MELCHOR G. MADERAZO AND DIONESIO R. VERUEN, JR., PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.

G.R. No. 209845. July 01, 2015

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Assailed in this petition for review[1] are the Decision[2] dated 30 May 2013 and the Resolution[3] dated 13 November 2013 of the Sandiganbayan in Criminal Case No. 27916, which found petitioners Melchor G. Maderazo (Maderazo) and Dionesio R. Veruen, Jr. (Veruen) guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. (RA) 3019, or the Anti-Graft and Corrupt Practices Act.

The Facts

The facts, as culled from the records, are as follows:

On 21 January 1998, the Sangguniang Bayan of Caibiran, Biliran, composed of Victor Maderazo (Victor), Jovencio Pantas, Camilo Go, Nestorio Rosario, Cesar Almen, Florentino Banquilay, Camilo Brasil and Imelda Cuevas (collectively, SB Members), unanimously passed and approved Resolution No. 01, Series of 1998, authorizing the municipal mayor to enter into a negotiated contract with a local fabricator of tapping saddles for the improvement of the water system of Caibiran, Biliran.

On 28 January 1998, Maderazo, the Acting Mayor due to the suspension of Mayor Rodito Ramirez (Ramirez), entered into a Job Contract with Artemio Vermug (Vermug), proprietor of Vermug Welding Shop. The Job Contract provided that: (a) Vermug Welding Shop would fabricate 400 pieces of two-diameter tapping saddles; (b) the Local Government Unit (LGU) of Caibiran would pay Vermug Welding Shop P400.00 for each tapping saddles fabricated; (c) Vermug Welding Shop would complete the fabrication within 30 days after the signing of the Job Contract; and (d) the LGU of Caibiran would pay Vermug Welding Shop the whole amount due upon completion of the orders.

On the same day, Acting Municipal Treasurer Domingo Vidal (Vidal) issued Land Bank Check No. 21408930 with an amount of P454,036.37 in the name of Vermug, upon submission of the following documents to him: (1) Request for Obligation and Allotment; (2) Disbursement Voucher; (3) Official Receipt No. 0020 issued by Vermug Welding Shop; and (4) undated Inspection Report certified correct by Victor and Veruen, and noted by Maderazo.

On 8 February 1998, Ramirez resumed his position as mayor and found that there were no tapping saddles delivered despite the payment made. On 18 June 1998, Ramirez filed an Affidavit-Complaint, docketed as OMB-VIS CRIM-98-0475, before the Office of the Ombudsman charging Maderazo, Veruen and the SB members with Malversation and violation of RA 3019.

On 20 August 1998, Biliran Provincial Auditor Rogelio C. Abiera directed State Auditor Evangeline C. Bernil (Bernil) and Narciso Brun (Brun) to conduct a physical inventory and inspection of the tapping saddles. In their report, Bernil and Brun stated that: (a) on 25 August 1998, they counted 188 pieces of tapping saddles, consisting of 156 pieces measuring 20 x 1/2" and 32 pieces measuring 40 x 1/2", in the Office of the Municipal Engineer; (b) the tapping saddles were delivered on 10 August 1998 as alleged by Ramirez and Municipal Engineer Arnulfo Y. Camarines (Camarines); (c) one of the supporting documents was an undated Inspection Report certified correct by Victor and Veruen, and noted by Maderazo; (d) a Job Contract was signed between Maderazo and Vermug on 28 January 1998; (e) the creditor was paid on the same day that the Job Contract was executed; and (f) there were no Purchase Request, Purchase Order, Delivery Receipts and Acceptance Report attached to the voucher as supporting documents.

Upon finding probable cause for violation of Section 3(e) of RA 3019, the Ombudsman issued an Information dated 22 October 2003:

> That [o]n or about the period from 21 to 28 January 1998, in the Municipality of Caibiran, Province of Biliran, Philippines, and within the jurisdiction of this Honorable Court, above-named accused MELCHOR G. MADERAZO, a high ranking public officer, being then the Acting Mayor, VICTOR MADERAZO, JR., JOVENCIO PANTAS, CAMILO GO, NESTORIO ROSARIO, CESAR ALMEN, FLORENTINO BANQUILAY, CAMILO BRASIL AND IMELDA CUEVAS, being then Sangguniang Bayan (SB) Members and DIONESIO R. VERUEN, JR., then Acting Municipal Accountant, all of Caibiran, Biliran, commit[t]ing the offense in relation to their official duties and taking advantage of their official positions, conniving and confederating with each other, thru evident bad faith and manifest partiality, (or, at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally cause[d] undue injury to the government by enacting SB Resolution No. 01 Series of 1998 authorizing the Municipal Mayor to enter into a negotiated contract with any local fabricator of tapping saddles and thereafter, enter[ed] into a Job Contract with one Artemio Vermug, the Proprietor of Vermug Welding Shop for the fabrication of four hundred (400) pieces of tapping saddles, worth ONE HUNDRED SIXTY THOUSAND (P160,000.00) PESOS, Philippine Currency to be used in the water system of the Municipality of Caibiran, when in truth and in fact said tapping saddles are not yet needed and despite non-compliance with the requirements of the negotiated contract and the non-delivery of the tapping saddles the accused prepare[d] the corresponding Disbursement Voucher and release[d] the corresponding Check in the amount of P154,036.37 and thereafter receive[d] the proceeds thereof for their own personal benefit, to the damage and prejudice of the government.
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> CONTRARY TO LAW.[4]

