

WILFREDO R. ANTONIO, PETITIONER, VS. SANDIGANBAYAN (2ND DIVISION), RESPONDENT.

G.R. No. 57937. October 21, 1988

Ponente: CORTES, J.

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CORTES, J.:

The instant case involves the demand for and acceptance of "grease money" or, in the vernacular, "lagay", a form of graft and corruption so common in the application licenses and permits from the government.

Manuel Caoili and Wilfredo Antonio (the petitioner herein) of the Ministry of Public Works office in Baguio City, together with Teofilo Tinaza, Jr. of the Office of the City Engineer of Baguio City, were jointly charged before the Sandiganbayan for violating the Anti-Graft and Corrupt Practices Act (R.A. No. 3019, as amended), under the following information:

That on or about the 19th day of October, 1979, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, TEOFILO TINAZA, JR, then employed as a Civil Engineer in the Office of the City Engineer, Baguio City, WILFREDO ANTONIO and MANUEL CAOILI, employed as Engineers in the Building Section of the Ministry of Public Works, directly or indirectly having financial or pecuniary interest in the issuance of a building permit to Mrs. Edarlina de Guzman in connection with which they had to intervene or take part in their official capacities, and conspiring with one another, did then and there wilfully, unlawfully, and feloniously, receive the sum of EIGHT HUNDRED (P800.00) PESOS as "grease money" from Mrs. Edarlina de Guzman to continue the construction of her house, thereby causing undue injury to Mrs. de Guzman in the discharge of their official functions through evident bad faith. [Rollo, pp. 19-20.]

All of them pleaded not guilty to the charge.

After trial, the Sandiganbayan rendered a judgment of conviction, to wit:

ACCORDINGLY, we find from the evidence adduced before us that the built of each of the three accused Engineers, Teofilo Tinaza, Jr., as Civil Engineer in the office of the City Engineer of Baguio City; Wilfredo Antonio as Civil Engineer in the Office of the Ministry of Public Works of the Benguet Engineering District, Benguet Province; and Manuel Caoili, Supervising Civil Engineer of the Ministry of Public Works, Benguet Engineering District, Benguet Province, for Violation of Section 3, paragraph (c) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, as principals, has been established by proof beyond reasonable doubt.

Thus found guilty and the accused being entitled to the benefits of the Indeterminate Sentence Law (Act 4103, as amended, Section 1 in Section 9 of Republic Act 3109), they are hereby sentenced to in indeterminate penalty ranging from TWO (2) YEARS imprisonment, as minimum; to SIX (6) YEARS imprisonment, as maximum; to suffer perpetual disqualification from public office; to be deprived of any retirement or gratuity benefits; and, to indemnify Edarlina de Guzman y Yee in the sum of P400.00, jointly and severally. The sum of P400.00 presented

in evidence as Exhibit "A" shall be returned to the aforesaid Edarlina de Guzman. The accused shall pay one-third (1/3) each of the costs. [Rollo, pp. 38-39.]

Not agreeing with the judgment, Antonio filed a motion for reconsideration. The Sandiganbayan, however, denied his motion.

Alleging that the Sandiganbayan "gravely abused its discretion amounting to lack of jurisdiction" in rendering the assailed decision and denying his motion for reconsideration, Antonio filed the instant "Petition for Review by Way of Certiorari" praying that judgment be rendered "annulling or setting aside" the Sandiganbayan decision and the order denying his motion for reconsideration.[*] In support of this contention, he argues that the existence of a conspiracy was not established and, hence, each one of the accused should only be held responsible for the consequences of his own acts. In other words, Antonio would want the court to hold that he was not privy to the scheme to demand "grease money" from De Guzman and, hence he should be acquitted.

More particularly, he argues that from the facts, the elements of conspiracy, namely: (1) an agreement by two or more persons to commit the crime; and (2) the performance of an overt act aimed towards the accomplishment of the crime, have not been established [Petitioner's Brief, p. 13 et seq.]

The Court, however, is unswayed by this contention.

