

EDGAR Y. TEVES AND TERESITA Z. TEVES, PETITIONERS, VS. THE SANDIGANBAYAN, RESPONDENT.

G.R. No. 154182. December 17, 2004

Ponente: DAVIDE JR., CJ.

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DAVIDE JR., CJ.:

The pivotal issue in this petition is whether a public official charged with violation of Section 3(h) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, for unlawful intervention, in his official capacity, in the issuance of a license in favor of a business enterprise in which he has a pecuniary interest may be convicted, together with his spouse, of violation of that same provision premised on his mere possession of such interest.

Edgar Y. Teves, former Mayor of Valencia, Negros Oriental, and his wife Teresita Z. Teves seeks to annul and set aside the 16 July 2002 Decision[1] of the Sandiganbayan in Criminal Case No. 2337 convicting them of violation of Section 3(h) of the Anti-Graft Law for possessing direct pecuniary interest in the Valencia Cockpit and Recreation Center in Valencia.

The indictment reads:[2]

The undersigned Special Prosecution Officer II, Office of the Special Prosecutor, hereby accuses EDGAR Y. TEVES and TERESITA TEVES of violation of Section 3(h) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about February 4, 1992, and sometime subsequent thereto, in Valencia, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, accused Edgar Y. Teves, a public officer, being then the Municipal Mayor of Valencia, Negros Oriental, committing the crime-herein charged in relation to, while in the performance and taking advantage of his official functions, and conspiring and confederating with his wife, herein accused Teresita Teves, did then and there willfully, unlawfully and criminally cause the issuance of the appropriate business permit/license to operate the Valencia Cockpit and Recreation Center in favor of one Daniel Teves, said accused Edgar Y. Teves having a direct financial or pecuniary interest therein considering the fact that said cockpit arena is actually owned and operated by him and accused Teresita Teves.

CONTRARY TO LAW.

Upon their arraignment on 12 May 1997, the petitioners pleaded “not guilty.” Pre-trial and trial were thereafter set.

The petitioners and the prosecution agreed on the authenticity of the prosecution’s documentary evidence. Thus, the prosecution dispensed with the testimonies of witnesses and formally offered its documentary evidence marked as Exhibits “A” to “V.”[3]

On 23 February 1998, the petitioners filed their Comment/Objections to the evidence offered by the prosecution and moved for leave of court to file a demurrer to evidence.[4] On 29 July 1998, the Sandiganbayan admitted

Exhibits “A” to “S” of the prosecution’s evidence but rejected Exhibits “T,” “U,” and “V.”[5] It also denied petitioners’ demurrer to evidence,[6] as well as their motion for reconsideration.[7] This notwithstanding, the petitioners filed a Manifestation that they were, nonetheless, dispensing with the presentation of witnesses because the evidence on record are inadequate to support their conviction.

On 16 July 2002, the Sandiganbayan promulgated a decision[8] (1) convicting petitioners Edgar and Teresita Teves of violation of Section 3(h) of the Anti-Graft Law; (2) imposing upon them an indeterminate penalty of imprisonment of nine years and twenty-one days as minimum to twelve years as maximum; and (3) ordering the confiscation of all their rights, interests, and participation in the assets and properties of the Valencia Cockpit and Recreation Center in favor of the Government, as well as perpetual disqualification from public office.[9] The conviction was anchored on the finding that the petitioners possessed pecuniary interest in the said business enterprise on the grounds that (a) nothing on record appears that Mayor Teves divested himself of his pecuniary interest in said cockpit; (b) as of April 1992, Teresita Teves was of record the “owner/licensee” of the cockpit; and (c) since Mayor Teves and Teresita remained married to each other from 1983 until 1992, their property relations as husband and wife, in the absence of evidence to the contrary, was that of the conjugal partnership of gains. Hence, the cockpit is a conjugal property over which the petitioners have pecuniary interest. This pecuniary interest is prohibited under Section 89(2) of R.A. No. 7160, otherwise known as the Local Government Code (LGC) of 1991, and thus falls under the prohibited acts penalized in Section 3(h) of the Anti-Graft Law.

The Sandiganbayan, however, absolved the petitioners of the charge of causing the issuance of a business permit or license to operate the Valencia Cockpit and Recreation Center on or about 4 February 1992 for not being well-founded.

On 26 August 2002, the petitioners filed the instant petition for review on certiorari[10] seeking to annul and set aside the 16 July 2002 Decision of the Sandiganbayan.

At first, we denied the petition for failure of the petitioners to sufficiently show that the Sandiganbayan committed any reversible error in the challenged decision as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[11] But upon petitioners’ motion for reconsideration,[12] we reinstated the petition.[13]

The petitioners assert that the Sandiganbayan committed serious and palpable errors in convicting them. In the first place, the charge was for alleged unlawful intervention of Mayor Teves in his official capacity in the issuance of a cockpit license in violation of Section 3(h) of the Anti-Graft Law. But they were convicted of having a direct financial or pecuniary interest in the Valencia Cockpit and Recreation Center prohibited under Section 89(2) of the LGC of 1991, which is essentially different from the offense with which they were charged. Thus, the petitioners insist that their constitutional right to be informed of the nature and cause of the accusation against them was transgressed because they were never apprised at any stage of the proceedings in the Sandiganbayan that they were being charged with, and arraigned and tried for, violation of the LGC of 1991. The variance doctrine invoked by the respondent is but a rule of procedural law that should not prevail over their constitutionally-guaranteed right to be informed of the nature and cause of accusation against them.

