

PABLO P. BURGOS, FRANCISCO G. PEDRIGAL, AND JESUS B. SABANDO, PETITIONERS, VS. HON. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 123144. October 15, 2003

Ponente: AZCUNA, J.

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AZCUNA, J.:

Three consolidated appeals by way of petitions for review on certiorari are before the Court, seeking to reverse the decision[1] of the Sandiganbayan in Criminal Case No. 13527 entitled "People of the Philippines v. Flaviano B. Galapon, Pablo P. Burgos, Abelardo S. Monge, Jesus O. Sabando, Francisco B. Pedrigal, Santiago L. Loyola, Jr., Julieta L. Modesto and Ricardo B. Castañeda." Petitioners Galapon, Burgos, Monge, Sabando and Pedrigal were all convicted of violating Section 3(e) of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act," as amended, and each sentenced to suffer an indeterminate penalty of 6 years and 1 month, as minimum, to 9 years and 21 days, as maximum, with perpetual disqualification from public office.[2]

The entire controversy relates to the repair of some 30 to 45 year-old surveying instruments owned by the Leyte-Samar Engineering Districts, which is under the Ministry (now Department) of Public Works and Highways (MPWH). Culled from the records of the case, it appears that sometime in 1983 appellant Monge, Chief of the Planning and Designs Division of the MPWH, and appellant Galapon, Chief of the Survey Section of said Division, requisitioned for the repair of 19 of these surveying instruments. Accordingly, on September 14, 1983, appellant Pedrigal, Chairman of the Procurement Section of the Finance Division, caused the preparation of three Requisitions for Supplies and Equipment (RSE) forms, which enumerated the repairs or job orders that needed to be made on the surveying instruments. The RSEs were later recommended for approval by Finance Officer Modesto.[3]

Invitations to Bid were sent out on October 26, 1983 and, eventually, the contract to repair the instruments was awarded to Engineering & Surveying Instruments Center (ESIC), represented by Castañeda. On December 14, 1983, three Purchase Orders (PO), addressed to ESIC, were recommended for approval in the amount of P83,850. Castañeda received the POs, together with the 19 surveying instruments, on December 19, 1983.[4]

On January 3, 1984, petitioner Galapon inspected the 19 surveying instruments after they were returned, and presumably repaired, by ESIC. The results of the inspection are contained in three Reports on Inspections prepared by petitioner Galapon wherein he declared that the surveying instruments were functional and operational. The Reports on Inspection were concurred in by petitioners Burgos, Monge and Sabando, who were all members of the Inspectorate Committee.[5] Thereafter, Disbursement Vouchers were prepared and signed by, among others: Galapon, who directed the preparation of thereof; Pedrigal, who declared receiving the surveying instruments in good condition; and Modesto, who certified that the expenses incurred were necessary and lawful.[6]

The surveying instruments were, thereafter, stored in a warehouse of Region VIII, MPWH until they were

post-inspected by Robert A. Bajar, Technical Inspector for the Commission on Audit. According to his Post Inspection Report dated January 20, 1984, Bajar found numerous defects and deficiencies on the surveying instruments. Reacting to the Post Inspection Report, the Regional Director of MPWH sent a wire to Castañeda requesting him to correct these defects. Initially, Castañeda did not respond to the wire so the Regional Director ordered one of his subordinates, Loyola, personally to bring the instruments to ESIC in Cebu City and to see to it that they were properly repaired. Before Loyola could leave for Cebu City, a brother of Castañeda arrived to pick up the instruments. The two of them then brought the instruments to ESIC.[7]

On October 5 and 8, 1984, after Castañeda returned the surveying instruments, Bajar inspected them for a second time and again found their conditions unacceptable. His findings are contained in his Post Inspection Report dated October 15, 1984. This prompted the Regional Director again to request Castañeda to correct the deficiencies. Castañeda accordingly complied and went to Leyte to make repairs thereon.[8]

On October 30, 1985, Bajar conducted a third post inspection and numerous deficiencies and defects were still found on the surveying instruments. Due to Bajar's recommendation that final action be immediately taken, an investigating team was formed to look into the whole incident regarding the repairs of the surveying instruments. The result was a recommendation that charges be filed against Galapon, Burgos, Monge, Sabando, Modesto, Pedrigal, Loyola and Castañeda. After the requisite preliminary investigation, an information for violation Section 3(e) of Republic Act (R.A.) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, was filed against petitioners, as follows:[9]

