

RUPERTO A. AMBIL, JR., PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 175457. July 06, 2011*

Ponente: VILLARAMA, JR., J.

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Before us are two consolidated petitions for review on certiorari filed by petitioner Ruperto A. Ambil, Jr.[1] and petitioner Alexandrino R. Apelado Sr.[2] assailing the Decision[3] promulgated on September 16, 2005 and Resolution[4] dated November 8, 2006 of the Sandiganbayan in Criminal Case No. 25892.

The present controversy arose from a letter[5] of Atty. David B. Loste, President of the Eastern Samar Chapter of the Integrated Bar of the Philippines (IBP), to the Office of the Ombudsman, praying for an investigation into the alleged transfer of then Mayor Francisco Adalim, an accused in Criminal Case No. 10963 for murder, from the provincial jail of Eastern Samar to the residence of petitioner, then Governor Ruperto A. Ambil, Jr. In a Report[6] dated January 4, 1999, the National Bureau of Investigation (NBI) recommended the filing of criminal charges against petitioner Ambil, Jr. for violation of Section 3(e)[7] of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended. On September 22, 1999, the new President of the IBP, Eastern Samar Chapter, informed the Ombudsman that the IBP is no longer interested in pursuing the case against petitioners. Thus, he recommended the dismissal of the complaint against petitioners.[8]

Nonetheless, in an Information[9] dated January 31, 2000, petitioners Ambil, Jr. and Alexandrino R. Apelado, Sr. were charged with violation of Section 3(e) of R.A. No. 3019, together with SPO3 Felipe A. Balano. Upon reinvestigation, the Office of the Ombudsman issued a Memorandum[10] dated August 4, 2000, recommending the dismissal of the complaint as regards Balano and the amendment of the Information to include the charge of Delivering Prisoners from Jail under Article 156[11] of the Revised Penal Code, as amended, (RPC) against the remaining accused. The Amended Information[12] reads:

That on or about the 6th day of September 1998, and for sometime prior [or] subsequent thereto, [in] the Municipality of Borongan, Province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, [the] above-named accused, Ruperto A. Ambil, Jr.,[.] being then the Provincial Governor of Eastern Samar, and Alexandrino R. Apelado, being then the Provincial Warden of Eastern Samar, both having been public officers, duly elected, appointed and qualified as such, committing the offense in relation to office, conniving and confederating together and mutually helping x x x each other, with deliberate intent, manifest partiality and evident bad faith, did then and there wilfully, unlawfully and criminally order and cause the release from the Provincial Jail of detention prisoner Mayor Francisco Adalim, accused in Criminal Case No. 10963, for Murder, by virtue of a warrant of Arrest issued by Honorable Arnulfo P. Bugtas, Presiding Judge, RTC-Branch 2, Borongan, Eastern Samar, and thereafter placed said detention prisoner (Mayor Francisco Adalim) under accused RUPERTO A. AMBIL, JR.'s custody, by allowing said Mayor Adalim to stay at accused Ambil's residence for a period of Eighty-Five (85) days, more or less which act was done without any court order, thus accused in the performance of official functions had given unwarranted benefits and advantage to detainee Mayor Francisco Adalim to the prejudice of the government.

CONTRARY TO LAW.

BAIL BOND RECOMMENDED: P30,000.00 each.[13]

On arraignment, petitioners pleaded not guilty and posted bail.

At the pre-trial, petitioners admitted the allegations in the Information. They reason, however, that Adalim's transfer was justified considering the imminent threats upon his person and the dangers posed by his detention at the provincial jail. According to petitioners, Adalim's sister, Atty. Juliana A. Adalim-White, had sent numerous prisoners to the same jail where Mayor Adalim was to be held.

Consequently, the prosecution no longer offered testimonial evidence and rested its case after the admission of its documentary exhibits. Petitioners filed a Motion for Leave to File Demurrer to Evidence with Reservation to Present Evidence in Case of Denial[14] but the same was denied.

At the trial, petitioners presented three witnesses: petitioner Ambil, Jr., Atty. Juliana A. Adalim-White and Mayor Francisco C. Adalim.