Second, according to the petitioners, their alleged prohibited pecuniary interest in the Valencia Cockpit in 1992 was not proved. The Sandiganbayan presumed that since Mayor Teves was the cockpit operator and licensee in 1989, said interest continued to exist until 1992. It also presumed that the cockpit was the conjugal property of Mayor Teves and his wife, and that their pecuniary interest thereof was direct. But under the regime of conjugal partnership of gains, any interest thereon is at most inchoate and indirect.

Also assigned as glaring error is the conviction of Teresita Teves, who is not a public officer. In the information, only Mayor Teves was accused of “having a direct financial or pecuniary interest in the operation of the Valencia

Cockpit and Recreation Center in Negros Oriental.” His wife was merely charged as a co-conspirator of her husband’s alleged act of “while in the performance and taking advantage of his official functions, ... willfully, unlawfully and criminally caus[ing] the issuance of the appropriate business permit/license to operate” the said cockpit arena. Teresita Teves could not be convicted because conspiracy was not established. Besides, the Sandiganbayan had already absolved the petitioners of this offense.

On the other hand, the Sandiganbayan, through the Office of the Special Prosecutor (OSP), insists that the uncontroverted documentary evidence proved that petitioner Edgar Teves had direct pecuniary interest over the cockpit in question as early as 26 September 1983. That interest continued even though he transferred the management thereof to his wife Teresita Teves in 1992, since their property relations were governed by the conjugal partnership of gains. The existence of that prohibited interest is by itself a criminal offense under Section 89(2) of the LGC of 1991. It is necessarily included in the offense charged against the petitioners, i.e., for violation of Section 3(h) of the Anti-Graft Law, which proscribes the possession of a direct or indirect financial or pecuniary interest in any business, contract, or transaction in connection with which the person possessing the financial interest intervenes in his official capacity, or in which he is prohibited by the Constitution or any law from having any interest. The use of the conjunctive word “or” demonstrates the alternative mode or nature of the manner of execution of the final element of the violation of the provision. Although the information may have alleged only one of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof. There was, therefore, no violation of the constitutional right of the accused to be informed of the nature or cause of the accusation against them in view of the variance doctrine, which finds statutory support in Sections 4 and 5 of Rule 120 of the Rules of Court.

The petition is not totally devoid of merit.

Section 3(h) of the Anti-Graft Law provides:

Section 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:

...

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The essential elements set out in the afore-quoted legislative definition of the crime of violation of Section 3(h) of the Anti-Graft Law are as follows:

- The accused is a public officer;
- He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction;
- He either
 - intervenes or takes part in his official capacity in connection with such interest; or
 - is prohibited from having such interest by the Constitution or by any law.

There are, therefore, two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft Law. The first mode is if in connection with his pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his official capacity. The second mode is when he is prohibited from having such interest by the

Constitution or any law.

We quote herein the Sandiganbayan's declaration regarding petitioners' culpability anent the first mode:

...[T]hat portion of the Information which seeks to indict the spouses Teves for his causing the issuance of a business permit/license to operate the Valencia cockpit on or about February 4, 1992 is not well-founded.

... Mayor Edgar Teves could not have issued a permit to operate the cockpit in the year 1992 because as of January 1, 1992 the license could be issued only by the Sangguniang Bayan. He may have issued the permit or license in 1991 or even before that when he legally could, but that is not the charge. The charge is for acts committed in 1992.[14] [Emphasis supplied].

The Sandiganbayan found that the charge against Mayor Teves for causing the issuance of the business permit or license to operate the Valencia Cockpit and Recreation Center is "not well-founded." This it based, and rightly so, on the additional finding that only the Sangguniang Bayan could have issued a permit to operate the Valencia Cockpit in the year 1992. Indeed, under Section 447(3)[15] of the LGC of 1991, which took effect on 1 January 1992, it is the Sangguniang Bayan that has the authority to issue a license for the establishment, operation, and maintenance of cockpits. Unlike in the old LGC, Batas Pambansa Blg. 337, wherein the municipal mayor was the presiding officer of the Sangguniang Bayan,[16] under the LGC of 1991, the mayor is not so anymore and is not even a member of the Sangguniang Bayan. Hence, Mayor Teves could not have intervened or taken part in his official capacity in the issuance of a cockpit license during the material time, as alleged in the information, because he was not a member of the Sangguniang Bayan.[17]

A fortiori, there is no legal basis to convict Teresita Teves as a co-conspirator in the absence of a finding that Mayor Teves himself is guilty of the offense charged. In short, the Sandiganbayan correctly absolved the petitioners of the charge based on the first mode. And there is no need to belabor this point.

The Sandiganbayan, however, convicted the petitioners of violation of Section 3(h) of the Anti-Graft Law based on the second mode. It reasoned that the evidence overwhelmingly evinces that Mayor Teves had a pecuniary interest in the Valencia Cockpit, which is prohibited under Section 89(2) of the LGC of 1991.

The information accuses petitioner Edgar Teves, then Municipal Mayor of Valencia, Negros Oriental, of causing, "while in the performance and taking advantage of his official functions, and conspiring and confederating with his wife ... the issuance of the appropriate business permit/license to operate the Valencia Cockpit and Recreation Center in favor of one Daniel Teves." The last part of the dispositive portion of the information states that "said accused Edgar Y. Teves having a direct financial or pecuniary interest therein considering the fact that said cockpit arena is actually owned and operated by him and accused Teresita Teves."

