

ATTY. RODOLFO D. PACTOLIN, PETITIONER, VS. THE HONORABLE FOURTH DIVISION OF THE SANDIGANBAYAN, THE HON. SIMEON V. MARCELO, IN HIS OFFICIAL CAPACITY AS THE OMBUDSMAN, AND MARIO R...*G.R. No. 161455. May 20, 2008*

Ponente: VELASCO JR., J.

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Petitioner Atty. Rodolfo P. Pactolin was a former member of the Sangguniang Panlalawigan of Misamis Occidental. During Pactolin's term, sometime in May 1996, the mayor of Ozamis City, Benjamin A. Fuentes, received a letter dated May 3, 1996 from Elmer Abastillas, the playing coach and team captain of the Ozamis City volleyball team, requesting financial assistance for the city's volleyball team. Mayor Fuentes immediately approved the request and then forwarded Abastillas' letter to the City Treasurer's Office for processing. Mayor Fuentes at that time designated Mario R. Ferraren, a member of the city council, as OIC (Officer-in-Charge)-Mayor for the duration of his trip to Cagayan de Oro City starting May 5, 1996. Abastillas received the check for PhP 10,000 on behalf of the volleyball team on May 8, 1996.

While Ferraren was OIC-Mayor, Pactolin went to the Ozamis City Treasurer's Office and asked to photocopy Abastillas' letter. Assistant City Treasurer Alma Y. Toledo lent the letter to Pactolin, having known him as a member of the Sangguniang Panlalawigan. Besides, he was accompanied by Solomon Villaueran, a city employee. Pactolin returned the letter to the City Treasurer's Office immediately after photocopying it.

Thereafter, on June 24, 1996, Pactolin filed a complaint, docketed as OMB-MIN-96-0416, against Mario with the Office of the Deputy Ombudsman-Mindanao, alleging that Mario illegally disbursed public funds worth PhP 10,000 in connivance with then City Accountant Cynthia Ferraren. Attached as Annex "A" to the complaint was the alleged falsified version of the Abastillas letter. The purported falsified letter showed that it was Mario and not Mayor Fuentes who approved the request for financial assistance. Aggrieved, Mario instituted a criminal complaint against Pactolin. Pactolin was charged with falsification of a public document under Article 171(2)[1] of the Revised Penal Code (RPC) in an Amended Information filed on January 31, 2000, as follows:

That on or about June 24, 1996, or some time prior or subsequent thereto, in Ozamis City, Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the accused RODOLFO D. PACTOLIN, a high ranking public officer, being a member of the Sangguniang Panlalawigan of Misamis Occidental, committing the felony herein charged in relation to his office, and taking advantage of his official position as Sangguniang Panlalawigan Member and head of the athletic delegation of Misamis Occidental, did then and there, willfully, unlawfully and feloniously, falsify a document dated May 3, 1998 requesting from the city mayor of Ozamis City financial assistance, by intercalating thereon the printed name of Mario R. Ferraren, and the latter's position as OIC Mayor, and by imitating the latter's signature on top of the intercalated name "Mario R. Ferraren", thereby making it appear that OIC Mayor Mario R. Ferraren approved the request for financial assistance, when in truth and in fact, Mario R. Ferraren neither signed the subject letter nor approved

the said request for financial assistance.

After arraignment in which Pactolin appeared on his own behalf and pleaded not guilty, and after trial on the merits in which Pactolin repeatedly failed to appear, the Sandiganbayan issued a Decision[2] on November 12, 2003, disposing, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Rodolfo D. Pactolin, guilty of Falsification under Article 172 of the Revised Penal Code, and in the absence of any aggravating or mitigating circumstances, he is sentenced to suffer the indeterminate penalty of imprisonment of 2 years and 4 months of prision correccional as minimum to 4 years, 9 months and 10 days of prision correccional as maximum, to suffer all the accessory penalties of prision correccional, and to pay a fine of P5,000.00, with subsidiary imprisonment in case of insolvency to pay the fine.

SO ORDERED.

On the stated premise that the falsified document was not in the official custody of Pactolin, nor was there evidence presented showing that the falsification was committed by him while in the performance of his duties, the Sandiganbayan found him liable for falsification under the first paragraph of Art. 172, penalizing "any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document."

Pactolin's motion for reconsideration was denied. Hence, he filed this petition, raising the following issues:

- WHETHER OR NOT FALSIFICATION UNDER THE REVISED PENAL CODE IS WITHIN THE PURVIEW OF THE JURISDICTION OF THE SANDIGANBAYAN? [sic]
- WHETHER RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO ACTING WITHOUT OR IN EXCESS OF JURISDICTION IN CONVICTING PETITIONER WHEN BY ITS OWN FINDINGS OF FACTS THE FALSIFIED DOCUMENT WAS NOT IN THE OFFICIAL CUSTODY OF THE ACCUSED NOR WAS THERE ANY EVIDENCE PRESENTED THAT THE FALSIFICATION WAS COMMITTED BY ACCUSED WHILE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES? [sic]

Simply, the issues are: Did the Sandiganbayan have jurisdiction over the case? If so, did it gravely abuse its discretion when by its own findings the falsified document was not in the custody of Pactolin, and he falsified the document while in the performance of his duties?

