

CRESENTE Y. LLORENTE, JR., PETITIONER, VS. SANDIGANBAYAN AND LETICIA G. FUERTES, RESPONDENTS.

G.R. No. 122166. March 11, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In a prosecution for violation of Section 3[e] of the Anti-Graft Law, that is, “causing undue injury to any party,” the government prosecutors must prove “actual” injury to the offended party; speculative or incidental injury is not sufficient.

[The Case]

Before us is a petition for review of the Decision promulgated on June 23, 1995 and the Resolution promulgated on October 12, 1995 of the Sandiganbayan in Criminal Case No. 18343, finding Cresente Y. Llorente, Jr. guilty as charged.

Llorente, then municipal mayor of Sindangan, Zamboanga del Norte, was charged with violation of Sec. 3[e] of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, under an Information dated October 22, 1992, textually reproduced as follows:[1]

“That in or about and during the period of July, 1990 to October, 1991, or for sometime subsequent thereto, in the Municipality of Sindangan, Province of Zamboanga del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Cresente Y. Llorente, Jr., a public officer, being then the Mayor of Sindangan, Zamboanga del Norte, in the exercise of his official and administrative functions, did then and there, wilfully, unlawfully and criminally with evident bad faith refuse to sign and approve the payrolls and vouchers representing the payments of the salaries and other emoluments of Leticia G. Fuertes, without just valid cause and without due process of law, thereby causing undue injury to the said Leticia G. Fuertes.

CONTRARY TO LAW.”

Duly arraigned on March 29, 1993, petitioner, with the assistance of counsel, entered a plea of “NOT GUILTY.”[2] After trial in due course, the Sandiganbayan[3] rendered the assailed Decision, disposing as follows:[4]

“WHEREFORE, judgment is hereby rendered finding accused Mayor Cresente Y. Llorente, Jr. GUILTY beyond reasonable doubt as principal of the crime of Violation of Section 3(e) of Republic Act 3019, as amended, and he is hereby sentenced to suffer imprisonment of SIX (6) YEARS and ONE (1) MONTH, as minimum to SEVEN (7) YEARS, as maximum; to further suffer perpetual disqualification from public office; and to pay the costs.”

Respondent Court denied the subsequent motion for reconsideration in the assailed Resolution, thus:[5]

“WHEREFORE, accused’s ‘Motion for Reconsideration and/or New Trial’ is hereby DENIED for lack of

merit. His 'Motion for Marking of Additional Exhibits Cum Offer of Documentary Exhibits in Support of Motion for Reconsideration and/or New Trial' is now rendered moot and academic."

Hence, this petition.[6]

[The Facts]

[Version of the Prosecution]

As found by Respondent Court, the prosecution's version of the facts of this case is as follows:[7]

"After appreciating all the evidence on both sides, the following uncontroverted facts may be gleaned:

1. Accused Mayor Cresente Y. Llorente, Jr., at the time the alleged act was committed, was the Municipal Mayor of Sindangan, Zamboanga del Norte.
2. Private [C]omplainant, Leticia C. Fuertes, is the duly appointed Assistant Municipal Treasurer in the same municipality since October 18, 1985.
3. Starting 1986, private complainant was detailed to different offices, as follows:
 - (a) Municipality of Katipunan, Zamboanga del Norte – from April, 1986 to August, 1987 as OIC Municipal Treasurer.
 - (b) Municipality of Roxas, Zamboanga del Norte – from September, 1987 to March, 1988 as OIC Municipal Treasurer.
 - (c) Office of the Provincial Treasurer of Zamboanga del Norte – from April, 1988 to May, 1988.
 - (d) Municipality of Piñan, Zamboanga del Norte – from June, 1988 to June, 1990 as OIC Municipal Treasurer.
4. In July, 1990, she was returned to her post as Assistant Municipal Treasurer in the town of Sindangan.

She was not provided with office table and chair nor given any assignment; neither her daily time record and application for leave acted upon by the municipal treasurer per instruction of accused Mayor (Exh. 'G-2'; 'G-3').

5. On July 23, 1990, the Sangguniang Bayan of Sindangan, Zamboanga del Norte, presided by accused Mayor, passed Resolution No. SB – 214 (Exh. '3'), vehemently objecting to the assignment of complainant as Assistant Municipal Treasurer of Sindangan.

6. On March 12, 1991, accused Municipal Mayor received a letter (SB Resolution No. 36) from the Sangguniang Bayan of the Municipality of Piñan, demanding from the private complainant return of the amount overpaid to her as salaries (par. 9, p. 2 of Exh. '4' – counter-affidavit of accused Mayor).

