

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION), VICTORINO A. BASCO, ROMEO S. DAVID, AND ROGELIO L. LUIS, RESPONDENTS.

G.R. No. 164577. July 05, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

The prosecution cannot appeal from a ruling granting the demurrer to evidence of the accused as it is equivalent to an acquittal, unless the prosecution can sufficiently prove that the court's action is attended with grave abuse of discretion. Otherwise, the constitutional right of the accused against double jeopardy will be violated.

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Court filed by the People of the Philippines, represented by the Office of the Ombudsman, assailing the July 23, 2004 Resolution[1] of the Sandiganbayan granting the accused's respective demurrers to evidence filed with prior leave of court.

THE FACTS:

On November 23, 1999, private respondents Victorino A. Basco, Romeo S. David and Rogelio L. Luis were charged with having violated Section 3(e) of Republic Act No. 3019,[2] as amended, (Anti-Graft and Corrupt Practices Act) before the Sandiganbayan.[3] The Information, docketed as Criminal Case No. 25752, alleged:

That between November 15, 1996 to May 7, 1998 or some time prior or subsequent thereto, in the Municipality of Mabalacat, Pampanga, Philippines, and within the jurisdiction of this Honorable Court, accused Victorino A. Basco, Romeo S. David and Rogelio L. Luis, all high ranking public officers, being then Chairman and President/Presidents and Chief Executive Officers of the Bases Conversion Development Authority [BCDA], Clark Development Corporation/Clark International Airport, [CDC /CIAC] and Philippine National Construction Corporation [PNCC], respectively, while in the performance of their official functions, taking advantage of their positions and committing the offenses in relation to their office, confederating and conspiring with one another, with manifest partiality and evident bad faith, did then and there, willfully, unlawfully and criminally enter into contracts/transactions for the construction of the Mabalacat-Clark Spur Road and the Clark Perimeter Road, without the benefit of public bidding and at the price higher by 60 to 167% than the typical roadway construction cost, thus, depriving the government of the opportunity of obtaining the most advantageous construction cost, causing undue injury to the same and giving unwarranted benefits, advantage and preference to their preferred private contractors.

Before the arraignment, the accused filed a Motion for Leave of Court to File Motion for Reconsideration/Re-investigation. Acting thereon, the Sandiganbayan required the Office of the Special Prosecutor to comment and submit the final action taken by the Office of Ombudsman.

In a Memorandum, dated March 26, 2000, Special Prosecution Officer Roberto T. Agagon recommended the withdrawal of the information without prejudice to the conduct of further preliminary investigation to resolve the issue on overpricing by referring the matter to the Commission on Audit (COA) "whose report shall serve as legal

basis for indictment against the accused." [4] Then Ombudsman Aniano Desierto, however, disapproved the recommendation and directed the prosecutor to "proceed with the trial."

Upon arraignment, the three (3) respondents pleaded not guilty.

On August 23, 2002, the Sandiganbayan issued a Pre-trial Order identifying the issues as follows: (i) whether or not the construction projects involved should have been subjected to a public bidding as mandated by P.D. 1594, [5] as amended; [6] (ii) whether or not there was overpricing in the construction costs of the projects; (iii) whether or not the government suffered undue injury or damage as a consequence; (iv) whether or not the accused acted with evident bad faith and/or manifest partiality; and (v) whether or not the accused conspired with each other in committing the offense charged.

During the trial, the prosecution presented its lone witness, Atty. Emora C. Pagunuran, Legal Counsel, Office of the Legal Affairs, Office of the Ombudsman. Thereafter, the prosecution filed its Formal Offer of Evidence. After the evidence were admitted, the prosecution rested its case.

Instead of presenting their evidence, the respondents filed their respective motions for leave to file their demurrer to evidence based substantially on the following grounds: (i) that Atty. Pagunuran had no personal knowledge of the transactions involved and so her testimony was hearsay; (ii) that the prosecution failed to prove that the questioned contracts were indeed overpriced as Atty. Pagunuran merely relied on the Department of Public Works and Highways (DPWH) table of "Typical Construction Costs, 1999" without more; and (iii) that the ruling of the Court of Appeals in an administrative case (C.A. G.R. SP No. 62084), which upheld the validity of the direct negotiated contracts, even in the absence of a public bidding, was already the law of the case.

The motions were granted and the Sandiganbayan directed the prosecution to file its opposition.