Petitioner Ambil, Jr. testified that he was the Governor of Eastern Samar from 1998 to 2001. According to him, it was upon the advice of Adalim's lawyers that he directed the transfer of Adalim's detention to his home. He cites poor security in the provincial jail as the primary reason for taking personal custody of Adalim considering that the latter would be in the company of inmates who were put away by his sister and guards identified with his political opponents.[15]

For her part, Atty. White stated that she is the District Public Attorney of Eastern Samar and the sister of Mayor Adalim. She recounted how Mayor Adalim was arrested while they were attending a wedding in Sulat, Eastern Samar, on September 6, 1998. According to Atty. White, she sought the alternative custody of Gov. Ambil, Jr. after Provincial Warden and herein petitioner Apelado, Sr. failed to guarantee the mayor's safety.[16]

Meanwhile, Francisco Adalim introduced himself as the Mayor of Taft, Eastern Samar. He confirmed his arrest on September 6, 1998 in connection with a murder case filed against him in the Regional Trial Court (RTC) of Borongan, Eastern Samar. Adalim confirmed Atty. White's account that he spotted inmates who served as bodyguards for, or who are associated with, his political rivals at the provincial jail. He also noticed a prisoner, Roman Akyatan, gesture to him with a raised clenched fist. Sensing danger, he called on his sister for help. Adalim admitted staying at Ambil, Jr.'s residence for almost three months before he posted bail after the charge against him was downgraded to homicide.[17]

Petitioner Apelado, Sr. testified that he was the Provincial Jail Warden of Eastern Samar. He recalls that on September 6, 1998, SPO3 Felipe Balano fetched him at home to assist in the arrest of Mayor Adalim. Allegedly, Atty. White was contesting the legality of Mayor Adalim's arrest and arguing with the jail guards against booking him for detention. At the provincial jail, petitioner was confronted by Atty. White who informed him that he was under the governor, in the latter's capacity as a provincial jailer. Petitioner claims that it is for this reason that he submitted to the governor's order to relinquish custody of Adalim.[18]

Further, petitioner Apelado, Sr. described the physical condition of the jail to be dilapidated and undermanned. According to him, only two guards were incharge of looking after 50 inmates. There were two cells in the jail, each housing 25 inmates, while an isolation cell of 10 square meters was unserviceable at the time. Also, there were several nipa huts within the perimeter for use during conjugal visits.[19]

On September 16, 2005, the Sandiganbayan, First Division, promulgated the assailed Decision[20] finding petitioners guilty of violating Section 3(e) of R.A. No. 3019. The court ruled that in moving Adalim to a private

residence, petitioners have conspired to accord him unwarranted benefits in the form of more comfortable quarters with access to television and other privileges that other detainees do not enjoy. It stressed that under the Rules, no person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.[21]

The Sandiganbayan brushed aside petitioners' defense that Adalim's transfer was made to ensure his safety. It observed that petitioner Ambil, Jr. did not personally verify any actual threat on Adalim's life but relied simply on the advice of Adalim's lawyers. The Sandiganbayan also pointed out the availability of an isolation cell and nipa huts within the 10-meter-high perimeter fence of the jail which could have been used to separate Adalim from other prisoners. Finally, it cited petitioner Ambil, Jr.'s failure to turn over Adalim despite advice from Assistant Secretary Jesus Ingeniero of the Department of Interior and Local Government.

Consequently, the Sandiganbayan sentenced petitioner Ambil, Jr. to an indeterminate penalty of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months. In favor of petitioner Apelado, Sr., the court appreciated the incomplete justifying circumstance of obedience to a superior order and sentenced him to imprisonment for six (6) years and one (1) month to nine (9) years and eight (8) months.

Hence, the present petitions.

Petitioner Ambil, Jr. advances the following issues for our consideration:

I

WHETHER OR NOT SECTION 3(e) REPUBLIC ACT NO. 3019, AS AMENDED, APPLIES TO PETITIONER'S CASE BEFORE THE SANDIGANBAYAN.

