

ARIEL C. SANTOS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, RESPONDENTS.

G.R. NO. 161877. March 23, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review on certiorari, petitioner Ariel C. Santos assails and seeks the reversal of the July 31, 2003 decision[1] of the Sandiganbayan (Third Division) in Criminal Case No. 21770, as reiterated in its January 28, 2004 resolution,[2] denying petitioner's motion for reconsideration.

The facts:

In an Information[3] filed with the Sandiganbayan, thereat docketed as Criminal Case No. 21770 and raffled to its Third Division, herein petitioner Ariel Santos y Cadiente, then the Labor Arbiter of the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. III, San Fernando, Pampanga, was charged with violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, allegedly committed as follows:

That on March 11, 1993 and June 15, 1993 respectively, in San Fernando, Pampanga, ..., the above-named accused, ..., being then the Labor Arbiter of the [NLRC], Regional Arbitration Branch No. III, San Fernando, Pampanga, while in the performance of his quasi-judicial functions, taking advantage of his position and committing the offense in relation to his office, did then and there willfully, unlawfully, criminally and through evident bad faith and manifest partiality towards Abraham Mose, complainant in NLRC-RAB Case No. RO3-198-79 captioned Abraham Mose vs. Plaza Hotel/Apartments, cause undue injury to Conrado L. Tiu, the owner of the Plaza Hotel/Apartments, in the following manner: accused despite the pendency of the motion for reconsideration of his Order dated October 21, 1992 directing the issuance of a writ of execution and the opposition to the motion for execution as well as the motion to quash writ of execution, issued first a writ of execution dated March 11, 1993 followed by an alias writ of execution dated June 15, 1993, without acting on the said motions and opposition anymore, and as a consequence thereof, undue injury was caused to Conrado L. Tiu while giving unwarranted benefit and advantage to Abraham Mose.

CONTRARY TO LAW. [Words in bracket added.]

Arraigned on April 22, 1996,[4] petitioner, as accused below, entered a plea of "Not Guilty."

In the ensuing pre-trial conference, petitioner made the following admissions of fact duly embodied in the court's second pre-trial order[5] dated April 13, 1999:

- That at the time material to the case as alleged in the information, accused Ariel Santos was the Labor Arbiter of the NLRC-Branch III, San Fernando, Pampanga;
- That the accused issued an Order dated October 21, 1992, directing the issuance of Writ of Execution against Conrado L. Tiu in NLRC-RAB Case No. RO3-198-79

- That Conrado L. Tiu, addressed to the accused, a motion for reconsideration of said Order directing the issuance of Writ of Execution;
- That likewise, Conrado L. Tiu filed an opposition to Abraham Mose's motion for issuance of Writ of Execution in the above-entitled case;
- That without resolving the Motion for Reconsideration, and despite the pendency of the same accused issued a Writ of Execution dated March 11, 1993, as well as an Alias Writ of Execution dated June 15, 1993 in said case.

During trial, the prosecution adduced in evidence the testimony of its sole witness in the person of private complainant Conrado L. Tiu, owner of Plaza Hotel/Apartments, and the documents he identified and marked in the course of the proceedings.

For its part, the defense, following the denial of its Demurrer to Evidence,[6] called to the witness box petitioner himself and one Norma G. Reyes.

As summarized in the decision under review, the parties' respective versions of the relevant incidents follow:

Facts as established by the prosecution

On July 10, 1981, a Decision was rendered by Labor Arbiter Andres Palumbarit of the Ministry of Labor and Employment of Region 3, Arbitration Branch in RO3-AB Case No. 198-79 entitled Abraham M. Mose vs. Plaza Hotel/Apartments, owned by Conrado L. Tiu. In said Decision, Conrado L. Tiu was ordered to pay his former employee, Abraham Mose, backwages and other benefits from the time he was illegally dismissed up to the time of his reinstatement, without however indicating any particular amount.

Pursuant to the above Labor Decision, NLRC Corporate Auditing Examiner Maria Lourdes L. Flores issued a Report of Examiner rendering the computation of Abraham Mose's backwages and benefits for a period of three (3) years from July 1979 for a total amount of P16,360.50.

On September 2, 1981, the Plaza Hotel/Apartments filed a Memorandum of Appeal with the MOLE Region 3, ... seeking for the reversal/reconsideration of the above stated Labor Decision. This appeal was, however, dismissed per Resolution dated August 4, 1982. Plaza Hotel/Apartments raised their appeal to the Honorable Supreme Court which was docketed as G.R. No. 77105.

