EUTIQUIO A. PELIGRINO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 136266. August 13, 2001

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

To convict the accused in a prosecution for the violation of Section 3(b) of the Anti-Graft Law, mere receipt of a gift or any other benefit is enough, even without any express demand for it. The duration of the possession is not controlling. Important are the appellant's words, action and reactions showing acceptance thereof. These are factual in nature and, absent any arbitrariness, abuse of discretion, or palpable error, the trial court's assessment of their presence or absence is generally binding on appellate review.

The Case

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the August 24, 1998 Decision[1] and the November 16, 1998 Resolution[2] of the Sandiganbayan, First Division, in Criminal Case No. 17086. The dispositive portion of the assailed Decision reads:

> "WHEREFORE, premises considered judgment is hereby rendered, finding accused EUTIQUIO A. PELIGRINO, GUILTY beyond reasonable doubt, as principal, of having violated Sec. 3(b) of R.A. 3019 as charged, and hereby imposes upon him in the absence of any modifying circumstances affecting criminal liability, an indeterminate prison term of SIX (6) YEARS and ONE (1) MONTH as minimum, to NINE (9) YEARS as maximum, with all the accessories of the law, to suffer perpetual disqualification from office, and to pay the cost.
>
> "There is no pronouncement as to civil liability it being apparently clear that the amount of Three Thousand (P3,000.00) used in the entrapment has been returned to the offended party.
>
> "Accused ATTY. BUENAVENTURA V. BUENAFE, on the other hand[,] is ACQUITTED on the basis of reasonable doubt, with cost de oficio.
>
> "His bond is ordered cancelled and any Hold[-] Departure Order issued in this case is set aside and ordered lifted as to him."[3]

The assailed Resolution denied the Motion for Reconsideration as follows:

> "There being no adequate cause to set aside the decision herein, more particularly since the points raised by the accused in his motion for reconsideration dated September 2, 1998 have been adequately taken up in the decision, the said motion for reconsideration is denied."[4]

This case originated from the Information filed on October 17, 1991 by Special Prosecution Officers Carlos D. Montemayor and Edna Herrera-Batacan. The accusatory portion reads thus:

> "That on or about October 15, 1991, in Makati, Metro Manila, and within the jurisdiction of this Honorable

> Court, accused EUTIQUIO PELIGRINO y ALAAN, a public officer being then an Examiner II of Region IV-A of the Bureau of Internal Revenue, and as such [was] tasked among others, to examine or investigate Books of Accounts for Income and Business [t]ax [r]eturns earned by professionals (medical practitioners) in order to determine their compliance and/or tax deficiencies and to collect payments thereof, while in the performance of his official duties as such public officer, did then and there, willfully, unlawfully and criminally demand the amount of P200,000.00 from Dr. Antonio N. Feliciano, a practicing [g]enetology [d]octor holding office at Pasong Tamo, Makati, Metro Manila, found by the accused to have incurred an allege[d] deficiency income tax assessment of P500,000.00 for the calendar years 1988-1989, received P200,000.00, P51,858.57 was in the form of Prudential Bank Check No. 914077 dated October 15, 1991 payable to the Bureau of Internal Revenue as full payment of Dr. Feliciano's tax liabilities and the remaining balance to be appropriated to himself, to the damage and prejudice of Dr. Antonio Feliciano in the amount of P148,141.43 and the government in the amount equal to the deficiency income tax due it."[5]

On February 25, 1992, the Information was amended to include Buenaventura V. Buenafe as co-accused. It is reproduced below:

> "That on or about October 15, 1991 and/or for sometime prior thereto, in Makati, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused EUTIQUIO PELIGRINO y ALAAN and BUENAVENTURA V. BUENAFE, both public officers, being then Examiner II and Supervisor, respectively, both of Region IV-A of the Bureau of Internal Revenue, Makati, Metro Manila, and as such are tasked, among others, to examine or investigate the Books of Accounts for Income and Business Tax and other accounting records of professionals (medical practitioners) and to determine their compliance and/or tax deficiencies after assessment, and to collect payments thereof, taking advantage of their public positions, while in the performance of said official duties as such public officers, conspiring, confederating and mutually helping each other, did then and there wil[l]fully, unlawfully and criminally demand directly from taxpayer Antonio N. Feliciano, a practicing [g]enetology [d]octor holding office at Pasong Tamo, Makati, Metro Manila, found by both accused to have incurred an alleged deficiency income tax assessment of P500,000.00 for the calendar years 1988 and 1989, the amount of P200,000.00 Philippine currency, for the purpose of applying a portion thereof in the amount of P51,858.57 as full payment for deficiency income tax due from said taxpayer for fiscal years 1988 & 1989 and the balance of P148,141.43 to be appropriated by both accused for themselves as gift or consideration for their promise to make as they did lower assessment for said fiscal years 1988 & 1989 in the amount of P51,858.57, which request or demand for money was in connection with a transaction between the government and Dr. Antonio N. Feliciano wherein both accused in their official capacities had to intervene under the law, and thereafter, accused Eutiquio A. Peligrino wil[l]fully, unlawfully and criminally received the amount of P200,000.00 in behalf of both accused, to the damage and prejudice of Dr. Antonio Feliciano in the amount of P148,141.43 and the government in the amount equal to the deficiency income tax due it."[6] (Underscoring in the original.)

On August 28, 1992, the two accused, assisted by their respective lawyers,[7] were arraigned. Both pleaded not guilty.[8] On April 24, 1998, after full trial, the Sandiganbayan convicted petitioner of the offense charged, but acquitted his co-accused.