II

WHETHER OR NOT A PUBLIC OFFICER SUCH AS PETITIONER IS A PRIVATE PARTY FOR PURPOSES OF SECTION 3(e), REPUBLIC ACT NO. 3019, AS AMENDED.

III

WHETHER OR NOT PETITIONER ACTED WITH DELIBERATE INTENT, MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE IN THE CONTEXT OF SAID SECTION 3(e).

IV

WHETHER OR NOT PETITIONER AS PROVINCIAL GOVERNOR AND JAILER UNDER SECTIONS 1730 AND 1733, ARTICLE III, CHAPTER 45 OF THE ADMINISTRATIVE CODE OF 1917 AND SECTION 61, CHAPTER V, REPUBLIC ACT 6975 HAS THE AUTHORITY TO TAKE CUSTODY OF A DETENTION PRISONER.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF FULFILLMENT OF A DUTY OR THE LAWFUL EXERCISE OF A RIGHT OR OFFICE.

VI

WHETHER OR NOT PETITIONER SHOULD HAVE BEEN ACQUITTED BECAUSE THE PROSECUTION EVIDENCE DID NOT ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[22]

For his part, petitioner Apelado, Sr. imputes the following errors on the Sandiganbayan:

I

THERE WAS MISAPPREHENSION OF FACTS AND/OR MISAPPLICATION OF THE LAW AND JURISPRUDENCE IN CONVICTING ACCUSED APELADO, EITHER AS PRINCIPAL OR IN CONSPIRACY WITH HIS CO-ACCUSED AMBIL.

II

IN THE ABSENCE OF COMPETENT PROOF BEYOND REASONABLE DOUBT OF CONSPIRACY BETWEEN ACCUSED AMBIL AND HEREIN PETITIONER, THE LATTER SHOULD BE ACCORDED FULL CREDIT FOR THE JUSTIFYING CIRCUMSTANCE UNDER PARAGRAPH 6, ARTICLE 11 OF THE REVISED PENAL CODE.

III

THE COURT A QUO'S BASIS IN CONVICTING BOTH ACCUSED AMBIL AND HEREIN PETITIONER OF HAVING GIVEN MAYOR ADALIM "UNWARRANTED BENEFITS AND ADVANTAGE TO THE PREJUDICE x x x OF THE GOVERNMENT IS, AT THE MOST, SPECULATIVE.[23]

The issues raised by petitioner Ambil, Jr. can be summed up into three: (1) Whether he is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019; (2) Whether a provincial governor has authority to take personal custody of a detention prisoner; and (3) Whether he is entitled to the justifying circumstance of fulfillment of duty under Article 11(5)[24] of the RPC.

Meanwhile, petitioner Apelado, Sr.'s assignment of errors can be condensed into two: (1) Whether he is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019; and (2) Whether he is entitled to the justifying circumstance of obedience to an order issued by a superior for some lawful purpose under Article 11(6)[25] of the RPC.

Fundamentally, petitioner Ambil, Jr. argues that Section 3(e), R.A. No. 3019 does not apply to his case because the provision contemplates only transactions of a pecuniary nature. Since the law punishes a public officer who extends unwarranted benefits to a private person, petitioner avers that he cannot be held liable for extending a favor to Mayor Adalim, a public officer. Further, he claims good faith in taking custody of the mayor pursuant to his duty as a "Provincial Jailer" under the Administrative Code of 1917. Considering this, petitioner believes himself entitled to the justifying circumstance of fulfillment of duty or lawful exercise of duty.

Petitioner Apelado, Sr., on the other hand, denies allegations of conspiracy between him and petitioner Ambil, Jr. Petitioner Apelado, Sr. defends that he was merely following the orders of a superior when he transferred the detention of Adalim. As well, he invokes immunity from criminal liability.