7. On May 22, 1991, private complainant filed a Petition for Mandamus with Damages (Exh. 'E') against the accused Mayor and the Municipality of Sindangan before Branch II, Regional Trial Court of Sindangan, Zamboanga del Norte docketed as Special Proceedings No. 45, for the alleged unjustified refusal of Mayor Llorente to sign and/or approve her payrolls and/or vouchers representing her salaries and other emoluments as follows: (a) salary for the month of June, 1990 in the amount of P5,452.00 under disbursement voucher dated September 5, 1990 (Exh. 'H'). Although complainant rendered services at the municipality of Piñan during this period, she could not collect her salary there considering that as of that month, Piñan had already appointed an Assistant Municipal Treasurer. When she referred the matter to the Provincial Auditor, she was advised to claim her salary for that month with her mother agency, the Municipality of Sindangan, [(Ip. 12, TSN of August 9, 1994; 10th paragraph of complainant's Supplemental Affidavit marked Exh. 'G'); (b) salary differential for the period from July 1, 1989 to April 30, 1990 in the total amount of P19,480.00 under

disbursement voucher dated August, 1990 (Exh. 'I'); (c) 13th month pay, cash gift and clothing allowance under Supplemental Budget No. 5, CY 1990 in the total amount of P7,275 per disbursement voucher dated December 4, 1990 (Exh. 'J'); (d) vacation leave commutation for the period from October to December 31, 1990 in the total amount of P16,356.00 per disbursement voucher dated December 3, 1990 (Exh. 'K'); (e) RATA for the months of July, August and September, 1990, January and February, 1991 in the total amount of P5,900.00 (par. 12 & 16 of Exh. 'E'); and (f) salaries for January and February, 1991 in the total amount of P10,904.00 (par. 17 of Exh. 'E').

8. Accused Mayor did not file an answer; instead, he negotiated for an amicable settlement of the case (p. 24, TSN of August 10, 1994). Indeed, a Compromise Agreement (Exh. 'A') dated August 27, 1991, between the accused and private complainant was submitted to and approved by the court, hereto quoted as follows:

'COMPROMISE AGREEMENT

'That the parties have agreed, as they hereby agree, to settle this case amicably on the basis of the following terms and conditions, to wit:

'(a) That the respondent Mayor Cresente Y. Llorente, Jr. binds himself to sign and/or approve all vouchers and/or payrolls for unpaid salaries, RATA, Cash-gifts, 13th month pay, clothing allowance, salary differentials and other emoluments which the petitioner is entitled is Assistant Municipal Treasurer of Sindangan, Zamboanga del Norte;

'(b) That the parties herein hereby waive, renounce and relinquish their other claims and counter-claims against each other;

'(c) That the respondent Mayor Cresente Y. Llorente Jr. binds himself to sign and/or approve all subsequent vouchers and payrolls of the herein petitioner.'

9. On August 27, 1991, a Decision (Exh. 'B') was rendered by Judge Wilfredo Ochotorena on the basis of the aforesaid compromise agreement.

10. For his failure to comply with the terms of the compromise agreement, private complainant, thru counsel, filed a Motion for Execution on September 12, 1991. A Writ of Execution (Exh. 'C') was issued by the Court on September 17, 1991, and served [on] the accused on September 23, 1991.

11. As shown in the Sheriff's Return dated November 19, 1991 (Exh. 'D'), private complainant was paid her salaries for the period from January, 1991 to August, 1991, while the rest of her salaries including the RATA and other emoluments were not paid considering the alleged need of a supplemental budget to be enacted by the Sangguniang Bayan of Sindangan per verbal allegation of the municipal treasurer.

12. Complainant was not also paid her salaries from July to December 1990; September and October, 1991; RATA for the period from July 1990 to June 1994 (admission of accused, pp. 8-9, TSN of June 27, 1994, a.m.; Exh. 'E'; p. 17, TSN of June 27, 1994).

13. Sometime in 1993, accused municipal mayor received from the Municipality of Piñan, Bill No. 93-08 (Exh. '1'), demanding from the Municipality of Sindangan settlement of overpayment to complainant Fuertes in the amount of P50,643.93 per SB Resolution No. 6 sent on July 23, 1990. The bill was settled by the Municipality of Sindangan in December, 1993 per Disbursement Voucher No. 101-9312487 dated December 2, 1993 (Exh. '2').

14. Private complainant was able to receive complete payment of her claims only on January 4, 1993 in the form of checks all dated December 29, 1992 (as appearing on Exhs. 'H', 'I', 'J', 'K' of the prosecution, Exhs. '6', '7', '8', of the defense) except her RATA which was given to her only on July 25, 1994, covering the period from July 1990 to December, 1993 amounting to P55,104.00, as evidenced by Disbursement

Voucher dated July 25, 1994 (Exh. '5')."