While the appeal was still pending before the Court, another Report of Examiner was rendered by Examiner Philip A. Manansala increasing the award from P16,360.50 to P63,537.76 which now covered backwages and benefits from July 1979 to May 1987.

This sudden increase of judgment award prompted Plaza Hotel/ Apartments to file an objection to the Report of Examiner Philip Manansala, citing among others: a) Supreme Court rulings that the maximum backwages to be paid should only cover three (3) years from dismissal;

On March 15, 1989, the Supreme Court denied the appeal filed by Plaza Hotel/Apartments and with finality on August 3, 1989.

On March 13, 1990, the NLRC Region 3 through ... Norma G. Reyes, made a recomputation of the judgment award in favor of Abraham Mose in accordance with the Supreme Court ruling covering a period of only three (3) years from the date of dismissal. This recomputed award amounted to P19,908.46

After the above incidents, [the] accused took over the above Labor Case RO3-AB-Case No. 198-79, ... On October 21, 1992, [he] issued an Order of even date, which increased the judgment award from P19,908.46 to a skyrocketing P178,462.56 adopting and citing therein as basis a Report of Fiscal Examiner dated September 24, 1991, which was not even furnished to Plaza Hotel/Restaurants, Conrado L. Tiu or his counsel. This computation was contrary to the prevailing jurisprudence in Lepanto Consolidated Mining Co.

vs. Encarnacion, where the monetary awards for illegally dismissed employees should only cover a three (3) year-period from the time of dismissal. The October 21, 1992 Order of [the] accused included the order for the issuance of Writ of Execution.

Plaza Hotel/Apartments filed a Motion for Reconsideration dated November 5, 1992 seeking the reconsideration of the above Order of accused Cited as grounds for reconsideration, inter alia, are: a) the order assailed [is] contrary to the prevailing jurisprudence laid in Lepanto Consolidated Mining; b) Conrado L. Tiu cannot possibly reinstate Abraham Mose to his former position as waiter in the Plaza Hotel because it has already closed business as early as January 21, 1987

During the pendency of the Plaza Hotel's Motion for Reconsideration, Abraham Mose through counsel filed an Ex-Parte Motion for Execution of the Order dated October 21, 1992. This was opposed by Plaza Hotel/Apartments

Without however acting on the Plaza Hotel/Apartments' Motion for Reconsideration dated November 5, 1992 and the Opposition to Motion for Execution dated February 6, 1993, [the] accused issued a Writ of Execution dated March 11, 1993 to implement his Order of October 21, 1992 to collect the amount of P178,462.56

Reacting to this action of [the] accused, Plaza Hotel/Apartments filed on May 25, 1993 a Motion to Quash Writ of Execution and to Resolve Motion for Reconsideration. [The] accused however ignored all the abovesaid Motions and pleadings filed by Plaza Hotel/Apartments.

Conrado L. Tiu, ... was then compelled to file a Petition for Injunction before the Department of Labor and Employment with a prayer for [a] Temporary Restraining Order [TRO].

The NLRC in its Resolution of June 9, 1993 issued the (TRO) enjoining the accused from enforcing his Writ of Execution dated March 11, 1993. In order to implement the TRO, the NLRC imposed as a condition the posting by Conrado L. Tiu of a cash or surety bond equivalent to the judgment award of P178,462.56 [which Tiu complied] as shown by his payment of premium amounting to P11,885.50.

Despite the [TRO], [the] accused issued an "Alias Writ of Execution" dated June 15, 1993 reiterating the enforcement of his previous Writ of Execution. However, this was not enforced due to the [TRO] presented by Conrado L. Tiu to the NLRC Sheriffs

On February 8, 1994, the NLRC, ... issued a decision to limit the computation of judgment award in favor of Abraham Mose to only three (3) years from July 4, 1979 to July 4, 1982 without qualification or deduction according to the prevailing jurisprudence laid down by the Supreme Court.[7] (Words in bracket added).

Facts as established by the defense

Accused Ariel Santos admitted that he had issued a Writ of Execution on the Decision dated July 10, 1981 of the Labor Arbiter Andres Palumbarit

The award, however, was increased from P19,908.46 to P178,462.56

The said writ of execution was issued on March 11, 1993. A Motion for Reconsideration dated February 6, 1993 was subsequently filed by the Plaza Hotel/Apartments on the Order dated October 21, 1992, but [the] accused deemed not to resolve the same because he felt there is no necessity to resolve it, since the decision of Labor Arbiter Palumbarit has become final and executory, hence, ministerial for his part to implement and enforce the same.