For the State, the Office of the Special Prosecutor (OSP) points out the absence of jurisprudence that restricts the application of Section 3(e), R.A. No. 3019 to transactions of a pecuniary nature. The OSP explains that it is enough to show that in performing their functions, petitioners have accorded undue preference to Adalim for liability to attach under the provision. Further, the OSP maintains that Adalim is deemed a private party for purposes of applying Section 3(e), R.A. No. 3019 because the unwarranted benefit redounded, not to his person as a mayor, but to his person as a detention prisoner accused of murder. It suggests further that petitioners were motivated by bad faith as evidenced by their refusal to turn over Adalim despite instruction from Asst. Sec. Ingeniero. The OSP also reiterates petitioners' lack of authority to take custody of a detention prisoner without a court order. Hence, it concludes that petitioners are not entitled to the benefit of any justifying circumstance.

After a careful review of this case, the Court finds the present petitions bereft of merit.

Petitioners were charged with violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act which provides:

Section. 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

(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 order to hold a person liable under this provision, the following elements must concur: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) 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.[26]

As to the first element, there is no question that petitioners are public officers discharging official functions and that jurisdiction over them lay with the Sandiganbayan. Jurisdiction of the Sandiganbayan over public officers charged with violation of the Anti-Graft Law is provided under Section 4 of Presidential Decree No. 1606,[27] as amended by R.A. No. 8249.[28] The pertinent portions of Section 4, P.D. No. 1606, as amended, read as follows:

SEC. 4. Jurisdiction.--The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade `27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan and provincial treasurers, assessors, engineers and other provincial department heads[;]

x x x x

In cases where none of the accused are occupying positions corresponding to Salary Grade `27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129, as amended.

x x x x

Thus, the jurisdiction of the Sandiganbayan over petitioner Ambil, Jr. is beyond question. The same is true as regards petitioner Apelado, Sr. As to him, a Certification[29] from the Provincial Government Department Head of the HRMO shows that his position as Provincial Warden is classified as Salary Grade 22. Nonetheless, it is only when none of the accused are occupying positions corresponding to salary grade `27' or higher shall

exclusive jurisdiction be vested in the lower courts. Here, petitioner Apelado, Sr. was charged as a co-principal with Governor Ambil, Jr., over whose position the Sandiganbayan has jurisdiction. Accordingly, he was correctly tried jointly with said public officer in the proper court which had exclusive original jurisdiction over them - the Sandiganbayan.

The second element, for its part, describes the three ways by which a violation of Section 3(e) of R.A. No. 3019 may be committed, that is, through manifest partiality, evident bad faith or gross inexcusable negligence.

In *Sison v. People*,^[30] we defined "partiality," "bad faith" and "gross negligence" as follows:

"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 wilfully 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." x x x^[31]

In this case, we find that petitioners displayed manifest partiality and evident bad faith in transferring the detention of Mayor Adalim to petitioner Ambil, Jr.'s house. There is no merit to petitioner Ambil, Jr.'s contention that he is authorized to transfer the detention of prisoners by virtue of his power as the "Provincial Jailer" of Eastern Samar.

Section 28 of the Local Government Code draws the extent of the power of local chief executives over the units of the Philippine National Police within their jurisdiction:

SEC. 28. Powers of Local Chief Executives over the Units of the Philippine National Police.--The extent of operational supervision and control of local chief executives over the police force, fire protection unit, and jail management personnel assigned in their respective jurisdictions shall be governed by the provisions of Republic Act Numbered Sixty-nine hundred seventy-five (R.A. No. 6975), otherwise known as "The Department of the Interior and Local Government Act of 1990," and the rules and regulations issued pursuant thereto.

In particular, Section 61, Chapter 5 of R.A. No. 6975^[32] on the Bureau of Jail Management and Penology provides:

Sec. 61. Powers and Functions. - The Jail Bureau shall exercise supervision and control over all city and municipal jails. The provincial jails shall be supervised and controlled by the provincial government within its jurisdiction, whose expenses shall be subsidized by the National Government for not more than three (3) years after the effectivity of this Act.

The power of control is the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.^[33] An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself.^[34]

On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties."^[35] If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law.^[36] The supervisor or superintendent merely sees to it that the rules are

followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.[37]

Significantly, it is the provincial government and not the governor alone which has authority to exercise control and supervision over provincial jails. In any case, neither of said powers authorizes the doing of acts beyond the parameters set by law. On the contrary, subordinates must be enjoined to act within the bounds of law. In the event that the subordinate performs an act ultra vires, rules may be laid down on how the act should be done, but always in conformity with the law.