For the prosecution, the complaining witness, Edarlina de Guzman, testified that when she started to construct her house in March, 1979, the construction was stopped by city authorities, among them Tinaza, because she did not have a building permit. Tinaza and his companions demanded P2,700.00 as "tong", which she gave, for the issuance of a permit. She was told to follow up her application for a building permit with Engineer Wilfredo Antonio. On the morning of October 19, 1979 she went to see Antonio but was informed that the application was not yet approved. Antonio called up Tinaza and when the latter arrived with a companion, Rey Camungao, they talked with Engineer Antonio and then they told De Guzman to meet them at 2:00 o'clock in the afternoon at the City Hall. De Guzman then sought the assistance of the Philippine Constabulary and the entrapment of Tinaza and his associates was planned and eight (8) one hundred peso bills were marked for use as "grease money." When she arrived at the City Hall that afternoon she was met by Tinaza, Antonio and Caoili and together they proceeded to the Ganza Restaurant to have a snack. In the restaurant they discussed De Guzman's application for a building permit. Tinaza demanded P1,000.00 for the approval of her permit. She replied that she had only P800.00 with her and Tinaza told her that it would suffice for the moment, on the condition that she would give the balance of P200.00 on October 22. Then, Tinaza and De Guzman left the restaurant and drove around for a few minutes in Tinaza's car, wherein she handed the P800.00 to Tinaza. The two then returned to the Ganza Restaurant and De Guzman paid for the snacks and left. She then informed the PC of what had transpired [Rollo, pp. 22-24.]

Additionally, Pat. Mario Uzon of the Baguio City Police testified as to the identity of the marked bills and Lt. Col. Rogelio Aguana of the Philippine Constabulary, as to the details of the entrapment plan and the recovery of P400.00 of the marked bills from the accused [Rollo, pp. 20-22.]

For the defense, Caoili testified that while in the Ganza Restaurant De Guzman showed him her application papers and that he told her that he could not help her since there were requirements which were not yet complied with. When they left the Ganza Restaurant and transferred to the Jingjing Kitchenette, Tinaza gave him P200.00, P100.00 of which he used in paying their bill while the other P100.00 was borrowed by Antonio. He was surprised when he found out when he was questioned by the PC that the bills given to him were marked money, as Tinaza did not tell him where the money came from [Rollo, pp. 25-26.]

On his part, Antonio testified that De Guzman's application was indorsed to him by Tinaza in April, 1979. De

Guzman came to his office to follow up the application but he told her that it could not be acted upon since certain requirements had not yet been complied with. He told her that the expenses that she would incur for contracting the services of private engineers to sign the required supporting papers would amount to P800.00. On October 19, 1979, she again went to his office to follow-up her application and offered to give him money, but he refused. As she was insistent, he telephoned Tinaza and the latter arrived with a companion, Rey Camungao. The two talked to De Guzman. In the afternoon, Antonio and Caoili were invited by Tinaza to go to the City Hall. From there they proceeded to the Ganza Restaurant with De Guzman. In the restaurant, De Guzman discussed her application with Caoili. From the Ganza Restaurant, they proceeded to the Jingjing Kitchenette in Tinaza's car, wherein Tinaza handed to Antonio P200.00 in payment of a debt. When accosted later by the PC, he surrendered one (1) P100.00 bill as he had already spent the rest [Rollo, pp.26-27.]

Tinaza testified that he was part of a team that demolished the house being built by De Guzman for lack of a building permit. In spite of her offer to give a bribe, the demolition proceeded. When she asked for help in securing a building permit, he told her of the requirements. Again De Guzman offered him money, but he refused. On October 19, 1979, he went to the office of Antonio, together with Rey Camungao, after Antonio had telephoned him. There they explained to De Guzman the requirements for the issuance of a building permit. In the afternoon Tinaza, together with Antonio and Caoili, met De Guzman at the City Hall and they proceeded to the Ganza Restaurant where again De Guzman brought up the matter of her building permit. Then De Guzman invited him out of the restaurant and they boarded his car and drove around, De Guzman insisting in giving him money. When he stopped the car upon her request, she alighted and left eight (8) P100.00 bills on her seat. Back at the Ganza Restaurant, she paid their bill and left. Tinaza got the P800.00 left by De Guzman in his car and gave P200.00 each to Antonio and Caoili, keeping P400.00 for himself. At first, he did not tell them where the money came from, but when they were already at the Jingjing Kitchenette, he told them that the money came from De Guzman. He denied giving P200.00 to Antonio as payment for an existing obligation. He surrendered the money still in his possession to the PC when he was questioned [Rollo, pp. 28-30.]

From the evidence, the Sandiganbayan concluded that the accused conspired together to demand "grease money" from De Guzman for the approval of her application.

We concur with this finding.