Pactolin claims that the Sandiganbayan has no jurisdiction over the crime of falsification. First, according to Pactolin, even as Republic Act No. (RA) 8249, known as An Act Further Defining the Jurisdiction of the Sandiganbayan, amending for the Purpose P.D. 1606, as Amended, Providing Funds therefor and for Other Purposes, vests the Sandiganbayan with exclusive jurisdictional authority over certain offenses, the following requisites must concur before that court can exercise such jurisdiction: (1) the offense is committed in violation of (a) RA 3019, as amended, known as The Anti-Graft and Corrupt Practices Act, (b) RA 1379 or The Law on Ill-gotten Wealth, (c) Chapter II, Section 2, Title VII, Book II of the RPC, (d) Executive Order Nos. 1, 2, 14, and 14-A, or (e) other offenses or felonies whether simple or complex with other crimes; (2) the offender committing the offenses in items (a), (b), (c), and (e) is a public official or employee holding any of the positions enumerated in Section 4, par. (a) of RA 8249; and (3) the offense committed is in relation to the office.[3] Pactolin argues that these requisites show that the crime of falsification as defined under Arts. 171 and 172 of the RPC is not within the jurisdiction of the Sandiganbayan. He also points out that nowhere under Sec. 4 of Presidential Decree No. 1606, RA 3019, RA 1379, or in Title VII, Book II of the RPC is "falsification of official document" mentioned. He relies on *Bartolome v. People*[4] as a case in point.

Our Ruling: The Sandiganbayan Has Jurisdiction

Falsification of public document under the RPC is within the jurisdiction of the Sandiganbayan. This conclusion finds support from Sec. 4 of RA 8249, which enumerates the cases in which the Sandiganbayan has exclusive jurisdiction, as follows:

Section 4. x x x

- Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade `27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the Sangguniang Panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads;

x x x x

(5) All other national and local officials classified as Grade `27' and higher under the Compensation and Position Classification Act of 1989.

- Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office. (Emphasis supplied.)

Going to another point, Pactolin, in his Memorandum, contends that the Sandiganbayan gravely abused its discretion when it convicted him as a private individual under an information charging him as a public official, thus violating his right to be informed of the nature and cause of the accusation against him and his right to due process of law. He claims that the information filed against him charged him with violation of Art. 171 of the RPC in his capacity as Board Member of the Sangguniang Panlalawigan, but the Sandiganbayan convicted him of violation of Art. 172 as a private individual. Thus, he avers, he had not been given a chance to defend himself from a criminal charge of which he had been convicted.

Again, Pactolin errs. It is true that the Amended Information did not at all mention any statutory designation of the crime he is charged with. But, it is all too evident that the body of the information against him contains averments that unmistakably constitute falsification under Art. 171 and also Art. 172 of the RPC, which, for reference, are quoted below:

Art.171. Falsification by public officer, employee; or notary or ecclesiastical minister.—x x x

x x x x

- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate [as testified to by witnesses].

x x x x

Art. 172. Falsification by private individual and use of falsified documents.—The penalty of prison correccional in its medium and maximum periods and a fine of not more than 5,000 shall be imposed upon:

- Any private individual who shall commit any of the falsification enumerated in the next preceeding article in any public or official document or letter of exchange or any other kind of commercial document;

x x x x

Any person who shall knowingly introduce in evidence in any judicial proceedings or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceeding article or in any of the foregoing subdivisions of this article shall be punished by the penalty next lower in degree. (Emphasis supplied.)

Note that the last paragraph of Art. 172 does not specify that the offending person is a public or private individual as does its par. 1. Note also that the last paragraph of Art. 172 alludes to the use of the false document embraced in par. 2 of Art. 171 where it was made to appear that "persons have participated in any act or proceeding when they did not in fact participate." Patently, even a public officer may be convicted under Art. 172. The crime in Art. 171 is absorbed by the last paragraph of Art. 172. Thus, Pactolin's argument about being deprived of his right to be informed of the charges against him when the Sandiganbayan convicted him as a private person under Art. 172, is baseless. The headings in italics of the two articles are not controlling. What is controlling is not the title of the complaint, or the designation of the offense charged or the particular law or part thereof allegedly violated, but the description of the crime charged and the particular facts therein recited.[5] The character of the crime is not determined by the caption or the preamble of the information or by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.[6] In this case, the Amended Information encompasses the acts of Pactolin constitutive of a violation of Art. 172 in relation to par. 2 of Art. 171 of the RPC.