In a desperate attempt to stretch the scope of his powers, petitioner Ambil, Jr. cites Section 1731, Article III of the Administrative Code of 1917 on Provincial jails in support. Section 1731 provides:

SEC. 1731. Provincial governor as keeper of jail.--The governor of the province shall be charged with the keeping of the provincial jail, and it shall be his duty to administer the same in accordance with law and the regulations prescribed for the government of provincial prisons. The immediate custody and supervision of the jail may be committed to the care of a jailer to be appointed by the provincial governor. The position of jailer shall be regarded as within the unclassified civil service but may be filled in the manner in which classified positions are filled, and if so filled, the appointee shall be entitled to all the benefits and privileges of classified employees, except that he shall hold office only during the term of office of the appointing governor and until a successor in the office of the jailer is appointed and qualified, unless sooner separated. The provincial governor shall, under the direction of the provincial board and at the expense of the province, supply proper food and clothing for the prisoners; though the provincial board may, in its discretion, let the contract for the feeding of the prisoners to some other person. (Emphasis supplied.)

This provision survived the advent of the Administrative Code of 1987. But again, nowhere did said provision designate the provincial governor as the "provincial jailer," or even slightly suggest that he is empowered to take personal custody of prisoners. What is clear from the cited provision is that the provincial governor's duty as a jail keeper is confined to the administration of the jail and the procurement of food and clothing for the prisoners. After all, administrative acts pertain only to those acts which are necessary to be done to carry out legislative policies and purposes already declared by the legislative body or such as are devolved upon it[38] by the Constitution. Therefore, in the exercise of his administrative powers, the governor can only enforce the law but not supplant it.

Besides, the only reference to a transfer of prisoners in said article is found in Section 1737[39] under which prisoners may be turned over to the jail of the neighboring province in case the provincial jail be insecure or insufficient to accommodate all provincial prisoners. However, this provision has been superseded by Section 3, Rule 114 of the Revised Rules of Criminal Procedure, as amended. Section 3, Rule 114 provides:

SEC. 3. No release or transfer except on court order or bail.-No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.

Indubitably, the power to order the release or transfer of a person under detention by legal process is vested in the court, not in the provincial government, much less the governor. This was amply clarified by Asst. Sec. Ingeniero in his communication[40] dated October 6, 1998 addressed to petitioner Ambil, Jr. Asst. Sec. Ingeniero wrote:

06 October 1996

GOVERNOR RUPERTO AMBIL

Provincial Capitol

Borongan, Eastern Samar

Dear Sir:

This has reference to the letter of Atty. Edwin B. Docena, and the reports earlier received by this Department, relative to your alleged action in taking into custody Mayor Francisco "Aising" Adalim of Taft, that province, who has been previously arrested by virtue by a warrant of arrest issued in Criminal Case No. 10963.

If the report is true, it appears that your actuation is not in accord with the provision of Section 3, Rule 113 of the Rules of Court, which mandates that an arrested person be delivered to the nearest police station or jail.

Moreover, invoking Section 61 of RA 6975 as legal basis in taking custody of the accused municipal mayor is misplaced. Said section merely speaks of the power of supervision vested unto the provincial governor over provincial jails. It does not, definitely, include the power to take in custody any person in detention.

In view of the foregoing, you are hereby enjoined to conduct yourself within the bounds of law and to immediately deliver Mayor Adalim to the provincial jail in order to avoid legal complications.

Please be guided accordingly.

Very truly yours,

(SGD.)

JESUS I. INGENIERO

Assistant Secretary

Still, petitioner Ambil, Jr. insisted on his supposed authority as a "provincial jailer." Said petitioner's usurpation of the court's authority, not to mention his open and willful defiance to official advice in order to accommodate a former political party mate,[41] betray his unmistakable bias and the evident bad faith that attended his actions.

