

LEANDRO A. SULLER, PETITIONER, VS. SANDIGANBAYAN, RESPONDENT.

G.R. No. 153686. July 22, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review of the decision of the Sandiganbayan dated December 6, 2001 in Criminal Case No. 17759, finding petitioner Leandro Suller y Avena guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Petitioner was charged in an Information which reads:

That on or about the 8th day of June 1992, or sometime prior thereto, at United Nations Avenue, Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused a public officer, being a Legal Officer III of Adjudication Board No. 1 of the National Police Commission, while in the performance of his official functions, taking advantage of his position and committing the crime in relation thereto, with evident bad faith and manifest partiality, did then and there, willfully and unlawfully and criminally demand the amount of P8,000.00 but received only the amount of P2,000.00 from complainant Reynaldo M. Nicolas in consideration of the accused refraining from working for the reversal of the decision prepared by Hearing Officer Lucien Florentino of the same officer recommending the dismissal of the Administrative Case for Homicide against said Reynaldo M. Nicolas which was elevated to said Adjudication Board No. 1 for review which the accused failed to accomplish as he was apprehended upon receipt of the latter amount, thereby causing undue injury to said Reynaldo M. Nicolas in the aforesaid amount.

CONTRARY TO LAW.[1]

When arraigned, petitioner pleaded not guilty to the offense charged. After trial on the merits, the Sandiganbayan rendered the challenged decision, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered finding accused LEANDRO A. SULLER GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and he is hereby sentenced -

- (a) To suffer imprisonment for an indeterminate period of six
(6) years and one (1) month as minimum to twelve (12) years and one (1) month as maximum;
- (b) To suffer perpetual disqualification from public office; and
- (c) To pay the costs of the suit.

As regards the civil liability ex delicto of accused Leandro A. Suller, the same is deemed extinguished, in as much as the money which is the object of the crime committed, had already been recovered from said accused.

SO ORDERED.[2]

The facts, as established by the evidence for the prosecution, show that sometime in the last week of May 1992, petitioner, representing himself to be an employee of the NAPOLCOM, called up SPO1 Reynaldo M. Nicolas of the WPD, PNP on the telephone and told him that the administrative case against him for homicide before the NAPOLCOM had already been elevated to the Adjudication Board. Thus, if he wanted to settle the case, he must meet with petitioner on June 1, 1992 at 10:00 a.m. at the 7-11 convenience store along United Nations Avenue, Manila. Petitioner also informed SPO1 Nicolas that he will be wearing a long-sleeved polo shirt and jeans and will be standing near the telephone booth.[3]

The following day, SPO1 Nicolas went to NAPOLCOM to verify the status of his case. There, he learned that the same was indeed before the Adjudication Board. He spoke with Atty. Florentino, the hearing officer of his case, and reported to him that a NAPOLCOM employee was extorting money from him in exchange for his acquittal. Atty. Florentino was surprised to hear this since he had recommended his exoneration.[4]

SPO1 Nicolas met the petitioner at the agreed time and place to talk about his case. Petitioner informed him that there were many "loopholes" in Atty. Florentino's recommendation. He then told SPO1 Nicolas that if he can produce the sum of P10,000.00, he can make a favorable resolution in the case. Otherwise, SPO1 Nicolas might be dismissed from the service. Petitioner also told him that a certain Atty. Hernandez of the Adjudication Board already knew about their transaction. SPO1 Nicolas haggled for a smaller amount, and petitioner agreed to reduce it to P8,000.00, saying that only P3,000.00 thereof will go to him while the remaining P5,000.00 will go to Atty. Hernandez. SPO1 Nicolas and petitioner agreed to meet again on June 8, 1992 at 10:00 a.m. at the Shakey's Pizza Parlor on Taft Avenue, Manila, for the pay-off.[5]

At 8:00 a.m. of June 8 1992, before his meeting with petitioner, SPO1 Nicolas went to the National Bureau of Investigation (NBI) to file a complaint against him. Agent Rickson L. Chiong mobilized a team to conduct an entrapment operation composed of himself, Agent Juan E. Monge, Agent Norberto R. Malit, Jr., and Special Investigator James Calleja. SPO1 Nicolas, for his part, provided the money consisting of twenty pieces of P100.00 bills, which were marked with invisible crayon and fluorescent powder and placed inside a white envelope.[6]

