

TIMOTEO A. GARCIA, PETITIONER, VS. SANDIGANBAYAN, RESPONDENT.

G.R. NO. 155574. November 20, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court which seeks to set aside and nullify the Decision[1] of the Sandiganbayan dated 6 May 2002 which convicted petitioner Timoteo A. Garcia of 56 counts of violation of Section 3(b) of Republic Act No. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act," in Criminal Cases Nos. 24042 to 24098 (except 24078), and its Resolution[2] dated 2 October 2002 denying petitioner's Motion for Reconsideration.

The instant case stemmed from the Complaint of Maria Lourdes Miranda against petitioner, then Regional Director, Land Transportation Office (LTO), Region X, Gilbert G. Nabo and Nery Tagupa, employees of the same office, for violation of the Anti-Graft and Corrupt Practices Act for their alleged frequent borrowing of motor vehicles from Oro Asian Automotive Center Corporation (Company). Finding probable cause for violation thereof, Graft Investigation Officer II Gay Maggie F. Balajadia-Violan recommended that petitioner, Gilbert G. Nabo and Nery Tagupa be indicted for violation of Section 3(b) of Republic Act No. 3019, as amended.

On 14 August 1997, 57 Informations were filed with the Sandiganbayan against petitioner, Gilbert G. Nabo and Nery Tagupa for violation of Section 3(b) of Republic Act No. 3019, as amended. The Information in Criminal Case No. 24042 reads:

That on or about the period covering January 9, 1993 to January 10, 1993 or sometime prior thereto, in Cagayan de Oro City, Philippines, within the jurisdiction of this Honorable Court, the said accused, TIMOTEO A. GARCIA, GILBERT G. NABO and NERY TAGUPA, being then public officers or employees of the Land Transportation Office (LTO), Cagayan de Oro City, taking advantage of their respective official positions, and conspiring, confederating and mutually helping one another and with intent to gain personal use or benefit, did then and there willfully, unlawfully and feloniously borrow One (1) unit Asian Automotive Center's Service Vehicle – Fiera Blue KBK-732, in good running condition, spare tire, tools from Oro Asian Automotive Corporation, which is engaged in the business of vehicle assembly and dealership in Cagayan de Oro City, knowing that said corporation regularly transacts with the accused's LTO Office for the registration of its motor vehicles, in the reporting of its engine and chassis numbers as well as the submission of its vehicle dealer's report and other similar transactions which require the prior approval and/or intervention of the said accused Regional Director and employees and/or their said LTO office in Cagayan de Oro City, to the damage and prejudice of and undue injury to said Oro Asian Automotive Corporation, including complainant Maria Lourdes Miranda.[3]

The fifty-six other Informations are similarly worded except for the alleged dates of commission of the offense, and the types/descriptions of the vehicles allegedly borrowed by them. The pertinent data in the other informations are as follows:12345

CASE NUMBER**DATE OF COMMISSION****TYPE/DESCRIPTION OF VEHICLE**

24043 January 16, 1993 to January 17, 1993 One (1) unit FIERA BLUE

24044 January 23, 1993 to January 24, 1993 One (1) unit FIERA BLUE KBK-732, service vehicle of Asian Automotive Center, in good running condition with tools, spare tire

24045 February 6, 1993 to February 7, 1993 One (1) unit FIERA BLUE KBK-732, in good running condition with tools

24046 February 13, 1993 to February 14, 1993 One (1) unit FIERA BLUE KBK-732, in good running condition

24047 March 13, 1993 to March 14, 1993 One (1) unit TOYOTA TAMARAW yellow, KBN-156, in good running condition, with tools and spare tire

24048 Morning of March 20, 1993 to afternoon of March 20, 1993 One (1) unit TOYOTA HSPUR YELLOW KBN-156, with spare tools, in good condition

24049 Morning of March 27, 1993 to afternoon of March 27, 1993 One (1) unit TAMARAW HSPUR, yellow in color, KBN-156, in good condition, with spare tire, with jack and tire wrench

24050 April 24, 1993 to April 25, 1993 One (1) unit TAMARAW HSPUR, Yellow in color, KBN-156, in good condition, with spare tire, jack and tire wrench

24051 April 25, 1993 and have been returned after use One (1) unit AERO D VAN KBN-865, maroon in color Asian Automotive Center's Vehicle, in good running condition, with spare tire, tools, jack and tire wrench