It appears that accused Rogelio L. Luis and Victorino A. Basco (and several other BCDA officers) were also charged administratively in the Office of the Ombudsman, docketed as OMB-ADM-0-98-0430 and entitled Joseph M. Ocol//FFIB vs. Victorino A. Basco et. al., based on the same act subject of the criminal indictment. The Office of the Ombudsman found one of the respondents therein (Isaac Puno III) administratively liable for simple misconduct. In the case of Basco and Luis, however, the complaint against them was dismissed for lack of jurisdiction. [7]

Isaac Puno III then filed a petition for review with the Court of Appeals (CA). After a study of his case, the CA exonerated him on the ground that the failure to conduct a public bidding was legally justified as "time was of the essence." It likewise considered the absence of a prior written approval from then President Ramos as merely confirmatory rather than curative in nature and, as a consequence, did not render the negotiated contracts [8] invalid.

On April 15, 2004, Sandiganbayan issued a Resolution [9] denying the demurrers to evidence. It opined that the prosecution's evidence substantiated the essential elements charged in the Information. For said reason, it was incumbent on the respondents to present controverting evidence. On the exoneration in the administrative case, Sandiganbayan was of the view that there was disparity in the nature of the two proceedings and in the quantum of evidence required, and so it did not necessarily bar a successful criminal prosecution involving the same or similar acts.

The private respondents filed their motion for reconsideration which was granted in a Resolution dated July 23, 2004. The fallo of the resolution reads:

WHEREFORE, in view of the foregoing, this Court is constrained to GRANT, as it hereby GRANTS, the Motions for Reconsideration of accused Victorino A. Basco, Romeo S. David and Rogelio L. Luis, as the

evidence of the prosecution failed to sufficiently establish the essential elements of the offense charged and to overcome the presumption of innocence in favor of the said accused. Accordingly, the cases against accused Victorino A. Basco, Romeo S. David and Rogelio L. Luis are hereby DISMISSED.

In making such a turnaround, the Sandiganbayan took into account the decision of the Court of Appeals in the administrative case, which upheld the legality and validity of the subject contracts, as a "persuasive ruling" considering that it involved the same issues, subject matter and parties. It reasoned out that since the bases for the two (2) separate and distinct proceedings pertain to the same evidence, then the principle that the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint, on which its previous resolution was anchored, no longer applies. It, thus, concluded that there being want of substantial evidence to support an administrative charge, there could be no sufficient evidence to warrant a conclusion that there is probable cause for a violation of Section 3(e) of R.A. No. 3019.

The Sandiganbayan further stated that the prosecution failed to establish the fact of overpricing. The prosecution witness was unable to justify her sole reliance on DPWH table of "Typical Construction Costs, 1999" vis-à-vis the roadway construction cost of the projects involved to prove overpricing. It noted that the Office of the Ombudsman itself was not firmly convinced of respondents' culpability as shown by (i) its issuance of two conflicting memoranda, viz: one in the administrative case dated June 28, 2000 (OMB-ADM-0-98-0430) where it found that there was no overpricing; and the other, in the criminal case (this case) dated June 19, 2000 (OMB-0-98-1629 and OMB-0-99-0368), where it found evidence that the project was overpriced; and (ii) the recommendation of Special Prosecutor Roberto Agagon that the contracts be reviewed by the COA, at a time when the Information was already filed in court.

Hence, this petition.

In the petition, the Office of the Ombudsman raises the following:

ISSUES

I. WHETHER THE ACT OF THE RESPONDENTS IN ENTERING INTO NEGOTIATED CONTRACTS IN THE IMPLEMENTATION OF THE MABALACAT-CLARK SPUR ROAD AND CLARK PERIMETER ROAD PROJECTS WAS IN ACCORDANCE WITH THE REQUIREMENTS OF P.D. 1594

II. WHETHER THE SANDIGANBAYAN CAN ADOPT THE FINDINGS OF FACTS OF THE COURT OF APPEALS CONSIDERING THAT THE CASE BEFORE THE FORMER COURT IS CRIMINAL IN NATURE, WHILE IN THE LATTER IT IS ADMINISTRATIVE

In their respective comments on the petition, the respondents are one in questioning the propriety of resorting to this present petition for review on certiorari under Rule 45 on the ground that it places them in double jeopardy.

In its Reply, petitioner argued that the right of the accused against double jeopardy cannot be invoked because the issues presented for resolution are purely legal.[10] In resolving the legal issues, there is no need to reevaluate the evidence already adduced before the Sandiganbayan. Petitioners also lament the fact that the Sandiganbayan ignored the legal dictum that the dismissal of the administrative case does not bar the filing of a criminal prosecution for the same or similar act/s subject of the criminal case. Under that doctrine, a criminal case already filed must proceed in the normal course of litigation.

THE COURT'S RULING

The petition fails.