A careful reading of the information reveals that the afore-quoted last part thereof is merely an allegation of the second element of the crime, which is, that he has a direct or indirect "financial or pecuniary interest in any business, contract or transaction." Not by any stretch of imagination can it be discerned or construed that the afore-quoted last part of the information charges the petitioners with the second mode by which Section 3(h) of the Anti-Graft Law may be violated. Hence, we agree with the petitioners that the charge was for unlawful intervention in the issuance of the license to operate the Valencia Cockpit. There was no charge for possession of pecuniary interest prohibited by law.

However, the evidence for the prosecution has established that petitioner Edgar Teves, then mayor of Valencia, Negros Oriental,[18] owned the cockpit in question. In his sworn application for registration of cockpit filed on 26 September 1983[19] with the Philippine Gamefowl Commission, Cubao, Quezon City, as well as in his renewal application dated 6 January 1989[20] he stated that he is the owner and manager of the said cockpit. Absent any

evidence that he divested himself of his ownership over the cockpit, his ownership thereof is rightly to be presumed because a thing once proved to exist continues as long as is usual with things of that nature.[21] His affidavit[22] dated 27 September 1990 declaring that effective January 1990 he “turned over the management of the cockpit to Mrs. Teresita Z. Teves for the reason that [he] could no longer devote a full time as manager of the said entity due to other work pressure” is not sufficient proof that he divested himself of his ownership over the cockpit. Only the management of the cockpit was transferred to Teresita Teves effective January 1990. Being the owner of the cockpit, his interest over it was direct.

Even if the ownership of petitioner Edgar Teves over the cockpit were transferred to his wife, still he would have a direct interest thereon because, as correctly held by respondent Sandiganbayan, they remained married to each other from 1983 up to 1992, and as such their property relation can be presumed to be that of conjugal partnership of gains in the absence of evidence to the contrary. Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife. And Section 143 of the Civil Code declares all the property of the conjugal partnership of gains to be owned in common by the husband and wife. Hence, his interest in the Valencia Cockpit is direct and is, therefore, prohibited under Section 89(2) of the LGC of 1991, which reads:

Section 89. Prohibited Business and Pecuniary Interest. – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

...

(2) Hold such interests in any cockpit or other games licensed by a local government unit.... [Emphasis supplied].

The offense proved, therefore, is the second mode of violation of Section 3(h) of the Anti-Graft Law, which is possession of a prohibited interest. But can the petitioners be convicted thereof, considering that it was not charged in the information?

The answer is in the affirmative in view of the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure, which both read:

Sec. 4. Judgment in case of variance between allegation and proof. – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Sec. 5. When an offense includes or is included in another. – An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitutes the latter. And an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form part of those constituting the latter.

The elements of the offense charged in this case, which is unlawful intervention in the issuance of a cockpit license in violation of Section 3(h) of the Anti-Graft Law, are

- The accused is a public officer;
- He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction, whether or not prohibited by law; and
- He intervenes or takes part in his official capacity in connection with such interest.

On the other hand, the essential ingredients of the offense proved, which is possession of prohibited interest in

violation of Section 3(h) of the Anti-Graft Law, are as follows:

- The accused is a public officer;
- He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
- He is prohibited from having such interest by the Constitution or any law.

It is clear that the essential ingredients of the offense proved constitute or form part of those constituting the offense charged. Put differently, the first and second elements of the offense charged, as alleged in the information, constitute the offense proved. Hence, the offense proved is necessarily included in the offense charged, or the offense charged necessarily includes the offense proved. The variance doctrine thus finds application to this case, thereby warranting the conviction of petitioner Edgar Teves for the offense proved.

The next question we have to grapple with is under what law should petitioner Edgar Teves be punished. It must be observed that Section 3(h) of the Anti-Graft Law is a general provision, it being applicable to all prohibited interests; while Section 89(2) of the LGC of 1991 is a special provision, as it specifically treats of interest in a cockpit. Notably, the two statutes provide for different penalties. The Anti-Graft Law, particularly Section 9, provides as follows:

SEC. 9. Penalties for violations. – (a) Any public official or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5, and 6 of this Act shall be punished by imprisonment of not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest....

On the other hand, Section 514 of the LGC of 1991 prescribes a lighter penalty; thus:

SECTION 514. Engaging in Prohibited Business Transactions or Possessing Illegal Pecuniary Interest. – Any local official and any person or persons dealing with him who violate the prohibitions provided in Section 89 of Book I hereof shall be punished with imprisonment for six months and one day to six years, or a fine of not less than Three thousand pesos (P3,000.00) nor more than Ten Thousand Pesos (P10,000.00), or both such imprisonment and fine at the discretion of the court.

It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute.[23] Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, the one designed therefor specially should prevail over the other.[24]

Conformably with these rules, the LGC of 1991, which specifically prohibits local officials from possessing pecuniary interest in a cockpit licensed by the local government unit and which, in itself, prescribes the punishment for violation thereof, is paramount to the Anti-Graft Law, which penalizes possession of prohibited interest in a general manner. Moreover, the latter took effect on 17 August 1960, while the former became effective on 1 January 1991. Being the earlier statute, the Anti-Graft Law has to yield to the LGC of 1991, which is the later expression of legislative will.[25]

In the imposition on petitioner Edgar Teves of the penalty provided in the LGC of 1991, we take judicial notice of the fact that under the old LGC, mere possession of pecuniary interest in a cockpit was not among the prohibitions enumerated in Section 41[26] thereof. Such possession became unlawful or prohibited only upon the advent of the LGC of 1991, which took effect on 1 January 1992. Petitioner Edgar Teves stands charged with an offense in connection with his prohibited interest committed on or about 4 February 1992, shortly after the maiden appearance of the prohibition. Presumably, he was not yet very much aware of the prohibition. Although

ignorance thereof would not excuse him from criminal liability, such would justify the imposition of the lighter penalty of a fine of P10,000 under Section 514 of the LGC of 1991.

