

TEOFILO GIANGAN, SANTOS BONTIA (DECEASED), AND LIBERATO DUMAIL (DECEASED), PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 169385. August 26, 2015

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The reversal of the decision rendered on July 15, 2005 by the Sandiganbayan,[1] and the consequent acquittal of petitioner Teofilo Giangan (as the only surviving accused) are being sought in this appeal by petition for review on certiorari. By the assailed decision, the Sandiganbayan affirmed the judgment of the Regional Trial Court (RTC), Branch 25, in Danao City in Criminal Case No. DNO-1799 finding the three named-accused, namely: Teofilo Giangan, Santos Bontia, and Liberato Dumail, guilty beyond reasonable doubt of the violation of Section 3(e) of Republic Act No. 3019 as charged.[2]

It is noted that this appeal now concerns only Giangan considering that the two other accused meanwhile died.

Antecedents

In his capacity as the barangay chairman of Barangay Luyang in the Municipality of Carmen, Province of Cebu at the time material to this case, Giangan, along with his co-accused Domail, a barangay councilor, and Bontia, the head of the barangay tanods, were charged with the violation of Section 3 (e) of R. A. No. 3019 under the following information:

x x x That on or about the 16th day of February 1996, at Barangay Luyang, Municipality of Carmen, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, having been elected, appointed and qualified to such public positions above mentioned, taking advantage of their public positions and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously destroy the fence made of wooden posts and straight wires in an agricultural land situated at Luyang, Carmen, and owned by Aurelia F. Bernadas, without proper court order or authority of law, thus accused in the performance of their official functions had given unwarranted benefits, preference or advantage to themselves, to the damage, injury and prejudice to Aurelia F. Bernadas.[3]

Version of the Prosecution

It appears that Aurelia Bernadas hired Delfin Buot to construct the wooden fence on her land; that the accused removed the fence; that Buot first learned of the removal of the fence from the residents of Barangay Luyang; that Buot further learned that Giangan and his co-accused removed the wooden fence; that Buot first directly inquired from Giangan why the latter had destroyed the fence, but he harshly told him to tell Bernadas to just file a case against him; that Buot then went home to call Bernadas about the incident; and that Buot accompanied Bernadas and her spouse to confront Giangan, who reiterated his dare for them to just file a case.[4]

Bernadas testified that she had caused the construction of the fence on her three properties in Barangay Luyang because the fruits of the coconut trees growing on her properties were frequently stolen, and also because the sand on the seashore within her properties was being excavated; that she reported the theft to Giangan, who did not take any action on her complaint; that she spent a total of P11,200.00 for labor and materials in the construction of the fence; that upon learning of the removal of the fence, she visited Giangan to inquire, but the latter shouted at her: "It is within my power as barangay captain to destroy the fence," and "Don't tell me what to do, you just file a case in court;" that many landowners put up fences on their properties in the area, but the fences were not removed; and that there was no established road right of way on her properties ever since she could remember.[5]

Version of the Defense

Giangan stated that on February 17, 1996, he went to the Bantigue Port Area after receiving a report that the barangay road had been blocked by a fence; that the road, which was connected to Barangay Luyang,[6] had existed in that area for as long as he could remember; that he had then removed the three standing posts and six posts lying on the ground, and brought the posts to the police station; that as the barangay chairman of Luyang, he believed that the site of the fence was a road because the residents complained that they could no longer pass through especially during high tide; that such complaint was why he removed the fence; and that he simply told Bernadas and her husband that he was forced to remove the fence because of the complaint of the residents.[7]

Also presented was Gregorio Basan, the former barangay chairman of Luyang, who avowed that he was aware of the existence of the barangay road of Luyang along the coastline; and that the barangay road to Sitio Po-po[8] had existed for more than 40 years without any protest from the present owner during his tenure as the barangay chairman.[9]

Bontia recalled that Jaime Misa had reported to him that the Sto. Nino road traversing the Bernadas' properties, which had existed since he was 7 years of age and had never been blocked before, was closed; that the road was on the land owned by Aurelio Fernandez, the father of Bernadas; that they made an opening in the fence so that the residents could pass through; and that they brought the fence posts to the municipal hall of Carmen.[10]

