

CONRADO G. AVILA, SR., PETITIONER, VS. SANDIGANBAYAN, FIRST DIVISION, AND THE HONORABLE OMBUDSMAN, RESPONDENTS.

G.R. No. 130576. May 18, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is a special civil action for certiorari with preliminary injunction or temporary restraining order seeking to set aside the resolution of the Sandiganbayan, First Division,[1] which denied petitioner's motion for an order directing reinvestigation of the charge against him.

The motion for reinvestigation was based on the ground that the accusation in the information was for violation of Section 3 (e), R.A. 3019, but the charge in the complaint subject of preliminary investigation in the office of the Ombudsman was for direct assault and that there was no evidence to support the finding of probable cause to hold the accused for trial.

We grant the petition.

The facts may be related as follows:

Petitioner Conrado G. Avila, Sr. was, at the time alleged in the information, the municipal mayor of the municipality of San Isidro, Northern Samar.

On July 23, 1997, Graft Investigation Officer I Raul V. Cristoria filed with the Sandiganbayan, Manila, assigned to the First Division, an Information charging petitioner Conrado G. Avila, Sr. with violation of R.A. 3019, Section 3 (e), as amended, committed as follows:

"That on or about the 15[th] day of February, 1996, at about 12:00 o'clock noon, in Barangay San Juan, Municipality of San Isidro, Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of San Isidro, Northern Samar, in such capacity and committing the offense in relation to Office, with deliberate intent, with manifest partiality and with evident bad faith, with intimidation, did then and there wilfully, unlawfully and feloniously, intervene, prevent, prohibit or stop, the Forest Rangers of the Department of Environment and Natural Resources (DENR) Regional Office No. VIII from confiscating and seizing one hundred sixty (160) pieces of illegally cut lumber thus, accused in the performance or discharge of his official functions had given unwarranted benefits to himself, to the damage and prejudice of the government.

"CONTRARY TO LAW."[2]

On August 15, 1997, petitioner filed with the Sandiganbayan, Manila, a motion for reinvestigation on the ground that (a) the accusation in the information in this case is for violation of Section 3 (e), R. A. 3019, but this is not the nature of the case subject of preliminary investigation since the crime charged in the letter complaint is for direct assault, and (b) lack of evidence to support the finding of probable cause to hold the accused for trial.

On September 8, 1997, respondent Sandiganbayan by minute resolution denied petitioner's motion for lack of

merit "it appearing that issues raised . . . are either matters of law already resolved by the Supreme Court (e.g. Enrile vs. Salazar, 186 SCRA 217) or otherwise not a matter of evidence not available to the accused at preliminary investigation." [3]

Hence, this petition.

On October 15, 1997, the Court required respondents to comment on the petition (not to file a motion to dismiss) within ten (10) days from notice. On December 1, 1997, respondents filed their comment.

On January 28, 1998, we resolved to (a) give due course to the petition; and (b) require both parties to submit their respective memoranda within thirty (30) days from notice.

In due time, the parties filed their memoranda.

The issues raised are (a) whether the Ombudsman acted with grave abuse of discretion in filing an information against petitioner for violation of Section 3 (e), R. A. 3019, despite the absence of the requisite prima facie evidence, and (b) whether the Sandiganbayan acted with grave abuse of discretion in denying his motion for reconsideration. [4]

We find no merit in petitioner's contention that he was deprived of due process because the accusation in the information was for violation of Section 3 (e), R. A. 3019, but the crime charged in the letter complaint subject of the preliminary investigation was for direct assault. [5]

In Enrile vs. Salazar, we ruled that there is "nothing inherently irregular or contrary to law in filing against a respondent an indictment for an offense different from what was charged in the initiatory complaint, if warranted by the evidence developed during the preliminary investigation." [6]

We are, however, not convinced that there was sufficient reason or that a prima facie evidence existed for the prosecution of petitioner for violation of Sec. 3 (e) of R. A. 3019. This Court has held in Pecho vs. Sandiganbayan [7] that "Causing undue injury to any party, including the government, could only mean actual injury or damage which must be established by evidence."

In the case at bar, the confiscated lumber was officially deposited under the care of Barangay Chairman Paquito Visorio of barangay San Juan, San Isidro, Northern Samar, as per his request. [8] There was absolutely no evidence of actual injury or damage to any party shown during the preliminary investigation.

The deposit of the confiscated lumber to the care of a person in authority is precisely the proper thing to do. Hence, such act is not tantamount to giving undue advantage to the petitioner, much less causing damage and prejudice to the government. As there was no prima facie evidence or probable cause of actual injury or damage to the government as an element of the commission of the offense charged, the Sandiganbayan gravely abused its discretion in denying petitioner's motion for reconsideration of the filing of the information.

The Court has held that "failure or inability of the prosecution to substantiate any of the elements of the offense charged (R. A. 3019, Section 3 [e]) is fatal to the cause of the people, it renders inevitable the acquittal of the accused." [9]

As we said in Fernando vs. Sandiganbayan, [10] "faced with an information charging a manifestly non-existent crime, the duty of a trial court is to throw it out." Unfortunately, the Sandiganbayan did not learn the lesson taught in that case.

WHEREFORE, the Court hereby SETS ASIDE the resolution of the Sandiganbayan, dated September 8, 1997, in Criminal Case No. 23813, and DIRECTS the Sandiganbayan to dismiss the said case, with costs de oficio.

No costs in this instance.

SO ORDERED.

Davide, Jr., (Chairman), Melo, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Francis E. Garchitorena, Presiding Justice, Minita V. Chico-Nazario, Associate Justice, and Edilberto G. Sandoval, Associate Justice, members.

[2] Petition, Annex "F", Rollo, p. 35-36.

[3] Petition, Annex "A", Rollo, p. 6.

[4] Memorandum for respondent, Rollo, pp. 153-175, at pp. 157-158.

[5] In fact, there was a complaint against petitioner filed with the Ombudsman-Visayas, for violation of Section 3 (e), R. A. 3019.

[6] 186 SCRA 217, 230.

[7] 238 SCRA 116; see *Fonacier v. Sandiganbayan* 238 SCRA 655; See also *Ponce de Leon vs. Sandiganbayan*, 186 SCRA 745.

[8] See par. 20, Joint Affidavit, Petition, Annex "E-1", Rollo, pp. 32-34, at p. 33.

[9] *Ignacio R. Bunye vs. Sandiganbayan*, G. R. No. 122058, May 5, 1999.

[10] 212 SCRA 680.

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