Petitioner Teresita Teves must, however, be acquitted. The charge against her is conspiracy in causing “the issuance of the appropriate business permit/license to operate the Valencia Cockpit and Recreation Center.” For this charge, she was acquitted. But as discussed earlier, that charge also includes conspiracy in the possession of prohibited interest.

Conspiracy must be established separately from the crime itself and must meet the same degree of proof, i.e., proof beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during, and after the commission of the crime, all taken together, the evidence must reasonably be strong enough to show community of criminal design.[27]

Certainly, there is no conspiracy in just being married to an erring spouse.[28] For a spouse or any person to be a party to a conspiracy as to be liable for the acts of the others, it is essential that there be intentional participation in the transaction with a view to the furtherance of the common design. Except when he is the mastermind in a conspiracy, it is necessary that a conspirator should have performed some overt act as a direct or indirect contribution in the execution of the crime planned to be committed. The overt act must consist of active participation in the actual commission of the crime itself or of moral assistance to his co-conspirators.[29]

Section 4(b) of the Anti-Graft Law, the provision which applies to private individuals, states:

SEC. 4. Prohibitions on private individuals. – ...

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

We find no sufficient evidence that petitioner Teresita Teves conspired with, or knowingly induced or caused, her husband to commit the second mode of violation of Section 3(h) of the Anti-Graft Law.

As early as 1983, Edgar Teves was already the owner of the Valencia Cockpit. Since then until 31 December 1991, possession by a local official of pecuniary interest in a cockpit was not yet prohibited. It was before the effectivity of the LGC of 1991, or on January 1990, that he transferred the management of the cockpit to his wife Teresita. In accordance therewith it was Teresita who thereafter applied for the renewal of the cockpit registration. Thus, in her sworn applications for renewal of the registration of the cockpit in question dated 28 January 1990[30] and 18 February 1991,[31] she stated that she is the Owner/Licensee and Operator/Manager of the said cockpit. In her renewal application dated 6 January 1992,[32] she referred to herself as the Owner/Licensee of the cockpit. Likewise in the separate Lists of Duly Licensed Personnel for Calendar Years 1991[33] and 1992,[34] which she submitted on 22 February 1991 and 17 February 1992, respectively, in compliance with the requirement of the Philippine Gamefowl Commission for the renewal of the cockpit registration, she signed her name as Operator/Licensee.

The acts of petitioner Teresita Teves can hardly pass as acts in furtherance of a conspiracy to commit the violation of the Anti-Graft Law that would render her equally liable as her husband. If ever she did those acts, it was because she herself was an owner of the cockpit. Not being a public official, she was not prohibited from holding an interest in cockpit. Prudence, however, dictates that she too should have divested herself of her ownership over the cockpit upon the effectivity of the LGC of 1991; otherwise, as stated earlier, considering her property relation with her husband, her ownership would result in vesting direct prohibited interest upon her husband.

In criminal cases, conviction must rest on a moral certainty of guilt.[35] The burden of proof is upon the prosecution to establish each and every element of the crime and that the accused is either responsible for its

commission or has conspired with the malefactor. Since no conspiracy was proved, the acquittal of petitioner Teresita Teves is, therefore, in order.

WHEREFORE, premises considered, the 16 July 2002 Decision of the Sandiganbayan, First Division, in Criminal Case No. 2337 is hereby MODIFIED in that (1) EDGAR Y. TEVES is convicted of violation of Section 3(h) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, for possession of pecuniary or financial interest in a cockpit, which is prohibited under Section 89(2) of the Local Government Code of 1991, and is sentenced to pay a fine of P10,000; and (2) TERESITA Z. TEVES is hereby ACQUITTED of such offense.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Chico-Nazario, and Garcia, JJ., concur.
Callejo, Sr., J., on leave, but left his oath of concurrence with the dissent of J. Tinga.
Tinga, J., dissenting opinion.

[1] Rollo, 30-47.

[2] Id., 52-53.

[3] Id., 56-63.

[4] Rollo, 69-71.

[5] Id., 80-81.

[6] Id., 72-79.

[7] Id., 82-90, 93.

[8] Id., 30-47.

[9] Id., 46.

[10] Rollo, 8-29.

[11] Id., 139.

[12] Id., 152-169.

[13] Id., 194.

[14] Rollo, 43.

[15] Section 447. Powers, Duties, Functions and Compensation. – (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall

...

(3) Subject to the provisions of Book II of this Code, grant franchises, enact ordinances authorizing the issuance of permit or licenses, or enact ordinances levying taxes, fees and charges upon such conditions and

for such purposes intended to promote the general welfare of the inhabitants of the municipality, and pursuant to this legislative authority shall:

...

(v) Any law to the contrary notwithstanding, authorize and license the establishment, operation, and maintenance of cockpits, and regulate cockfighting and commercial breeding of gamecocks: Provided, that existing rights should not be prejudiced.... [Emphasis supplied].

[16] Section 146 (1), B.P. Blg. 337.

[17] Section 446. Composition – (a) The sangguniang bayan, the legislative body of the municipality, shall be composed of the municipal vice mayor as the presiding officer, the regular sanggunian members, the president of the municipal chapter of the liga ng mga barangay, the president of the pambayang pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.

[18] Exh. “R,” Rollo, 317.

[19] Exh. “A,” Rollo, 298.

[20] Exh. “B,” Rollo, 299.