24052 May 15, 1993 to May 16, 1993 One (1) unit TOYOTA Fiera, yellow in color, engine no. 4k-0907126, chassis no. CMCI-109247-C, in good condition, jack, spare tire, tire wrench

24053 May 29, 1993 to May 30, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24054 June 5, 1993 to June 6, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24055 June 19, 1993 to June 20, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24056 June 26, 1993 to morning of June 26, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24057 July 17, 1993 to July 18, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24058 July 31, 1993 to August 1, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24059 July 24, 1993 to July 25, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24060 August 7, 1993 to August 8, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24061 August 14, 1993 to August 15, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24062 August 21, 1993 to August 22, 1993 One (1) unit TAMARAW HSPUR, KBN-156, yellow in color, in good running condition, w/ spare tire, jack and tire wrench

24063 September 4, 1993 to September 5, 1993 One (1) unit AERO D HSPUR, KBP-375, white in color, with engine no. C190-484232, Chassis no. SMM90-6787-C, in good running condition upholstered seats

24064 Morning of September 11, 1993 to evening of September 11, 1993 One (1) unit AERO D HSPUR, KBP-375, white in color, in good running condition, upholstered seats, jack, tire wrench, spare tire

24065 September 18, 1993 to September 19, 1993 One (1) unit AERO D HSPUR, KBP-375, in good running condition, upholstered seats, side view mirrors, rear view mirror, jack w/ handle, tire wrench, seats

24066 September 25, 1993 to September 26, 1993 One (1) unit AERO D HSPUR, KBP-375, good running condition, upholstered seats, side view mirrors, rear view mirror, jack w/ handle, tire wrench, seats

24067 October 23, 1993 to October 24, 1993 One (1) unit AERO D HSPUR, KBP-375, good running condition, upholstered seats, side view mirrors, rear view mirror, jack w/ handle, tire wrench, seats

24068 October 30, 1993 to October 31, 1993 One (1) unit ISUZU, NNJ-917, white in color, in good running condition, side view mirror, jack w/ tire wrench

24069 November 6, 1993 to November 7, 1993 One (1) unit AERO D HSPUR, KBP-375, good running condition, upholstered seats, side view mirrors, rear view mirror, jack w/ handle, tire wrench, seats

24070 November 13, 1993 to November 14, 1993 One (1) unit AERO D HSPUR, KBP-375, good running condition, upholstered seats, side view mirrors, rear view mirror, jack w/ handle, tire wrench, seats

24071 November 27, 1993 to November 28, 1993 One (1) unit AERO D-II HSPUR, KBP-375, good running condition, jack w/ handle, tire wrench, spare tire

24072 December 4, 1993 to December 5, 1993 One (1) unit AERO D-II HSPUR, KBP-375, good running condition, jack w/ handle, tire wrench, spare tire

24073 December 11, 1993 to December 12, 1993 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24074 December 18, 1993 to December 19, 1993 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24075 January 8, 1994 to January 9, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24076 Morning of January 15, 1994 to late afternoon of January 15, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition.

24077 January 29, 1994 to January 30, 1994 One (1) unit AERO D HSPUR, KBP-375, white in color, w/o plate number

24078 Withdrawn per Court Resolution dated July 3,

1998, p. 103 Crim. Case # 24042

24079 February 5, 1994 to February 6, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24080 February 12, 1994 to February 13, 1994 One (1) unit AERO D-II HSPUR, KBP-375, in good running condition, jack w/ handle, tire wrench, spare tire

24081 February 26, 1994 to February 27, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24082 March 4, 1994 to March 5, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24083

March 12, 1994 to March 13, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24084 March 19, 1994 to March 20, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, in good running condition, with jack, tire wrench, spare tire.

