ROBERTO E. CHANG AND PACIFICO D. SAN MATEO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 165111. July 21, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

On appeal is the July 2, 2004 Decision and August 23, 2004 Resolution of the Sandiganbayan[1] finding herein petitioners Roberto E. Chang and Pacifico D. San Mateo guilty beyond reasonable doubt of violation of Section 3(b) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and sentencing each of them to suffer the indeterminate penalty of imprisonment from Six (6) Years and One (1) Month as minimum to Fifteen (15) Years as maximum and perpetual disqualification from public office.

Petitioner Roberto Estanislao Chang (Chang) was the Municipal Treasurer of Makati who was tasked to, among other things, examine or investigate tax returns of private corporations or companies operating within Makati, and determine the sufficiency or insufficiency of Income Tax assessed on them and collect payments therefor. Petitioner Pacifico D. San Mateo (San Mateo) was the Chief of Operations, Business Revenue Examination, Audit Division, Makati Treasurer's Office.

By Information dated June 20, 1991, petitioners were, along with Edgar Leoncito Feraren (Feraren), a Driver-Clerk also of the Makati Treasurer's Office, charged before the Sandiganbayan to have willfully, unlawfully and criminally demanded and received the amount of One Hundred Twenty Five Thousand Pesos (P125,000) from Group Developers, Inc. (GDI) through its employee Mario Magat (Magat) in consideration of the issuance by petitioners of a Certificate of Examination that it had "no tax liability" to the Municipality, albeit it had not settled the assessed deficiency tax in the amount of P494,000.[2] Thus the Information read:

> That on or about June 19, 1991, in Makati, Metro Manila and within the jurisdiction of this Honorable Court, accused ROBERTO ESTANISLAO CHANG, a public officer being the incumbent Municipal Treasurer of Makati, Metro Manila and as such is tasked among others, to examine or investigate corporate tax returns of private corporations or companies operating within the municipality of Makati, Metro Manila, to determine their compliance and/or insufficiency of Income Tax Assessments thereon, and to collect payments corresponding thereto, while in the performance of his official duties as such found Group Developer's Inc., to be owing the municipality in the form of tax liabilities amounting to Four Hundred Ninety Four Thousand Pesos (P494,000.00), conspiring and confederating with Pacifico Domingo San Mateo, Chief of Operations, Business Revenue Examination, Audit Division, Municipal Treasurer's Office, Makati, Metro Manila, and Edgar Leoncito Feraren, Driver-Clerk, Municipal Treasurer's Office, Makati, Metro Manila, who are both public officials, did then and there willfully, unlawfully and criminally demand the amount of One Hundred Twenty Five Thousand Pesos (P125,000.00) from the said corporation, through Mario Magat, an employee of said corporation, in consideration of the issuance of a Certificate of Examination that it had "no tax liability" to the Municipality of Makati, Metro Manila, which he in fact issued to the said corporation, notwithstanding the fact that the latter has not paid any amount out of the P494,000.00.
>
> CONTRARY TO LAW.

Gathered from the evidence for the prosecution is its following version:

By virtue of Letter-Authority No. M-90-245 dated June 18, 1990 issued by the Office of the District Treasurer (District IV), Makati Treasurer's Office examiners Vivian Susan C. Yu and Leonila T. Azevedo conducted an examination of the books of accounts and other pertinent records of GDI covering the period from January 1985 to December 1989 in order to verify the true and correct amount of tax due from its business operations.[3]

The examiners found that GDI incurred a tax deficiency inclusive of penalty in the total amount of P494,601.11, the details of which follow:

> Deficiency in the payment for business taxes in P271,160.00 1986 to 1990
> Deficiency in the payments for Mayor's Permit & 14,730.00 Garbage Fee
> Surcharge Interest 208,711.11
> Total Amount Due P494,601.11[4]

The Office of the Treasurer thus issued an Initial Assessment Notice[5] dated January 25, 1991 to GDI for it to pay the tax deficiency within four days from receipt.

No word having been received by the Office of the Treasurer from GDI, it issued a Second Assessment Notice[6] dated February 14, 1991, reminding GDI to settle the amount due within three days from receipt.

The assessment notices were personally received by Mario Magat (Magat), Chief Operating Officer of GDI, in April 1991. Magat thereupon referred the matter to the Accounting Department which informed him that the computations and worksheets requested from the municipal auditors to enable it to validate the assessment[7] had not been received.

Magat was later able to talk via telephone to San Mateo who had been calling GDI's Accounting Department and requesting for someone with whom he could talk to regarding the assessment.