On February 28, 1994, a Decision of the NLRC was issued stating that the backwages should be limited only to three (3) years in consonance with the ruling in the Lepanto Mining Company case. He further testified that, he did not know anymore nor aware what happened to the case since, as of August, 1993, he was assigned at the NLRC—NCR, and much as he wanted to rectify the error, he can no longer do so

Prior to the issuance of the above—said decision, a [TRO] was issued by the DOLE—NLRC for the enjoinder of the implementation of the writ of execution dated March 11, 1993, however, [the] accused issued an alias

writ of execution. The Sheriff assigned did not implement the said writs.

Norma Reyes initially made a computation for the back wages of Abraham Mose in the amount P19,908.46 However, she made a recomputation based on the Order of [the accused] dated October 21, 1992 and increased the P19,908.46 back wages to P178,462.56 She was not informed by [the] accused that it is physically impossible for Mose to be reinstated[8] (Words in bracket added)

In the same decision, the Sandiganbayan (Third Division) adjudged petitioner guilty as charged and, accordingly, sentenced him, thus:

WHEREFORE, the Court finds accused ARIEL SANTOS y CADIENTE GUILTY beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. 3019, otherwise known as "The Anti-Graft and Corrupt Practices Act", and sentences said accused to EIGHT (8) YEARS and ONE (1) DAY, as minimum, to TEN (10) YEARS, as maximum, and perpetual disqualification from holding public office.

Ariel Santos is also ordered to pay Plaza Hotel/Apartments, through Conrado L. Tiu, the following sums as his civil liability:

- P68,000 for the attorney's fees paid by Conrado L. Tiu because of filing of this case; and
- P11,800 for the supersedeas bond paid by Conrado L. Tiu in connection with the restraining order issued by the DOLE-NLRC.

SO ORDERED.[9]

His motion for reconsideration having been denied by the same court in its equally assailed Resolution of January 28, 2004,[10] petitioner is now with this Court via the present recourse imputing on the respondent court the following errors:

- I. IN HOLDING THAT PETITIONER WAS GUILTY OF MANIFEST PARTIALITY IN ISSUING THE WRITS OF EXECUTION SUBJECT OF THE INFORMATION.

- II. IN HOLDING THAT THE PRIVATE COMPLAINANT SUFFERED UNDUE INJURY SINCE, AS SHOWN ABOVE, THE JUDGMENT FOR WHICH HE WAS HELD LIABLE TO PAY BACKWAGES, WHETHER FOR THAT LIMITED PERIOD OF THREE (3) YEARS OR CONTINUING BACKWAGES UNTIL ACTUAL REINSTATEMENT HAS NEVER BEEN SATISFIED.

The petition is not impressed with merit.

Section 3(e) of R.A. No. 3019, as amended, under which petitioner was indicted and convicted, reads:

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:

xxx xxx xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Jacinto vs. Sandiganbayan*,[11] the Court en banc enumerated the essential elements of the crime punishable

under the aforequoted statutory provision, to wit:

- The accused must be a public officer discharging administrative, judicial or official functions;
- He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

As may be noted, what contextually is punishable is the act of causing any undue injury to any party, or the giving to any private party of unwarranted benefits, advantage or preference in the discharge of the public officer's functions. In *Uy vs. Sandiganbayan*,^[12] and again in *Santiago vs. Garchitorena*,^[13] the Court has made it abundantly clear that the use of the disjunctive word "or" connotes that either act of (a) "causing any undue injury to any party, including the Government"; and (b) "giving any private party any unwarranted benefits, advantage or preference," qualifies as a violation of Section 3(e) of R.A. No. 3019, as amended. This is not to say, however, that each mode constitutes a distinct offense but that an accused may be proceeded against under either or both modes.

Anent the first error, petitioner submits that the Sandiganbayan overlooked the fact that, when he issued, on June 15, 1993, the Alias Writ of Execution, reiterating the enforcement of the previous Writ of Execution dated March 11, 1993, he had no knowledge of the issuance on June 9, 1993 by the NLRC of a temporary restraining order (TRO). Prescinding therefrom, petitioner would now insist that, having been apprised of the TRO only on June 29, 1993, the day the NLRC's Central Docket Section released the same, he could not be criminally liable for acting with manifest partiality in issuing the alias writ of execution on June 15, 1993.