The Facts

Version of the Prosecution

The Sandiganbayan narrated the evidence of the prosecution in this wise:

> "Stripped of the non-essentials, the prosecution's evidence shows that about the last week of July or early August of 1991, accused Atty. Buenafe delivered a letter of authority dated July 4, 1991 (Exhibit K) to complainant Dr. Antonio N. Feliciano in the latter's office at Valgozon Bldg., Pasong Tamo, Makati. Said Exhibit K is addressed to Dr. Antonio [N.] Feliciano signed by one Eufracio D. Santos a [d]eputy [c]ommissioner of the BIR stating inter alia that 'x x x the bearer(s) hereof Revenue Officer Eutiquio Peligrino

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to be supervised by Buenaventura Buenafe is/are authorized to examine your books of accounts and other accounting records for income and business for the calendar/fiscal year(s) ending 1988 & 1989 x x x.' Atty. Buenafe was referred to the accountant of the complaining witness.

"About two weeks later, the complainant received a telephone call from accused Atty. Buenafe asking him if his accountant had not told him anything, and when he (complainant) inquired from his accountant Ellen Quijano about the matter, he was informed that the accused were demanding half a million pesos. Surprised about the demand, since the books were not even examined, he instructed Ellen Quijano to further clarify the matter. Thereafter about Sept. 1991, Atty. Buenafe called him up requesting for a meeting in his (complainant's) office.

"On October 10, 1991 accused Eutiquio Peligrino and Atty. Buenaventura Buenafe appeared in the complainant's office and told the latter that his tax deficiencies would amount to [f]ive [h]undred [t]housand [p]esos (P500,000.00)[.]

"Flabbergasted, because his books were not even examined, complainant entertained the idea that it was the beginning of an extortion, and he tried to negotiate for a smaller amount, and finally the two (2) accused agreed to the amount of [t]wo [h]undred [t]housand, of which [f]ifty [t]housand [p]esos would be paid to the BIR, and the rest to them. The pay-off would take place on that coming Monday. He immediately wrote a letter to the NBI (Exhibit A) requesting for assistance, and an NBI Agent Atty. Rafael Ragos, went to his office where they talked and arranged for an entrapment which was set on October 14. At around noon-time of the said date, he provided the NBI with the pay-off money consisting of [t]hree [t]housand (P3,000.00) pesos as the entrapment was scheduled at 4:00 p.m. Prior to this, he had executed an affidavit (Exhibit C). On the said entrapment date, October 14, 1991 neither accused appeared. The complainant further testified:

['']Q

What happened next after October 14[?]

A

We set it for the next day and I told the NBI people that I ha[d] a feeling that they [would] show up the next day and so early on the next morning the NBI came to my office.

PJ GARCHITORENA

Q

On Monday, how many NBI agents came to your office?

A

About two or three, Your Honor.

PROS. CAOILI

Q

Now, at about what time did the NBI c[o]me to your office?

A

They came before noon, sir.

Q

And did the accused Atty. Buenafe and Mr. Peligrino appear on that date, October 15, 1991?

A

Atty. Buenafe did not appear but Mr. Peligrino appeared at 4:00 p.m. in my office.

Q

When Mr. Peligrino appeared in your office at 4:00 p.m., of October 15, 1991, what transpired?

A

By this time I was already ready with the planted money in an envelope, brown Manila envelope and the NBI agents were already positioned and we ha[d] a pre-arranged signal that if I buzz[ed] or made a buzzer in the intercom that mean[t] that the money was accepted and they [would] come out and arrest Mr. Peligrino.

Q

Now, were you able to hand the money to Mr. Peligrino?

A

Yes, sir.

Q

What did he do when he took hold of the money?

A

He accepted the envelope and opened it and look inside and saw the money then close[d] it again and place[d] it in front of him.

Q

What happened next?

PJ GARCITORENA

Q

And after you turned over the envelope to him, you still ha[d] a conversation with him?

A

No, your Honor, I immediately [pressed] the buzzer and then the NBI immediately c[a]me out.

PJ GARCHITORENA

Mr. Caoili.

PROS. CAOILI

Q

When the NBI agents came to your room after pressing the button, what happened next?

A

There was a commotion, sir, and it happened so fast that I don’t remember anymore but they brought him out of my office with an instruction for me to follow.

Q

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Did you understand where to follow[?]

A

Yes, sir, in the NBI office at Taft Avenue.

Q

And did you do that Mr. Witness?

A

Yes, sir.

Q

Then what happened at the NBI office?

A

I was asked to make an affidavit of what happened which I [did] and I signed it.

(TSN August 12, 1993 pp. 19-21)[']

"Corroborating the declaration of the complaining witness, witness Rafael Z. Ragos an NBI Agent testified that on October 11, 1991 he was handed a letter ([E]xhibit A) by NBI Deputy Director Antonio Aragon with instruction to handle the complaint of the author – Dr. Antonio Feliciano. He then contacted the physician – complainant and requested him to execute an affidavit (Exhibit C). After studying the affidavit, he decided together with other NBI agents to conduct an entrapment operation. Thus, 30 pieces of one-hundred peso bills were secured and submitted to the Forensic Chemist Section for marking. He made arrangement with Dr. Feliciano that on October 14, 1991, he, with the members of his team would standby at the office of the said doctor to conduct the entrapment. Nothing came out of their plan as the two (2) accused did not appear. The following day, he with 8 or 10 NBI agents returned to the office before lunch time and waited for the two (2) suspects. The arrangement was that, the NBI agents would stay in one of the rooms of the clinic, would wait for the signal of the Doctor which [was] the sound of the buzzer, and when the buzzer [was] heard they would proceed to arrest the subject of the operation.

