

**ANDRES S. SUERO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
REPRESENTED BY THE OFFICE OF THE OMBUDSMAN-MINDANAO;
THE CITY PROSECUTION OFFICE OF DAVAO CITY; AND HON.
EMMANUEL C. ...**

G.R. NO. 156408. January 31, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The defense of double jeopardy places upon the accused the burden of proving the following three requisites: (1) the first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first; or the second offense is necessarily included in the first. The same act may give rise to two or more separate and distinct offenses. No double jeopardy attaches as long as there is a variance between the elements of the two offenses charged. What is forbidden is another prosecution for the same offense.

The Case

Before us is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, seeking to reverse the December 14, 2001 Order[2] of the Regional Trial Court (RTC) of Davao City (Branch 16) in Criminal Case No. 48167-01, denying the Motion to Quash Information filed by petitioner, as well as the October 3, 2002 Order[3] denying his Motion for Reconsideration. The first assailed Order states in full:

“Posed for resolution is the motion to quash information and/or dismiss the case filed by the accused along with the opposition thereto filed by the Office of the Ombudsman.

“Sifting through the arguments and counter-arguments in support of and in opposition to the instant motion, the court rules to deny the motion to quash the information.

“There is no dispute that the present case and Criminal Case No. 23518 before the Sandiganbayan arose out of the same incident or transaction. Nonetheless, as correctly raised by the Office of the Ombudsman, the present case involves the prosecution for Falsification of Public Documents as defined and penalized under Art. 171 of the Revised Penal Code, while Criminal Case No. 23518 before the Sandiganbayan pertains to the causing of undue injury to the government. The latter case requires the element of damage while in Falsification of Public Document, damage is of no consequence.

“The dismissal therefore of Criminal Case No. 23518 before the Sandiganbayan has no bearing with the present case since the quantum of evidence required to sustain both cases are not similar. In the same vein, this is a particular case where one incident results to two (2) separate and distinct criminal offenses, such that the dismissal of one case would not constitute double jeopardy against the accused in the other case.

“Accordingly, the motion to quash the information is denied for lack of merit.”[4]

The Facts

The undisputed facts, as narrated by petitioner, are as follows:

“The herein [p]etitioner was earlier accused, together with another accused [Aquilina B. Granada], of the crime of Falsification of Public Document, defined and penalized under Article 171 of the Revised Penal Code, per Information dated November 7, 1996, signed by Marco Anacleto P. Bueno, Graft Investigation Officer I, Office of the Ombudsman for Mindanao, Davao City, committed as follows, to wit:

‘That on or about February 12, 1992 or sometime prior or subsequent thereto, in the City of Davao, Philippines and within the jurisdiction of this Honorable Court, the above-named accused-public officers, being then the Administrative Officer and Property Inspector, respectively, of the Department of Education, Culture and Sports (DECS), Region XI, Davao City, with salary grades below grade 27, while in the performance of their official duties, and taking advantage of their official positions, in conspiracy with one another, did then and there, willfully, unlawfully and feloniously falsify or cause to be falsified an undated Inspection Report affixing their signatures thereto, making it appear that various furniture purchase[d] from, and delivered by Business International Wood Products under Delivery Receipt Nos. 9758, 9759, 9760 and 9761, in the total amount of P1,033,450.00, have all been delivered and duly inspected, thereby justifying the release of the payment to Business International Wood Products in the aforesaid amount, when in truth and in [f]act, no such complete delivery was made and inspected, to the damage and prejudice of the government.

‘CONTRARY TO LAW.’

which case was docketed as Criminal Case [N]o. 38552-97 before the Regional Trial Court, Branch 16, Davao City x x x.

“Thereafter, herein [p]etitioner was arraigned sometime on June 20, 1997.

“The RESPONDENT CITY PROSECUTOR commenced the trial on the merits in Criminal Case [N]o. 38552-97 against the herein [p]etitioner, but the trial was later suspended when the Court a Quo granted the Joint Motion to Suspend further Proceedings, filed jointly by the Accused and RESPONDENT OMBUDSMAN through Special Prosecutor Humphrey Monteroso and Special Prosecutor Leonardo P. Tamayo x x x.