24085 April 9, 1994 to April 10, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24086 April 30, 1994 to May 1, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24087 May 7, 1994 to May 8, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24088 May 14, 1994 to May 15, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24089 May 21, 1994 to May 22, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24090 June 4, 1994 to June 5, 1994 One (1) unit AERO D-II HSPUR, KBP-375, in good running condition, jack w/ handle, tire wrench, spare tire

24091 June 11, 1994 to June 12, 1994 One (1) unit AERO D-II HSPUR, KBP-375, in good running condition, jack w/ handle, tire wrench, spare tire

24092 June 17, 1994 to June 19, 1994 One (1) unit AERO D-II HSPUR, KBP-375, in good running condition, jack w/ handle, tire wrench, spare tire

24093 July 2, 1994 to July 3, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24094 July 23, 1994 to July 24, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition

24095 August 25, 1994 to August 28, 1994 One (1) unit AERO D VAN with engine no. C190-542416, chassis no. SMM90-8370-C, full in dash instrumentation, maroon in color with plate no. KBN-865, in good condition

24096 Morning of September 3, 1994 to afternoon of September 3, 1994 One (1) unit AERO D HSPUR, white in

color, KBP-375, full in dash instrumentation, jack, tire wrench, in good running condition

24097 September 17, 1994 to September 18, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, in good running condition

24098 November 26, 1994 to November 27, 1994 One (1) unit AERO D HSPUR, white in color, KBP-375, full in dash instrumentation, jack w/ handle, tire wrench in good running condition[4]

On 22 August 1997, the Sandiganbayan issued orders for the arrest of the three accused[5] and for the holding of their departure from the country.[6] On 6 October 1997, petitioner posted a consolidated surety bond for his provisional liberty.[7]

In a resolution dated 3 July 1998, the withdrawal of the information in Criminal Case No. 24078 was granted.[8]

On 17 August 1998, when arraigned, petitioner and accused Tagupa, assisted by counsel de parte, pleaded "not guilty" to the charges.[9] Accused Nabo remains at large.

On 15 October 1998, pre-trial was concluded.[10] Thereafter, trial ensued.

The evidence of the prosecution, as summarized by the Sandiganbayan, are as follows:

ESTANISLAO BARRETE YUNGAO (hereinafter, "Yungao") declared that he was employed as the driver and liaison officer of the Oro Asian Automotive Center Corporation (hereinafter, "the Company"), an establishment engaged in the assembly of motor vehicles, during the period covering the years 1991 to 1995. As such, Yungao had to officially report to the Land Transportation Office ("LTO") of Cagayan de Oro City all the engine and chassis numbers prior to the assembly of any motor vehicle. In the process, the Company had to secure from the LTO a Conduct Permit after a motor vehicle has been completely assembled, for purposes of carrying out the necessary road testing of the vehicle concerned. After the said road testing and prior to its eventual sale/disposition, the vehicle has to be first properly registered with the LTO. Accused Garcia, in his capacity as the Director of the LTO of Cagayan de Oro City, during all times relevant to the instant cases, was the approving authority on the aforesaid reportorial requirements and the signatory of the said Conduct Permits.

By reason thereof, Yungao knew accused Garcia since January of 1991. Yungao would always personally talk to accused Garcia regarding the issuance of the required Conduct Permit for any newly assembled vehicle. Yungao would secure from accused Garcia as many as 30 to 40 of such permits in a year.

In the process, accused Garcia would regularly summon Yungao to his office to tell him to inform either Aurora or Alonzo Chiong, the owners of the Company, that he (accused Garcia) would borrow a motor vehicle for purposes of visiting his farm. When Yungao could not be contacted, accused Garcia would personally call up the Company and talk to the owners thereof to borrow the vehicle. Accused Garcia confided to Yungao that he could not utilize the assigned government vehicle for his own personal use during Saturdays and Sundays. It was for this reason that he had to borrow vehicles from the Chiongs to enable him to visit his farm.

Yungao maintained that accused Garcia had been regularly borrowing motor vehicles from the Chiongs during the period covering January of 1993 up to and until November of 1994. Accused Garcia would always ask his representative to take the Company's vehicle on a Saturday morning. However, Yungao never reported for work on Saturdays; thus, he was not the one who actually released the borrowed motor vehicles to the representative of accused Garcia. Nonetheless, Yungao would be aware of the fact that accused Garcia borrowed the vehicles requested because, for every such instance, a corresponding delivery receipt is issued, which is placed on top of his table for him to place in the Company's record files on the following working day. The numerous delivery receipts would show and indicate the actual number of times accused Garcia had borrowed vehicles from the Company.

Finally, Yungao identified the affidavit which he executed in connection with the subject cases.