"At around 4:30 p.m., accused Peligrino arrived, and so upon hearing the sound of the buzzer, he [Ragos], together with his co-NBI agents immediately proceeded to the room of Dr. Feliciano, and on seeing the accused in possession of the brown envelope which contained the marked money, arrested him, and made a body search on him. An inventory of the things found in the possession of the accused was made (Exhibit T). The following were seized from accused Peligrino:

- Prudential Check No. 914077;

- BIR Authority to Issue Payment Order dated 28 August 1991 with stated amount of P14,092.92;

- BIR Authority to Issue Payment Order dated 28 August 1991 with stated amount of P23,760.35;

- BIR Authority to Issue Payment Order dated 28 August 1991 with stated amount of P14,005.30;

- Worksheet labeled 'COMMITTEE ON SPECIAL PROJECTS' with [L]ist of Taxpayers [who were] Doctors;

- 1988 and 1989 [P]rovisional Computation (DR. FELICIANO) Tax Assessment;

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- List of Dr. A. FELICIANO's withheld taxes for 1989;

- Computation of Dr. FELICIANO[‘s] 1989 Sales of Clinic Supplies and Number of Patients;

- Computation of Dr. Feliciano's Number of Patients;

- BIR Letter of Authority No. 0456962 addressed to Dr. ANTONIO N. FELICIANO;

- Photocopy of Dr. FELICIANO's 1989 Income Tax Return and its attached Auditor's Report, Balance Sheet, Profit and Loss Statement and Schedule of Salaries and Wages;

- DR. FELICIANO's 1989 Confirmation Receipts;

- Photocopy of Dr. FELICIANO's 1988 Income Tax Return and its attachments;

- DR. FELICIANO's Worksheet for 1989 transactions;

- DR. FELICIANO's Worksheet for 1988 transactions;

- Big-brown envelope containing the Bogus Money with (30) pcs. of marked One Hundred [Peso b]ills.

"The accused was then brought to the NBI Office in Manila where he was examined for the detection of the fluorescent powder [o]n his hands and body. He then prepared his report (Exhibit Q) after the complainant executed a written statement.

"NBI agent Raul A. Ancheta also took the witness stand and declared that on October 14, 1991 Agent Ragos assigned him to get the statement of Dr. Feliciano, after which he was instructed to prepare 'boodle' money to be submitted to the Forensic Chemist Division of the NBI in preparation for the entrapment. Accordingly, with thirty (30) pieces of genuine money, he submitted the same to the Forensic Chemist for dustings and proper markings. He was present in the initial process of dusting the articles with fluorescent powder but did not witness the entire proceedings. He thereafter retrieved the money from the Forensic Chemist, placed it in an envelope, and delivered the same to Agent Ragos.

"[O]n the morning of October 14, Agent Ragos called all the members of the entrapment team and made the necessary briefings. They, thereafter proceeded to the office of Dr. Feliciano, and waited for the accused but nobody appeared, and Agent Ragos instructed the members of the team to be on the stand by status the following day.

"The next day, October 15, the NBI agents posted themselves at the different parts of the clinic and waited for the BIR examiners. His [Agent Rago's] assignment was [at] the main door of the clinic to secure the team members from outside forces. By 4:00 p.m., only accused Eutiquio Peligrino arrived. He saw him enter the clinic, [go] directly to the secretary who picked up the phone, and then he saw Dr. Feliciano going out of the room and conferr[ing] with the accused. Thereafter, they entered the room of Dr. Feliciano. About 15 to 20 minutes, he saw the other members of the team rushing to the office of the doctor, and after a short while, they came out from the office with accused Peligrino. Agent Ragos handed him the brown envelope and the blue bag of the accused, and then they proceeded to the NBI office where he brought the accused to the Office of the Forensic Chemist who examined him upon presentation of the request (Exhibit E-I). After the examination, he was given a certification by the Forensic Chemist (Exhibit E).

"Dimpna Dacudao Bermejo, a Forensic Chemist of the NBI declared:

['']Q

Miss Witness, do you remember whether you were in your office on October 15, 1991?

A

Yes, sir.

Q

Did you give any technical assistance during that date?

A

Yes, sir.

Q

What kind of technical assistance did you give on that date?

A

[At] 5:00 of October 15, a certain agent Raul Ancheta came to my laboratory with a letter request asking for a detection of fluorescent powder [on] a person.

x x x x x x x x x

PROS. CAOILI

May I request, Your Honor, that this letter request for Chemistry examination, disposition form dated October 15, 1991 be marked as Exhibit E-1[.]

x x x x x x x x x

Q

What did you do upon getting this request for examination Miss Witness?

A

I examined the letter request whether the contents [were] in order, then I asked him to bring the subject in my presence and I right away proceeded to my examination.

Q

Are you familiar with the subject?

A

Yes, sir.

Q

If he is in this Court, will you be able to identify him?

A

Yes, sir.

x x x x x x x x x

(Witness pointing to a person in Court who when asked gave his name as Mr. Eutiquio Peligrino.)

Q

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How did you conduct the examination?

A

I brought the person [to] our dark room and then I exposed his left and right arms[,] palm[a]r aspect[,] under the UV light.

PJ GARCHITORENA

Q

What is UV light?

A

Ultra-Violet light.

PROS. CAOILI

Q

What [were] your findings?

A

The said Peligrino was found to be positive [for] the presence of fluorescent powder.

Q

Did you [put] your findings in writing?

A

Yes, sir.

Q

There is already here a certification which is already marked as Exhibit E signed by one Dimpna Bermejo. Will you please go over the same and tell me if you know this document?

A

Yes, I was the one who made that document.

x x x x x x x x x

Q

It states here that this is only a temporary certification and [the] official report follows. Did you make that official report?

A

Yes, sir.

Q

Where is it now?

A

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Witness presenting a document to the Fiscal which is entitled Physics Report Number P-91-140 dated 17 October 1991.

Q

On this report, there is a signature above the typewritten name Dimpna Bermejo[;] whose signature is that?

A

My signature, sir.

PROS. CAOILI

May I request your Honor, that this Physics Report No. P91-140 be marked as Exhibit E-2.

Q

Aside from your report, did you prepare any diagnosis showing where you found this fluorescent powder in the person of Mr. Peligrino?