[Version of the Defense]

While admitting some delays in the payment of the complainant's claims, petitioner sought to prove the defense of good faith -- that the withholding of payment was due to her failure to submit the required money and property clearance, and to the Sangguniang Bayan's delayed enactment of a supplemental budget to cover the claims. He adds that such delays did not result in "undue injury" to complainant. In his memorandum, petitioner restates the facts as follows:[8]

"1. Complainant xxx was appointed assistant municipal treasurer of Sindangan, Zamboanga del Norte on October 18, 1985. However, starting 1986 until July 1990, or for a period of about four (4) and one half (1/2) years, she was detailed in other municipalities and in the Office of the Provincial Treasurer of Zamboanga del Norte. She returned as assistant treasurer of Sindangan in July 1990. (Decision, pp. 5-6).

2. As complainant had been working in municipalities and offices other than in Sindangan for more than four (4) years, her name was removed from the regular payroll of Sindangan, and payment of past salaries and other emoluments had to be done by vouchers. When complainant xxx presented her vouchers to petitioner, the latter required her to submit clearances from the different offices to which she was detailed, as well as a certificate of last payment as required by COA regulations (Tsn, p. 11, Aug. 10, 1994). Instead of submitting the required documents, Mrs. Fuertes said that 'what I did, I endorsed my voucher to the mayor through the municipal treasurer' (Tsn, p. 13, June 27, 1994). The municipal treasurer could not, however, process the vouchers and certify as to the availability of funds until after the Sangguniang Bayan had passed a supplemental budget for the purpose (Exhs. D and 6-c Motion), which came only in December 1992.

3. Petitioner, in the meanwhile, received on March 12, 1991 SB Resolution No. 36 from the Municipality of Pinan, demanding from Mrs. xxx Fuertes the reimbursement of P105,915.00, and because of this demand, he needed time to verify the matter before acting on Mrs. Fuertes' claims (Exh. 4). Mrs. Fuertes admitted that she had at the time problems of accountability with the Municipality of Pinan. She testified:

'Q. Counsel now is asking you, when you went back to Sindangan there was [sic] still problems of the claims either against you or against the Municipality of Sindangan by the municipalities had, [sic] in their minds, overpaid you?

A. Yes, your Honor, that was evidence[d] by the bill of the Municipality of Pinan to the Municipality of Sindangan.' (Tsn, p. 18, Aug. 3, 1994).

4. Petitioner also stated that he could not act on complainant's claims because she had not submitted the required money and property accountability clearance from Pinan (Tsn, 11, Aug. 10, 1994) and that at the time the Sangguniang Bayan had not appropriated funds for the purpose. (Tsn, pp. 18, 30, 42-43, Aug. 10, 1994). Nonetheless, petitioner included Mrs. Fuertes' name in the regular annual budget beginning 1991 (Exhs. 4-b, 4-d, 4-f), as a result of which she had been since then receiving her regular monthly salary.

5. On May 21, 1991, Mrs. Fuertes filed a complaint xxx. Petitioner filed his answer to the complaint, alleging as a defense, that plaintiff did not exhaust administrative remedies. (Annex B, p. 3, Petition; Exh. 1-Motion). On August 27, 1991, the parties entered into a compromise agreement, which the trial court approved (Exh. B).
x x x.

6. Upon motion of counsel for Mrs. Fuertes, the trial court issued a writ of execution of the compromise judgment. However, the writ of execution was addressed only to petitioner; it was not served on the municipal Sangguniang Bayan. x x x.

Thus, Mrs. Fuertes had been receiving her regular salary from January, 1991 because petitioner had included her name in the regular budget beginning 1991, which fact complainant did not dispute. With respect to her

other claims for past services in other offices, Municipal Treasurer, Mrs. Narcisa Caber, informed that a supplemental budget for such purpose to be passed by the Sangguniang Bayan was necessary before she could be paid thereof. Being the municipal treasurer, Mrs. Caber knew that without such supplemental budget, payment of Mrs. Fuertes' other claims could not be made because the law requires that 'disbursements shall be made in accordance with the ordinance authorizing the annual or supplemental appropriations' (Sec. 346, RA 7160) and that 'no money shall be disbursed unless xxx the local treasurer certifies to the availability of funds for the purpose.' (Sec. 344, RA 7160).

7. Petitioner had instructed the municipal budget officer to prepare the supplemental budget for payment of complainant's unpaid claims for submission to the Sangguniang [Bayan] for enactment. (Tsn, pp. 32-33, Aug. 10, 1994). The budget officer, Mr. Narciso Siasico stated as follows:

'1. I am the budget officer for the Municipality of Sindangan, Zamboanga del Norte, a position I have held since 1981.

xxx xxx xxx

3. Immediately after said mandamus case was settled through a compromise agreement, Mayor Llorente instructed me to prepare the necessary budget proposals for the deliberation and approval of the Sangguniang Bayan;

xxx xxx xxx.'