“The basic reason for the joint motion to suspend further proceedings in Criminal Case [N]o. 38552-97 is and we quote the pertinent portion of the Order dated September 1, 1998:

‘Asst. City Prosecutor Emilio Dayanghirang III interpose[d] no opposition to the motion of the accused Andres Suero and Special Prosecutor Humphrey Monteroso and Leonardo P. Tamayo, for the prosecution to suspend further proceeding in the instant case on the trial on the merits and to allow the Sandiganbayan to proceed with the hearing of the [sic] Criminal Case No. 23518 pending trial before it on the ground that the two accused in the instant case charged for falsification of a public document and other accused who are also charged for similar offense arising from the same transaction now pending before Br. 14 of this Court are the same Accused who are likewise charged before the Sandiganbayan for violation of Sec. 3(e) of RA No. 3019; that the primordial issue under which these cases were filed before different courts of separate jurisdiction are the same – validity (or falsification) of the questioned documents; that in the appreciation of the issue as to the validity of the questioned documents, it could not be assumed that both courts would rule in the same manner; that considering that all the accused in the questioned transaction are lumped together in one before the Sandiganbayan, which is a collegial court, it is preferred that the Sandiganbayan takes precedence over all other cases including the instant case involving the same accused similarly situated.’

“Subsequently, [upon the motion of the accused] Criminal Case [N]o. 38552-97 was eventually dismissed without prejudice by the RESPONDENT JUDGE in an Order dated November 2, 2000, pursuant to the ruling in the case of George Uy vs. Sandiganbayan, G.R. [N]o. 105965-07.

“Meanwhile, x x x Criminal Case [N]o. 23518 against the herein [p]etitioner for alleged violation of Section 3(e)

of Republic Act 3019, as amended, pending before the Sandiganbayan x x x was decided, acquitting the herein Accused x x x.

“Thereafter, on July 31, 2001, the RESPONDENT OMBUDSMAN through Ombudsman Prosecutor I Eusebio M. Avila Sr. wrote a letter to the Clerk of Court of the RESPONDENT JUDGE regarding Criminal Case [N]o. 38552-97, expressing their decision in ‘refiling the herein enclosed information and request that the same be entered in the docket of the criminal case with a new case number assigned to it x x x,’ attaching thereto the Criminal Information.

“Consequently, a new information was filed by the RESPONDENT OMBUDSMAN with the RESPONDENT JUDGE and docketed as Criminal [C]ase [N]o. 48167-2001.

x x x x x x x x

“On October 10, 2001, herein [p]etitioner filed in Criminal Case [N]o. 48167-2001 before the RESPONDENT JUDGE, a Motion to Quash Information and/or Dismiss Case.

x x x x x x x x

“On December 14, 2001, the RESPONDENT JUDGE issued the questioned Order denying herein [p]etitioner’s Motion to Quash Information x x x.

“Herein [p]etitioner filed a timely Motion for Reconsideration on February 19, 2002.

“On October 3, 2002, the RESPONDENT JUDGE issued the questioned Order denying [p]etitioner’s Motion for Reconsideration x x x.”[5]

Ruling of the Trial Court

Denying the Motion to Quash Information, the RTC held that the Sandiganbayan’s dismissal of Criminal Case No. 23518 did not bar the re-filing of the questioned Information for falsification of a public document in Criminal Case 48167-01, now pending before trial court. While there was no dispute that the same incident or transaction gave rise to the two cases, it nonetheless resulted in two separate and distinct criminal offenses, such that the dismissal of one would not constitute double jeopardy in the other case.

Hence, this Petition.[6]

Issues

Petitioner submits the following issues for our consideration:

“I. Whether or not it was improper and utterly without legal basis for the respondent ombudsman to refile the same criminal information against the herein accused, after the latter was acquitted by the Sandiganbayan in a criminal case involving the same parties, the same questioned documents, the same questioned transaction and admittedly involving the same fundamental legal issue?