A

Yes, sir.

x x x x x x x x x

PROS. CAOILI

Your Honor, may I request that these two (2) diagnos[e]s presented by the witness be marked as Exhibit E-3 for [the] dorsal portion and Exhibit E-4 for the palm[a]r side.

x x x x x x x x x

Q

There is a note written in pencil in Exhibit E-3, [on] the bottom portion. Will you please explain to the Honorable Court what is that note?

A

That note states that subject was found to have fluorescent powder [o]n the front shirt, pants and right arm.

x x x x x x x x x

Q

Miss Witness, whose hands are those which were examined supposed to [be]?

A

[They] belonged to the subject Peligrino.

Q

How about the palm[a]r section, does it also belong to the subject Eutiquio Peligrino?

A

Yes, sir.[']

"The records disclose that the prosecution presented documentary evidence consisting of Exhibit A which is a

letter-complaint dated 10/11/91 of the complaining witness addressed to Director Alfredo Lim of the NBI[;] Exhibit B an NBI routine slip emanating from Asst. Director Aragon; two (2) sworn statements of Dr. Feliciano marked as Exhibit[s] C and D which were all offered as part of the testimony of the said doctor; Exhibit E which is a certification dated October 15, 1991 by the NBI Forensic Chemist Dimpna Bermejo together with her Physics Report No. P91-140 (Exhibit E-2); all offered as part of the declaration of witness Bermejo; Exhibit F – xerox copy of the genuine thirty P100 bill[;] three authorities to issue payment order (Exhibits H, I & J); a letter of authority issued by BIR Director Viray (Exhibit K); Exhibit L which is the Joint Affidavit of Arrest of NBI Agents; Exhibits M and N[,] the booking sheet and Arrest Report and Arrest Information Sheet respectively for accused Peligrino; Exhibits O and P[,] the booking sheet & Arrest Report and Arrest Information Sheet respectively for accused Buenafe; Exhibit Q[;] the Report of the Arresting NBI Agents regarding the entrapment; Exhibit R which [consists of] some notes of Dr. Feliciano; Exhibit S which is a letter dated 11/26/92 of BIR Deputy Commissioner Santos to Dr. Feliciano; Exhibit T[,] the inventory/list of documents seized from accused Peligrino[;] and [Exhibit] U[,] the referral letter of Director Alfredo Lim of the NBI to the Ombudsman. These exhibits were admitted as part of the testimonies of the witnesses who testified thereon."[9]

Version of the Defense

Inasmuch as petitioner did not submit his version of the facts, we quote the Sandiganbayan's narration of the defense evidence as follows:

> "The defense was abject denial. Stoutly asserting their innocence, and abjuring the inculpation with vehemence, both accused took the witness stand, and presented Prosecutor Carlos Montemayor of the Office of the Special Prosecutor to drive [home] their point. They also submitted as documentary evidence Exhibits 1 to 21 which were admitted by the Court in its Resolution of October 28, 1994.
>
> "The testimony of accused Buenaventura V. Buenafe may be capsulized as follows:
>
> 'That he is 59 years old, married and a Revenue Officer IV with designation of Supervisor in the Bureau of Internal Revenue; that he first came to know Dr. Feliciano when he served a letter of authority for the examination of the 1988-89 books of account of the doctor to establish his tax liability; that said letter of authority was issued by the [d]eputy [c]ommissioner of [i]nternal [r]evenue (Exhibit 9) which has a [life-time] of 30 days within which to be served and since Examiner Eutiquio Peligrino was on leave he took it upon himself to serve the same personally on the doctor at the latter's office; that since the letter of authority came about pursuant to a letter of denunciation of the doctor-complainant, he was checking on the veracity of the said letter of denunciation and except for the item in the said letter of denunciation about his ownership of ten (10) cars as the doctor said he ha[d] only three expensive cars [but] he was able to confirm that the subject [was] living in Forbes Park, ha[d] been treating more than thirty (30) patients a day, ha[d] a share in Puerto Azul, ha[d] an island off Atimonan, and ha[d] many househelps; that he charged P200.00 per consultation from low income patients but with respect to foreigners he asked for a package-deal $1000 for consultation, laboratory examination, etc.
>
> 'After the interview, he was told by the complainant that the latter's accountant would be coming to his office later on, and true to form, one Elen Quijencio representing herself as accountant of the doctor, came to his office, bringing some papers but not the book of accounts. He referred him to his co-accused Eutiquio Peligrino, and after their examination, he found out that instead of the reported income of [o]ne [m]illion [pesos] (P1,000,000.00) a year the doctor [should] have reported [t]hree [m]illion pesos (P3,000,000.00) per year. He told the accountant of his computation who retorted that she would inform the doctor of the same.
>
> 'About the end of August 1991, the accountant called him in his office and relayed the information that the doctor [was] amenable to pay fifty thousand ([P]50,000.00) pesos more or less, and so he consulted his superior and assessing that it was reasonable, [an] authority to issue payment order (ATIPO) was prepared.

(Exhibits H, K and J also Exhibits 10, 10-A & 10-B respectively). The aggregate amount to be paid by the complainant including surcharges, interest and compromises as appearing in the three ATIPO [was] P51,858.57.

'On October 10, 1991 upon invitation of the complainant, he and co-accused went to the former's office bringing with them the ATIPO's in anticipation of the payment, but the complainant requested x x x postponement of the payment, and told them to come back the following day; the next day, the complainant-doctor pleaded again for postponement. He then left the ATIPO [with] his co-accused Peligrino.

'On October 16, thirty minutes after arrival in his office, he was called by the new [d]irector at the latter's office where an NBI agent was waiting. He was then invited to the NBI office to identify the papers or documents seized from Mr. Peligrino. At the NBI Office, he was informed that he was the mastermind of the extortion aborted by the entrapment laid by the NBI and the complainant on Mr. Peligrino, and when he denied the same, he was brought before Prosecutor Carlos Montemayor in the Office of the Ombudsman where he saw the NBI Agent presenting the boodle money, and where he was told by the Prosecutor to go home when the NBI agent could not answer the Prosecutor's question why he (Buenafe) was there.'