On May 15, 1991, Magat and San Mateo met for lunch at the Makati Sports Club.[8] Chang later joined the two, and the three agreed that if GDI could pay P125,000 by the end of May 1991, the assessment would be "resolved."[9]

On May 29, 1991, San Mateo went to Magat's office at GDI to pick up the check for the settlement of GDI's deficient tax liability. When Magat handed over to San Mateo Interbank Manager's Check No. 301715603[10] in the amount of P125,000 dated May 29, 1991 payable to the Municipal Treasurer of Makati, San Mateo refused to accept the same, he uttering that Magat may have misunderstood their agreement as the money would not be going to the Municipality. Magat thereupon asked if Chang knew about the matter and San Mateo replied that that was the agreement as understood by Chang. Magat then informed San Mateo that he still had to consult with the top management of GDI because what he understood was that GDI was settling the correct amount of taxes to the Municipality.[11]

After consultation with the management of GDI, Magat repaired on May 30, 1991 to the offices of San Mateo and Chang at the Makati Treasurer's Office during which he was told that the payment was to absolve GDI from its tax liability and if no payment is made, they would find ways to close GDI.[12]

On June 6, 1991, Magat met again for lunch with San Mateo and Chang at the Makati Sports Club. Magat tried to convince the two that GDI wanted to pay the correct amount of tax to the Municipality. He was advised by San Mateo and Chang, however, that GDI had only two options: pay the P494,601.11 to the Municipality or P125,000 to them.[13]

Magat thus consulted with Victor Puyat, president of GDI. Referral of the matter to the National Bureau of

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Investigation (NBI) was considered.[14]

On June 12, 1991, Magat met with then NBI Deputy Director Epimaco Velasco who advised him to file a complaint with the NBI. On even date, Magat thus gave a sworn statement[15] before the NBI.

After the lapse of several days, Magat contacted San Mateo and asked him if their position was still the same to which the latter replied in the affirmative, he adding that if no payment was made, GDI would be closed. Magat thereafter told San Mateo that he would deliver the P125,000 on June 19, 1991 at the Makati Sports Club.[16]

On the morning of June 19, 1991, Magat informed the NBI that the payment was to be made that day around lunchtime. The NBI immediately formed a team to conduct an entrapment. On the request of the NBI, Magat brought hundred peso bills to be added to the boodle money to be used in the entrapment operation. The genuine as well as the boodle money and the brown envelope where the money was placed were then laced with fluorescent powder.[17]

A few minutes before 11:30 a.m. of June 19, 1991, Magat together with some NBI operatives, arrived at the Makati Sports Club. Two of the NBI agents went with Magat to the restaurant and pretended to play billiards while Magat occupied one of the tables.[18]

At 11:30 a.m., San Mateo arrived and joined Magat at his table. The two took lunch after which San Mateo stood up and watched those playing billiards. At 12:00 noon, Chang and his driver Feraren arrived and joined Magat at the table. After Chang and Feraren were through with their lunch, Magat told Chang and San Mateo that GDI was ready to pay and asked them if they could give him the Certificate of Examination showing that GDI had no more tax liability to the municipality. Chang thereupon handed to Magat the Certificate of Examination[19] issued to GDI with an annotation reading "NO TAX LIABILITY INVOLVED," following which Magat gave Chang the brown envelope. Chang then passed the brown envelope on to his driver Feraren who in turn passed it on to San Mateo who opened it and peeped at its contents. At that instant, the NBI agents announced that they were being arrested.[20]

After their arrest, Chang, San Mateo and Feraren were brought to the NBI headquarters where their respective hands were tested and found positive for fluorescent powder.[21]

The defense, on the other hand, proffered the following tale:

On the invitation of GDI through one of its accounting clerks and a certain Atty. Villarosa, San Mateo met with Atty. Villarosa for lunch in April 1991 during which the latter requested for a reduction of the tax liability of GDI as it was experiencing financial difficulties. San Mateo turned down the request.[22]

In the first week of May 1991, San Mateo met for lunch with Magat, on the latter's invitation at the Makati Sports Club. At said meeting, Magat reiterated the request of Atty. Villarosa but San Mateo just the same turned it down.[23]

On May 29, 1991, Magat invited San Mateo to repair to his office at GDI, he advising him that there was already a check in the amount of P494,610.11. San Mateo did go to Magat's office where he was given a white envelope containing a manager's check payable to the Municipal Treasurer of Makati in the amount of P125,000. He did not accept the check, however, as he did not have authority to accept any payment less than that which was due from GDI.[24]

Magat later went to San Mateo's office at the Municipal Treasurer's Office and tried to convince him to accept the P125,000 check but to no avail.[25]

On June 17, 1991, Magat called on San Mateo at the latter's office and conveyed Puyat's invitation to Chang for

lunch on June 19, 1991 at the Makati Sports Club. San Mateo in turn relayed the invitation to Chang through the latter's driver, Feraren.[26]

On June 19, 1991, Magat, San Mateo, Chang and Feraren met for lunch at the Makati Sports Club.