On cross-examination, Yungao testified that it was his duty to keep the permits relating to the road testing of the motor vehicles assembled by the Company. These permits were secured by him from accused Garcia before the vehicles were eventually put on display or presented to potential buyers. Although there was a Regulation Officer at the LTO before whom the request for the issuance of a Conduct Permit is to be presented, Yungao was often told to go straight up to the room of accused Garcia so that the latter could personally sign the said permit. It was only when accused Garcia is absent or is not in office that the papers submitted to the LTO were attended to by his assistant.

Yungao testified that accused Garcia would always make his request to borrow the Company's motor vehicle verbally and on a Friday. However, Yungao admitted that he was not very familiar with the signature of accused Garcia, and that the latter's signature did not appear in any of the delivery receipts.

During all these years, Yungao could only recall one (1) instance when accused Garcia failed to approve the Company's request, and this was a request for an extension of the usual "5-day road test" period granted to the Company. Nonetheless, the Company found the said disapproval to be acceptable and proper.

On questions propounded by the Court, Yungao testified that the names and signatures of the persons who actually received the Company's vehicles were reflected on the faces of the delivery receipts. However, Yungao does not recognize the signatures appearing on the said delivery receipts, including those purportedly of accused Tagupa, because Yungao was not present when the vehicles were taken.

The prosecution had intended to present another witness in the person of Ms. Ma. Lourdes V. Miranda (hereinafter, "Miranda"), who was present at the time Yungao testified. Prior to her presentation, however, the parties agreed to enter into stipulations and admissions. Thus, it was stipulated that Miranda was the mother of a child named Jane, who was run over and killed in a vehicular accident; that the driver of the ill-fated motor vehicle was accused Nabo; that Miranda, thereafter, successfully traced the said vehicle and eventually discovered the existence of numerous delivery receipts in the files and possession of the Company; and that said discovery led to the institution of the subject criminal cases against herein accused. As a result of such admissions and stipulations, the proposed testimony of Miranda was, thereafter, dispensed with.

AURORA J. CHIONG (hereinafter, "Chiong") declared that she is the Vice-President and General Manager of the Company, a business establishment engaged in the assembly of motor vehicles. In the process, the Company has to submit a Dealer's Report to the LTO prior to the assembly of a motor vehicle. After the assembly is completed, the Company has to secure a permit from the LTO for purposes of conducting the necessary road testing of the newly assembled motor vehicle.

In 1993, accused Garcia was the Regional Director of the LTO in Cagayan de Oro City. He was the officer who approves the needed Conduction Permit of newly assembled motor vehicles. He was also the LTO officer who approves and signs the Company's annual LTO Accreditation Certificate.

Chiong recounted that accused Garcia has a farm, and that he would need a vehicle to transport water thereto. For this purpose, he would, on a weekly basis, borrow from the Company a motor vehicle, either by asking from Chiong directly through telephone calls or through Yungao, her Liaison Officer. Everytime accused Garcia would borrow a motor vehicle, the Company would issue a delivery receipt for such purpose, which has to be signed by the person whom accused Garcia would send to pick up the motor vehicle. Chiong was usually the company officer who signed the delivery receipt for the release of the borrowed motor vehicle to the representative of accused Garcia. When she was not in office, she would authorize her personnel to place [their] initials on top of her name. On several occasions, Chiong had seen accused Nabo affixing his signature on the delivery receipt before taking out the borrowed motor vehicles. Chiong was very sure that the driver who picked up the motor vehicle from the Company was the personnel of accused Garcia because the latter would always call her up first before sending his representative to get a vehicle. Chiong was likewise very

familiar with the voice of accused Garcia because she had been dealing with him for a long period of time already, and all the while she had always maintained a cordial relationship with him.

On questions propounded by the Court, Chiong testified that accused Garcia would ask his driver to get a vehicle on a Saturday at around 6:30 o'clock in the morning. He would return it in the late afternoon of the same day. There was only one instance when accused Garcia returned the motor vehicle on the day after, and this was the time when the said vehicle had figured in a vehicular accident which resulted in the death of a certain Jane, the daughter of Miranda. Chiong was not the complainant in the said vehicular accident case because she could not afford to offend or antagonize accused Garcia, and she had always considered the lending of motor vehicles to accused Garcia as a public relation thing.

Chiong clarified that the subject motor vehicles occasionally borrowed by accused Garcia were all company service cars and not newly assembled vehicles. Finally, she testified that she gets irritated whenever accused Garcia would ask for a vehicle at a time when she herself would also need it. However, under the circumstances, she had to give in to his request.[11]

For the defense, petitioner took the witness stand, while accused Tagupa did not present any evidence.