"On the other hand, accused Eutiquio A. Peligrino, 51 years old, married and a BIR examiner made the following declaration:

'That he ha[d] been a BIR examiner for thirteen (13) years, and sometime in June or July 1991 he was assigned as examiner at Revenue District 22, Manila and at the same time one of the members of the Special Project Committee supervised by his co-accused; that he came to know Dr. Feliciano in the early part of July 1991 when he was assigned to examine the latter's books of accounts, that when the accountant of the said doctor went to his office she brought only the working sheets, list of employees and some of the withholding taxes, and not the most vital document which [was] the books of accounts[;] nonetheless he made a preliminary assessment based on the information given by his superior co-accused Buenafe; that when the accountant [came] back, he told her that if she want[ed] to make a compromise she [could] talk to his superior.

'On October 10, 1991 co-accused Buenafe told him that they had to go to the clinic of Dr. Feliciano in order to present the [A]uthority to [I]ssue Payment Order. They were entertained by the Doctor who told him that the check for the payment was not yet prepared, and requested them to return the following day. Again when they went there the next day, the Doctor informed them the check [was] not yet ready since he was very busy.

'On October 15, 1991 while in his Manila District Office 22, co-accused Buenafe gave him three (3) copies of [A]uthority to [I]ssue [P]ayment [O]rder and instructed him to deliver the same to Dr. Feliciano, and get the check if it is already prepared. He arrived at the Office of the Doctor at around 4:00 to 4:30 p.m. and went directly to the reception hall where he told the receptionist that his purpose in going there [was] to inform the Doctor of the due date of the ATIPO, and to pick up the check if it [was] already ready.

'He was allowed to enter the clinic where he gave the Doctor the copies of ATIPO. The Doctor asked the whereabouts of Atty. Buenafe and requested the copies of the ATIPO for xeroxing. While waiting for the ATIPO to be xeroxed, Dr. Feliciano asked him if he would accept payment in cash to which he said No and he would accept only check payable to the BIR. Thereafter, the Doctor took a brown envelope from his drawer, threw it in front of him and said 'yan ang bayad.' The envelope landed close to his arms and so he pushed it asking: 'What is that sir? My purpose in coming here is to get the check in payment for the BIR'. Instead of answering him, the Doctor stood up and told him he [was] going to get the xerox copy of the ATIPO.

'The Doctor returned followed by two (2) persons one of whom grabbed his hands from behind while the other standing behind him wanted him to hold the envelope but he resisted[,] placing his hands against his chest, and since the two men realized he [could] not be forced to hold the envelope, they let him go, picked the envelope and pressed it against his breast.

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> 'He was brought to the NBI office where in one room, a chemist examined him to detect the presence of fluorescent powder. During the examination, he asked the chemist which of his hand[s was] contaminated and the chemist answered 'none'. Then, she looked up to the escort behind him, and after that, started examining his hands, shirt and pants, and then began encircling portions on the diagram in front of her. Then he was fingerprinted.
>
> 'The following day, October 16, 1991 his co-accused arrived and they were brought before Fiscal Montemayor of the Ombudsman who asked the NBI why the envelope supposedly containing the money was still sealed. He [could] not remember how the NBI agents replied, but Fiscal Montemayor let go [of] his co-accused while he was asked to post bail.'

"The defense also presented Carlos Montemayor, 59 years old, married and a Special Prosecutor III in the Office of the Special Prosecutor, Ombudsman[,] who testified as follows:

> ['']Q
>
> Mr. Witness, can you tell us whether a big brown envelope was presented to you by the NBI during the inquest preliminary investigation?
>
> A
>
> I can not exactly remember if there was an envelope submitted by the NBI during the inquest investigation. What I remember having x x x seen and [having been] presented by the NBI [were the] xeroxed copy of the marked money and several affidavits.
>
> Q
>
> You mentioned that what [were] presented were only xeroxed copies of the marked money. Did you see the original of the marked money?
>
> A
>
> I am not sure whether it was presented to me or not.
>
> Q
>
> How about the diagram of the hands of the alleged persons [and] the presence of fluorescent powder, can you tell if you have seen them on that day?
>
> A
>
> No, what was presented to me was the Forensic Chemistry Report.['']
>
> "Answering the queries of the Court, he declared:
>
> ['']PJ GARCHITORENA
>
> Q
>
> Mr. Montemayor, at that time that you were conducting the inquest examination[,] was the accused Peligrino presented to you?
>
> A
>
> Yes, your Honor.
>
> Q

Did you ask him any question?

A

Well, my companions asked [him] questions x x x because we were three who conducted the inquest examination.

x x x x x x x x x

Q

Was there any question addressed by the panel to Mr. Peligrino at the time with respect to the evidence?

A

Yes, your Honor.

x x x x x x x x x

Q

Was Mr. Peligrino asked about the entrapment itself?

A

I believe so.

Q

Was he confronted in some way with the findings of the NBI with regard to the forensic powder?

A

I can not remember anymore, sir.

Q

Was the Forensic Report of the NBI presented [in] his presence?

A

Yes, sir.

Q

Did he protest in anyway the process by which the forensic examination was conducted?

A

No, because he waived the right to preliminary investigation.

Q

Be that as it may, did he in any way [protest] the proceedings or [protest] that the forensic examination was irregular or otherwise. . .

A

No protest whatsoever.

Q

Was he confronted with any statement?

A

He was confronted with the testimony or allegations of Dr. Feliciano[.]

Q

Did he make any comment?

A

He denied [them].

Q

Was the denial general or specific?

A

General.

Q

He denied any attempt to extort money from Dr. Feliciano?

A

Yes, Your Honor.

Q

Did he make any protest [or] misbehavior by the NBI?

A

No, sir.

Q

Did you see him under [some] kind of fear or stress about the NBI? Did he feel afraid?