“II. Whether or not the formal admission of [similarity] of primo[r]dial legal issue by the respondent ombudsman, as well as identical parties, public documents involved and questioned transactions, would amount to double jeopardy upon the filing of the instant case after the dismissal of the earlier complaint x x x?

“III. Whether or not the respondent judge committed grave abuse of discretion amounting to lack of jurisdiction in denying petitioner’s motion to quash information and later his motion for reconsideration?”[7]

Simply put, the issues boil down to two: (1) whether the prosecution of petitioner for falsification of a public document would place him twice in jeopardy; and (2) whether the ombudsman is barred from re-filing the

criminal information for falsification of a public document.

The Court's Ruling

The Petition has no merit.

First Issue: No Double Jeopardy in Falsification Case

Petitioner contends that the charge of falsification of a public document now pending before the trial court is necessarily inclusive of or included in the earlier Information filed with the Sandiganbayan in Criminal Case No. 23518 for violation of Section 3(e) of RA 3019. He claims that his acquittal by the anti-graft court constitutes a bar to the present case under the doctrine of double jeopardy.

We hold that the instant case does not constitute double jeopardy, for which the following requisites must concur: (1) the first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.[8]

The test for the third element is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether one offense necessarily includes or is necessarily included in the other, as provided in Section 7 of Rule 117 of the Rules of Court.[9]

Section 5 of Rule 120 of the Rules of Court further provides:

SECTION 5. When an offense includes or is included in another. -- An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter.

A comparison of the elements of the crime of falsification of a public document, provided for in Article 171 of the Revised Penal Code, and those of violation of Section 3(e) of RA 3019 shows that there is neither identity nor exclusive inclusion between the offenses. For falsification of a public document to be established, the following elements must concur:

- “1. That the offender is a public officer, employee, or notary public;
2. That he takes advantage of his official position;
3. That he falsifies a document by committing any of the following acts:
 - Counterfeiting or imitating any handwriting, signature or rubric;
 - Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
 - Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
 - Making untruthful statements in a narration of facts;
 - Altering true dates;
 - Making any alteration or intercalation in a genuine document which changes its meaning;
 - Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original;

- Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book x x x.”[10]

On the other hand, to hold a person criminally liable under Section 3(e) of RA 3019, the following elements must be present:

- (1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they cause undue injury to any party, whether the Government or a private party;
- (4) That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- (5) That the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[11]

Petitioner argues that the “primordial legal issue” involved in the two cases is the same. We do not agree. It is undisputed that the two charges stem from the same transaction. However, it has been consistently held that the same act may give rise to two or more separate and distinct offenses. No double jeopardy attaches, as long as there is a variance between the elements of the offenses charged. The constitutional right against double jeopardy protects from a second prosecution for the same offense,[12] not for a different one.

Indeed, the crime under Section 3(e) of RA 3019 shares two common elements with the felony under Article 171 of the Revised Penal Code -- that the offender is a public officer and that the act is related to the officer’s public position. However, the latter offense is not necessarily inclusive of the former. The essential elements of each are not included among or do not form part of those enumerated in the former. For there to be double jeopardy, the elements of one offense should -- like the ribs of an umbrella -- ideally encompass those of the other. The elements of a violation of Section 3(e) of RA 3019 fall outside the realm of those of falsification of a public document and vice versa. At most, the two offenses may be considered as two conjoined umbrellas with one or two common ribs. Clearly, one offense does not include the other.

Given the differences between the elements of the two offenses, there is no merit to petitioner’s contention that it would be legally untenable for respondent judge to make a contradictory appreciation of the evidence to be presented and, hence, a ruling contradictory to that of the Sandiganbayan. Petitioner is of the erroneous assumption that the guilt or the innocence of the accused in both cases hinges on the exact same set of evidence; namely, the validity or the falsity of the documents, subject of the instant case.

The differences between the elements needed to establish the commission of the two charges imply that the evidence required to prove the guilt or the innocence of the accused would likewise differ in each case. Since both charges stemmed from the same transaction, the same documents may be relevant to both cases. However, the degree of materiality of these documents in relation to proving the commission of the offenses would necessarily vary.