Procedurally, the petitioner resorted to a wrong remedy. Section 1 of Rule 122 allows "any party" to appeal from a judgment or final order, unless the right of the accused against double jeopardy will be violated. It is axiomatic that an appeal in criminal cases throws the whole case wide open for review by an appellate court. As a consequence, an appeal by the prosecution from a judgment of acquittal necessarily places the accused in double jeopardy.[11]

The rule barring an appeal from a judgment of acquittal is, however, not absolute. The following are the recognized exceptions thereto: (i) when the prosecution is denied due process of law;[12] and (ii) when the trial court commits grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing a criminal case by granting the accused' demurrer to evidence.[13]

Such issues are brought to the attention of a reviewing court through the special civil action of certiorari under Rule 65 on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. In assailing the resolution of the Sandiganbayan, the petitioner resorted to this petition for review on certiorari under Rule 45, purportedly raising pure questions of law. This is erroneous for which reason this petition is dismissible outright. In *People v. Laguio*,[14] the same procedural misstep was addressed by the Court in this wise:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused' demurrer to evidence. This may be done via the special civil action of certiorari under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via certiorari, the right of the accused against double jeopardy is not violated.

Unfortunately, what petitioner *People of the Philippines*, xxx filed with the Court in the present case is an appeal by way of a petition for review on certiorari under Rule 45 raising a pure question of law, which is different from a petition for certiorari under Rule 65.

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Also, in *Madrigal*, we stressed that the special civil action of certiorari and appeal are two different remedies mutually exclusive; they are neither alternative nor successive. Where appeal is available, certiorari will not prosper. In the dismissal of a criminal case upon demurrer to evidence, appeal is not available as such an appeal will put the accused in double jeopardy. Certiorari, however, is allowed.

For being the wrong remedy taken by petitioner *People of the Philippines* in this case, this petition is outrightly dismissible. The Court cannot reverse the assailed Dismissal order of the trial court by appeal without violating private respondent's right against double jeopardy. [Emphasis Supplied]

Stated differently, although the dismissal order consequent to a demurrer to evidence is not subject to appeal, it is still reviewable but only by certiorari under Rule 65 of the Rules of Court. In such a case, the factual findings of the trial court are conclusive upon the reviewing court, and the only legal basis to reverse and set aside the order of dismissal upon demurrer to evidence is by a clear showing that the trial court, in acquitting the accused, committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus, rendering the assailed judgment void.[15]

Petitioner attempts to justify its position by relying on our pronouncement in *People v. Villalon*,[16] which reads:

As a general rule, the dismissal or termination of the case after arraignment and plea of the defendant to a valid

information shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the complaint or information. However, an appeal by the prosecution from the order of dismissal (of the criminal case) by the trial court shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent, of the defendant, and (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant. (emphasis supplied)

A cursory reading of the above judicial pronouncement readily betrays petitioner's posture on the matter. The use of the conjunctive word "and" which even originally^[17] appeared italicized suggests the concurrence of those three requisites to prevent double jeopardy from attaching.

The demurrer to evidence in criminal cases, such as the one at bench, is "filed after the prosecution had rested its case." As such, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused."^[18] Judicial action on a motion to dismiss or demurrer to evidence is best left to the exercise of sound judicial discretion. Accordingly, unless the Sandiganbayan acted without jurisdiction or with grave abuse of discretion, its decision to grant or deny the demurrer may not be disturbed.^[19]

Not surprisingly, petitioner has not attributed any commission of grave abuse of discretion on the part of Sandiganbayan in issuing the questioned resolution, on the mistaken assumption that it can assail the resolution on purely legal questions. As explained above, it cannot do so. A judgment of acquittal cannot be reopened or appealed because of the doctrine that nobody can be put twice in jeopardy for the same offense.

Granting arguendo that petitioner's recourse under Rule 45 was proper, nevertheless, petitioner failed to raise pure questions of law. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented. There is a question of law in a given case when the doubt or difference arises as to what the law is on certain state of facts.^[20]

Contrary to petitioner's contention, the determination of whether the established facts fall squarely within the provisions of the law, that is, Section 3 (e) of R.A. No. 3019, would require us to reassess and reexamine the evidence, and essentially to supplant the lower courts' finding. This is beyond the province of Rule 45. Judicial review under Rule 45 does not envisage a re-evaluation of the sufficiency of the evidence upon which respondent court's action was predicated. It bears reiterating that a judgment of acquittal, "even if seemingly erroneous," is the final verdict.^[21]

Similarly, the second issue posed by petitioner is a question of fact disguised as a question of law. An affirmative ruling thereon would also require us to review the factual bases of the ruling of the CA in the administrative case. In fact, as noted by respondent court, the same issue of legality or validity of the subject contracts had already been passed upon by the CA, and the Ombudsman did not even attempt to question the CA ruling, which could only mean its adherence thereto.