A

I have not noticed any unusual appearance of the accused Peligrino, Your Honor.

x x x x x x x x x

Q

And in this particular case Mr. Peligrino was calm and apparently not at all unsettled?

A

Yes, Your Honor.

Q

He was calm in other words?

A

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Yes, Your Honor.

Q

And in his calm condition he did not say the NBI maltreated him?

A

No, Your Honor.

Q

Or that the entrapment or any of the proceedings were conducted in any manner different from what the NBI should do?

A

He did not protest.[']

"The documentary evidence adduced by the defense consist[s] of Exhibits 1 and 2, [which are] the affidavits of accused Buenafe dated Nov. 7 and December 18, 1991 respectively; Exhibits 3 and 4, which are the affidavits of Felicidad Viray[,] then Regional Director of the BIR and that of Antonio Panuncialman[,] then [c]oordinator of the Special Project Committee of the BIR; Exhibits 5 and 6, the certifications of BIR Revenue District Officer Mamerto Silang, Cruz[;] and Exhibit 7 the affidavit of one Roselyn Dy all tending to show the efficiency of accused Buenafe as a BIR employee. To prove the extent of Dr. Feliciano's practice, Exhibits 8 and 8-a consisting of [a] letter of some 'concerned doctors OB-Gyne," and a brochure were presented. The letters of authority already marked as Exhibits K, H, J & I were adopted by the defense as Exhibits 9, 10, 10-A & 10-B[;] while Exhibits M, N, O, & P of the prosecution were adduced by the accused as their Exhibits 11, 11-A, 12 and 12-A. Exhibit 13 is the Counter-affidavit of accused Peligrino while Exhibits 14 is a copy of a Memorandum for Hon. Mauro Castro[,] the Provincial Prosecutor of Rizal[; Exhibit] 14-a is a copy of an information charging Dr. Feliciano [with] the crime of Simple Slander, [Exhibit] 14-B is another information also charging the doctor [with] Simple Slander[;] Exhibit 15 is another Memorandum for Provincial Fiscal Mauro Castro recommending dismissal of the charges of Falsification of Private Document and Use of Falsified document against Dr. Feliciano[; Exhibit]15-A is a copy of another Memorandum for Provincial Fiscal Mauro Castro recommending dismissal of the three charges for perjury against the doctor[;] Exhibit 16 is another Memorandum for dismissal of the charge of perjury against the complainant-doctor[;] while Exhibit 17 is a certification by the Office of the Provincial Prosecutor of Rizal certifying the filing of five (5) criminal charges against the doctor[;] Exhibit 18 is a copy of the complaint (civil case) of the doctor against his own children – Dr. Antonio Feliciano Jr. and Ma. Isabel Feliciano – all these Exhibits (14 to 18 inclusive) were submitted to show that complainant [was] a very troublesome person. [The a]ccused also presented Exhibits 19, 20 and 21 [which are a] certification of the Dismissal of the Administrative case filed by Dr. Feliciano against accused Buenafe, as well as [a] certification anent his semestral accomplishment, and a letter of the Metropolitan Hospital Administrator to x x x BIR [C]ommissioner Ong commending Buenafe respectively.

"While Exhibits 1 to 21 were admitted by the Court in its Minute Resolution of October 28, 1994 there was nothing said of Exhibits 22 and 23 but considering that they were annexes to the Joint Stipulation of Facts, the Court is constrained to consider them even if virtually they were not the object of a formal offer. Exhibit 22 is Revenue Special Order No. 30-91 dated April 2, 1991 signed by BIR Com. Jose Ong appointing Antonio Panuncialman and Buenaventura Buenafe as Head & Team Leader respectively of the Committee on Special Projects, Revenue Region 4-A Manila, while Exhibit 23 is the same as Exhibit 21."[10]

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Ruling of the Sandiganbayan

In its well-written 40-page Decision, the Sandiganbayan ruled that all the elements of the offense described in Section 3, paragraph (b) of Republic Act 3019 (Anti-Graft and Corrupt Practices Act),[11] had been proven. Being a public officer, specifically an examiner of the BIR, Peligrino had the right to intervene in the subject transaction. He was a member of the Special Project Committee tasked to verify the tax liabilities of professionals, particularly physicians, within the jurisdiction of Revenue Region No. 4-A, Manila.

Based on the testimony of private complainant, the NBI agents' entrapment scheme, and the positive results of the chemical examination done on petitioner, the latter was found by the anti-graft court to have demanded and received money for his personal benefit in connection with private complainant's tax liabilities. After noting that they had no improper motive to testify against petitioner, the court a quo accorded full faith and credence to the testimonies of the NBI agents and the complaining witness.

As regards Buenafe, however, the Sandiganbayan held that there was no sufficient proof that he had conspired with petitioner: "[A]ll told, as to this accused, there were whispers of doubt anent his culpability, which the prosecution despite its commendable efforts, has failed to still. Such doubt must set him free."[12]

Hence, this Petition by Peligrino.

Issues

In his Memorandum, petitioner raises the following issues:

> "I.
>
> That the Sandiganbayan erred in finding that petitioner demanded and received the envelope with the boodle money;
>
> "II.
>
> That the Sandiganbayan erred in convicting the petitioner on the basis of the lone testimony of Dr. Feliciano, an admittedly discredited witness;
>
> "III.
>
> That petitioner was denied his right to equal protection of the law."[13]

This Court's Ruling

The Petition[14] has no merit.

First Issue:Demand and Receipt of
"Boodle Money"

Section 3(b) of the Anti-Graft and Corrupt Practices Act (RA 3019, as amended) provides:

> "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:
>
> x x x x x x x x x
>
> "(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or

> for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.
>
> x x x x x x x x x."

The elements of this offense were summed up in Mejia v. Pamaran,[15] and we restate them here: (1) the offender is a public officer (2) who requested or received a gift, a present, a share, a percentage, or a benefit (3) on behalf of the offender or any other person (4) in connection with a contract or transaction with the government (5) in which the public officer, in an official capacity under the law, has the right to intervene.