That on or about the 29[th] day of December, 1983, in the municipality of Palo, Leyte and within the jurisdiction of this Honorable Court, accused Engr. Flaviano Galapon, Supervising Civil Engineer III, Engr. Pablo P. Burgos, Regional Engineering Coordinator, Engr. Jesus Sabando, Engr. Abelardo Monge, Jr. and Julieta Modesto, Chairman and Members, respectively, of the MPWH Inspectorate Committee, Region VIII, Candahug, Palo, Leyte, Francisco Pedrigal, Supply Officer of the then MPWH, and therefore all public officers, with grave abuse of confidence and acting in conspiracy and confabulation with accused Ricardo Castañeda, Proprietor/Manager of Engineering and Surveying Center, with business address at No. 33 F. Ramos St., Cebu City, did then and there willfully enter into a contract with the said Ricardo Castañeda, who actually received the same, despite their being aware and knowing fully well that the said survey instruments were not actually repaired and rendered functional/operational, thereby causing undue injury to the government and giving themselves unwarranted benefits and advantage, through manifest partiality and/or evident bad faith in the discharge of their official and administrative functions, in the aforementioned amount of P83,850.[10]

Prior to trial before the Sandiganbayan, Burgos, Sabando, Monge and Loyola filed a motion for reinvestigation. The motion was at first denied but was eventually granted upon motion for reconsideration. After reinvestigation, the prosecution moved to withdraw the information on the ground that it "is morally convinced that...those 19 surveying instruments could be used." The Sandiganbayan, however, denied the motion to withdraw and proceeded to try the case on the merits.[11]

The prosecution submitted 67 exhibits consisting of various documents including POs, Disbursement Vouchers, RSEs and the three Post Inspection Reports of Bajar. The defense, during pre-trial, admitted the existence, genuineness and due execution of these documents but reserved the right to question the truth and veracity of their contents. The prosecution rested its case after formally offering the 67 exhibits and without having presented any testimonial evidence.[12]

The evidence for the defense consisted of testimonies from petitioners Galapon, Pedrigal, Sabando and Burgos. Other witnesses presented were Loyola, Mercedita, Caing, Bonifacio, Boco and San Gabriel. Along with testimonial evidence, the defense submitted 18 exhibits.[13]

On August 12, 1994, the Sandiganbayan rendered a decision finding petitioners guilty of violating Section 3(e) of R.A. 3019 by falsely making it appear in the Reports of Inspection and Disbursement Vouchers that the 19 surveying instruments had all been repaired in the manner specified in the Job Orders, thus, allowing full payment to Castañeda, causing undue injury to the Government. A motion for reconsideration was duly filed but was denied on December 1, 1995.[14]

Seeking to reverse their convictions, petitioners Burgos, Pedrigal and Sabando appealed their case to this Court through a petition for review on certiorari, docketed as G.R. No. 123144. Appellants Monge and Galapon likewise filed their own petitions that were docketed as G.R. No. 123207 and G.R. No. 123536, respectively. All three petitions were eventually consolidated under a resolution issued by this Court on August 28, 1996.[15]

Common and foremost among the issues raised by petitioners is the argument that the Sandiganbayan erred in convicting them on a finding of fact that was not alleged in the information. They contend that the information charged them with having allowed payment of P83,850 to Ricardo Castañeda despite being aware and knowing fully well that the surveying instruments were not actually repaired and rendered functional/operational. However, their conviction by the Sandiganbayan was based on the finding that the surveying instruments were not repaired in accordance with the specifications contained in the job orders.

Petitioners contend that there is a whale of a difference between the information, which alleges that the surveying instruments were not actually repaired and rendered functional/operational, and the finding of the Sandiganbayan that the survey instruments were not repaired in the manner specified in the job orders. They assert that to convict them based on allegations other than what was contained in the information would be a deprivation of their right to due process and to be informed of the nature and cause of the accusation against them.

The Office of the Special Prosecutor on the other hand maintains that although the exact wording of the information is not faithfully stated in the Sandiganbayan decision, a reading of the entire information would show that the words therein practically mean the same thing, in that "not actually repaired and rendered functional/operation" is synonymous with "not having been repaired in accordance with the job orders."

Moreover, according to the prosecution, petitioners admitted in their pleadings that they fully understood that the charge against them was allowing payment despite knowledge that the surveying instruments were not repaired in accordance with the job orders. One such pleading cited by the prosecution is appellants' Motion for Reconsideration[16] dated July 7, 1989 to the Order denying their Motion for Reinvestigation, to wit:

- That during the preliminary investigation, the principal issue posited by the complainant thru the evidence presented was whether the repairs made on the 19 surveying equipments by the Engineering and Surveying Instruments Center of Cebu were in accord with the specifications in the corresponding job orders.
- Evidence submitted by the accused dwelt solely on this issue and that the same strongly supports the findings that the repairs made were in conformity with the job orders.
- That notwithstanding the fact that during the preliminary investigation the issue on the functionality/or operational condition of the instruments aforesaid after the repair was never raised by the complainant or evidence, and as such, the prosecution made no findings on this point, the prosecution now in the amended information in Criminal Case No. 13527, alleged that the equipment were "not repaired and rendered functional/operational". In effect, the accused, although [they] were in possession of evidence to sufficiently prove that the instruments became functional/operational because of the repairs made thereon, were deprived of an opportunity to present their evidence on this point. This is the reason why the accused filed their Motion for Reinvestigation;

The same argument was reiterated by petitioners in their Observation/Manifestation[17] dated August 25, 1989.