The Court is not persuaded.

Petitioner's posture of not having known at some material point in time the issuance of the TRO in question strikes the Court as mere afterthought. If it were really true that he had no knowledge of the TRO issuance before he issued the June 15, 1993 alias writ of execution, he should have at least stated so in his defense before the court below or marked, as evidence, the TRO evidencing that it was released from the NLRC's docket section only on June 29, 1993. The materiality and significant weight of this defense could not have eluded petitioner, himself a lawyer, and his counsel, if indeed he had no knowledge that a TRO had already been issued. Not lost on the Court is the fact that petitioner did not even raise said issue in his Demurrer to Evidence before the respondent court, as well as in his motion for reconsideration of its decision. The settled rule is that no question will be entertained on appeal unless it had been raised in the court below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court as they cannot be raised for the first time on appeal. Springing surprises on the opposing party is offensive to the sporting idea of fair play, justice and due process; hence the proscription against raising a new issue for the first time on appeal.^[14]

In any case, the Court agrees with the findings and disquisitions of the Sandiganbayan that petitioner exhibited manifest partiality towards Abraham Mose in issuing the two Writs of Execution:

As a Labor Arbiter, and a lawyer at that, it is incumbent upon him to exercise prudence and probity in the exercise of his functions. He knew that there was a pending Motion for Reconsideration filed by Plaza Hotel/Apartments contesting his order dated October 21, 1992 ordering, in haste, the issuance of the writ of execution and regarding the hulking increase of the amount of backwages to be paid to Abraham Mose from P19,908.46 to P178,462.56, and despite the pendency of the said Motion, he issued the corresponding writ of execution. His reason that there is no longer a necessity to resolve the motion for reconsideration because the Decision of Labor Arbiter Palumbarit has become final and executory is untenable and a very negligible

statement. The issue raised in the motion for reconsideration is not the Decision of Labor Arbiter Palumbarit, but accused's Order dated October 21, 1992, and thus, incumbent upon him to resolve first the pending motion for reconsideration before pursuing with the implementation of the said Order and instead of issuing the writ of execution. Furthermore, accused again issued an alias writ of execution, this time, despite issuance of a temporary restraining order by the DOLE-NLRC. By these acts of accused Ariel Santos, it is clearly evident that he had exercised manifest partiality or bias on Abraham Mose in impetuously issuing the two writs of execution, thus, causing damage and injury, which are not merely negligible to Plaza Hotel/Apartments.[15]

Petitioner also maintains that Plaza Hotel did not suffer damage or injury consequent to his having issued the two writs of execution, arguing that neither was ever enforced. Pressing the point, he also states that what Plaza Hotel paid by way of attorney's fees and premium for the supersedeas bond it posted to enjoin the enforcement of the alias writ of execution is not the damage or injury contemplated under Section 3(e) of R.A. No. 3019.

The contention is untenable.

The term "undue injury" in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." The Court said so in *Llorente vs. Sandiganbayan*,[16] thus:

In jurisprudence, "undue injury" is consistently interpreted as "actual damage." Undue has been defined as "more than necessary, not proper, [or] illegal;" and injury as "any wrong or damage done to another, either in his person, rights, reputation or property [; that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

In turn, actual or compensatory damages is defined by Article 2199 of the Civil Code as follows:

"Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

Fundamental in the law on damages is that one injured by a breach of a contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. Actual pecuniary compensation is awarded as a general rule, ... Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Petitioner admitted issuing the two writs of execution without first resolving Plaza Hotel's motion for reconsideration of his October 21, 1992 Order. He argued, however, that it was his ministerial duty to issue the writs aforementioned, the finality of the decision sought to be enforced, i.e., the decision of Labor Arbiter Palumbarit, having set in upon the dismissal, with finality, by this Court of Plaza Hotel's petition for certiorari in G.R. No. 77105 assailing said decision.