Pactolin also misapplied *Bartolome*. [7] In *Bartolome*, there was no showing that the accused committed acts of falsification while they were discharging official functions, and the information in *Bartolome* did not allege there was an intimate connection between the discharge of official duties and the commission of the offense. In this case, the State, in no uncertain words, alleged in the Amended Information and proved that Pactolin was a member of the Sangguniang Panlalawigan and took advantage of his position when he committed the falsification.

The Sandiganbayan Is Correct in Convicting Petitioner

As to the second issue, Pactolin avers that the Sandiganbayan gravely abused its discretion when it convicted him despite its own findings that the falsified document was not in his official custody and that there was no evidence he committed the falsification in the performance of his official duties.

Pactolin distorts the statement of the Sandiganbayan.

The Sandiganbayan's conviction of Pactolin was based on its factual findings after the prosecution presented both documentary and testimonial pieces of evidence. We are not a trier of facts so we defer to the factual findings of the lower court that had more opportunities and facilities to examine the evidence presented.

The Sandiganbayan had established the following undisputed facts: (1) the request for financial assistance of the volleyball players, represented by Abastillas, was approved by Mayor Fuentes and not by OIC-Mayor Mario; (2) the original Abastillas letter was in the custody of Toledo in her official capacity and she testified that the approving authority was Mayor Fuentes and no other; (3) Pactolin borrowed the Abastillas letter for photocopying upon oral request, and Toledo granted the said request because she knew him as a member of the Sangguniang Panlalawigan of their province; and (4) Pactolin filed a complaint against Mario with the Ombudsman for illegal disbursement of public funds, and the principal document he attached to show the alleged illegal disbursement was the Abastillas letter on which was superimposed Mario's signature, thus making it appear that Mario approved the financial assistance to the volleyball players, and not Mayor Fuentes. In short, the Sandiganbayan clearly established that the copy of the Abastillas letter that Pactolin attached to his complaint was spurious. Given the clear absence of a satisfactory explanation regarding Pactolin's possession and use of the falsified

Abastillas letter, the Sandiganbayan did not err in concluding that it was Pactolin who falsified the letter. The settled rule is that in the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification.[8]

Neither do we agree with Pactolin that the Sandiganbayan gravely abused its discretion amounting to lack of jurisdiction. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction.[9] The rule in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case, be it dismissal, conviction, or acquittal of the accused, rests on the sound discretion of the court.[10] The only qualification to this exercise of judicial prerogative is that the substantial rights of the accused must not be impaired nor the People be deprived of the right to due process. As we have discoursed, no substantial right of Pactolin has been impaired nor has there been any violation of his right to due process. He had been adequately informed by the detailed litany of the charges leveled against him in the information. He had the occasion to confront witnesses against him and the opportunity to question documents presented by the prosecution. Under no circumstance in this case has his right to due process been violated.

Lastly, Pactolin is a member of the Philippine bar. As a lawyer, he is bound by the profession's strict code of ethics. His conviction means he has not met the high ethical standard demanded by his profession. He must be dealt with accordingly.

WHEREFORE, the petition is DENIED. The Sandiganbayan's Decision dated November 12, 2003 in Criminal Case No. 25665 and its Resolution dated January 7, 2004 are AFFIRMED in their entirety. This Decision shall be treated as an administrative complaint against petitioner Atty. Rodolfo D. Pactolin under Rule 139-B of the Rules of Court and is referred to the Integrated Bar of the Philippines for appropriate action.

The Clerk of Court is directed to furnish private complainant Mario R. Ferraren with a copy of this Decision.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Corona, J., On Leave.

[1] ART. 171. Falsification by public officer, employee; or notary or ecclesiastical minister. - The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

- Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.

[2] Rollo, pp. 28-38. Penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justices Gregory S. Ong (Chairperson) and Norberto Y. Germaldez.

[3] Id. at 230-231.

[4] Nos. L-64548 & L-64559, July 7, 1986, 142 SCRA 459.

[5] People v. Malngan, G.R. No. 170470, September 26, 2006, 503 SCRA 294, 330-331.

[6] Olivarez v. Court of Appeals, G.R. No. 163866, July 29, 2005, 465 SCRA 465, 482.

[7] Supra note 4.

[8] Maliwat v. Court of Appeals, G.R. No. 107041, May 15, 1996, 256 SCRA 718, 734.

[9] Pontejos v. Office of the Ombudsman, G.R. Nos. 158613-14, February 22, 2006, 483 SCRA 83, 94.

[10] Fuentes v. Sandiganbayan, G.R. No. 164664, July 20, 2006, 495 SCRA 784, 800; citing Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462, 467-468.

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