Misa attested that he was on his way home at around midnight on February 16, 1996 after conveying passengers from Carmen, Cebu to Danao City; that he had to stop because a fence erected on the property of Bernadas blocked the road; that he returned to Luyang to report the matter to the barangay chairman; that he also tried to see the Mayor but then headed home when he could not see the Mayor.[11]

Judgment of the RTC

On November 5, 1999, the RTC Danao City rendered its judgment finding all of the accused guilty as charged, disposing:

WHEREFORE, facts and law considered, the Court finds accused TEOFILO GIANGAN, LIBERATO DOMAIL, JR., AND SANTOS BONTIA guilty beyond reasonable doubt as principals of violating the Anti-Graft and Corrupt Practices Act, and hereby sentences them to suffer an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY to FIFTEEN (15) years imprisonment, with perpetual disqualification from public office pursuant to Section 9, Republic Act No. 3019, as amended. *Dura Lex, Sed Lex*. The law may be harsh, but the law is the law.

Accused are likewise ordered to pay jointly and solidarity unto private complainant the sum of P100,000.00 for moral damages, P11,000.00 for actual damages and P20,000.00 for attorney's fees.

SO ORDERED.[12]

Decision of the Sandiganbayan

On July 15, 2005, the Sandiganbayan affirmed the judgment of conviction, to wit:

WHEREFORE, premises considered the judgment of conviction appealed from is hereby AFFIRMED, with the following modifications:

1)

That the duration of the penalty of imprisonment imposed upon the accused be reduced to six years and one day to ten years;

2)

That the award for actual damages be reduced to P6,200.00; and

3)

That the award for moral damages be likewise reduced to P25,000.00

SO ORDERED.[13]

Explaining the affirmance, the Sandiganbayan observed as follows:

Element No. 1 that the accused are public officers

The accused-appellants do not deny the respective positions that they held in Barangay Luyang, Carmen, Cebu, when the fence was demolished, namely, Teofilo Giangan as Barangay Chairman, Liberate Domail as Barangay Councilor and Santos Bontia as Barangay Tanod. What they do contest vehemently is the application to them of Section 3 (e) of R.A. No. 3019, as amended. They assert that the prohibited act mentioned in said subsection, of causing undue injury or granting unwarranted benefit to any party through manifest partiality, evident bad faith or gross inexcusable negligence, applies exclusively to officers and employees of offices or government corporations charged with the grant of licenses of permits or other concessions, which they allegedly are not.

The argument clung to by the accused lacks merit. This issue had long been settled in the case of *Mejorada vs. Sandiganbayan* where the Honorable Supreme Court held that Section 3 (e) of RA 3019 is not only limited to government officials or public officers or government corporations who charged with the duty of granting licenses, permits or other concessions but also to other officials and employees in the government without any distinction.[14] x x x

x x x x

Element No. 2 that the accused acted with manifest partiality and evident bad faith

In determining the existence of this element, a preliminary discussion is entailed on the collateral issue of whether or not the portion of the complainant's land from which the fence was demolished could be considered a right of way over which the barangay has acquired a right through prescription. The lower court held that there was no easement of right of way in this case. The accused-appellants, however, contend that the lower court erred in refusing to appreciate that the barangay road in question is a property of the public dominion and not of private ownership. Pursuing further their assignment of error, they insist that the road, which has allegedly been used as a passageway of people coming from the seashore for more than 40 years, has acquired the status of an easement by virtue of prescription.

x x x x

We now come to the issue of whether or not the act of the accused-appellants in destroying the fence on the complainant's property was attended by manifest partiality and evident bad faith, and thus granted unwarranted

benefit to themselves, to the damage and injury of complainant Aurelia Bernadas. The Information alleges that the demolition of the fence was made by the accused without any court order or authority of the law. This Court finds that the allegation is substantiated in the sense that no such court order or other authority was indeed presented by the accused-appellants by virtue of which they undertook the demolition of the fence. In fact, the demolition appeared to have been done clandestinely and without the knowledge of the owner who was thereby deprived of all possible opportunity to take remedial measures to protect her proprietary rights.

x x x x

The above discussion about the lack of authority of the accused-appellants to demolish the fence of the complainant, and the brazen challenge of accused Giangan for the complainant to file a case against him for his act, reinforces the finding of the lower court that the accused acted with evident bad faith. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.