Likewise amply established beyond reasonable doubt is the third element of the crime. As mentioned above, in order to hold a person liable for violation of Section 3(e), R.A. No. 3019, it is required that the act constituting the offense consist of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.

In the case at hand, the Information specifically accused petitioners of giving unwarranted benefits and advantage to Mayor Adalim, a public officer charged with murder, by causing his release from prison and detaining him instead at the house of petitioner Ambil, Jr. Petitioner Ambil, Jr. negates the applicability of Section 3(e), R.A. No. 3019 in this case on two points. First, Section 3(e) is not applicable to him allegedly because the last sentence thereof provides that the "provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses, permits or other concessions" and he is not such government officer or employee. Second, the purported unwarranted benefit was accorded not to a private party but to a public officer.

However, as regards his first contention, it appears that petitioner Ambil, Jr. has obviously lost sight, if he is not altogether unaware, of our ruling in *Mejorada v. Sandiganbayan*[42] where we held that a prosecution for violation of Section 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "charged with the grant of licenses or permits or other concessions." Following is an excerpt of what we said in *Mejorada*,

Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers (sic) declared unlawful. Its reference to "any public officer" is without distinction or qualification and it specifies the acts declared unlawful. We agree with the view adopted by the Solicitor General that the last sentence of paragraph [Section 3] (e) is intended to make clear the inclusion of officers and employees of officers (sic) or government corporations which, under the ordinary concept of "public officers" may not come within the term. It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting licenses or permits or other concessions.[43] (Italics supplied.)

In the more recent case of *Cruz v. Sandiganbayan*,^[44] we affirmed that a prosecution for violation of said provision will lie regardless of whether the accused public officer is charged with the grant of licenses or permits or other concessions.^[45]

Meanwhile, regarding petitioner Ambil, Jr.'s second contention, Section 2(b) of R.A. No. 3019 defines a "public officer" to include elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal from the government. Evidently, Mayor Adalim is one. But considering that Section 3(e) of R.A. No. 3019 punishes the giving by a public officer of unwarranted benefits to a private party, does the fact that Mayor Adalim was the recipient of such benefits take petitioners' case beyond the ambit of said law?

We believe not.

In drafting the Anti-Graft Law, the lawmakers opted to use "private party" rather than "private person" to describe the recipient of the unwarranted benefits, advantage or preference for a reason. The term "party" is a technical word having a precise meaning in legal parlance^[46] as distinguished from "person" which, in general usage, refers to a human being.^[47] Thus, a private person simply pertains to one who is not a public officer. While a private party is more comprehensive in scope to mean either a private person or a public officer acting in a private capacity to protect his personal interest.

In the present case, when petitioners transferred Mayor Adalim from the provincial jail and detained him at petitioner Ambil, Jr.'s residence, they accorded such privilege to Adalim, not in his official capacity as a mayor, but as a detainee charged with murder. Thus, for purposes of applying the provisions of Section 3(e), R.A. No. 3019, Adalim was a private party.

Moreover, in order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions.^[48] The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.^[49]

Without a court order, petitioners transferred Adalim and detained him in a place other than the provincial jail. The latter was housed in much more comfortable quarters, provided better nourishment, was free to move about the house and watch television. Petitioners readily extended these benefits to Adalim on the mere representation of his lawyers that the mayor's life would be put in danger inside the provincial jail.

As the Sandiganbayan ruled, however, petitioners were unable to establish the existence of any risk on Adalim's safety. To be sure, the latter would not be alone in having unfriendly company in lockup. Yet, even if we treat Akyatan's gesture of raising a closed fist at Adalim as a threat of aggression, the same would still not constitute a special and compelling reason to warrant Adalim's detention outside the provincial jail. For one, there were nipa huts within the perimeter fence of the jail which could have been used to separate Adalim from the rest of the prisoners while the isolation cell was undergoing repair. Anyhow, such repair could not have exceeded the 85 days that Adalim stayed in petitioner Ambil, Jr.'s house. More importantly, even if Adalim could have proven the presence of an imminent peril on his person to petitioners, a court order was still indispensable for his transfer.