[21] Section 3 (ee), Rule 131, Rules on Evidence.

[22] Exh. “E,” Rollo, 302.

[23] Laxamana v. Baltazar, 92 Phil. 32, 35 (1952).

[24] Wil Wilhemsen, Inc v. Baluyut, Nos. L-27350-51, 11 May 19778, 83 SCRA 38, 53; Leveriza v. Intermediate Appellate Court, No. L-66614, 25 January 1988, 157 SCRA 282.

[25] City of Naga v. Agna, No. L-36049, 31 May 1976, 71 SCRA 176.

[26] SEC. 41. Officials not to Engage in Business Transactions or Possess Pecuniary Interest.—It shall be unlawful for any local government official, directly or indirectly, individually or as a member of a firm:

(1) To engage in any business transaction with the local government unit of which he is an official or over which he has power of supervision, or with any of its authorized officials, boards, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;

(2) To purchase any real estate or other property forfeited in favor of such unit which shall be sold for unpaid taxes or assessment, or by virtue of legal process at the suit of said unit;

(3) To be a surety for any person having contract or doing business with the local government unit for the performance of which surety may be required.

[27] Lecaroz v. Sandiganbayan, 364 Phil. 890, 911 (1999), citing Magsuci v. Sandiganbayan, 310 Phil. 14,19 (1995).

[28] Id.

[29] Pecho v. Sandiganbayan, 331 Phil. 6 (1996).

[30] Exh. “F,” Rollo, 303.

[31] Exh. “J,” Rollo, 306.

[32] Exh. "M," Rollo, 311.

[33] Exh. "I," Rollo, 307.

[34] Exh. "N," Rollo, 312.

[35] *Timbal v. Court of Appeals*, G.R. No. 136487, 14 December 2001, 372 SCRA 358 citing *People v. Quindipan*, 323 Phil. 497, 507 (1996).

DISSENTING OPINION

TINGA, J.:

It is imperative for this Court as guardian of the people's fundamental liberties, to redeem persons inflicted with the classic Kafkaesque nightmare – conviction for a crime the indictment for which the accused has no knowledge of. I sense that the majority recognizes, albeit tacitly, the absurdity of the convictions challenged in this petition. Thus the proposed quantum downgrading of the penalty of accused Edgardo Teves (Teves) from imprisonment of at least nine years, imposed by the Sandiganbayan, to a mere fine. However, I submit that Teves should be extenuated not as a matter of grace, but as a matter of right in consonance with the Constitution.

My submission is ultimately premised on constitutional considerations – that Teves cannot be convicted of the present charges against him without violating his constitutional right to be informed of the nature and cause of the accusation against him.[1] Furthermore, the punishment of Teves for a crime of which he was neither legally nor actually informed constitutes a violation of the constitutional right to due process of law.[2] While the variance doctrine is a rule of long-standing, its mechanical application cannot supplant the Bill of Rights which occupies a position of primacy within our fundamental law.[3] I believe that the variance between the offense charged to Teves, on one hand, and the offense of which the majority intends to convict him, on the other, is material and prejudicial enough so as to affect his substantial rights as an accused.[4]

In particular, the Information filed against Teves is deficient for the purpose of convicting him, as charged, of violating Section 3(h) of the Anti-Graft and Corrupt Practices Act, or for violating Section 89(b) of the Local Government Code, as is the wont of the majority.

The offense of which Teves is charged is defined under Section 3(h) of the Anti-Graft and Corrupt Practices Act,[5] which states:

Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

As the majority correctly points out, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract or transaction may violate Section 3(h). The first is where the public officer, in connection with his financial or pecuniary interest in a business, contract or transaction, intervenes or takes part in his official capacity (First Mode). The second is where the public officer possesses such financial or pecuniary interest and said possession is prohibited by the Constitution or of any other law (Second

Mode).

The Information clearly charges the Teves spouses with violating Section 3(h) through the First Mode:

The undersigned Special Prosecution Officer II, Office of the Special Prosecutor, hereby accuses EDGAR Y. TEVES and TERESITA TEVES of violation of Section 3(h) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That on or about February 4, 1992, and sometime subsequent thereto, in Valencia, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, accused Edgar Y. Teves, a public officer, being then the Municipal Mayor of Valencia, Negros Oriental, committing the crime herein charged in relation to, while in the performance and taking advantage of his official functions, and conspiring and confederating with his wife, herein accuse[d] Teresita Teves, did then and there willfully, unlawfully and criminally cause the issuance of the appropriate business permit/license to operate the Valencia Cockpit and Recreation Center in favor of one Daniel Teves, said accused Edgar Y. Teves having a direct or pecuniary interest therein considering the fact that said cockpit arena is actually owned and operated by him and accused Teresita Teves.

CONTRARY TO LAW.[6]

The Sandiganbayan found that Teves could not have caused the issuance of the permit to operate the cockpit in 1992, as alleged in the Information. Hence, the offense through the First Mode for which Teves was charged was not proved. Still, the Sandiganbayan found the Teves spouses guilty of violating Section 3(h), through the Second Mode, although it was not at all alleged in the Information. In justifying the conviction, the Sandiganbayan merely noted that the fact of Teves' pecuniary interest in the cockpit was un rebutted,[7] and that Section 89(b) of the Local Government Code barred Teves from holding an interest in a cockpit. The Sandiganbayan was silent as to why the Teves spouses were convicted of an offense different from that charged in the Information.