The prosecution, thus, argues that appellants cannot claim that they were deprived of their constitutional right to be informed of the nature of the accusation against them.

In criminal cases, where the life and liberty of the accused is at stake, due process requires that the accused be informed of the nature and cause of the accusation against him.[18] An accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right.[19]

The important end to be accomplished is to describe the act with sufficient certainty in order that the accused may be apprised of the nature of the charge against him[20] and to avoid any possible surprise that may lead to injustice.[21] Otherwise, the accused would be left in the unenviable state of speculating why he is made the object of a prosecution.[22]

Applying the foregoing principles to the case at bar, the Court finds the petitions to be meritorious.

Needless to say, there are a number of ways by which Section 3(e) of R.A. No. 3019 may be violated. But, recognizing an accused's constitutional right to due process, conviction may only be obtained under what has been charged, or included, in the complaint or information. It is of no consequence that the designation of the offense given by the statute has been specified and the facts proven fall under said designation. The real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but on the facts recited in the complaint or information.[23] More particularly, the prosecution must show that the act alleged, in the manner stated in the information, has been committed by the accused, regardless of the technical name of the crime charged. As explained by Justice Moreland in *U.S. v. Lim San*: [24]

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the information and proved in the trial is not the crime characterized by the fiscal in the caption of the information. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not, "Did you commit a crime named murder?" If he performed the acts alleged, in the manner stated, the law determines what the name of the crime is and fixes the penalty therefor.... If the accused performed the acts alleged in the manner alleged, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.

There is no question that the manner of commission alleged in the information and the act the Sandiganbayan found to have been committed are both violations of Section 3(e) of R.A. 3019. Nonetheless, they are and remain two different means of execution and, even if reference to Section 3(e) of R.A. 3019 has been made in the information, appellants' conviction should only be based on that which was charged, or included, in the information. Otherwise, there would be a violation of their constitutional right to be informed of the nature of the accusation against them.[25]

In *Evangelista v. People*, [26] a judgment of conviction by the Sandiganbayan, for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act, was reversed by the Court on the ground that accused was made liable for acts different from those described in the information. The accused therein was convicted on the finding that she failed to identify with certainty in her certification the kinds of taxes paid by Tanduary Distillery, Inc., although

the information charged her with falsifying said certificate. The Court said that, constitutionally, the accused has a right to be informed of the nature and cause of the accusation against her. To convict her of an offense other than that charged in the complaint or information would be a violation of this constitutional right.

Contrary to the stand of the prosecution, the allegations contained in the information and the findings stated in the Sandiganbayan decision are not synonymous. This is clearly apparent from the mere fact that the defenses applicable for each one are different. To counter the allegations contained in the information, petitioners only had to prove that the instruments were repaired and rendered functional/operational. Under the findings stated in the Sandiganbayan decision, petitioners' defense would have been to show not only that the instruments were repaired, but were repaired in accordance with the job order.

In any case, the ambiguity of whether the wording of information is synonymous with the finding that the instruments were not repaired in accordance with the job order must be resolved in favor of the accused and against the writer of the information.[27]

Neither can the Court accept the prosecution's view that petitioners had admitted that the issue of the case was whether the surveying instruments were repaired in accordance with the job orders nor that, by their failure to move to quash the information, petitioners had waived their right to be informed of the nature of the accusation against them.

In the first place, petitioners' Motion for Reconsideration does not at all show an admission of having been duly informed that the charge was knowing that the surveying instruments were not repaired in accordance with the job orders. On the contrary, a careful reading of said pleading demonstrates quite the opposite. Petitioners merely alleged that during the preliminary investigation the principal issue raised was whether the surveying instruments were repaired in accordance with the specifications in the corresponding job orders. However, when the information was later filed, the issue became whether the instruments were not repaired and rendered functional/operational. Petitioners lament that had this been the issue during the preliminary investigation, they could have easily presented evidence to show that the instruments became functional/operational. For this reason, they moved for a reinvestigation of the case.

Clearly, petitioners' admission regarding the issue of failure to repair the surveying instruments in accordance with the job orders pertained only to the preliminary investigation stage and not to the trial proper. In fact, petitioners' allegation that there was a change of issues from the preliminary investigation, that is, "whether the surveying instruments were repaired in accordance with the specifications in the job orders" into "whether or not the instruments were actually repaired and rendered functional/operational," as charged in the information, only further strengthens petitioners' case.