8. Instead of waiting for the Sangguniang Bayan to enact the budget or of securing an alias writ of execution to compel the Sangguniang Bayan to pass the same, Mrs. Fuertes filed a criminal complaint with the Office of the Ombudsman under date of October 28, 1991, admitting receipt of her salaries from January 1991 and saying she had not been paid her other claims in violation of the compromise judgment. (Exh. F). She had thus made the Office of the Ombudsman a collecting agency to compel payment of the judgment obligation.

9. While the budget proposal had been prepared and submitted to the Sangguniang Bayan for action, it took time for the Sangguniang Bayan to pass the supplemental budget and for the Provincial Board to approve the same. It was only on December 27, 1992 that the municipal treasurer and the municipal accountant issued a certification of availability of funds for the purpose. Petitioner approved the vouchers immediately, and in a period of one week, Mrs. Fuertes was paid all claims, as evidenced by the prosecution's Exhs. H, I, J and K, which were the four vouchers of Mrs. Fuertes, xxxx.

xxx xxx xxx

11. Petitioner testified that he could not immediately sign or approve the vouchers of Mrs. Fuertes for the following reasons:

'a) The Sangguniang Bayan had not appropriated the amounts to pay Mrs. Fuertes. (Tsn, pp. 18, 30, 42-43, Aug. 10, 1994).

b) Municipal Treasurer Caber, to whom Mrs. Fuertes endorsed her vouchers for processing, and the Municipal Accountant issued the certificate of availability of funds only on December 27, 1992 (Tsn, p. 42, Aug. 10, 1994; Exhs. H, I, J and K); and the delay in the issuance of the certificate of availability of funds was due to the delay by the Provincial Board to approve the supplemental budget. (Tsn, p. 43, Aug. 10, 1994).

[c]) He received on March 12, 1991 a demand from the Municipality of Pinan, Zamboanga del Norte, where Mrs. Fuertes last worked, for the reimbursement of P105,915.00, and the matter had to be clarified first. (Exh. 4). Mrs. Fuertes admitted that she had some problem of accountability with the Municipality of Pinan. (Tsn, p. 18, 1994). It took time before this matter could be clarified by the Municipality of Pinan reducing its claim to P50,647.093

and the Municipality of Sindangan paying said claim. (Exh. 2; Decision, p. 9).

[d]) Mrs. Fuertes had not submitted the required clearance from the Municipality of Pinan. (Tsn, p. 11, Aug. 10, 1994). He did not insist on this requirement after the trial court issued the writ of execution to implement the compromise judgment. (Tsn, p. 23, Aug. 10, 1994). Nonetheless, in the post audit of Mrs. Fuertes' accountability, the Commission on Audit issued a notice of suspension of the amount of P5,452.00 from Mrs. Fuertes for her failure to submit: '1. Clearance for money & property accountability from former office. 2. Certification as [sic] last day of service in former office. 3. Certification of last salary received & issued by the disbursing officer in former office, certified by chief accountant and verified by resident auditor.' (Exh. 2-Motion).

12. The Information dated October 12, 1992 filed against petitioner alleged that petitioner as mayor did not sign and approve the vouchers of Mrs. Fuertes for payment of her salaries and other emoluments from July 1, 1990 to October 1991, which caused her undue injury. However, the prosecution's Exh. 'D', the sheriff's return dated November 19, 1991, stated that Mrs. Fuertes had received her salary from January 1, 1991 'up to the present', which meant that even before the information was filed, she had been paid her regular salaries from January 1, 1991 to October 1991. The supplemental budget to cover payment of her other claims for past services was passed only in December 1992 and the municipal treasurer and accountant issued the certificate of availability of funds only on December 27, 1992, and Mrs. Fuertes got paid of [sic] all her other claims, including those not claimed in the Information, within one week therefrom. (Exhs. H, I, J, and K).

xxx xxx xxx."

[Ruling of the Sandiganbayan]