Upon arraignment, Maderazo, Veruen, Victor, Nestorio Rosario, Florentino Banquilay, and Imelda Cuevas entered a plea of not guilty. The other accused, Jovencio Pantas, Camilo Go, Cesar Almen and Camilo Brasil, are still at large. The Sandiganbayan dismissed the case against Florentino Banquilay on 30 July 2006 upon submission by the prosecution of his death certificate.

The Ruling of the Sandiganbayan

In a Decision dated 30 May 2013,[5] the Sandiganbayan convicted Maderazo and Veruen for violation of Section 3(e) of RA 3019. The Sandiganbayan found that all the elements of Section 3(e) of RA 3019 were present. The Sandiganbayan held that both Maderazo and Veruen, who were then public officers, acted in evident bad faith for disbursing the amount of PI60,000, without the delivery of the tapping saddles. According to the Sandiganbayan, their actions violated the pecuniary interest of the LGU of Caibiran and caused undue injury in the said amount.

The Sandiganbayan held that conspiracy existed between Veruen and Maderazo, since the crime would not have been possible without each other's participation as shown by their execution and approval of the Disbursement

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Voucher, check, and undated Inspection Report. The Sandiganbayan, however, found no sufficient evidence to link the SB members to the crime, considering that their participation was limited to the collective passage and approval of Resolution No. 1, Series of 1998.

The dispositive portion of the Sandiganbayan decision states:

> WHEREFORE, judgment is hereby rendered finding accused MELCHOR G. MADERAZO and DIONESIO R. VERUEN, JR. GUILTY beyond reasonable doubt as charged in the Information and sentencing each of them to suffer the indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer the perpetual disqualification from public office, and to indemnify, jointly and severally, the Municipality of Caibiran, Biliran, the amount of PhP 160,000.00 representing the losses that it suffered by reason of the non-delivery of the 400 pieces [of] tapping saddles with legal interest from the finality of this decision until the same is fully paid, and to proportionately pay the costs; and for insufficiency of evidence, ACQUITTING accused JOVENCIO PANTAS, NESTORIO ROSARIO, VICTOR MADERAZO, and IMELDA CUEVAS with cost de oficio. In this connection, the respective cash bonds posted by the said accused are hereby RELEASED to them subject to the usual accounting anil auditing procedures, and the Hold Departure Orders issued against them are hereby LIFTED and SET ASIDE.
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> With respect to accused CAMILO GO, CESAR ALMEN and CAMILO BRASIL, who are at-large and beyond the jurisdiction of the court, this Case is ordered ARCHIVED.
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> SO ORDERED.[6]

In a Resolution dated 13 November 2013,[7] the Sandiganbayan denied the motion for reconsideration filed by Maderazo and Veruen. Hence, this petition.

The Issue

The principal issue to be resolved is whether Maderazo and Veruen violated Section 3(e) of RA 3019.

The Ruling of the Court

The petition has no merit.

Well-entrenched is the rule that factual findings of the Sandiganbayan are conclusive upon this Court, except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conclusions without citation of specific evidence on which they are based; and (6) the findings of fact are premised on an absence of evidence on record.[8]

In the present case, Maderazo and Veruen question the conclusions reached by the Sandiganbayan in so far as its appreciation of facts is concerned. However, Maderazo and Veruen failed to show that the present case falls within any of the above exceptions.

Maderazo and Veruen are charged with the crime of violation of Section 3(e)[9] of RA 3019, which has the following essential elements: (a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[10]

As found by the Sandiganbayan, all these elements are present in this case. It is undisputed that both Maderazo and Veruen were public officers discharging administrative functions at the time material to this case. Maderazo, as the Acting Mayor, and Veruen, as the Acting Municipal Accountant, ensured the release of the payment for the

tapping saddles on the same day that the Job Contract was executed. However, the tapping saddles were not delivered upon payment:

