

HENRY T. GO, PETITIONER, VS. THE FIFTH DIVISION, SANDIGANBAYAN AND THE OFFICE OF THE SPECIAL PROSECUTOR, OFFICE OF THE OMBUDSMAN, RESPONDENTS.

G.R. No. 172602. April 16, 2009

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In its Motion for Reconsideration, respondent Office of the Special Prosecutor argues, citing *Meneses v. People*,^[1] *Balmadrid v. Sandiganbayan*,^[2] *Domingo v. Sandiganbayan*,^[3] and *Singian v. Sandiganbayan*,^[4] that private persons when conspiring with public officers may be held liable for violation of Section 3(g) of Republic Act (R.A.) No. 3019.

The arguments presented by the Office of the Special Prosecutor convinced us to take a second look at the case. We maintain that to be indicted of the offense under Section 3(g) of R.A. No. 3019, the following elements must be present: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government. However, if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is "to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto."

In the instant case, the Information charges Vicente C. Rivera, Jr., then Secretary of the Department of Transportation and Communications, with committing the offense under Section 3(g) of R.A. No. 3019 "in conspiracy with accused HENRY T. GO, Chairman and President of Philippine International Air Terminals, Co., Inc. (PIATCO) x x x."

Pursuant to our ruling in *Estrada v. Sandiganbayan*,^[5] said allegation of conspiracy is sufficient, thus:

The requirements on sufficiency of allegations are different when conspiracy is not charged as a crime in itself but only as the mode of committing the crime as in the case at bar. There is less necessity of reciting its particularities in the Information because conspiracy is not the gravamen of the offense charged. x x x

x x x x

[I]t is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude, etc; or (2) by allegation of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.^[6]

Thus, the allegation in the Information that accused Rivera "in conspiracy with accused HENRY T. GO" committed the alleged acts in violation of Section 3(g) of R.A. No. 3019, is sufficient in form and substance.

Consequently, petitioner Go was validly charged with violation of Section 3(g) when he allegedly conspired with accused Rivera.

However, we note that in the Decision of the Sandiganbayan dated March 18, 2008, Vicente C. Rivera, Jr. was acquitted and the case against him dismissed. The dispositive portion of the Decision states:

WHEREFORE, in view of the foregoing, accused Vicente C. Rivera, Jr.'s "Motion to Dismiss by way of Demurrer to Evidence", dated September 8, 2007, is hereby GRANTED. Criminal Case No. 28092 for violation of Section 3(g) of Republic Act No. 3019, is ordered DISMISSED and accused VICENTE C. RIVERA, JR., is hereby ACQUITTED of the offense charged.

The cash bond posted by the accused to secure his provisional liberty is hereby ordered returned to him, subject to the usual accounting and auditing procedures.

The Hold Departure Order issued by this Court against the accused dated February 15, 2005, is lifted and set aside.

There can be no pronouncement as to civil liability as the facts from which the same might arise were not proven in the case at bar.

SO ORDERED.

From the said Decision, the Office of the Special Prosecutor filed a Petition for Certiorari before this Court which was docketed as G.R. No. 185045 and captioned as *People v. Sandiganbayan and Rivera*. However, on December 3, 2008, the Court dismissed the petition, viz:

The Court resolves to DISMISS the petition for certiorari of the Decision and Resolution dated 18 March 2008 and 16 September 2008, respectively, of the Sandiganbayan in Criminal Case No. 28092 for failure of the petitioner to sufficiently show that any grave abuse of discretion was committed by the Sandiganbayan in rendering the challenged decision and resolution which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.

The said December 3, 2008 Resolution became final and executory and was recorded in the Book of Entries of Judgments on February 13, 2009.

Based on the foregoing, it follows as a matter of course that the instant case against herein petitioner Henry T. Go should likewise be dismissed. The acquittal of Rivera means that there was no public officer who allegedly violated Section 3(g) of R.A. No. 3019. There being no public officer, it follows that a private individual such as herein petitioner Go could not be said to have conspired with such public officer. The basis for a finding of conspiracy against petitioner and Rivera has been removed; consequently, the case against Henry T. Go should likewise be dismissed.

WHEREFORE, the Motion for Reconsideration (of the Resolution dated September 3, 2007) filed by the Office of the Special Prosecutor is DENIED subject to the qualification discussed in the body of the decision. The Prayer to Refer Case to the Supreme Court En Banc is likewise DENIED. The Comment/Opposition filed by petitioner Go to the said Motion for Reconsideration (of the Resolution dated September 3, 2007) With Prayer to Refer Case to the Supreme Court En Banc as well as the Manifestation and Motion are NOTED. The Sandiganbayan is hereby DIRECTED to DISMISS Criminal Case No. 28092 against petitioner Henry T. Go.

SO ORDERED.

Austria-Martinez, Chico-Nazario, Velasco, Jr., and Brion, JJ., concur.

[1] G.R. Nos. L-71651 and L-71728, August 27, 1987, 153 SCRA 303.

[2] G.R. No. 58237, March 22, 1991, 195 SCRA 497.

[3] G.R. No. 149175, October 25, 2005, 474 SCRA 203.

[4] G.R. Nos. 160577-94, December 16, 2005, 478 SCRA 348.

[5] G.R. No. 148965, February 26, 2002, 377 SCRA 538.

[6] Id. at 563, 565.

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