The foregoing, indeed, negates the application of the justifying circumstances claimed by petitioners.

Specifically, petitioner Ambil, Jr. invokes the justifying circumstance of fulfillment of duty or lawful exercise of right or office. Under paragraph 5, Article 11 of the RPC, any person who acts in the fulfillment of a duty or in the

lawful exercise of a right or office does not incur any criminal liability. In order for this justifying circumstance to apply, two requisites must be satisfied: (1) the accused acted in the performance of a duty or in the lawful exercise of a right or office; and (2) the injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office.[50] Both requisites are lacking in petitioner Ambil, Jr.'s case.

As we have earlier determined, petitioner Ambil, Jr. exceeded his authority when he ordered the transfer and detention of Adalim at his house. Needless to state, the resulting violation of the Anti-Graft Law did not proceed from the due performance of his duty or lawful exercise of his office.

In like manner, petitioner Apelado, Sr. invokes the justifying circumstance of obedience to an order issued for some lawful purpose. Under paragraph 6, Article 11 of the RPC, any person who acts in obedience to an order issued by a superior for some lawful purpose does not incur any criminal liability. For this justifying circumstance to apply, the following requisites must be present: (1) an order has been issued by a superior; (2) such order must be for some lawful purpose; and (3) the means used by the subordinate to carry out said order is lawful.[51] Only the first requisite is present in this case.

While the order for Adalim's transfer emanated from petitioner Ambil, Jr., who was then Governor, neither said order nor the means employed by petitioner Apelado, Sr. to carry it out was lawful. In his capacity as the Provincial Jail Warden of Eastern Samar, petitioner Apelado, Sr. fetched Mayor Adalim at the provincial jail and, unarmed with a court order, transported him to the house of petitioner Ambil, Jr. This makes him liable as a principal by direct participation under Article 17(1)[52] of the RPC.

An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part of and another performing another so as to complete it with a view to the attainment of the same object, and their acts although apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[53]

Conspiracy was sufficiently demonstrated by petitioner Apelado, Sr.'s willful cooperation in executing petitioner Ambil, Jr.'s order to move Adalim from jail, despite the absence of a court order. Petitioner Apelado, Sr., a law graduate, cannot hide behind the cloak of ignorance of the law. The Rule requiring a court order to transfer a person under detention by legal process is elementary. Truth be told, even petitioner governor who is unschooled in the intricacies of the law expressed reservations on his power to transfer Adalim. All said, the concerted acts of petitioners Ambil, Jr. and Apelado, Sr. resulting in the violation charged, makes them equally responsible as conspirators.

As regards the penalty imposed upon petitioners, Section 9(a) of R.A. No. 3019 punishes a public officer or a private person who violates Section 3 of R.A. No. 3019 with imprisonment for not less than six (6) years and one (1) month to not more than fifteen (15) years and perpetual disqualification from public office. Under Section 1 of the Indeterminate Sentence Law or Act No. 4103, as amended by Act No. 4225, if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

Thus, the penalty imposed by the Sandiganbayan upon petitioner Ambil, Jr. of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months is in accord with law. As a co-principal without the benefit of an incomplete justifying circumstance to his credit, petitioner Apelado, Sr. shall suffer the same penalty.

WHEREFORE, the consolidated petitions are DENIED. The Decision of the Sandiganbayan in Criminal Case No. 25892 is AFFIRMED WITH MODIFICATION. We find petitioners Ruperto A. Ambil, Jr. and Alexandrino R. Apelado, Sr. guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019. Petitioner Alexandrino R. Apelado, Sr. is, likewise, sentenced to an indeterminate penalty of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months.

With costs against the petitioners.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio,[*] Bersamin, and Del Castillo, JJ., concur.

[*] Designated additional member per Raffle dated July 4, 2011 in lieu of Associate Justice Teresita J. Leonardo-De Castro who recused herself due to prior action in the Sandiganbayan.

[1] Rollo (G.R. No. 175457), pp. 8-34.

[2] Rollo (G.R. No. 175482) pp. 8-15.