The members of the entrapment team proceeded to Shakey's Pizza Parlor and strategically occupied different tables. SPO1 Nicolas arrived shortly and sat beside petitioner. He then surreptitiously handed to petitioner the white envelope under the table, which the latter placed inside his shirt pocket. Immediately thereafter, SPO1 Nicolas gave the pre-arranged signal that prompted all the NBI agents to accost petitioner and place him under arrest.[7]

Petitioner was brought to the NBI where he was booked, fingerprinted and photographed. His hands were likewise examined at the NBI's Chemistry Division, the results of which were as follows:

FINDINGS:

Ultra-violet light examinations conducted on the above mentioned specimen showed the presence of yellow fluorescent specks and smudges on the dorsal and palmar aspects. xxx[8]

For his part, petitioner denied the charge against him and claimed that he was framed-up by SPO1 Nicolas and the NBI agents. According to him, SPO1 Nicolas went to NAPOLCOM to follow up the status of his case sometime in the last week of May 1992. SPO1 Nicolas pleaded for his help in asking the Adjudication Board to affirm Atty. Florentino's recommendation for the dismissal of his case. Petitioner advised him to just wait for the resolution of the case because he cannot influence the decision of the Adjudication Board since he is a mere legal researcher. Nevertheless, to end the already long-drawn conversation, he promised SPO1 Nicolas that he will see what he can do.[9]

On June 1, 1992 at around 9:00 a.m. SPO1 Nicolas returned to NAPOLCOM. As petitioner was about to leave for the Department of Justice (DOJ) to do some research, SPO1 Nicolas offered him a ride in his jeep. Petitioner accepted the offer since it was difficult to obtain public transportation. During the trip, SPO1 Nicolas repeatedly begged for his assistance and implored him to relay the request to Atty. Hernandez. Petitioner refused to entertain his plea for assistance. Instead, he reiterated that he cannot do anything about his request as it is very difficult to talk to Atty. Hernandez. Before petitioner alighted from the jeep, SPO1 Nicolas asked if they can meet on June 8, 1992 at 9:00 a.m. at the 7-11 convenience store along United Nations Avenue. Petitioner acceded to his request just to appease him.[10]

On June 8, 1992, at 9:00 a.m., petitioner arrived at the 7-11 store and found SPO1 Nicolas already there. After talking about the developments of his case, SPO1 Nicolas invited him for a snack somewhere on Taft Avenue but said he had to ask permission first from his superiors to leave the headquarters. Petitioner waited for SPO1 Nicolas but when he did not return after ten minutes, decided to proceed to the DOJ to do some legal research. As he was walking towards Taft Avenue, he met SPO1 Nicolas near the Manila Medical Center. SPO1 Nicolas again invited petitioner for a snack at the nearby Shakey's Pizza Parlor, and the latter agreed to join him.[11]

Inside the restaurant, SPO1 Nicolas moved his chair closer to petitioner and inserted a white envelope into his left side shirt pocket. Petitioner asked what the envelope was for, and SPO1 Nicolas told him not to mind it. As he was about to take out the envelope and return it to SPO1 Nicolas, agents of the NBI appeared and arrested him.[12]

Petitioner was thereafter brought to the Anti-Graft Division of the NBI where he was harassed by the agents who arrested him. Agent Chiong forced him to count the money inside the envelope while news reporters took photographs. After he counted the money, he was brought to the Chemistry Division where his hands were examined.[13]

Hence, this petition based on the following assignment of errors:

I

IT WAS IMPOSSIBLE FOR HEREIN PETITIONER TO HAVE DEMANDED P2,000.00 FROM THE PRIVATE COMPLAINANT;

II

THE PROSECUTION'S EVIDENCE IS WEAK;

III

THERE ARE STRONG REASONS OR MOTIVES FOR THE PRIVATE COMPLAINANT AND THE N.B.I. AGENTS TO CONCOCT THE CHARGE AGAINST THE PETITIONER;