Petitioner testified that he was the Regional Director of the 10th Regional Office of the LTO from August, 1987 to December, 1994. He downright denied borrowing any motor vehicle from the Company arguing that his signatures never appeared in the Delivery Receipts[12] submitted by the prosecution.[13] He admitted, though, that the Company has been continually transacting business with his office properly and officially, and has not, even for a single instance, violated any rules with respect to assembly of motor vehicles, and that there was no reason for the owners of the Company to harbor any ill-feelings against him.[14] He further admitted that he had known Atty. Aurora Chiong, Vice-President and General Manager of the Company, even before he became Regional Director when he was still the Chief of the Operations Division.[15] He added that employees of the LTO are used to borrowing vehicles from their friends and that this practice has been going on prior to his being Regional Director. He claimed he repeatedly warned his subordinates about the illegality of the same but they merely turned a deaf ear.[16] Lastly, he said his driver, accused Nabo, had, on several occasions, driven motor vehicles and visited him at his farm, and that he rode with him in going home without allegedly knowing that the vehicles driven by Nabo were merely borrowed from his (Nabo) friends.[17]

On 6 May 2002, the Sandiganbayan promulgated the assailed decision convicting petitioner of fifty-six counts of violation of Section 3(b) of Republic Act No. 3019, as amended. Accused Tagupa was acquitted, while the cases against accused Nabo, who remained at large, were archived. The decretal portion of the decision reads:

WHEREFORE, judgment is hereby rendered finding accused TIMOTEO A GARCIA GUILTY beyond reasonable doubt of fifty-six (56) counts of violation of Section 3(b) of Republic Act No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act. Accordingly, said accused is hereby sentenced to: (i) in each case, suffer an indeterminate sentence of imprisonment for a period of six (6) years and one (1) month, as minimum, to twelve (12) years and one (1) month, as maximum; (ii) suffer all accessory penalties consequent thereto; and (iii) pay the costs.

With respect to accused NERY TAGUPA, by reason of the total lack of any evidence against him, he is hereby ACQUITTED.

As for accused Gilbert G. Nabo, considering that he remained at large and jurisdiction over his person had yet to be acquired, let the case as against him be achieved.[18]

Petitioner is now before us assigning as errors the following:

- THE SANDIGANBAYAN ERRED IN HOLDING THAT ALL THE ELEMENTS OF SECTION 3(B) OF

REPUBLIC ACT NO. 3019 WERE PRESENT IN CRIM. CASES NOS. 24042 TO 24098 (EXCEPT 24078) AND IN FINDING THE HEREIN PETITIONER GUILTY OF FIFTY SIX (56) COUNTS OF VIOLATION THEREOF;

- THE SANDIGANBAYAN ERRED IN FINDING THE HEREIN PETITIONER GUILTY BEYOND REASONABLE DOUBT OF FIFTY SIX (56) COUNTS OF VIOLATION OF SECTION 3(B) OF REPUBLIC ACT NO. 3019 ON THE BASIS OF FATALY DEFECTIVE INFORMATIONS WHEREIN THE FACTS CHARGED NEVER CONSTITUTED AN OFFENSE;

- THE SANDIGANBAYAN ERRED IN FINDING THE HEREIN PETITIONER GUILTY BEYOND REASONABLE DOUBT OF FIFTY SIX (56) COUNTS OF VIOLATION OF SECTION 3(B) OF REPUBLIC ACT NO. 3019 ON THE BASIS OF EVIDENCE WHICH IS INSUFFICIENT TO CONVICT (EVEN FOR A SINGLE COUNT);

- THE SANDIGANBAYAN ERRED AND IN THE PROCESS VIOLATED THE CONSTITUTIONAL AND LEGAL RIGHTS OF THE HEREIN PETITIONER WHEN IT SUPPLIED THE DEFICIENCIES IN THE EVIDENCE OF THE PROSECUTION WITH ASSUMPTIONS WHICH WERE NOT AT ALL SUPPORTED BY THE EVIDENCE ON RECORD;

- THE SANDIGANBAYAN ERRED WHEN IT OBSERVED DIFFERENT STANDARDS OF JUSTICE BY ACQUITTING THE PETITIONER'S CO-ACCUSED TAGUPA AND CONVICTING THE HEREIN PETITIONER WHEN THE SAME REASONING SHOULD HAVE LED ALSO TO THE ACQUITTAL OF THE PETITIONER.