Respondent Court held that the delay or withholding of complainant's salaries and emoluments was unreasonable and caused complainant undue injury. Being then the sole breadwinner in their family, the withholding of her salaries caused her difficulties in meeting her family's financial obligations like paying for the tuition fees of her four children. Petitioner's defense that complainant failed to attach the required money and property clearance to her vouchers was held to be an afterthought that was brought about, in the first place, by his own failure to issue any memorandum requiring its submission. That the voucher form listed the clearance as one of the requirements for its approval had neither been brought to complainant's attention, nor raised by petitioner as defense in his answer. In any event, the payment of complainant's salary from January to November 1991, confirmed by the sheriff's return, showed that the clearance was not an indispensable requirement, because petitioner could have acted upon or approved the disbursement even without it. The alleged lack of a supplemental budget was also rejected, because it was petitioner's duty as municipal mayor to prepare and submit the "executive and supplemental budgets" under Sections 318, 320, and 444 (3)(ii) of the Local Government Code,[9] and the complainant's claims as assistant municipal treasurer, a permanent position included in the plantilla for calendar year 1990 and 1991, were classified as "current operating expenditures" for the same calendar years, which were chargeable against the general funds of the town of Sindangan. Except for the representation and transportation allowance, Fuertes' claims for thirteenth month pay, cash gift and clothing allowance were already covered by Supplemental Budget No. 5 for calendar year 1990. Petitioner's contention that funds covering complainant's claims were made available only in December 1992 was unbelievable, considering that an ordinance enacting a supplemental budget takes effect upon its approval or on the date fixed therein under Sec. 320 of the Local Government Code.

The Sandiganbayan also ruled that the petitioner's evident bad faith was the direct and proximate cause of Fuertes' undue injury. Complainant's salaries and allowances were withheld for no valid or justifiable reasons. Such delay was intended to harass complainant, because petitioner wanted to replace her with his political protege whom he eventually designated as municipal treasurer, bypassing Fuertes who was next in seniority. Bad faith

was further evidenced by petitioner's instructions to the outgoing municipal treasurer not to give the complaining witness any work assignment, not to provide her with office table and chair, not to act on her daily time record and application for leave of absence, instructions which were confirmed in the municipal treasurer's certification. (Exh. G-2).

[The Issues]

In his memorandum, petitioner submits the following issues:[10]

“1. Could accused be held liable under Sec. 3(e) of R.A. 3019 ‘in the discharge of his official administrative duties’, a positive act, when what was imputed to him was failing and refusing to sign and/or approve the vouchers of Mr[s]. Fuertes on time or by ‘inaction on his obligation under the compromise agreement’ (ibid., p. 19), a passive act? Did not the act come under Sec. 3(f) of R.A. 3019, of [sic] which accused was not charged with?

2. Assuming, arguendo, that his failure and refusal to immediately sign and approve the vouchers of Mrs. Fuertes comes [sic] under Sec. 3(e), the questions are:

(a) Did not the duty to sign and approve the same arise only after the Sangguniang Bayan had passed an appropriations ordinance, and not before? In other words, was the non-passage of the appropriation ordinance a justifiable reason for not signing the vouchers?

(b) Did Mrs. Fuertes suffer undue injury, as the term is understood in Sec. 3(e), she having been paid all her claims?

(c) Did petitioner not act in good faith in refusing to immediately sign the vouchers and implement the compromise agreement until the Sangguniang Bayan had enacted the appropriation ordinance and until Mrs. Fuertes submitted the clearance from the Municipality of Pinan, Zamboanga del Norte?”

Restated, petitioner claims that the prosecution failed to establish the elements of undue injury and bad faith. Additionally, petitioner submits that a violation of Section 3[e] of RA 3019 cannot be committed through nonfeasance.

[The Court's Ruling]

The petition is meritorious. After careful review of the evidence on record and thorough deliberation on the applicable provision of the Anti-Graft Law, the Court agrees with the solicitor general's assessment that the prosecution failed to establish the elements of the crime charged.

[First Issue: Undue Injury]

Petitioner was charged with violation of Section 3[e] of R.A. 3019, which states:

“SEC. 3. 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:

xxx xxx xxx

(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.”

To hold a person liable under this section, the concurrence of the following elements must be established beyond reasonable doubt by the prosecution:

- “(1) that the accused is a public officer or a private person charged in conspiracy with the former;
- (2) that said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions;
- (3) that he or she causes undue injury to any party, whether the government or a private party; and
- (4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.”[11]

The solicitor general, in his manifestation,[12] points out that “undue injury” requires proof of actual injury or damage, citing our ruling in *Alejandro vs. People*[13] and *Jacinto vs. Sandiganbayan*. [14] Inasmuch as complainant was actually paid all her claims, there was thus no “undue injury” established.

This point is well-taken. Unlike in actions for torts, undue injury in Sec. 3[e] cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.

In jurisprudence, “undue injury” is consistently interpreted as “actual damage.” Undue has been defined as “more than necessary, not proper, [or] illegal;” and injury as “any wrong or damage done to another, either in his person, rights, reputation or property[;] [that is, the] invasion of any legally protected interest of another.” Actual damage, in the context of these definitions, is akin to that in civil law.[15]

In turn, actual or compensatory damages is defined by Article 2199 of the Civil Code as follows:

“Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.”

Fundamental in the law on damages is that one injured by a breach of a contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant’s act. Actual pecuniary compensation is awarded as a general rule, except where the circumstances warrant the allowance of other kinds of damages.[16] Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.[17]

Furthermore, damages must not only be capable of proof, but must be actually proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork.[18] They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury.