IV

PETITIONER CANNOT BE FAULTED FOR LACK OF CORROBORATIVE WITNESSES;

V

PETITIONER CANNOT BE CONVICTED UNDER R.A. 3019, SECTION 3(e) BECAUSE ACTUAL INJURY WAS NOT INCURRED BY THE COMPLAINANT.[14]

Petitioner claims that he could not have demanded the measly sum of P2,000.00 from SPO1 Nicolas who was a complete stranger; that he was not in a position to help in the outcome of any administrative case pending before the Adjudication Board of the NAPOLCOM as he was a mere legal researcher in that office; and that it would be contrary to human experience for him to extort money in front of the Western Police District or the NBI where he

could have been easily arrested.

We are not persuaded.

It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.[15] None of the above exceptions obtains in this case.

After a careful review of the evidence on record, we find enough evidence to support the charge of extortion. We agree with the following findings of Sandiganbayan:

Moreover, it would have been quite illogical (if accused Suller's version is to be believed) for Nicolas to exert pressure on the accused, a mere legal researcher who already declared to him that he could not influence the decisions of the Adjudication Board one way or the other. If Nicolas really wanted to pressure anybody (and we do not believe that he did), then his most logical targets would have been the members of the Adjudication Board No. 1 itself (most especially, Atty. Hernandez) since they are in the best position to grant the relief he wanted, and not accused Suller who, in the scheme of things, is a low-man in that office's pecking order. And finally, assuming *ex gratia argumenti* that it is really the case that Nicolas approached and begged accused Suller to help him "fix the case" with Atty. Hernandez (again a claim which we do not accept), then it hardly makes sense for Nicolas himself to plot the entrapment of the accused because it would have meant sabotaging the realization of the very favor he wanted to extract from him in the first place.[16]

The elements of violation of Section 3(e), R.A. 3019, as amended, are as follows:

(1) The accused is a public officer or a private person charged in conspiracy with the former;

(2)

The 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;

(4) Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and

(5)

That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[17]

All the elements of the offense charged had been duly established beyond reasonable doubt. Petitioner, being a legal researcher of the Adjudication Board of the NAPOLCOM, is a public officer discharging administrative and official functions. His act of demanding and receiving money from SPO1 Nicolas in exchange for a supposed favorable resolution of the latter's administrative case was clearly tainted with or attended by evident bad faith. It was driven by an utterly corrupt intention to profit materially at the expense of another and was founded upon dishonesty and fraud.

Petitioner argues that, assuming he demanded money from SPO1 Nicolas, he cannot be held liable under Section 3(e) of R.A. 3019 because the element of undue injury was not present as the money used in the entrapment was recovered.

We find no merit in his argument.

In the case of *Llorente v. Sandiganbayan*,^[18] petitioner was charged with violation of Sec. 3(e), R.A. 3019 for withholding the salaries and allowances of complainant. Petitioner was, however, acquitted because the prosecution failed to specify and prove any other loss or damage sustained by the complainant, other than the amount of the salaries and allowances justifiably withheld by the petitioner for failure of the complainant to comply with the required clearance and which was eventually received by her. Further, the alleged financial stress which complainant suffered was inadequate and largely speculative. The "long period of time" that her emoluments were withheld was not constitutive of "undue injury". In acquitting petitioner, it was held that:

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.^[19]

Petitioner's reliance in the ruling of the above-entitled case is misplaced. In the case at bar, we find that the undue injury to SPO1 Nicolas was indubitably proved, specified and quantified. SPO1 Nicolas suffered injury to the extent of P2,000.00, the amount he handed over to petitioner. The fact that the money extorted by petitioner was immediately recovered as a consequence of the NBI agents' timely entrapment will not in any way affect his criminal liability. Petitioner gained actual possession of the money and it matters not even if he had no occasion or opportunity to dispose of the same because at the precise moment he received the money and placed it inside his pocket with the evil motive of appropriating it as his own, the offense was already consummated. Thus, the Sandiganbayan was correct in saying that the recovery of the money merely extinguished his civil liability arising from the commission of the crime.