Furthermore, from a reading of the May 7, 2001 Decision[13] in Criminal Case No. 23518, it is apparent that the Sandiganbayan did not in any way rule on the validity or the falsity of the questioned documents. Nothing in the Decision prevents respondent judge from making his own determination on such matters. Nothing also bars him from ruling on the guilt or the innocence of the accused in the present case.

Second Issue: No Bar to the Information for Falsification of a Public Document

Petitioner contends that the ombudsman had no legal basis in re-filing the Information for falsification of a public document. Allegedly, the latter is bound by his formal admission of the similarity of the primordial legal issue. This contention is untenable.

The Joint Motion to Suspend filed by the accused and the respondent ombudsman cannot be deemed an admission on the part of the latter with respect to the so-called primordial legal issue involved in both cases. Much less can the filing thereof amount to double jeopardy. As discussed above, the Court has already noted the required elements of both crimes. However, petitioner has failed to show that these elements are identical, or that one offense necessarily includes or is in fact included in the others. Furthermore, estoppel arising from the act of agents of the government does not operate against the latter.[14]

WHEREFORE, the Petition is DENIED. Respondent judge is DIRECTED to proceed with all deliberate speed in Criminal Case No. 48167-01 and to conclude it in accordance with law. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, and Garcia, JJ., concur. Carpio-Morales, J., no part.

[1] Rollo, pp. 4-23.

[2] Id., p. 81. Penned by Judge Emmanuel C. Carpio.

[3] Id., p. 85.

[4] December 14, 2001 Order; rollo, p. 81.

[5] Petitioner's Memorandum, pp. 3-7; rollo, pp. 112-116. Citations omitted.

[6] The case was deemed submitted for decision on December 3, 2003, upon receipt by this Court of respondent's Memorandum, signed by Graft Investigation and Prosecution Officer II Teodoro V. Angel. Petitioner's Memorandum, signed by Atty. Martin B. Delgra III, was received by the Court on December 2, 2003.

[7] Petitioner's Memorandum, pp. 7-8; rollo, pp. 116-117.

[8] *Dimayacyac v. Court of Appeals*, GR No. 136264, May 28, 2004; *People v. Nitafan*, 362 Phil. 58, February 1, 1999.

[9] *Sarabia v. People*, 414 Phil. 189, July 20, 2001.

[10] Reyes, *The Revised Penal Code* (2001 ed.), pp. 201-202. It has been consistently held that for the offense of falsification of public documents through an untruthful narration of facts to be established, the following elements must concur: (a) the offender makes in a document statements in a narration of facts; (b) the offender has a legal obligation to disclose the truth of the facts narrated; (c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person (*Lumancas v. Intas*, 347 SCRA 22, December 5, 2000; *Lecaroz v. Sandiganbayan*, 364 Phil. 890, March 25, 1999; *Beradio v. Court of Appeals*, 191 Phil. 153, March 30, 1981). Furthermore, in *Lumancas v. Intas*, this Court (citing *People v. Giok To* [96 Phil. 913, April 30, 1955]) held that "in the falsification of public or official documents, whether by public officials or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. Hence, the last requisite need not be present."

[11] General Bank and Trust Company v. Ombudsman, 381 Phil. 119, January 31, 2000 (citing Ingco v. Sandiganbayan, 272 SCRA 563, May 23, 1997).

[12] People v. Reyes, 228 SCRA 13, November 18, 1993 (citing Nierras v. Dacuycuy, 181 SCRA 1, January 11, 1990); People v. Deunida, 231 SCRA 520, March 28, 1994 (citing People v. Tac-an, 182 SCRA 601, February 26, 1990).

[13] Rollo, pp. 33-45. Fourth Division. Penned by Justice Rodolfo G. Palattao, with the concurrence of Justices Narciso S. Nario (Division chairman) and Raoul V. Victorino (sitting as special member, per Administrative Order No. 52-2000).

[14] National Housing Authority v. Grace Baptist Church, GR No. 156437, March 1, 2004 (citing Republic v. Court of Appeals, 354 SCRA 148, March 9, 2001); Republic v. Sandiganbayan, 406 SCRA 190, July 15, 2003.

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