Petitioner is obviously trying to mislead. As may be recalled, petitioner took over Labor Case RO3-AB Case No. 198-79 after this Court, in G.R. No. 77105, dismissed with finality Plaza Hotel/Apartments' appeal from the decision of Labor Arbiter Andres Palumbarit which, to stress, decreed payment to Mose of backwages from the date of his illegal dismissal to his reinstatement, without, however, indicating a specific amount. In the span between the issuance of the Palumbarit decision and this Court's final dismissal action aforementioned, two NLRC auditing examiners came out with (2) different computations of the judgment award. Thereafter, but before accused issued, on October 21, 1992, an order fixing the judgment award at P178,462.56 and directing the issuance of the covering writ of execution, examiner Norma Reyes, following jurisprudence, made a recomputation and came up with the figure P19,908.46 to cover the threshold three years backwages.

The increase of the award for Mose from P19,908.46 to P178,462.56 appeared contrary to prevailing

jurisprudence that such award should cover only a 3-year period from the time of the employee's dismissal.[17] The perceived illegality of the said Order of October 21, 1992 is what impelled Plaza Hotel to move for a reconsideration, raising inter alia the following issues for petitioner to consider in assessing the former's liability: (a) the ruling in Lepanto Consolidated Mining vs. Encarnacion[17] on the amount recoverable in illegal dismissal cases is still the prevailing doctrine; (b) as early as July 1990, the employer already expressed willingness to pay Mose the sum of P19,908.46; and (c) Plaza Hotel was not furnished of the new computation assessing it the amount of P178,462.56.

From the foregoing narration of events, it is fairly clear that Plaza Hotel's motion for reconsideration immediately referred to above was directed against petitioner's order of October 21, 1992 directing the issuance of a writ of execution for the amount stated therein. Be this as it may, petitioner's pose respecting his ministerial duty to order the execution of a final and executory decision of Andres Palumbarit is as simplistic as it is misleading.

As it were, petitioner failed to resolve said motion for reconsideration and instead issued on March 11, 1993 a writ of execution. Worse still, he proceeded to issue an alias writ of execution despite the issuance by the NLRC Proper of a TRO enjoining the implementation of the underlying writ. Under the circumstances, Plaza Hotel was within its right to secure the services of counsel — for a fee of P68,500.00 - and, to apply for injunctive relief and then pay P11,800.00 for the supersedeas bond to stay the implementation of the writ of execution in question. In net effect, Plaza Hotel incurred damages rendered necessary by the illegal or improper acts of petitioner.

All told, the Court rules and so holds, as did the respondent Sandiganbayan, that the elements of the offense charged had been duly established beyond reasonable doubt. Petitioner, being a labor arbiter of the NLRC, discharges quasi-judicial functions. His act of issuing the two writs of execution without first resolving the pending motion for reconsideration of his October 21, 1992 Order, and despite the existence of a TRO was clearly tainted with or attended by evident partiality causing undue injury to private complainant Conrado L. Tiu.

The penalty for violation of Section 3(e) of R.A. No. 3019 is imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and other accessory penalties. Under the Indeterminate Sentence Law, if the offense is punished by special law, as here, the court shall impose on the accused an indeterminate penalty the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum prescribed by the same. Hence, the respondent court correctly imposed on petitioner an indeterminate prison term of eight (8) years and one (1) day, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

WHEREFORE, finding no reversible error on the decision under review, the same is hereby **AFFIRMED** in toto and this petition is **DENIED** for lack of merit.

Costs against petitioner.

SO ORDERED.

Puno, J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

[1] Penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Edilberto G. Sandoval and Norberto Y. Geraldez; Rollo, pp. 30-47.

[2] Id. at 48-49.

[3] Records, pp. 1-2.

[4] Id. at 47.

[5] Id. at 227-229.

[6] Records, pp. 461-478.

[7] Rollo, pp. 33-38.

[8] Id. at 39-40.

[9] Id. at 45-46.

[10] Supra, note #2.

[11] G.R. No. 84571, October 2, 1989, 178 SCRA 254.

[12] G.R. No. 100334, December 5, 1991.

[13] G.R. No. 109266, December 2, 1993, 228 SCRA 214.

[14] Union Bank vs. CA, G.R. No. 134068, June 25, 2001, 359 SCRA 480.

[15] Rollo, p. 44.

[16] 350 Phil. 820 (1998).

[17] Mendoza vs. NLRC, 350 Phil. 486 (1998). The applicable rule is: where the illegal dismissal happened before the effectivity of R.A. No. 6715, or before March 21, 1989, the award of backwages in favor of the dismissed employee is limited to three years without deduction or qualification

[18] G.R. Nos. L-67002-03, April 30, 1985, 136 SCRA 256.

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