The ponencia fills in the blank, contending that conviction can be had by applying the "variance doctrine" encapsulated in Sections 4 and 5, Rule 120 of the Rules of Criminal Procedure. According to the majority, the offense proved the violation of Section 3(h) through holding the prohibited pecuniary interest, is necessarily included in the offense charged³4the violation of Section 3(h) through intervening/taking part in an official capacity in connection with a financial or pecuniary interest in any business, contract or transaction. However, the majority would prefer to convict Teves instead and fine him Ten Thousand Pesos (P10,000.00) for violating Section 89(b) of the Local Government Code, the law which specifically prohibits Teves from maintaining an interest in a cockpit. The deviation is sought to be justified by noting that Section 89(b) of the Local Government Code is more specific in application than the general proscription under Section 3(h) of the Anti-Graft and Corrupt Practices Act, a law which happens to antecede the Local Government Code. The ponencia would also do away with a sentence of imprisonment, imposing instead a fine as earlier adverted to.

That an accused cannot be convicted of an offense not charged or included in the information is based upon the right to be informed of the true nature and cause of the accusation against him.[8] This right was long ago established in English law, and is expressly guaranteed under Section 14(2), Article III of the Constitution. This right requires that the offense be charged with clearness and all necessary certainty to inform the accused of the crime of which he stands charged, in sufficient detail to enable him to prepare a defense.[9] The peculiarities attaching to the Information herein preclude his conviction of any offense other than violation of Section 3(h) through the First Mode.

Second Mode Not Necessarily Included in First Mode

With due respect, I find unacceptable the general proposition that the Second Mode of violating Section 3(h) is necessarily included in the First Mode.

Under Section 5, Rule 120 of the Rules of Criminal Procedure, the offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former constitute the latter. Thus, it should be established that the Second Mode is constituted of the essential elements of the First Mode.

In analyzing the question, the majority makes the following pronouncement:

The elements of the offense charged in this case, which is unlawful intervention in the issuance of a cockpit license in violation of Section 3(h) of the Anti-Graft Law, are

- The accused is a public officer;
- He has a direct or indirect financial or pecuniary interest in any business, contract or transaction, whether or not prohibited by law; and
- He intervenes or takes part in his official capacity in connection with such interest.

On the other hand, the essential ingredients of the offense proved, which is possession of prohibited interest in violation of Section 3(h) of the Anti-Graft Law, are as follows:

- The accused is a public officer;
- He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
- He is prohibited from having such interest by the Constitution or any law.

It is clear that the essential ingredients of the offense proved constitute or form part of those constituting the offense charged. Put differently, the first and second elements of the offense charged, as alleged in the information, constitute the offense proved. Hence, the offense proved is necessarily included in the offense charged, or the offense charged necessarily includes the offense proved. The variance doctrine thus finds application to this case, thereby warranting the conviction of petitioner Edgar Teves for the offense proved.[10]

The essential common ingredient appreciated by the majority is clearly the existence of “direct or indirect financial or pecuniary interest.” Yet the element of “financial or pecuniary interest” contemplated under the Second Mode is one prohibited by law, a qualification not present in the First Mode.

Under the First Mode, the element considered is simply that the public official maintains a financial or pecuniary interest, whether or not prohibited by law. This contrasts to the Second Mode, wherein such interest is particularly qualified as one prohibited by the Constitution or by any other statute. Thus, while the pecuniary interest of a town mayor who possesses an ownership share in a real estate firm may be cause for liability under the First Mode if the other requisites thereof concur, it is not cause for liability under the Second Mode as such ownership is not prohibited either by the Constitution or by any other law.

It should be taken into the account that the proper application of the variance doctrine ordinarily does not run afoul of the Constitution because it is expected that the accused has been given the opportunity to defend himself/herself not only of the offense charged, but also of the offense eventually proven. This is because the essential elements of the offense proved are already necessarily included in the offense charged.[11] For the variance doctrine to apply, there must be a commonality of elements within the offense charged and offense proved, to the extent that an Information detailing the offense charged can be deemed as well as an Information detailing the offense proven.

Hence, the threshold question should be whether violation of Section 3(h) through the Second Mode is necessarily included in a violation of Section 3(h) through the First Mode. An affirmative answer is precluded by the

difference in the nature of the pecuniary interest that respectively lie at the core of the two modes.

Information Deficient To Sustain Conviction for Any Crime Other than the First Mode of Violation of Section 3(h)

An even more crucial reason why Teves should be acquitted pertains to the particular Information charged against him.

In relation to Teves's pecuniary interest in the cockpit, all the Information alleges is that Teves had a direct financial or pecuniary interest in the cockpit. It does not allege that such pecuniary interest violates either the Constitution or any other law. It does not even state that maintaining the pecuniary interest in the cockpit is in itself unlawful. Moreover, it does not make any reference to Section 89(b) of the Local Government Code, more so of the fact that such pecuniary interest is prohibited under the said statute.

Even the majority concedes that the Information does not charge the Teves spouses with violating the Second Mode. The ponencia notes that:

"[n]ot by any stretch of imagination can it be discerned or construed that the afore-quoted last part of the information charges the petitioners with the second mode by which Section 3(h) of the Anti-Graft Law may be violated. Hence, we agree with the petitioners that the charge was for unlawful intervention in the issuance of the license to operate the Valencia Cockpit. There was no charge for possession of pecuniary interest prohibited by law." [12]

In short, the Information does not give any indication that the Office of the Special Prosecutor, which had lodged the charge sheet, was genuinely aware that the fact of Teves's ownership of the cockpit actually constitutes a violation of a law, or any law for that matter. But before the Court chalks it up as a lucky break for the government, it should first examine whether Teves's constitutional rights as an accused would be impaired if he were found guilty of a charge on the basis of an Information clearly predicated on a different ground.