In this case, the complainant testified that her salary and allowance for the period beginning July 1990 were withheld, and that her family underwent financial difficulty which resulted from the delay in the satisfaction of her claims.[19] As regards her money claim, payment of her salaries from January 1991 until November 19, 1991 was evidenced by the Sheriff’s Return dated November 19, 1991 (Exh. D). She also admitted having been issued a check on January 4, 1994 to cover her salary from June 1 to June 30, 1990; her salary differential from July 1, 1989 to April 30, 1990; her thirteenth-month pay; her cash gift; and her clothing allowances. Respondent Court

found that all her monetary claims were satisfied. After she fully received her monetary claims, there is no longer any basis for compensatory damages or undue injury, there being nothing more to compensate.

Complainant's testimony regarding her family's financial stress was inadequate and largely speculative. Without giving specific details, she made only vague references to the fact that her four children were all going to school and that she was the breadwinner in the family. She, however, did not say that she was unable to pay their tuition fees and the specific damage brought by such nonpayment. The fact that the "injury" to her family was unspecified or unquantified does not satisfy the element of undue injury, as akin to actual damages. As in civil cases, actual damages, if not supported by evidence on record, cannot be considered.[20]

Other than the amount of the withheld salaries and allowances which were eventually received, the prosecution failed to specify and to prove any other loss or damage sustained by the complainant. Respondent Court insists that complainant suffered by reason of the "long period of time" that her emoluments were withheld.

This inconvenience, however, is not constitutive of undue injury. In *Jacinto*, this Court held that the injury suffered by the complaining witness, whose salary was eventually released and whose position was restored in the plantilla, was negligible; undue injury entails damages that are more than necessary or are excessive, improper or illegal.[21] In *Alejandro*, the Court held that the hospital employees were not caused undue injury, as they were in fact paid their salaries.[22]

[Second Issue: No Evident Bad Faith]

In the challenged Decision, Respondent Court found evident bad faith on the part of the petitioner, holding that, without any valid or justifiable reason, accused withheld the payment of complainant's salaries and other benefits for almost two (2) years, demonstrating a clear manifestation of bad faith.[23] It then brushed aside the petitioner's defenses that complainant failed to submit money and property clearances for her vouchers, and that an appropriation by the Sangguniang Bayan was required before complainant's vouchers could be approved. It said:[24]

"Secondly, his reliance on the failure of complainant to submit the clearances which were allegedly necessary for the approval of vouchers is futile in the light of the foregoing circumstances:

xxx xxx xxx

b. The evidence on record shows that complainant's salaries for the period from January to November 1991 (included as subject matter in the mandamus case) were duly paid, as confirmed in the Sheriff's Return dated November 19, 1991 (Exh. 'D'). This means that accused, even without the necessary clearance, could have acted upon or approved complainant's disbursement vouchers if he wanted to.

c. It may be true that a clearance is an indispensable requirement before complainant will be paid of her claims, but accused could not just hide behind the cloak of the clearance requirement in order to exculpate himself from liability. As the approving officer, it was his duty to direct complainant to submit the same. Moreover, accused could not just set aside the obligation he voluntarily imposed upon himself when he entered into a compromise agreement binding himself to sign complainant's vouchers without any qualification as to the clearance requirement. Perforce, he could have seen to it that complainant secured the same in order that he could comply with the said obligation.

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Fourthly, accused's contention that the delay in the release of complainant's claim could not be attributed to him because the vouchers were only submitted to him for his signature on December 24-27, 1992; that the approval of

the budget appropriations/resolutions depends on the Sangguniang Bayan, Budget Officer and the Sangguniang Panlalawigan, is unavailing.

As revealed in the alleged newly discovered evidence themselves, particularly x x x SB Res. No. 202 and Appropriation Ordinance No. 035, both dated May 21, 1990 (Exh. '5-a'- Motion), the Sangguniang Bayan appropriated a budget of P5M in the General Fund for calendar year 1991 [the Budget Officer does not approve the budget but assists the Municipal Mayor and the Sangguniang Bayan in the preparation of the budget (Sec. 475, Local Government Code of 1991)]. Complainant's claims consisted of her salaries and other benefits for 1990 and 1991 which were classified as Current Operating Expenditures chargeable against the General Fund. It is undisputed that she was holding her position as Assistant Municipal Treasurer in a permanent capacity (her position was also designated Assistant Department Head), which was included in the plantilla for calendar years 1990 and 1991 (Exhs. '4-a' & '4-b', Motion). In Program Appropriation and Obligation by Object (Exhs. '4-c' & '4-c', Motion), appropriations were made for current operating expenditures to which complainant's claims properly appertained. xxx. Verily, complainant's claims were covered by appropriations duly approved by the officials concerned, signifying that adequate funds were available for the purpose. In fact, even complainant's claims for her 13[th] month pay, cash gift and clothing allowance, subject matter of Disbursement Voucher marked Exhibit 'J' which would need a supplemental budget was covered by 'Supplemental Budget No. 5 for CY 1990 duly approved by the authorities concerned' as shown in the voucher itself. This means that the said claim was already obligated (funds were already reserved for it) as of calendar year 1990. xxxx. It is clear, then, that as regards availability of funds, there was no obstacle for the release of all the complainant's claims."