Petitioner is a BIR examiner assigned to the Special Project Committee tasked "x x x to undertake verification of tax liabilities of various professionals particularly doctors within the jurisdiction of Revenue Region No. 4-A, Manila x x x." Since the subject transaction involved the reassessment of taxes due from private complainant, the right of petitioner to intervene in his official capacity is undisputed. Therefore, elements (1), (4) and (5) of the offense are present.

However, petitioner disputes the prosecution evidence establishing that he demanded and received grease money in connection with the transaction.

Specifically, he contends that the Sandiganbayan's conclusion that he demanded money from complainant was based merely on an assumption that was not supported by any evidence. He avers that he merely informed complainant of his tax deficiencies, and that it was the latter who requested the reduction of the amount claimed.

We are not convinced. Section 3(b) of RA 3019 penalizes three distinct acts -- (1) demanding or requesting; (2) receiving; or (3) demanding, requesting and receiving -- any gift, present, share, percentage, or benefit for oneself or for any other person, in connection with any contract or transaction between the government and any other party, wherein a public officer in an official capacity has to intervene under the law. These modes of committing the offense are distinct and different from each other. Proof of the existence of any of them suffices to warrant conviction.[16] The lack of demand is immaterial. After all, Section 3(b) of RA 3019 uses the word "or" between requesting and receiving.

Averring that the incident in complainant's clinic was a frame-up, petitioner contends that there could not have been any payoff, inasmuch as there was no demand.

Like bribery, this crime is usually proved by evidence acquired during an entrapment, as the giver or briber is usually the only one who can provide direct evidence of the commission of this crime. Thus, entrapment is resorted to in order to apprehend a public officer while in the act of obtaining undue benefits.[17] However, we have to distinguish between entrapment and instigation.

In "instigation," officers of the law or their agents incite, induce, instigate or lure the accused into committing an offense, which the latter otherwise would not commit and has no intention of committing. In "entrapment," the criminal intent or design to commit the offense charged originates in the mind of the accused, and the law enforcement officials merely facilitate the commission of the crime.[18]

Frame-up, like alibi, is invariably viewed with disfavor because, as a line of defense in most criminal prosecutions of this nature, it is easily concocted, common or standard.[19]

Petitioner denies that he received payoff money from complainant. According to him, receive, as contemplated in the offense charged, connotes a voluntary act coupled with knowledge. Hence, where the giving of the money affords the accused no opportunity either to refuse or to return it to the giver, no punishable offense ensues.[20] Petitioner claims that the 40 seconds or less that the boodle money was in his hands was merely a momentary

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possession that could not prove “receipt,” which the law requires for the offense charged to be consummated.

We disagree. In Cabrera v. Pajares, acceptance was established because the accused judge placed the bribe money between the pages of his diary or appointment book, despite his protestations that the money bills landed on the open pages of his diary, only after he had flung them back to the complainant.[21]

In Formilleza v. Sandiganbayan,[22] this Court overruled the finding of acceptance, because it was improbable for the accused to accept bribe money in front of her office mates and in a public place, even if the money had been handed to her under the table. Furthermore, the accused therein shouted at the complainant, “What are you trying to do to me?” That is not the normal reaction of one with a guilty conscience.

Furthermore, the Court held in the said case that there must be a clear intention on the part of the public officer to take the gift so offered and consider it as his or her own property from then on. Mere physical receipt unaccompanied by any other sign, circumstance or act to show acceptance is not sufficient to lead the court to conclude that the crime has been committed. To hold otherwise would encourage unscrupulous individuals to frame up public officers by simply putting within their physical custody some gift, money or other property.[23]

The duration of the possession is not the controlling element in determining receipt or acceptance. In the case at bar, petitioner opened the envelope containing the boodle money, looked inside, closed it and placed the envelope beside him on the table. Such reaction did not signify refusal or resistance to bribery, especially considering that he was not supposed to accept any cash from the taxpayer. The proximity of the envelope relative to petitioner, as testified to by NBI Agent Ragos, also belies petitioner’s contention that he refused the bribe.

A person found in possession of a thing taken from the recent execution of a wrongful act is presumed to be both the taker and the doer of the whole act.[24]

Second Issue:
Credibility of Complaining Witness

Petitioner faults the Sandiganbayan with inconsistency. Supposedly, while stating on the one hand that complainant was not a credible witness on account of his character, on the other hand it accorded credibility to his testimony that petitioner had received the boodle money. Likewise, petitioner adds, the same court found complainant’s testimony insufficient to establish Buenafe’s complicity, yet deemed the same testimony sufficient to prove petitioner’s guilt.

The Sandiganbayan findings adverted to are as follows:

> “While the Court is reluctant to consider this declaration of the offended party as satisfactory proof that the accused [therein petitioner] requested or demanded x x x the sum of P200,000 not only because it was vehemently denied by the accused but likewise considering the nature and character x x x [or] person of the said offended party (Exhibit 14 to 18), we are at a loss why in the ensuing event, particularly in the entrapment laid out by the complainant and the NBI agents, this accused was present and x x x a brown envelop[e] containing the ‘boodle money’ was retrieved [from him]. x x x.”[25]

Obviously, the anti-graft court did not tag complainant as a discredited witness. It simply said that his testimony by itself was not sufficient evidence of the commission of the offense. But, taken together with the other pieces of corroborating evidence, it established a quantum of evidence strong enough to convict petitioner. While the case is weakened by the many suits filed for and against complainant, the court a quo did not say that he was not at all worthy of belief.

We see no cause to fault the lower court. The assessment of the credibility of a witness is primarily the function of

a trial court, which had the benefit of observing firsthand the demeanor or deportment of the witness. It is well-settled that this Court will not reverse the trial court's assessment of the credibility of witnesses in the absence of arbitrariness, abuse of discretion or palpable error.[26]

It is within the discretion of the Sandiganbayan to weigh the evidence presented by the parties, as well as to accord full faith to those it regards as credible and reject those it considers perjurious or fabricated.[27]

Petitioner further contends that he tested positive for fluorescent powder, because the NBI agents had pressed the envelope to his body.