In any event, petitioners' failure to move to quash the information cannot amount to waiver of their constitutional right to be informed.

As the Sandiganbayan itself discussed in its resolution denying petitioners' motion for reconsideration,[28] two requirements must be met in order that the complaint or information may be said to be sufficient. The first requirement refers to substance, the second to form. The substantial matter is the allegation of facts constituting the offense charged and the jurisdiction of the court, and the other matters are merely of form. The first is not waivable, however the second is, by failure to move to quash on the ground that it does not conform substantially to the prescribed form.

However, the Sandiganbayan erred in characterizing the variance in this case as a matter of form so that the failure of the accused to file a motion to quash constitutes a waiver of this variance. As aforesaid, the present

case concerns a variance as to the manner the crime was committed. The manner of commission is a matter of substance.[29] Hence, petitioners' right to question their conviction based on facts not alleged in the information cannot be waived.

This is not to say that petitioners cannot be convicted under the information charged. The information in itself is valid. It is only that the Sandiganbayan erred in convicting them for an act that was not alleged therein. Considering that the information charges the petitioners of having allowed the payment of P83,850 to Castañeda despite their being aware and knowing fully well that the survey instruments were not actually repaired and rendered functional/operational, the next issue is whether or not the prosecution succeeded in proving the crime as charged.

After a careful examination of the records of this case, the Court finds the prosecution's evidence insufficient to overcome the quantum of proof necessary to convict an accused, which is proof beyond reasonable doubt.[30] The evidence for the prosecution merely consisted of documentary evidence, including the post inspection reports of Bajar. These documents do not categorically declare that the instruments are not functional/operational but only show that there were defects and deficiencies. On the other hand, petitioners had presented testimonial, as well as documentary, evidence to show that the surveying instruments were functional and operational. Without the prosecution having presented any other evidence to rebut the defenses' evidence, it cannot be said that the guilt of petitioners have been established with moral certainty.

In view of the foregoing, it is unnecessary for this Court to pass upon the other remaining issues of the case.

WHEREFORE, the decision of the Sandiganbayan, convicting petitioners Flaviano B. Galapon, Pablo P. Burgos, Abelardo S. Monge, Jesus O. Sabando and Francisco B. Pedrigal in Criminal Case No. 13527 is REVERSED and SET ASIDE and a new judgment is hereby rendered ACQUITTING them of the crime charged. Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Carpio, JJ., concur.
Ynares-Santiago, J., on leave.

[1] G.R. No. 123144, Rollo, pp. 37-88; G.R. No. 123207, Rollo, pp. 37-88; G.R. No. 123536, Rollo, pp. 49-97.

[2] Loyola was acquitted while Modesto and Castañeda remained at large.

[3] Sandiganbayan Decision, pp. 7-11.

[4] Id., pp. 11-12.

[5] G.R. No. 123536, Petition, pp. 12-14; Sandiganbayan Decision, p. 13.

[6] Sandiganbayan Decision, p. 20.

[7] Id., pp. 23-28.

[8] Id., pp. 29-33.

[9] Id., pp. 33-35.

[10] The original information was amended on April 13, 1989. Quoted above is the amended information, Records, pp. 1-3.

[11] G.R. No. 123144, Petition, pp. 4-7.

- [12] Records, pp. 451-476 and 505-506.
- [13] G.R. No. 123144, Petition, p. 8.
- [14] G.R. No. 123144, Rollo, pp. 89-133; G.R. No. 123536, Rollo, pp. 99-144.
- [15] G.R. No. 123536, Rollo, p. 242.
- [16] Records, pp. 70-73.
- [17] Records, pp. 196-204.
- [18] *People v. Cruz*, 259 SCRA 109 (1996).
- [19] *People v. Ortega, Jr.*, 276 SCRA 166 (1997).
- [20] *U.S. v. Alabot*, 38 Phil. 698, (1918).
- [21] *People v. Zulueta*, 89 Phil. 755 (1951).
- [22] *People v. Mencias*, 46 SCRA 88 (1972).
- [23] *People v. Labado*, 98 SCRA 730 (1980).
- [24] *U.S. v. Lim San*, 17 Phil. 273 (1910); underscoring supplied.
- [25] *People v. Ortega*, 276 SCRA 166 (1997).

[26] 337 SCRA 671 (2000).

- [27] *Provincial Fiscal of Nueva Ecija v. CFI of Nueva Ecija*, 79 Phil. 165 (1947).
- [28] See note 13, *supra*.
- [29] *People v. Zulueta*, 89 Phil. 752 (1951).
- [30] *People v. Torion*, 307 SCRA 169 (1999).

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