It bears repeating that "an offense as a general rule causes two (2) classes of injuries - the first is the social injury produced by the criminal act which is sought to be repaired thru the imposition of the corresponding penalty and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated through indemnity, which is civil in nature."^[20] The civil liability of the accused and the consequent indemnity which he may be sentenced to pay to the offended party cannot be regarded as part of the penalty provided for the offense charged.^[21] Further, the indemnity for damages in a criminal action, being purely civil in nature, is independent of the penalties imposed for the criminal act.^[22]

Upon these principles, it is perfectly feasible to extinguish the civil liability arising from the commission of a criminal offense before, during or after the institution of the criminal case without, however, affecting or impairing the offender's criminal liability.^[23]

As against the evidence of the prosecution, petitioner claims that he was framed-up by SPO1 Nicolas and the NBI agents in order to pressure him to cause the dismissal of SPO1 Nicolas' case pending before the Adjudication Board of the NAPOLCOM.

We are not convinced. It bears emphasis that frame-up as a defense has been invariably viewed with disfavor, for it can easily be concocted^[24] but very difficult to substantiate.^[25] That is why once the elements of a crime have been established, clear and convincing evidence^[26] is required to prove this defense. Petitioner failed to discharge this burden in the instant case.

Absent any proof of ill-motive on the part of the NBI agents to falsely impute such a serious crime against petitioner, the presumption of regularity in the performance of their official duty, as well as the doctrine that findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the self-serving and uncorroborated claim of petitioner that he was framed-up.^[27]

The penalty for violation of Section 3(e) of R.A. 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office".[28] Under the Indeterminate Sentence Law, if the offense is punished by special law, the Court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same.[29] Hence, the trial court was correct in imposing the indeterminate penalty of imprisonment from six (6) years and one (1) month, as minimum, to twelve (12) years and one (1) month, as maximum, with perpetual disqualification from public office.

WHEREFORE, in view of the foregoing, the decision of the Sandiganbayan dated December 6, 2001 in Criminal Case No. 17759, finding petitioner Leandro A. Suller guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and sentencing him to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to twelve (12) years and one (1) month, as maximum, with perpetual disqualification from public office, is AFFIRMED in toto.

Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Vitug, Carpio, and Azcuna, JJ., concur.

[1] Records, pp. 1-2.

[2] Rollo, Decision, pp. 39-40; penned by Associate Justice Gregory S. Ong and concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Catalino R. Castañeda, Jr.

[3] TSN, March 28, 1995, p. 4.

[4] Id., p. 22.

[5] Id., p. 5.

[6] TSN, January 17, 1994, pp. 7.

[7] Id., pp. 8-9.

[8] Folder of Exhibits, "Annex F".

[9] TSN, June 28, 1996, pp. 4-8.

[10] Id., pp. 10-16.

[11] Id., pp. 17-24.

[12] Id., pp. 26-27.

[13] Id., pp. 29-35.

[14] Rollo, p. 72.

[15] Resoso Sandiganbayan, G.R. No. 124140, 25 November 1999, 319 SCRA 238, 244.

[16] Rollo, Decision, pp. 33-34.

[17] Garcia-Rueda Amor, G.R. No. 116938, 20 September 2001, 365 SCRA 456, 461.

[18] G.R. No. 122166, 11 March 1998, 287 SCRA 382.

[19] *Id.*, at 399.

[20] Ramos Gonong, G.R. No. L-42010, 31 August 1976, 72 SCRA 559.

[21] See U.S. Heery, 25 Phil. 600, [1913], cited in the case of Budlong Apalisok, 207 Phil. 804, [1983],

[22] Quiming De la Rosa, 67 Phil. 40, [1939].

[23] See Sangco, Philippine Law on Torts and Damages, p. 140 [1993], Revised Ed.

[24] People Patayek, G.R. No. 123076, 26 March 2003.

[25] People Hajili, G.R. Nos. 149872-73, 14 March 2003.

[26] People Gonzales, G.R. Nos. 113255-56, 19 July 2001, 361 SCRA 350.

[27] People Hajili, *supra*.

[28] Section 9, R.A. 3019, amended.

[29] Section 1, Act No. 4103, as amended.

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