

NAZARIO N. MARIFOSQUE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 156685. July 27, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure which assails the decision dated September 23, 2002 and the Resolution dated January 3, 2003 of the Sandiganbayan in Criminal Case No. 17030 finding petitioner Nazario Marifosque guilty beyond reasonable doubt of the crime of direct bribery, defined and penalized under the second paragraph of Article 210 of the Revised Penal Code, as amended.

Petitioner was charged with direct bribery in an Information which reads:

That on or about October 13, 1990 in Legazpi City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused a public officer being a qualified member of the Police Force of Legazpi City, now under the Philippine National Police, taking advantage of his official/public position and committing the crime herein charged in relation to his office, did then and there willfully, unlawfully, and feloniously demand, obtain and/or receive directly from Yu Su Pong[1] and Hian Hian Sy[2] the total amount of FIVE THOUSAND EIGHT HUNDRED PESOS (P5,800.00) Philippine Currency in consideration for his recovery from alleged robbers, eighteen Shellane gas filled cylinder/s tanks, to the damage and prejudice of the aforementioned victims in the aforesaid amount.

CONTRARY TO LAW.[3]

The antecedent facts as culled from the records are as follows:

On October 13, 1990 at around 5:00 in the afternoon, Hian Hian Yu Sy and her husband, Arsenio Sy, went to the office of Captain Alberto Salvo, Chief of the Intelligence and Operating Division stationed at the Criminal Investigation Service (CIS) in Region 5, to report the robbery of Shellane tanks at the gasoline station of her father, Yu So Pong, and the alleged extortion attempt by petitioner, Police Sergeant Narciso Marifosque, in exchange for the recovery of the lost items. Captain Salvo and his men set up a plan to entrap the petitioner. Hian Hian Yu Sy prepared the pay-off money in the amount of P4,800.00 and listed down the serial numbers of the bills. The pay-off was scheduled at 7:00 in the evening of that day in Golden Grace Department Store which was owned by Yu So Pong. At around 6:15 p.m., Captain Calvo and his men arrived at the target area and strategically positioned themselves outside the Golden Grace Department Store to await the arrival of the suspect. Shortly thereafter, petitioner Marifosque arrived on board a tricycle. He went inside the store and demanded the money from Hian Hian Yu Sy and Yu So Pong. The latter handed to him the marked money, which was wrapped in a newspaper. When petitioner stepped out of the store, Arsenio Sy gave the pre-arranged signal, whereupon the arresting operatives swooped down upon the suspect and arrested him.

Hian Hian Yu Sy testified that petitioner demanded the amount of P7,200.00 but she bargained for P4,800.00 only because that was all she had at the time. She proposed that petitioner return the following morning to pick up the

balance.

By way of defense, petitioner Marifosque testified that in the morning of October 13, 1990, a police asset came to his house and reported that he witnessed a robbery at the gasoline station of Yu So Pong. Petitioner went to the gasoline station of Yu So Pong and relayed to him the information. Thereafter, petitioner and Yu So Pong proceeded to the police station to report the robbery to the desk officer, PFC Jesus Fernandez, who then dispatched petitioner and a certain Pat. Garcia to conduct an investigation. As they were leaving the police station, the asset approached petitioner asking if he could get P350.00 per cylinder tank as his reward. Petitioner relayed the message to Yu So Pong, who said he was amenable "if that [was] the only way to recover the cylinders and to apprehend the robbers." [4] Based on information furnished by the asset, the police investigators proceeded to the house of Edgardo Arnaldo in San Roque Legazpi City, where they found the stolen gas tanks. The group loaded the gas tanks into the vehicle. Meanwhile, Arnaldo arrived. Petitioner did not arrest him at that time because he promised to lead them to the other stolen cylinder tanks. [5] The group returned to the police station where petitioner made a written report of the recovery of the gas tanks.

Elmer Arnaldo testified that he worked as an asset of the Legazpi City police force and occasionally received rewards from the police for any information of the criminal activities. On October 13, 1990 at around 4:00 in the morning, he went out to buy bread and saw three individuals stealing gas cylinder tanks in the nearby gasoline station. He later visited petitioner and reported to him the robbery. He went back to his house to feed the chickens. Sometime thereafter, he dropped by the police station to discuss with petitioner the reward of P350.00 per cylinder tank recovered. Petitioner gave him 1,000.00 and told him to return at 6:00 p.m. for the remainder. At 7:00 p.m., he and petitioner went to the store of Yu So Pong to collect the balance of the reward money. Petitioner went inside the store and Arnaldo, who was left outside, saw a woman giving him a folded newspaper. Suddenly, armed men apprehended the petitioner, so he ran away.