Petitioner would also make much of the principle in law that the dismissal of the administrative case does not necessarily prevent a criminal prosecution from proceeding. Indeed, the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint. Neither does the disposition in one case inevitably govern the resolution of the other case/s and vice versa. Administrative liability is one thing; criminal liability for the same act is another.^[22] The distinct and independent nature of one proceeding from the other can be attributed to the following: first, the difference in the quantum of evidence required and, correlatively, the procedure observed and sanctions imposed; and second, the

principle that a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability.[23]

Although the dismissal of the criminal case cannot be pleaded to abate the administrative proceedings primarily on the ground that the quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal actions, the same does not hold true if it were the other way around, that is, the dismissal of the administrative case is being invoked to abate the criminal case. The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases.[24] However, if the criminal case will be prosecuted based on the same facts and evidence as that in the administrative case, and the court trying the latter already squarely ruled on the absence of facts and/or circumstances sufficient to negate the basis of the criminal indictment,[25] then to still burden the accused to present controverting evidence despite the failure of the prosecution to present sufficient and competent evidence, will be a futile and useless exercise.

Petitioner's claim that the respondent court should not have adopted the Court of Appeal's findings and instead made its own separate finding on the matter deserves scant consideration.

WHEREFORE, petition is DISMISSED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Brion,[*] and Abad, Mendoza, JJ. , concur.

[*] Designated as additional member vice Associate Justice Diosdado M. Peralta, per raffle of December 9, 2009.

[1] Penned by Associate Justice Diosdado M. Peralta (now a member of this Court) with Associate Justices Teresita J. Leonardo-De Castro (now a member of this Court) and Rolando B. Jurado, concurring.

[2] 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:

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(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.

[3] Rollo, p. 87.

[4] Said recommendation was endorsed for approval by Prosecution Bureau Director Victorio U. Tabangul and Deputy Special Prosecutor Robert E. Kallos and concurred in by Special Prosecutor Leonardo P. Tamayo. Respondent David's Demurrer to Evidence, p.3, rollo, p. 89.

[5] "Sec. 4. Bidding.--Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement,

and in accordance with provisions of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than P1 Million, and of the President of the Philippines, upon the recommendation of the Minister, if the project cost is P1 Million or more."

[6] Executive Order No. 164 and Executive Order No. 80.

[7] Isaac Puno III v. Office of the Ombudsman and Joseph Ocol, CA-G.R. SP. No. 62084, February 11, 2002.

[8] Referring to the November 15, 1996 Memorandum of Agreement for the construction of the Mabalacat Clark Spur Road and Clark Perimeter Road Projects, and likewise the August 15, 1997 Supplemental Agreement to the same MOA entered into by all the accused herein.

[9] Rollo, pp. 49-53.

[10] Petitioner's Reply, p. 4, citing *People v. Villalon*, 192 SCRA 521.

[11] *People v. Laguio*, G.R. No. 128587, March 16, 2007, 518 SCRA 402,403.

[12] *Id.* at 403-404, citing *Galman v. Sandiganbayan*, G.R. No. L-72670, September 12, 1986, 144 SCRA 43.

[13] *Id.* at 405-406, citing *People v. Uy*, G.R. No. 158157, September 30, 2005, 471 SCRA 668.

[14] *Id.*

[15] *Dayap v. Sendiong*, G.R. No. 177960, January 29, 2009.

[16] 192 SCRA 521, recited in Petitioner's Memorandum, Rollo, p. 424.

[17] *People v. Villalon*, *supra*, which cited the case of *People v. City Court of Manila*, 154 SCRA 175 (1987), merely reiterated *People v. Desalisa*, 125 Phil. 27 (1966), where the Supreme Court at the time admittedly made "certain loose statements" on the subject of double jeopardy.

[18] *Dayap v. Sendiong*, G.R. 177960, January 29, 2009.

[19] *People v. Sandiganbayan*, G.R. Nos. 137707-11, December 17, 2004.

[20] Oscar M. Herrera, 2000 ed, p. 648, citing Moran, *Comments on the Rules of Court*, 1979 ed.

[21] *People v. Sandiganbayan*, *supra*.

[22] *Paredes v. Sandiganbayan*, CA, G.R. No. 108251, January 31, 1996.

[23] *Paredes v. CA*, G.R. No. 169534, July 30, 2007.

[24] *Id.*

[25] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31, February 11, 2008.

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