We are not persuaded. Petitioner failed to ascribe to the NBI agents any ill motive to deliberately implicate him. No malice was imputed, either, to the chemist who had examined and found him positive for the chemical; thus, we see no cogent reason to disbelieve her testimony. In the absence of any controverting evidence, the testimonies of public officers are given full faith and credence, as they are presumed to have acted in the regular performance of their official duties.[28]

Third Issue:
Right of the Accused to the Equal Protection of the Law

Petitioner asserts that he should be accorded the same treatment and, thus, acquitted because of his right to the equal protection of the law. After all, the Sandiganbayan believed the testimony of Buenafe that the latter had not asked for any payoff money; and he was, thus, cleared of the charge against him.

We disagree. Petitioner alludes to the doctrine that if the conviction of the accused rests upon the same evidence used to convict the co-accused, the acquittal of the former should benefit the latter.[29] Such doctrine does not apply to this case. The strongest pieces of evidence against petitioner were the ones obtained from the entrapment, in which Buenafe was not involved. Hence, the evidence against petitioner and that against his co-accused were simply not at par with each other.

All in all, petitioner failed to show that Sandiganbayan had committed any reversible error. Quite the contrary, it had acted judiciously and correctly. Hence, this recourse must fail.

WHEREFORE, the Petition is DENIED, and the assailed Decision and Resolution AFFIRMED. Costs against petitioner.

SO ORDERED.

Melo, (Chairman), Vitug, Gonzaga-Reyes, and Sandoval-Gutierrez, JJ., concur.

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[1] Penned by Justice Edilberto G. Sandoval with the concurrence of Presiding Justice Francis E. Garchitorena and Justice Catalino R. Castañeda Jr. (member).

[2] By that time, Justice Gregory S. Ong had replaced Justice Edilberto G. Sandoval in the First Division of the Sandiganbayan.

[3] Assailed Decision, p. 39; rollo, p. 101.

[4] Rollo, p. 118.

[5] Records, Vol. I, pp. 1-2.

[6] Ibid, pp. 78-80.

[7] Atty. Vernard V. Quijano for Peligrino, and Atty. Romeo Bringas for Buenafe.

[8] Sandiganbayan Records, Vol. I, pp. 330-331.

[9] Sandiganbayan Decision; rollo, pp. 66-77.

[10] Sandiganbayan Decision, pp. 16-25; rollo, pp. 77-87.

[11] "Sec. 3 par. (b) of Republic Act. 3019 x x x provides:

> 'Sec. 3. 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 x x x x x x
>
> (b) Directly or indirectly requesting or receiving any gift, present, share, percentage or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.
>
> "The elements of this offense are:
>
> - the accused is a public officer
>
> - who requested and received gift, present, etc.
>
> - the gift, present, etc. was for the benefit of said public officer.
>
> - said public officer requested and/or received the gift, present, etc. in connection with a contract or transaction with the government, and
>
> - said officer has the right to intervene in such contract or transaction in his/her official capacity under the law (see Mejia vs. Pamaran 160 SCRA 457)"
>
> (Assailed Decision, pp. 27-28; rollo, pp. 89-90.)

[12] Assailed Decision, p. 38; rollo, p. 100.

[13] Memorandum for Petitioner; rollo, pp. 200-201.

[14] This case was deemed submitted for decision on March 16, 2000, upon receipt by this Court of the Memorandum for Respondent signed by Special Prosecutor Leonardo P. Tamayo, Deputy Special Prosecutor Robert E. Kallos, Dir. Carlos D. Montemayor and Ombudsman Prosecutor II Henedina A. Pulgar. The Memorandum for Petitioner was submitted by Atty. Manuel B. Imbong on October 19, 1999.

[15] 160 SCRA 457, 474, April 15, 1988.

[16] Fonacier v. Sandiganbayan, 238 SCRA 655, 688, December 5, 1994.

[17] Luis B. Reyes, The Revised Penal Code, Book Two, 12th ed., 1981, p. 370.

[18] Araneta v. Court of Appeals, 142 SCRA 534, 539-540, July 9, 1986; Cabrera v. Pajares,142 SCRA 127, 134, May 30, 1986.

[19] Españo v. Court of Appeals, 288 SCRA 558, 564, April 1, 1998; People v. Velasco, 252 SCRA 135, 142-143, January 23, 1996.

[20] Memorandum for Petitioner; rollo, pp. 204-205; citing People v. Agustin, 17 CAR (2s) 789, June 16, 1972.

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[21] Cabrera, supra, pp. 131-132.

[22] 159 SCRA 1, 9-10, March 18, 1988.

[23] Ibid, p. 9.

[24] People v. Cabiles, 284 SCRA 199, 215, January 16, 1998.

[25] Sandiganbayan Decision, pp. 30-31; rollo, pp. 92-93.

[26] Filoteo Jr. v. Sandiganbayan, 263 SCRA 222, 266, October 16, 1996; Pareño v. Sandiganbayan, 256 SCRA 242, 265, April 17, 1996; Cosep v. People of the Philippines & Sandiganbayan, 290 SCRA 378, 384, May 21, 1998.

[27] Dacumos v. Sandiganbayan, 195 SCRA 833, 835, April 16, 1991.

[28] People v. Magno, 296 SCRA 443, 450, September 25, 1998; Onquit v. Binamira-Parcia, 297 SCRA 354, 364, October 8, 1998; Chan v. Court of Appeals, 298 SCRA 713, 726, November 18, 1998; Espano v. Court of Appeals, 288 SCRA 558, 564, April 1, 1998.

[29] People v. Rugay, 291 SCRA 692, 700, July 2, 1998.

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