Aside from evident bad faith, the Court likewise appreciates the element of manifest partiality in the act of the accused-appellants. The prosecution presented testimonial evidence, which was not rebutted, that other property owners similarly situated as complainant Bernadas were allowed to enclose their properties, such that the road traversing them was moved to a different location. Furthermore, some property owners were allowed to construct "riprap" on their property without the accused having lifted a finger to contradict them. It therefore appears that the accused were not at all stripped of bias when they exercised their option only against the complainant and turned a blind eye towards other property owners similarly situated. Such behavior undoubtedly bespeaks of partiality which has been defined as synonymous to bias which excites a disposition to see and report matters as they are wished for rather than as they are.

Element No. 3 that the act caused undue injury

As defined in *Pecho vs. Sandiganbayan*, causing undue injury means actual injury or damage which must be established by evidence. The word "undue" means "more than necessary, not proper, or illegal"; and "injury" means "any wrong or damage done to another, either in his person, rights, reputation or property; the invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

x x x x

Using the aforecited law and jurisprudence as guide, this Court finds that the lower court correctly ruled that undue injury was caused to the complainant under the obtaining circumstances. There is no doubt that the complainant had spent an amount for the construction of the fence which the accused-appellants eventually demolished, aside from the fact that she was restrained from exercising her proprietary rights.

We tackle the plea for acquittal made by the accused-appellants on the strength of the argument that they did not grant unwarranted benefit to themselves, based on the testimony of SPO4 Paquito Abellar that the accused deposited all the nine posts in the premises of the Carmen police station. It must be stressed that as held in a number of cases, there are two ways by which a public official violates Section 3 (e) or R.A. No. 3019, as amended, namely: 1) by causing undue injury to any party, including the government, or 2) by granting any private party any unwarranted benefit, advantage or preference. In the *Fonacier* case, it was distinctly stated that the third element of the offense is satisfied when the questioned conduct causes undue injury to any party, including the government, or gives any unwarranted benefit, advantage or preference.[15]

Issues

Hence, Giangan as the lone surviving accused appeals.

Giangan argues that the Sandiganbayan erred in upholding his conviction for the violation of Section 3 (e) of R.A. No. 3019 by the trial court, and that the Sandiganbayan should have instead ruled that the acts complained of amounted only to forcible entry under Rule 70 of the Rules of Court.[16]

The Office of the Solicitor General (OSG) counters that the Sandiganbayan properly dealt with the culpability of the three accused;[17] that considering that Giangan did not raise during the trial stage and at the hearing of their motion for reconsideration the lack of building permit, and that the acts complained against constituted only forcible entry,[18] the Sandiganbayan did not err in affirming the conviction by finding the three accused to have violated Section 3 (e) of RA 3019.[19]

In his reply, Giangan contends that the Prosecution did not aver that Bernadas had built by herself the entire length of the road from the edge of her land where she had put up the wooden obstacle across to Sitio Po; that the Prosecution did not prove that the road belonged to Bernadas; that as public officials, he and his co-accused acted within the bounds of the law; that the prerogative of opening or closing the road leading to Sitio Po did not belong to Bernadas but to the Sangguniang Barangay of Luyang, Carmen; and that he, as the barangay chairman, held the authority and responsibility to maintain public order, while Domail, as a barangay councilor, could also act as a peace officer to maintain public order within the barangay.[20]

Ruling of the Court

We find merit in the petition.

In every prosecution for the violation of Section 3 (e) of R.A. No. 3019, the State must prove the following essential elements, namely:

- The accused is a public officer discharging administrative, judicial or official functions;
- He must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence in the discharge of his functions and;
- His action caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[21]

The first element was present, for Giangan was indisputably a government official at the time of the alleged commission of the offense charged.