Clearly, the Information is sufficient to convict Teves for the First Mode of violating Section 3(h), had the evidence warranted conviction. It amply informs Teves of that particular charge to the extent that he could adequately prepare a defense in his behalf. However, would the same Information similarly suffice to have allowed Teves to defend himself against a charge that maintaining the financial/pecuniary interest in the cockpit is itself illegal? Clearly, it would not and I so maintain.

Our holding in *Esguerra v. People* [13] is in point. The accused was charged with estafa under Article 315, paragraph 1-b of the Revised Penal Code, which pertains to misappropriating personal property received by the offender reposed with trust to preserve or deliver it to another. However, while the Court of Appeals found that Esguerra could not be held liable for Estafa under Article 315, paragraph 1-b, he still could be held responsible for violation of the same Article, but under paragraph 3(2-a), which pertains to false pretenses or fraudulent acts committed by making misrepresentations as to his identity or status. [14] The Court reversed the conviction, noting that:

It is undisputed that the information contains no allegation of misrepresentation, bad faith or false pretenses, essential element in the crime of which appellant was found guilty by the Court of Appeals. This is so, evidently, because, as already stated, the fiscal and the private prosecutor avowedly were prosecuting the accused for the crime of misappropriation and conversion committed with unfaithfulness and abuse of confidence for which the appellant went to trial and was convicted by the lower court. It is true the information states that "the accused, upon representations (not misrepresentations) that the accused had copras ready for delivery to it, took and received" the sum of P4,400.00. Nowhere does it appear in the information that these "representations" were false or fraudulent, or that the accused had no such copra at the time he allegedly made

such "representations." The falsity or fraudulentness of the pretense or representation or act being the very constitutive element of the offense, allegation to that effect, either in the words of the law or in any other language of similar import, must be made in the information if the right of the accused to be informed of the nature and cause of the accusation against him is to be preserved. xxx[15]

In the case at bar, the constitutive element of the Second Mode for violating Section 3(h) is the possession of a pecuniary interest that the public officer is prohibited from having by law. Necessarily then, the Information should spell out which law prohibits such financial or pecuniary interest if conviction could be had based on the possession of such interest. Such fact would be critical in order to afford the accused the opportunity to prepare an intelligent defense. Had the Information notified Teves of his possible culpability hinging on Section 89(b) of the Local Government Code, Teves would have had the chance to study the provision and prepare accordingly. There are several avenues the defense could have pursued, such as an examination of relevant jurisprudential precedents regarding Section 89(b) or of its legislative history. Teves could have even conducted a contextual analysis of Section 89(b) in relation to the rest of the Local Government Code or of other statutes. Indeed, the validity itself of Section 89(b) could be fair game for judicial review, and it would be understood if Teves had pursued that line of argument, considering that the invalidity of the provision would equate to his absolution from criminal charges that may arise from Section 89(b).

But the simple fact remains that Teves could not have pursued these plausible defenses because Section 89(b) was not put in issue by the Information. Had he raised any matter relating to Section 89(b) during trial, these would have been deemed irrelevant as it bears no relation to the charge at hand. Indeed, the prosecution made no effort to demonstrate that Teves's interest in the cockpit was illegal under Section 89(b), as can be gleaned from the documentary evidence submitted[16] on the basis of which judgment was rendered.[17] Instead, intensive efforts were exerted by the prosecution to establish that Teves, in his official capacity, had caused the issuance of a license on or about 4 February 1992 to operate the cockpit in question. Confronted with the culpable acts alleged in the Information, Teves accordingly devoted his own defense to disprove the allegation that he had indeed issued the licenses for the operation of the cockpit. There is no indication that during the trial, the parties or the Sandiganbayan dwelt on the aspect that a municipal mayor may not hold an interest in a cockpit under Section 89(b), which is understandable considering that the Information itself does not proffer aspect as an issue.

Yet the Sandiganbayan anyway based its finding of guilt on Section 89(b), in relation to the Second Mode, despite the fact that the aspect had not been raised, much more the accused afforded the opportunity to offer a defense against such claim. It would be simplistic to justify the finding by pointing out that the accused had anyway admitted the facts that constitute a violation of Section 89(b). Even if the questions of fact are settled, the accused remains entitled to raise a question of law on the scope and reach, if not validity, of Section 89(b).

I am not arguing that Section 89(b) is invalid, but I am defending Teves's putative right to argue in such manner, or to be allowed the opportunity to raise any similarly-oriented arguments pertaining to the provision. It may run counterintuitive to sustain a legal doctrine that extenuates the penalty of the seemingly or obviously guilty, but precisely our Constitution is a document that is not necessarily attuned to common sense if legal sense dictates otherwise. Thus, the Constitution regards every criminally accused as innocent at the onset of trial, even an accused who murders another person in front of live television cameras to the horror of millions who witnessed the crime on their television sets. In such an instance, everybody "knows" that the accused is guilty, yet a judicial trial still becomes necessary to warrant for a conviction conformably to the dictates of due process.[18] It should be kept in mind that the question of guilt is not merely a factual question of did he/she do it, such being the usual treatment in the court of public opinion. In legal contemplation, it also requires a determination of several possible legal questions such as "is he/she justified in committing the culpable act;"[19] "is he/she exempt from criminal liability despite committing the culpable act;"[20] or even whether the acts committed actually constitute an

offense. It is thus very possible that even if it has been factually established that the accused had committed the acts constituting a crime, acquittal may still be legally ordained.