> The evidence on record, however, reveals that despite the disbursement of the amount of PhP160,000.00 on January 28, 1998, for 400 pieces [of] tapping saddles, no tapping saddles were actually delivered to the municipality on the said date, as confirmed by Municipal Engineer Arnulfo Y. Camarines in the Certification that he issued that 'there was no tapping saddles received or kept by this office as of May 18, 1998." x x x.
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> xxx While it is true that Mr. Vermug admitted that he signed the Job Contract and the Disbursement Voucher, and even issued Official Receipt No. 0020 dated January 28, 1998, evidencing receipt of the amount of PhP 160,000.00 for the 400 pieces [of] tapping saddles, the Court finds the testimony of Mr. Vermug credible that he did not deliver or fabricate/manufacture the said 400 pieces [of] tapping saddles as per contract because it was impossible for him to fabricate and deliver the 400 tapping saddles on the same day that the Job Contract was executed on January 28, 1998. Moreover, Mr. Vermug also testified that he never received any cent from the proceeds of the contract because after he had endorsed the Land Bank Check, he returned it to accused Mayor Melcor Maderazo upon the latter's request only to discover later that it was encashed by Municipal Treasurer Domingo Vidal from the Land Bank Branch in Naval, Biliran. This testimony of Mr. Vermug was corroborated by Municipal Treasurer Domingo Vidal who testified that in the afternoon of January 28, 1998, he encashed the said check of Mr. Vermug at the Land Bank Branch in Naval, Biliran at the request of accused Melchor Maderazo, as shown by his signature on the back thereof, and that he delivered the proceeds thereof to accused Melchor Maderazo. Hence, the endorsement of the check by Mr. Vermug for no apparent reason further proves that when the check was released on January 28, 1998, he had not yet delivered the tapping saddles.
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> Besides the Court finds no proof/evidence to show that the 400 pieces [of] tapping saddles that were allegedly delivered by Mr. Vermug were actually installed in the different households of the municipality."

The evidence established beyond reasonable doubt that Maderazo processed the Request for Obligation and Allotment instead of the municipal engineer, received the amount of P160,000 on 28 January 1998, and covered up the non-existent tapping saddles by belatedly effecting the delivery of the tapping saddles, which did not even conform to the Job Contract. For his part, Veruen approved the Disbursement Voucher despite the lack of supporting documents, as found upon audit, in violation of his duties. Moreover, Maderazo and Veruen signed the glaringly incomplete and undated Inspection Report. Verily, Maderazo and Veruen acted in evident bad faith, or such state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[12] By disbursing P160,000 despite the non-existent tapping saddles, Maderazo and Veruen caused undue injury to the LGU of Caibiran for the said amount. Their concerted actions, which demonstrate a common design, justify the finding of conspiracy.

In Lihaylihay v. People of the Philippines,[13] the Court found petitioners in evident bad faith for affixing their signatures on the disputed documents despite the glaring defects on it and for approving the "ghost" purchases in the amount of P800,000. In Alvizo v. Sandiganbayan,[14] the Court convicted petitioners for violating Section 3(e) of RA 3019 upon a finding of conspiracy in the irregular preparation, processing, and approval of simulated documents, and in the payment to the contractors for the non-existent projects.

As to the affidavit of desistance executed by Ramirez, we reiterate that retractions are generally unreliable and are looked upon with considerable disfavor by the courts.[15]

WHEREFORE, we DENY the petition. We AFFIRM the Decision dated 30 May 2013 and the Resolution dated 13 November 2013 of the Sandiganbayan in Criminal Case No. 27916.

SO ORDERED.

Bersamin,[*] Del Castillo, Mendoza, and Leonen, JJ., concur.

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[*] Designated acting member per Special Order No. 2079 dated 29 June 2015.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure. Rollo, pp. 11-41.

[2] Penned by Associate Justice Rodolfo A. Ponferrada, with Associate Justices Efren N. De La Cruz and Rafael R. Lagos concurring. Id. at 42-64.

[3] Id. at 65-67.

[4] Id. at 79 -80

[5] Id. at 42-64.

[6] Id. at 63.

[7] Id. at 65-67.

[8] Sazon v. Sandiganbayan, 598 Phil. 35 (2009); Mendoza v. People of the Philippines, 500 Phil. 550 (2005); Suller v. Sandiganbayan, 454 Phil. 704 (2003); Alvizo v. Sandiganbayan, 454 Phil. 34 (2003).

[9] Section 3. Corrupt Practices of Public Officers.- In addition to acts or omissions of public officers ai'ready 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 x 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 or government corporations charged with the grant of licenses or permits or other concessions, x x x.

[10] Lihaylihay v. People of the Philippines, G.R. No. 191219, 31 July 2013, 702 SCRA 755; Alvarez v. People of the Philippines, 668 Phil. 216 (2011); Albert v. Sandiganbayan, 599 Phil. 439 (2009).

[11] Rollo, pp. 58-59.

[12] Albert v. Sandiganbayan, 599 Phil. 439 (2009), citing Air France v. Carrascoso, 124 Phil. 722 (1966).

[13] Lihaylihay v. People of the Philippines, G.R. No. 191219, 31 July 2013, 702 SCRA 755.

[14] Alvizo v. Sandiganbayan, 454 Phil. 34 (2003).

[15] People of the Philippines v. Soriano, Sr., 570 Phil. 115 (2008).

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