Anent the second element, we have enunciated in *Fonacier v. Sandiganbayan*[22] that the three modes of committing are distinct and different from one another, to wit:

The second element enumerates the different modes by which means the offense penalized in Section 3 (e) may be committed. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3 (e) should suffice to warrant conviction. (Italics is part of the original text)

Conformably with the foregoing, we find that the Sandiganbayan erred in ruling that Giangan and his co-accused had acted with gross bad faith and manifest impartiality when they removed the wooden posts of the fence of Bernadas. On the contrary, their actuations evinced good faith. We note that it was not at all disputed that access through the road had long been permitted even by the owner and her predecessor. In that context, Giangan as the barangay chairman acted upon the honest and sincere belief that he was then summarily abating the nuisance that a regular user of the obstructed road had just reported to him. A further indication of the good faith of Giangan was the turning over of the wooden posts to the police station, manifesting that the accused were acting within the scope of their authority. Good faith means honest, lawful intent; the condition of acting without knowledge of fraud, and without intent to assist in a fraudulent or otherwise unlawful scheme.[23] Also, the act complained of was rendered inconsistent with the manifest partiality and bad faith that the law punished.

Also worth noting is that at the time of the removal of the wooden posts the owner held no building permit, and had not filed any application for a building permit on the construction. Whether this fact was brought to the attention of the trial court or not was of no consequence.

The Sandiganbayan further erred in finding the presence of manifest partiality on the basis that there had been other allegedly illegal constructions that the accused did not similarly remove in their capacities as barangay officials. Bias should still not be imputed against them because they were acting on the complaint against the inconvenience brought about by the obstruction erected on the access road. Manifest partiality should be inferred only if there was a clear showing that there had been others who had been bothered by the similar allegedly illegal constructions and had complained, but the accused, in their capacities as barangay officials, did not deal with such complaint with the same alacrity. Indeed, in *People v. Atienza*,[24] the Court affirmed the findings of the Sandiganbayan that there was no manifest impartiality or bad faith on the part of the accused public officials where the evidence adduced did not show that they had favored other persons similarly situated.

In light of the foregoing, the guilt of Giangan was not established beyond reasonable doubt. Hence, he is entitled to acquittal.

WHEREFORE, the Court GRANTS the petition for review on certiorari; REVERSES and SETS ASIDE the decision dated July 15, 2005 of the Sandiganbayan; ACQUITS petitioner TEOFILO GIANGAN for failure to establish his guilt of the crime charged beyond reasonable doubt; and MAKES no pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Perez, and Perlas-Bernabe, JJ., concur.

[1] Rollo, pp. 62-74; penned by Associate Justice Teresita V. Diaz-Baldos with Associate Justice Ma. Cristina Cortez-Estrada (later Presiding Justice) and Associate Justice Roland B. Jurado concurring.

[2] Id. at 76-83; penned by Judge Esperidion C. Rivala.

[3] Id. at 76.

[4] Id. at 77.

[5] Id. at 78-79.

[6] Id. at 79.

[7] Id.

[8] "Sitio Po" in some parts of the records.

[9] Supra note 6.

[10] Rollo, p. 80.

[11] Id.

[12] Id. at 83.

[13] Id. at 74.

[14] Id. at 66.

[15] Id. at 66-71.

[16] Id. at 11.

[17] Id. at 52.

[18] Id. at 53-54.

[19] Id. at 54.

[20] Id. at 122-123.

[21] *People v. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492, 509-510, citing *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386.

[22] G.R. Nos. 50691, 52263, 52766, 52821, 53350 & 53397, December 5, 1994, 238 SCRA 655, 687.

[23] *Words and Phrases* (Vol. 1 8A), p. 91, citing *Crouch v. First National Bank*, 40 N.E. 974, 979, 156 Ill. 342.

[24] G.R. No. 171671, June 18, 2012, 673 SCRA 470, 481.

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