Therefore, it was not satisfactory on the part of the Sandiganbayan to have relied merely on the uncontroverted fact that Teves had a financial or pecuniary interest in the cockpit despite the prohibition under Section 89(b). That was not the charge lodged in the Information, nor is it even necessarily included in the offense actually alleged in the Information. The Anti-Graft Court's conclusion of guilt is based on a *de novo* finding which the accused had neither an opportunity to defend against, nor even would have expected as a proper matter of inquiry considering the silence of the Information or the trial proceedings on the question of Section 89(b).

Even more galling is that nowhere in the Information is it even alleged that maintaining an interest in a cockpit is actually illegal. Not only is the charge sheet silent as to which law was violated, but such fact of owning an interest in a cockpit actually constitutes an offense. For that reason, I am confident that my view does not run counter to the well settled ruling of the Court in *U.S. v. Tolentino*[21] that "where an offense may be committed in any several different modes, and the offense is alleged to have been committed in two or modes specified, it is sufficient to prove the offense committed in any one of them, provided that it be such as to constitute the substantive offense." [22] The Information was crafted in such a way that only one particular offense was charged, and the alleged manner through which such offense was committed did not constitute ground for conviction for another offense.

There may have been stronger basis to uphold the conviction had the Information alleged that the mere act of possession of the pecuniary interest in the cockpit was in itself a violation of law, even if which law transgressed was not denominated in the Information. At least in such a case, Teves would have been put on guard that the legality of his ownership of the cockpit was a controversial issue and thus prepared accordingly, even if it would have to entail his having to research as to which law was actually violated by his ownership. But the Information herein is not so formulated. It was evidently crafted by persons who had no intention of putting into issue the illegality of Teves' ownership of the cockpit, but arguing instead that Teves illegally abused his office by issuing a license in connection with such cockpit.

My submission to acquit Edgar Teves necessarily results in the acquittal of his wife, Teresita. She is charged as a conspirator to the commission of her husband's felonious acts, and thus the exoneration of her husband should lead to a similar result in her favor. This observation is made without disputing the finding of the majority that there is no sufficient evidence that Teresita Teves conspired with her husband to commit a violation of Section 3(h) of the Anti-Graft Law.

Perhaps there is some reluctance in acquitting a public official accused of malfeasance in connection with the public office held. Such a result bolsters the general government crusade against graft and corruption, and is usually popular with the public at large. Still, the most vital essence of the democratic way of life is the protection of the bedrock guarantees extended by the Constitution to all persons regardless of rank. These rights cannot be bargained away, especially when they stand as the sole barrier to the deprivation of one's cherished right to liberty. A due process violation cannot be obviated by the technical application of a procedural rule.

I cannot join the Court in giving imprimatur to a conviction for a crime against which the accused was deprived the opportunity to defend himself. I respectfully DISSENT, and vote to ACQUIT Edgar and Teresita Teves.

[1] See Section 14(2), Art. III, CONST.

[2] See *People v. Despavellador*, 110 Phil. 800, 804 (1961).

[3] See *People v. Tudtud*, G.R. No. 144037, 26 September 2003, 412 SCRA 142, 168.

[4] “Once it is shown or determined that a variance exists, the issue is whether the variance is material or prejudicial, so that it affects substantial rights of the accused.” 41 Am Jur 2d §259; citing cases.

[5] Republic Act No. 3019.

[6] Rollo, p. 52.

[7] *Id.* at 44.

[8] *Koh Tieck Heng v. People*, G.R. Nos. 48535-36, 21 December 1990, 192 SCRA 533, 543; citing *U.S. v. Campo*, 23 Phil. 368 (1912); *Esguerra v. People*, 108 Phil. 1078 (1960); *People v. Despavellador*, 110 Phil. 800 (1961). “Having the right to be informed of the criminal charge that he or she is to meet at trial, the accused cannot be tried for or convicted of an offense not charged in the indictment or information. Put simply, not only must the government prove the crime it charges, it must charge the crime it proves.” 41 Am Jur 2d §257, citing cases.

[9] 21 AM JUR 2d §325.

[10] Decision, pp. 10-11.

[11] “An indictment for a particular offense serves as an indictment for all included offenses, even though the latter are not specifically set forth in the indictment” 41 Am Jur 2d §259; citing *People v. Schmidt*, 126 Ill 2d 179, 127 Ill Dec 816, 533 NE2d 898, 1988 Ill LEXIS 187.

[12] Decision, p. 9-10.

[13] 108 Phil. 1078 (1960).

[14] *Id.* at 1082.

[15] *Id.* at 1083-1084.

[16] See Rollo, pp. 32-36.

[17] No testimonial evidence was received into evidence, the parties agreeing to the authenticity of the documentary evidence. Rollo, p. 31.

[18] “The right to a fair and impartial trial applies whether an accused is innocent or guilty and is in no degree impaired or diminished by the strength or compelling character of the evidence against him.” 21 Am Jur 2d §234. “If an accused has not been afforded a fair trial before an impartial tribunal, it is obvious that he has not been afforded due process.” B. Schwartz, *Constitutional Law* (1972), at 206.

[19] See Article 11, Revised Penal Code, pertaining to Justifying Circumstances.

[20] See Article 12, Revised Penal Code, pertaining to Exempting Circumstances.

[21] 5 Phil. 682 (1906).

[22] *U.S. v. Tolentino*, *supra* note 11, at 685. See also *Jurado v. Suy Yan*, 148 Phil. 677, 686 (1971); *Ko Bu Lin v. Court of Appeals*, 204 Phil. 211, 220 (1982).

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