In any criminal prosecution, it is necessary that every essential ingredient of the crime charged must be proved beyond reasonable doubt in order to overcome the constitutional right of the accused to be presumed innocent.[19] To be convicted of violation of Section 3(b)[20] of Republic Act No. 3019, as amended, the prosecution has the burden of proving the following elements: (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.[21]

Petitioner maintains that not all the elements of Section 3(b) have been established by the prosecution. Petitioner focuses primarily on the fourth element. He argues that the prosecution failed to show the specific transactions of the Company with the LTO of Cagayan de Oro that petitioner approved and/or intervened in so that he could borrow from, or be lent by, the Company a vehicle. Inasmuch as he was convicted by the Sandiganbayan of fifty-six counts of violation of Section 3(b) for allegedly borrowing the Company's vehicle fifty-six times, the Sandiganbayan, he stresses, should have at least pointed out what these transactions were. This, petitioner claims, the Sandiganbayan failed to show with certainty in its decision. Petitioner adds that the prosecution did not even attempt to introduce evidence to show what contract or transaction was pending before the LTO over which petitioner had the right to intervene being the Regional Director when, at the period stated in all the fifty-six informations, he borrowed a vehicle.

We agree with petitioner that the prosecution miserably failed to prove the existence of the fourth element. It is very clear from Section 3(b) that the requesting or receiving of any gift, present, share, percentage, or benefit must be in connection with "a contract or transaction"[22] wherein the public officer in his official capacity has to intervene under the law. In the case at bar, the prosecution did not specify what transactions the Company had with the LTO that petitioner intervened in when he allegedly borrowed the vehicles from the Company. It is insufficient that petitioner admitted that the Company has continually transacted with his office. What is required is that the transaction involved should at least be described with particularity and proven. To establish the

existence of the fourth element, the relation of the fact of requesting and/or receiving, and that of the transaction involved must be clearly shown. This, the prosecution failed to do. The prosecution's allegation that the Company regularly transacts with petitioner's LTO Office for the registration of its motor vehicles, in the reporting of its engine and chassis numbers, as well as the submission of its vehicle dealer's report, and other similar transactions, will not suffice. This general statement failed to show the link between the 56 alleged borrowings with their corresponding transactions.

Failing to prove one of the other elements of the crime charged, we find no need to discuss the presence or absence of the elements.

The next question to be resolved is: Can petitioner be convicted of any other crime (i.e., Direct Bribery or Indirect Bribery) charged in the informations?

The crime of direct bribery as defined in Article 210[23] of the Revised Penal Code consists of the following elements: (1) that the accused is a public officer; (2) that he received directly or through another some gift or present, offer or promise; (3) that such gift, present or promise has been given in consideration of his commission of some crime, or any act not constituting a crime, or to refrain from doing something which it is his official duty to do; and (4) that the crime or act relates to the exercise of his functions as a public officer.[24] Thus, the acts constituting direct bribery are: (1) by agreeing to perform, or by performing, in consideration of any offer, promise, gift or present an act constituting a crime, in connection with the performance of his official duties; (2) by accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty; or (3) by agreeing to refrain, or by refraining, from doing something which is his official duty to do, in consideration of any gift or promise.[25]

In the case under consideration, there is utter lack of evidence adduced by the prosecution showing that petitioner committed any of the three acts constituting direct bribery. The two prosecution witnesses did not mention anything about petitioner asking for something in exchange for his performance of, or abstaining to perform, an act in connection with his official duty. In fact, Atty. Aurora Chiong, Vice-President and General Manager of the Company, testified that the Company complied with all the requirements of the LTO without asking for any intervention from petitioner or from anybody else from said office.[26] From the evidence on record, petitioner cannot likewise be convicted of Direct Bribery.

Can petitioner be found guilty of Indirect Bribery?