On September 23, 2002, the Sandiganbayan rendered a decision convicting petitioner of direct bribery, the dispositive portion of which reads: [6]

WHEREFORE, in view of the foregoing and considering that the agreed act, which did not constitute a crime, was executed, judgment is hereby rendered finding the accused NAZARIO MARIFOSQUE Y NUÑEZ GUILTY beyond reasonable doubt of the crime of Direct Bribery, defined and penalized under the second paragraph of Art. 210 of the Revised Penal Code as amended. The accused is sentenced to an indeterminate penalty of imprisonment of 3 years 6 months and 5 days of Prision Correccional medium and maximum periods as the Minimum and 7 years, 8 months and 9 days of Prision Mayor minimum and medium periods as the Maximum considering that there is no mitigating nor aggravating circumstance and a fine in the amount of THREE THOUSAND PESOS (P3,000.00). The accused shall also suffer the penalty of special temporary disqualification.

SO ORDERED. [7]

His motion for reconsideration having been denied, petitioner interposes the present appeal raising the following issues:

I

THE ACT OF PETITIONER – RECEIPT OF THE SUMS OF MONEY FOR DELIVERY TO HIS ASSET – DOES NOT CONSTITUTE AN OFFENSE DEFINED AND PENALIZED UNDER SECOND PARAGRAPH OF ARTICLE 210 OF THE REVISED PENAL CODE, AS AMENDED.

II

THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION

AMOUNTING TO LACK OF JURISDICTION IN FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF DIRECT BRIBERY. [8]

In the first assigned error, petitioner contends that the testimonies of the prosecution witnesses do not demonstrate with certainty that the receipt of the alleged “bribe money” constitutes the act punishable by the offense as defined by the Revised Penal Code. He draws attention to the following findings of fact by the appellate court, namely: (1) that he was not the one who asked for reward from private complainant Yu So Pong but the asset; and (2) that Hian Hian Yu Sy had no direct knowledge of the alleged transaction, i.e., the demand for money in consideration of the return/recovery of twenty-one Shellane gas tanks, between private complainant Yu So Pong and the accused.

In the second assigned error, petitioner argues that the prosecution failed to establish his guilt beyond reasonable doubt because there was no competent evidence to prove that the amount was really intended for him and not for his asset. He anchors his defense on the fact that: (1) he merely relayed to Yu So Pong the asset’s request for a reward money; and (2) Yu So Pong was agreeable to the request. He further contends that the act of receiving money for the asset is not one of those punishable under the law as direct bribery.

Petitioner cannot feign innocence and profess good faith since all the indicia point to his guilt and malicious intent.

First, petitioner did not introduce his asset or mention his name to Yu So Pong or his daughter at the time of the illegal transaction. His claim that he previously gave P1,000.00 to his asset, which purportedly represented a partial payment of the reward money, was not corroborated by his asset. When he was arrested and interrogated at Camp Ibalon, he made no attempt to present his asset to explain and justify his receipt of the reward money. Instead, he accepted his arrest and investigation with an air of resignation, which is characteristic of a culprit who is caught red-handed. Captain Calvo, one of the arresting CIS officers, testified that petitioner attempted to give back the money to Yu So Pong when they were about to arrest him.[9] This was a clear showing that he was well aware of the illegality of his transaction. Had he been engaged in a legitimate deal, he would have faced courageously the arresting officers and indignantly protested the violation of his person, which is the normal reaction of an innocent man. Instead, he meekly submitted to the indignity of arrest and went along the eventual investigation with the docility of a man at a loss for a satisfactory explanation.

Second, petitioner’s solicitous and overly eager conduct in pursuing the robbery incident betrays an intention not altogether altruistic. On the contrary, it denotes a corrupt desire on his part to obtain pecuniary benefits from an illegal transaction. At the time petitioner was notified by his asset of the robbery incident, he was no longer on duty, having been assigned to the night shift the day before. He was too overzealous to meet with Yu So Pong although the case was already assigned to another police investigator. His justification that he wanted to encourage the victim to pursue the case against the robbers rings hollow and untrue. It is clearly an afterthought. As shown in the testimony of prosecution witness Hian Hian Yu Sy, petitioner met with Yu So Pong for no apparent reason than to demand money. There was no mention of any attempt by him to investigate, much less encourage the victims to file charges against the malefactors. More telling is petitioner’s persistence in obtaining the monetary reward for the asset although the latter was no longer complaining about the P1,000.00 he supposedly received earlier, thus:

Pros. Agcaoili:

Since the asset was not complaining at the time, you should not have gone back anymore to Yu So Pong?

Accused Marifosque:

Why would I not go back? My purpose was to encourage him to pursue the matter. If he would not pursue this matter, then we would be the laughing stock of the thieves we arrested and then we cannot charge them.

Q. So Mr. Witness, you went to Yu So Pong after you received the P1,000.00 without any intention to receive additional amount for the asset, am I right?

A: No, ma'am. That was not the purpose. In fact, Yu So Pong had told me earlier to see him again in order to prepare for the cash and to see if an additional amount would be needed for my asset.[10]

While petitioner supposedly supports the "reward system," yet he denied that he previously gave incentives to the assets for the recovery of stolen items, to wit:

PJ:

Sometimes you would ask for reward for your assets?