After lunch, San Mateo saw a brown envelope being tossed and suddenly placed in front of him. As he held the brown envelope, several persons shouted "Arestado kayo, NBI ito." The NBI operatives got hold of the brown envelope[27] and apprehended San Mateo, Chang and Feraren while Magat disappeared.[28]

The Sandiganbayan, by the assailed Decision[29] of July 2, 2004, convicted herein petitioners San Mateo and Chang and acquitted Feraren, disposing as follows:

> WHEREFORE, judgment is hereby rendered finding accused Roberto E. Chang and Pacifico D. San Mateo GUILTY beyond reasonable doubt for the violation of sec. 3 (b) of RA 3019 and are hereby sentenced to each suffer the indeterminate penalty of imprisonment from six (6) years and one (1) month as minimum to fifteen (15) years as maximum and to each suffer the penalty of perpetual disqualification from public office.
>
> Anent accused Edgar L. Feraren, judgment is hereby rendered finding him NOT GUILTY for the violation of sec. 3 (b) of RA 3019 for failure of the Prosecution to prove his guilt beyond reasonable doubt and is hereby ACQUITTED. Consequently, the personal bail bond posted by accused Edgar L. Ferraren is hereby ordered cancelled and the Hold-Departure Order issued against the same accused is hereby revoked and declared functus officio.[30]

Hence, the present petition, faulting the Sandiganbayan to have gravely erred in:

I.

> . . . HOLDING THAT PETITIONERS HAVE COMMITTED THE CRIME CHARGED AND THAT THE ELEMENTS OF THE OFFENSE UNDER SECTION 3 (B) OF RA 3019 HAVE BEEN PROVEN BEYOND REASONABLE DOUBT.
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> II.
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> . . . HOLDING THAT THERE WAS CONSPIRACY ON THE PART OF PETITIONERS IN COMMITTING THE CRIME CHARGED, DESPITE LACK OF CLEAR AND CONVINCING EVIDENCE.
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> III.
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> . . . HOLDING THAT THE FAILURE OF PETITIONER ROBERTO E. CHANG TO TAKE THE WITNESS STAND TO REBUT THE PIECES OF EVIDENCE PRESENTED BY THE PROSECUTION, IS FATAL TO HIS CAUSE, OVERLOOKING THE FACT THAT PETITIONER, WHO IS ENTITLED TO HIS CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION, CANNOT BE COMPELLED TO TESTIFY.
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> IV.
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> . . . NOT ACQUITTING PETITIONERS OF THE CRIME CHARGED, THEIR GUILT NOT HAVING BEEN PROVEN BEYOND REASONABLE DOUBT.[31] (Underscoring supplied)

Petitioners argue that the elements of the offense for which they were charged were not proven beyond reasonable doubt.

On the presence of fluorescent powder in their hands, petitioners claim that it was the result of involuntary contact when Magat tossed to them the brown envelope.

At all events, petitioners claim that the circumstances surrounding the supposed pay-off fail to show community of purpose or design which is the critical element of conspiracy.

Maintaining their innocence, petitioners proffer that what transpired was not an entrapment but an instigation, which is an absolutory cause in criminal prosecution. They point out that when Magat went to the NBI on June 12, 1991, "no date, time or place was as yet known to them for purposes of the planned entrapment, leading to no other conclusion except that all the activities on . . . June 19, 1991, the day of the supposed pay-off in the amount of P125,000, were all orchestrated by . . . Magat so as not to lose face with the NBI."[32]

Finally, petitioners proffer that the failure of Chang to testify does not imply guilt, he being entitled to his constitutional right against self-incrimination.

The petition fails.

Section 3(b) of the Anti-Graft and Corrupt Practices Act provides:

> 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:
>
> x x x x
>
> (b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

Peligrino v. People[33] restates the elements of the above-quoted offense as summed up in Mejia v. Pamaran,[34] to wit: (1) the offender is a public officer (2) who requested or received a gift, a present, a share, a percentage, or a benefit (3) on behalf of the offender or any other person (4) in connection with a contract or transaction with the government (5) in which the public officer, in an official capacity under the law, has the right to intervene.