Indirect bribery is committed by a public officer who shall accept gifts offered to him by reason of his office. The essential ingredient of indirect bribery as defined in Article 211[27] of the Revised Penal Code is that the public officer concerned must have accepted the gift or material consideration. In the case at bar, was the prosecution able to show that petitioner indeed accepted a gift from the Company? The alleged borrowing of a vehicle by petitioner from the Company can be considered as the gift in contemplation of the law. To prove that petitioner borrowed a vehicle from the Company for 56 times, the prosecution adduced in evidence 56 delivery receipts[28] allegedly signed by petitioner's representative whom the latter would send to pick up the vehicle.

The prosecution was not able to show with moral certainty that petitioner truly borrowed and received the vehicles subject matter of the 56 informations. The prosecution claims that petitioner received the vehicles via his representatives to whom the vehicles were released. The prosecution relies heavily on the delivery receipts. We, however, find that the delivery receipts do not sufficiently prove that petitioner received the vehicles considering that his signatures do not appear therein. In addition, the prosecution failed to establish that it was petitioner's representatives who picked up the vehicles. The acquittal of one of the accused (Nery Tagupa) who allegedly received the vehicles from the Company further strengthens this argument. If the identity of the person who

allegedly picked up the vehicle on behalf of the petitioner is uncertain, there can also be no certainty that it was petitioner who received the vehicles in the end.

Factual findings of the Sandiganbayan are conclusive upon this Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record.[29] In the case before us, we are constrained to apply the exception rather than the rule. We find that the ruling of the Sandiganbayan that petitioners actually received the vehicles through his representatives is grounded entirely on speculation, surmise, and conjectures, and not supported by evidence on record. The certainty of petitioner's receipt of the vehicle for his alleged personal use was not substantiated.

WHEREFORE, all the above considered, the petition is GRANTED. The Decision of the Sandiganbayan in Criminal Cases Nos. 24042 to 24077 and 24079 to 24098 is REVERSED and SET ASIDE. For insufficiency of evidence, the petitioner is hereby ACQUITTED of the crime charged in the informations. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), in the result.

Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Penned by Associate Justice Gregory S. Ong with Presiding Justice Francis E. Garchitorena and Associate Justice Catalino R. Castañeda, Jr. concurring. Records, Vol. 1, pp. 419-442.

[2] Id. at 494-496.

[3] Rollo, pp. 84-85.

[4] Id. at 38-43.

[5] Records, p. 42.

[6] Id. at 43.

[7] Id. at 70.

[8] Id. at 103.

[9] Id. at 119. Arraignment in Crim. Case No. 24046 was on 15 October 1998 (Record, p. 149). Per agreement of the parties, the agreement in all the other cases, except in Crim. Case N. 24078, were adopted and deemed reproduced in Crim. Case No. 24046, thus obviating the pre-trial in the latter case. Records, p. 153.

[10] Id. at 142-146.

[11] Rollo, pp. 44-49.

[12] Exhibits "A" to "DDD."

[13] TSN, 18 March 1999, pp. 18-20, 22.

[14] TSN, 18 March 1999, pp. 55-56.

[15] TSN, 18 March 1999, pp. 31-33.

[16] TSN, 18 March 1999, pp. 46-51.

[17] TSN, 18 March 1999, p. 44.

[18] Rollo, p. 59.

[19] *People v. De Castro*, G.R. Nos. 148056-61, 8 October 2003.

[20] 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

(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.

[21] *Peligrino v. People*, 415 Phil. 94, 117 (2001).

[22] A transaction, like a contract, is one which involves some consideration as in credit transactions. *Soriano, Jr. v. Sandiganbayan*, G.R. No. L-65952, 31 July 1984, 131 SCRA 134.

[23] Art. 210. Direct bribery. – Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through, the mediation of another, shall suffer the penalty of prision mayor in its medium and minimum periods and a fine not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of prision correctional, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of prision correctional in its maximum period to prision mayor in its minimum period and a fine not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties. (As amended by B.P. Blg. 871, May 29, 1985.)

[24] *Marifosque v. People*, G.R. No. 156685, 27 July 2004, 435 SCRA 332, 340.

[25] Luis B. Reyes, *The Revised Penal Code*, Book 2, (15th ed., 2001) p. 210.

[26] TSN, 8 December 1998, p. 15.

[27] Art. 211. Indirect bribery. – The penalties of prision correctional in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office. (As amended by B.P. Blg. 871, approved May 29, 1985).

[28]Exhibits "A" to "DDD."

[29] Soriquez v. Sandiganbayan, G.R. No. 153526, 25 October 2005, 474 SCRA 222, 231.

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