The Court disagrees. Respondent Court cannot shift the blame on the petitioner, when it was the complainant who failed to submit the required clearance. This requirement, which the complainant disregarded, was even printed at the back of the very vouchers sought to be approved. As assistant municipal treasurer, she ought to know that this is a condition for the payment of her claims. This clearance is required by Article 443 of the Implementing Rules and Regulations of the Local Government Code of 1991:

"Art. 443. Property Clearances – When an employee transfers to another government office, retires, resigns, is dismissed, or is separated from the service, he shall be required to secure supplies or property clearance from the supply officer concerned, the provincial or city general services officer concerned, the municipal mayor and the municipal treasurer, or the punong barangay and the barangay treasurer, as the case may be. The local chief executive shall prescribe the property clearance form for this purpose."

For her own failure to submit the required clearance, complainant is not entirely blameless for the delay in the approval of her claims.

Also, given the lack of corresponding appropriation ordinance and certification of availability of funds for such purpose, petitioner had the duty not to sign the vouchers. As chief executive of the municipality Llorente could not have approved the voucher for the payment of complainant's salaries under Sec. 344, Local Government Code of 1991.[25] Also, Appropriation Ordinance No. 020[26] adding a supplemental budget for calendar year 1990 was approved on April 10, 1989, or almost a year before complainant was transferred back to Sindangan. Hence, she could not have been included therein. SB Resolution No. 202 and Appropriation Ordinance No. 035,[27] which fixed the municipal budget for calendar year 1991, was passed only on May 21, 1990, or almost another year after the transfer took effect. The petitioner's failure to approve the complainant's vouchers was therefore due to some legal obstacles,[28] and not entirely without reason. Thus, evident bad faith cannot be completely imputed to him.

"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 2[nd] 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.”[29]

In *Jacinto*, evident bad faith was not appreciated because the actions taken by the accused were not entirely without rhyme or reason; he refused to release the complainant’s salary because the latter failed to submit her daily time record; he refused to approve her sick-leave application because he found out that she did not suffer any illness; and he removed her name from the plantilla because she was moonlighting during office hours. Such actions were measures taken by a superior against an erring employee who studiously ignored, if not defied, his authority.[30]

In *Alejandro*, evident bad faith was ruled out, because the accused gave his approval to the questioned disbursement after relying on the certification of the bookkeeper on the availability of funds for such disbursement.[31]

[Third Issue: Interpretation of Causing]

The Court does not completely agree with petitioner’s assertion that the imputed act does not fall under Sec. 3[e] which, according to him, requires a positive act -- a malfeasance or misfeasance. Causing means “to be the cause or occasion of, to effect as an agent, to bring into existence, to make or to induce, to compel.”[32] Causing is, therefore, not limited to positive acts only. Even passive acts or inaction may cause undue injury. What is essential is that undue injury, which is quantifiable and demonstrable, results from the questioned official act or inaction.

In this case, the prosecution accused petitioner of failing or refusing to pay complainant’s salaries on time, while Respondent Court convicted him of unduly delaying the payment of complainant’s claims. As already explained, both acts did not, however, legally result in “undue injury” or in “giving any unwarranted benefits, advantage or preference in the discharge of his official, [or] administrative x x x functions.” Thus, these acts are not punishable under Sec. 3[e].

It would appear that petitioner’s failure or refusal to act on the complainant’s vouchers, or the delay in his acting on them more properly falls under Sec. 3[f]:

“(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.”

Here, the neglect or refusal to act within a reasonable time is the criminal act, not the causing of undue injury. Thus, its elements are:

- “1) The offender is a public officer;
- 2) Said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;
- 3) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and
- 4) Such failure to so act is ‘for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.’”[33]

However, petitioner is not charged with a violation of Sec. 3[f]. Hence, further disquisition is not proper. Neither may this Court convict petitioner under Sec. 3[f] without violating his constitutional right to due process.

WHEREFORE, the petition is hereby GRANTED. Petitioner is ACQUITTED of violating Section 3[e] of R.A. 3019, as amended. No costs.

SO ORDERED.

Davide, Jr. (Chairman), Bellosillo, Vitug and Quisumbing, JJ., concur.