[3] Id. at 16-24; rollo (G.R. No. 175457), pp. 35-43. Penned by Associate Justice Roland B. Jurado with Presiding Justice Teresita J. Leonardo-De Castro (now a member of this Court) and Associate Justice Diosdado M. Peralta (also now a member of this Court) concurring.

[4] Id. at 26-44; id. at 44-62.

[5] Exhibit "D". Dated September 11, 1998.

[6] Records, Vol. I, pp. 10-18.

[7] 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

(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.

x x x x

[8] Records, Vol. I, pp. 64-65.

[9] Id. at 1-2.

[10] Id. at 102-104.

[11] Art. 156. Delivering prisoners from jail. - The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who shall remove from any jail or penal establishment any person confined therein or shall help the escape of such person, by means of violence, intimidation or bribery. If other means are used, the penalty of *arresto mayor* shall be imposed.

x x x x

[12] Records, Vol. I, pp. 100-101.

[13] Id. at 100.

[14] Id. at 314-316.

[15] TSN, October 8, 2001, pp. 7, 23-30, 33.

[16] TSN, October 9, 2001, pp. 5-7, 22-24.

[17] TSN, March 11, 2002, pp. 4-6, 16, 21.

[18] TSN, March 12, 2002, pp. 11-17, 32.

[19] Id. at 21, 60-61.

[20] Supra note 3.

[21] Sec. 3, Rule 114, Rules of Court.

[22] Rollo (G.R. No. 175457), pp. 16-17.

[23] Rollo (G.R. No. 175482), pp. 11-12.

[24] Art. 11. Justifying circumstances. - The following do not incur any criminal liability:

x x x x

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

x x x x

[25] Art. 11. Justifying circumstances. - The following do not incur any criminal liability:

x x x x

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

[26] Ong v. People, G.R. No. 176546, September 25, 2009, 601 SCRA 47, 53-54.

[27] Revising Presidential Decree No. 1486 Creating a Special Court to be known as "Sandiganbayan" and for Other Purposes.

[28] An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as amended, Providing Funds Therefor, and for Other Purposes.

[29] Records, Vol. I, p. 43.

[30] G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670.

[31] Id. at 680.

[32] An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes.

[33] Drilon v. Lim, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140-141.

[34] Id. at 142.

[35] *Joseon v. Torres*, G.R. No. 131255, May 20, 1998, 290 SCRA 279, 301.

[36] *Id.*

[37] *Drilon v. Lim*, *supra* at 142.

[38] H.C. Black, *Black's Law Dictionary*, 1979 Ed., 42.

[39] SEC. 1737. Transfer of prisoners to jail of neighboring province.-In case there should be no jail in any province, or in case a provincial jail of any province be insecure or insufficient for the accommodation of all provincial prisoners, it shall be the duty of the provincial board to make arrangements for the safe-keeping of the prisoners of the province with the provincial board of some neighboring province in the jail of such neighboring province, and when such arrangement has been made it shall be the duty of the officer having custody of the prisoner to commit him to the jail of such neighboring province, and he shall be there detained with the same legal effect as though confined in the jail of the province where the offense for which he was arrested was committed.

[40] Exhibit "Q."

[41] TSN, October 8, 2001, p. 55.

[42] Nos. L-51065-72, June 30, 1987, 151 SCRA 399.

[43] *Id.* at 405.

[44] G.R. No. 134493, August 16, 2005, 467 SCRA 52.

[45] *Id.* at 60.

[46] H.C. Black, *Black's Law Dictionary*, 1979 Ed., 1010.

[47] *Id.* at 1028.

[48] *Sison v. People*, *supra* at 682.

[49] *Id.* at 681-682.

[50] *Valeroso v. People*, G.R. No. 149718, September 29, 2003, 412 SCRA 257, 261.

[51] L.B. Reyes, *The Revised Penal Code*, Book One, p. 213.

[52] Art. 17. Principals. - The following are considered principals:

1. Those who take a direct part in the execution of the act;

x x x x

[53] *People v. Serrano*, G.R. No. 179038, May 6, 2010, 620 SCRA 327, 336-337.

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