices Romeo M. Escareal, Chairman; Minita Chico-Nazario and Roberto M. Lagman, Members.

[2] Otherwise known as "The Anti-Graft and Corrupt Practices Act."

- [3] Annex "C," Petition; Rollo, pp. 248-50.
- [4] Annex "D," Petition; Rollo, pp. 251-58.
- [5] Annex "A," of Annex "D," Petition; Rollo, pp. 259 - 67.
- [6] Civil Case entitled "KBMBPM, Inc. vs. Hon. Buenaventura Guerrero, et al."
- [7] Officially known as "Kapasiyahan Blg. 45."
- [8] CA Decision, p. 6; Rollo, p. 264.
- [9] Annex "E," Petition; Rollo, pp. 268-271.
- [10] Annex "A," Petition; Rollo, pp. 149-216.
- [11] Annex "Y," Petition, Rollo, pp. 964 - 1051.
- [12] Sandiganbayan's Decision, pp. 45- 46; Rollo, pp. 193-194.
- [13] Exhibit "D-5," Rollo, pp. 441-444.
- [14] The Local Government Code of 1983.

[15] 131 SCRA 373 [1984].

- [16] 56 Phil. 329, 333.
- [17] Sandiganbayan's Resolution dated October 4, 1995, p. 19 ; Rollo, p. 236.
- [18] The approximate monthly rental fee for 1990 - the fifth year of the first five years starting 1985.
- [19] See: Paragraph (d) of the contract, pp. 8-9 (supra).
- [20] TSN, 15 October 1993, pp. 32-33; Rollo, pp. 728 - 29.
- [21] Exhibit 4 - Bunye (Opposition), p. 877.
- [22] Exhibit 5 - Bunye (Opposition), p. 878.
- [23] Exhibit "F," Rollo, p. 446; Annexes "W" and "X," Rollo, p. 514 - 15.
- [24] TSN , 15 October 1993, pp. 18-21; Rollo, pp. 714 - 17.

[25] 272 SCRA 563, 574 [1997].

- [26] TSN of Prosecution Witnesss, Mr. Amado Perez, October 19, 1990; p. 34; Rollo, p. 348.
- [27] TSN of Prosecution Witness, Mrs. Nayesda Ponzones, May 22, 1991, p. 24; Rollo, p. 652.
- [28] TSN, November 24, 1993, pp. 23; Rollo, p. 770.

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