[1]Records, p. 1; the information was signed by Special Prosecution Officer II Luz L. Quiñones-Marcos of the Office of the Special Prosecutor.

[2] Records, p. 60.

[3] First Division is composed of J. Minita Chico-Nazario, ponente; PJ. Francis E. Garchitorena and J. Jose S. Balajadia, concurring.

[4] Rollo, pp. 56-57.

[5] Rollo, p. 72.

[6] The case was deemed submitted for resolution upon filing of the memorandum for Respondent Court on December 11, 1997 by the Office of the Ombudsman.

[7] Rollo, pp. 39-44.

[8] Rollo, pp. 259-266; the memorandum for the petitioner was signed by Atty. Ruben E. Agpalo.

[9] “SEC. 318. Preparation of the Budget by the Local Chief Executive. – Upon receipt of the statements of income and expenditures from the treasurer, the budget proposals of the heads of departments and offices, and estimates of income and budgetary ceilings from the local finance committee, the local chief executive shall prepare the executive budget for the ensuing fiscal year in accordance with the provisions of this Title.

The local chief executive shall submit the said executive budget to the sanggunian concerned not later than the sixteenth (16th) of October of the current fiscal year. Failure to submit such budget on the date prescribed herein shall subject the local chief executive to such criminal and administrative penalties as provided for under this Code and other applicable laws.

“SEC. 320. Effectivity of Budgets. – The ordinance enacting the annual budget shall take effect at the beginning of the ensuing calendar year. An ordinance enacting a supplemental budget, however, shall take effect upon its approval or on the date fixed therein.

The responsibility for the execution of the annual and supplemental budgets and the accountability therefor shall be vested primarily in the local chief executive concerned.

“SEC. 444. The Chief Executive: Powers, Duties, Functions and Compensation – xxxx The municipal mayor shall:

(3) xxx xxx xxx

(ii) Prepare and submit to the sanggunian for approval the executive and supplemental budgets of the municipality for the [ensuing] calendar years in the manner provided for under Title Five, Book II of this Code.”

[10] Rollo, p. 266.

[11] *Ponce de Leon vs. Sandiganbayan*, 186 SCRA 745, 754, June 25, 1990; *Pecho vs. Sandiganbayan*, 238 SCRA 116, 128, November 14, 1994; *Jacinto vs. Sandiganbayan*, 178 SCRA 254, 259, October 2, 1989; and *Medija, Jr. vs. Sandiganbayan*, 218 SCRA 219, 223, January 29, 1993.

[12] Rollo, p. 140; the 30-page Manifestation in Lieu of Comment of the OSG, dated March 6, 1996, was signed by then Solicitor General Raul I. Goco, Asst. Solicitor General Romeo C. dela Cruz and Solicitor Karl B. Miranda.

[13] 170 SCRA 400, 405, February 20, 1989.

[14] *Supra*.

[15] *Pecho vs. Sandiganbayan*, *supra* at p. 133.

[16] Art. 2199, Civil Code; *Nolledo, Civil Code of the Philippines*, 10th ed., Vol. V, p. 927; and *Gonzales-Decano, Notes on Torts and Damages*, 1992 ed., pp. 141 & 144.

[17] *Tolentino, The Civil Code*, Vol. V, 1992 ed., pp. 633-634.

[18] *Ibid*.

[19] TSN, August 9, 1994, p. 3.

[20] *Fuentes, Jr. vs. Court of Appeals*, 253 SCRA 430, 438, February 9, 1996; *People vs. Fabrigas*, 261 SCRA 436, 448, September 5, 1996.

[21] *Jacinto vs. Sandiganbayan*, *supra* at p. 259.

[22] *Alejandro vs. People*, *supra* at p. 405.

[23] Rollo, p. 56.

[24] *Ibid.*, pp. 65-68.

[25] "SEC. 344. Certification on, and Approval of, Vouchers.—No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, xxx, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

xxx xxx xxx."

[26] Records, p. 219.

[27] Records, pp. 322-323.

[28] *Baldivia vs. Lota*, 107 Phil 1099, 1103 [1960]; and *Discanso vs. Gatmaytan*, 109 Phil 816, 920-921 [1960].

[29] *Marcelo vs. Sandiganbayan*, 185 SCRA 346, 349, May 14, 1990.

[30] *Jacinto vs. Sandiganbayan*, *supra* at p. 260.

[31] *Alejandro vs. Sandiganbayan*, supra at p. 405.

[32] *Pecho vs. Sandiganbayan*, supra, p. 135.

[33] *Coronado vs. Sandiganbayan*, 225 SCRA 406, 409-410, August 18, 1993; and *Nessia vs. Fermin*, 220 SCRA 615, 621-622, March 30, 1993.

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