From a review of the records of the case, this Court finds that all the above-stated elements were satisfactorily established by the prosecution.

Petitioners were undisputedly public officers at the time of the commission of the offense. The prosecution, as reflected in the above statement of its version, not only established creditably how the offense charged was committed. It established just as creditably how petitioners conspired to commit the crime.

Upon the other hand, the defense failed to overturn the evidence for the prosecution.

Petitioners' disclaimer of having demanded or requested anything from GDI to settle its assessed deficiency tax does not persuade in light of, among other things, San Mateo's willingness and interest to meet in April, first week of May and May 29, 1991 by his own account, with the officials of GDI outside his office, despite the receipt in April 1991 by Magat of the First and Second Deficiency Assessment Notices giving GDI four and three days, respectively, from receipt to settle the assessed deficit taxes; the admitted refusal of San Mateo to accept the check dated May 29, 1991 for P125,000 which was payable to the order of the Municipality; and petitioners' handing over to Magat the Certificate of Examination dated May 28, 1991 on which was annotated "NO TAX LIABILITY INVOLVED." San Mateo's justification behind such refusal - that he had no authority to accept an amount less than the assessment amount - is too shallow to merit belief, he being the Chief of Operations, Business Revenue Examination, Audit Division of the Treasurer's Office, who had, on those various meetings, gone out of his way to negotiate the settlement of the assessed deficiency tax.

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As to petitioners' argument that what transpired on June 19, 1991 was an instigation and not an entrapment, the same fails.

There is entrapment when law officers employ ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime. There is instigation when the accused is induced to commit the crime. The difference in the nature of the two lies in the origin of the criminal intent. In entrapment, the mens rea originates from the mind of the criminal. The idea and the resolve to commit the crime comes from him. In instigation, the law officer conceives the commission of the crime and suggests to the accused who adopts the idea and carries it into execution.[35]

From the evidence for the prosecution, it was clearly established that the criminal intent originated from the minds of petitioners. Even before the June 19, 1991 meeting took place, petitioners already made known to Magat that GDI only had two options to prevent the closure of the company, either to pay the assessed amount of P494,601.11 to the Municipality, or pay the amount of P125,000 to them.

Respecting the failure of Chang to testify, it bears noting that the evidence for the prosecution did establish beyond reasonable doubt the presence of conspiracy as it did his and San Mateo's guilt. The burden of the evidence having shifted to him, it was incumbent for him to present evidence to controvert the prosecution evidence. He opted not to, however. He is thus deemed to have waived his right to present evidence in his defense.

WHEREFORE, the petition is DENIED. The challenged Sandiganbayan decision is AFFIRMED.

SO ORDERED

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr. JJ., concur.

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[1] Penned by Justice Diosdado M. Peralta and concurred in by Justices Teresita Leonardo-De Castro and Roland B. Jurado.

[2] Sandiganbayan records, pp. 1-2.

[3] Exhibit "C," folder of exhibits (unpaginated).

[4]Exhibit "A," folder of exhibits.

[5] Exhibit "A," folder of exhibits.

[6] Exhibit "A-1," folder of exhibits.

[7]TSN, July 28, 1994, p. 7.

[8] Id. at 7-10.

[9] Id. at 10-14.

[10] Exhibit "D," folder of exhibits.

[11] TSN, July 28, 1994, pp. 15-17.

[12] Id. at 17-18.

[13] Id. at 18-19.

[14] Id. at 20.

[15] Id. at 20-21.

[16] Id. at 22.

[17] Id. at 23-25.

[18] Id. at 25.

[19] Exhibit " C ," folder of exhibits.

[20] TSN, July 28, 1994, pp. 26-32.

[21] Exhibits "O" to "Q-2," folder of exhibits.

[22] TSN, November 13, 1995, pp.12-13.

[23] Id. at 13-15.

[24] Id. at 21-23.

[25] Id. at 23.

[26] Id. at 23-24.

[27] Exhibit "R," folder of exhibits.

[28] TSN, November 13, 1995, pp. 31-33.

[29] Rollo, pp. 70-88.

[30] Id. at 87-88.

[31] Id. at 39-40.

[32] Id. at 51-52.

[33] 415 Phil. 94, 117 (2001).

[34] L-56741-42, April 15, 1988, 160 SCRA 457.

[35] 226 Phil. 437, 443 (1986).

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