A: I myself voluntarily give them a reward.

Q: That is not the question. The question is, in the past when you would recover stolen articles, would you ask the owner of the articles to give some incentive or tip to your assets?

A: That has not happened, your Honor.

PJ:

Next question.

Pros. Agcaoili:

And, in fact, Mr. Witness, you did not give any incentive to your asset on that incident that happened in the house of Yu So Pong which is the subject matter of this case?

A. For that particular case alone, Mr. Yu so Pong gave me something and I gave it to my asset.

x x x x x x x x

Pros. Agcaoili

In fact, Mr. Witness, you said that these tips were just given as an incentive?

A I would be the one to give the incentives to my asset. But in that particular instance, the P1,000.00 which Mr. Yu So Pong gave me, I turned it over to my own asset.

Q To your own assessment, Mr. Witness, is P1,000.00 not enough to serve as an incentive to your asset?

A I do not know whether P1,000.00 is enough or not. The fact, is, that was the amount I got from Yu So Pong which I gave to my asset.

PJ:

Was the asset complaining that was not enough?

A. No, Your Honor.[11]

Third, the conduct of the petitioner during the recovery of the stolen articles leaves much to be desired. He did not apprehend Edgardo Arnaldo or invite him for investigation although the cylinder tanks were found in his possession. His flimsy excuse that the latter promised to deliver additional cylinder tanks is unworthy of credence considering that, as a police officer with years of experience, he should have known that the proper action, under

the circumstances, was to at least invite him to the police precinct for investigation. Curiously, the prime suspect Edgardo Arnaldo turned out to be the brother of petitioner's police asset who, we recall, directed the police officers to the location of the stashed articles. This strange coincidence may well indicate a conspiracy between the petitioner and the thieves to steal from the victim and later cash in on the recovery of the lost items.

In the final analysis, this case boils down to an issue of credibility. In this regard, the prosecution witnesses gave clear and straightforward testimonies. The Sandiganbayan did not err in giving full weight and credence to their version of the events. Petitioner's conviction must be affirmed.

The crime of direct bribery as defined in Article 210 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.

There is no question that petitioner was a public officer within the contemplation of Article 203 of the Revised Penal Code, which includes all persons "who, by direct provision of law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Philippine Government, or shall perform in said government or any of its branches, public duties as an employee, agent or subordinate official or any rank or class." At the time of the incident, petitioner was a police sergeant assigned to the Legazpi City Police Station. He directly received the bribe money from Yu So Pong and his daughter Hian Hian Yu Sy in exchange for the recovery of the stolen cylinder tanks, which was an act not constituting a crime within the meaning of Article 210 of the Revised Penal Code. The act of receiving money was connected with his duty as a police officer.

The instant case falls within the second paragraph of Article 210 of the Revised Penal Code, which is quoted hereunder:

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 minimum and medium periods and a fine of 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 correccional 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 correccional in its maximum period to prision mayor in its minimum period and a fine not less than three times the value of the gift.

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

While the Sandiganbayan imposed the correct prison term in applying the Indeterminate Sentence Law, the amount of the fine is erroneous. Paragraph 1 of Article 210 of the Revised Penal Code, in relation to paragraph 2 thereof, provides that if the act does not constitute a crime, the fine shall not be less than three times the value of the amount received. Evidence shows that petitioner received an aggregate amount of P5,800.00.[12] He should

therefore be ordered to pay a fine not less than 3 times its value. Accordingly, a fine of P18,000.00 is deemed reasonable.

WHEREFORE, in view of the foregoing, the petition is DENIED. The decision of the Sandiganbayan in Criminal Case No. 17030, finding petitioner guilty beyond reasonable doubt of the crime of Direct Bribery and imposing upon him the indeterminate prison term of 3 years, 6 months, and 5 days of prision correccional, as minimum, to 7 years, 8 months, and 9 days of prision mayor, as maximum, is AFFIRMED with the MODIFICATION that the fine is increased to P18,000.00.

In addition, petitioner shall suffer the penalty of special temporary disqualification.

SO ORDERED.

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

[1] Also referred to as Yu So Pong in other parts of the records.

[2] Sometimes referred to as Hian Hian Yu Sy.

[3] Original Records, p. 1.

[4] TSN, 12 March 1997, p. 12.

[5] TSN, 3 March 1997, p. 13.

[6] Decision penned by Associate Justice Francisco H. Villaruz, concurred in by Associate Justices Minita V. Chico-Nazario (now a member of this Court) and Ma. Cristina Cortez-Estrada.

[7] Original Records, p. 493.

[8] Rollo, pp. 40-42.

[9] TSN, 30 September 1992, p. 13.

[10] TSN, 13 March 1997, p. 19.

[11] Id., pp. 16-17.

[12] Consisting of P1,000.00 earlier received and another P4,800.00 received at the time of the arrest.

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