The following facts had been established: that the construction of De Guzman's house had previously been stopped by city authorities, among them Tinaza, and what had already been constructed demolished, for want of the required building permit; that De Guzman sought the help of Tinaza in securing the building permit; that De Guzman's application papers were given by Tinaza to Antonio, the processing of such applications being part of the latter's official duties; that when De Guzman went to Antonio's office to follow up the application, he told her that he could not act on it because of certain deficiencies, adding that she would have to spend some P800.00 if she wanted private engineers to sign the supporting papers; that when De Guzman returned to inquire about her application, Antonio called Tinaza and a certain Rey Camungao and together they discussed the application; that, thereafter, they instructed De Guzman to meet them again at the City Hall at 2:00 that same afternoon; that De Guzman thereafter went to the Philippine Constabulary to report the matter; that a plan to entrap the persons demanding the "grease money" was hatched and eight (8) P100 bills were marked; that after meeting at the City Hall, De Guzman, Tinaza, Caoili and Antonio went together to the Ganza Restaurant where De Guzman's application was again discussed; that Tinaza demanded P1,000.00 from De Guzman, who replied that she only had P800.00 with her; that Tinaza agreed to the payment of P800.00, provided that De Guzman pay the balance of P200.00 a few days later; that Tinaza and De Guzman then went out of the restaurant and took a ride in Tinaza's car during which time De Guzman gave him P800.00 in marked bills; that the two returned to the restaurant and

after De Guzman paid the bill for their snacks, they left and transferred to the Jingjing Kitchenette; that Tinaza gave Antonio and Caoili P200.00 each from the P800.00 given him by De Guzman, which they accepted; that Tinaza told them while they were at the Jingjing Kitchenette that such amount came from the P800.00 given by De Guzman; that P400.00 of the P800.00 given by De Guzman was recovered from the accused.

"A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." [Art. 8, Revised Penal Code, as amended.] Essential therefore is an agreement to commit the crime and a decision to commit it.

The petitioner argues that there is no conspiracy since the agreement among the accused, if any, has not been proved.

While the actual agreement of the accused has not been proved, such can be inferred from the acts of the need accused. "For conspiracy to exist, the evidence need not establish the actual agreement which shows the preconceived plan, motive, interest or purpose in the commission of the crime". [People v. Tala, G.R. Nos. 69153-54, January 30, 1986, 141 SCRA 240.] "Proof of publicly observable mutual agreement is not indispensable to establish conspiracy". [People v. Banayo, G.R. No. 64164, June 22, 1984, 129 SCRA 725.]

The conduct of the accused before, during and after the commission of the crime may therefore be considered in showing the presence of a conspiracy [People v. Cabiltes, G.R. No. L-18010, September 25, 1968, 25 SCRA 112; People v. Beltran, G.R. Nos. L-37168-69, September 13, 1985, 138 SCRA 521; People v. Nabaluna, G.R. No. 60087, July 7, 1986, 142 SCRA 446.] As the existence of a conspiracy may be inferred from the acts of the accused [People v. Mahusay, G.R. No. 60470, September 9, 1985, 138 SCRA 452], so may the agreement be similarly inferred.

In the instant case, the acts of the accused before, during and after the actual demand for and the actual receipt of the bribe money by Tinaza support the conclusion that there was a conspiracy among them to demand a bribe from De Guzman for the issuance of a building permit.

Particularly, that there was a conspiracy may be inferred from the acts of Tinaza coupled with those of Antonio and Caoili who, knowing that De Guzman was an applicant for a building permit, met with her outside of their offices to discuss her application and accepted part of the money she gave to Tinaza after being informed by the latter that the money came from De Guzman. It is not essential that all of the accused together commit each and every act constitutive of the offense for a conspiracy to be established. There is conspiracy where several accused by their acts aimed at the same object, one performing one part and another performing another part so as to complete it with a view to the attainment of the same object, and their acts, though apparently independent are in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments [People v. Cabrera, 43 Phil. 64 (1922); People v. Geronimo, G.R. No. L-35700, October 15, 1973, 53 SCRA 246; People v. Dalusag, G.R. No. L-38988, October 31, 1984, 133 SCRA 15; People v. Petenia, G.R. No. 51256, August 12, 1986, 143 SCRA 361.]

It cannot therefore be said that the Sandiganbayan committed a reversible error when it concluded that there was a conspiracy among the three accused. The established facts speak for themselves. Moreover, with regard to the accused Antonio, his actuations are not compatible with the theory that he knew nothing about the plan to demand money for the issuance of the permit. In fact, the agreement to meet again in the afternoon of that fateful day was reached in his office, after he summoned Tinaza. He joined Tinaza, Caoili and De Guzman for a snack outside of his office, knowing that De Guzman was an applicant for a permit. Then, he accepted the money given by Tinaza, and even spent part of it, knowing that it came from De Guzman. Given these established facts, Antonio's contention that he was not party to the conspiracy cannot be seriously considered.

Neither did the Sandiganbayan err when it convicted Antonio as a principal together with Tinaza and Caoili, for the rule is well-settled that when conspiracy has been proved, the act of one conspirator is the act of all and, therefore, it is of no moment that not all the accused took part in the actual commission of every act constituting the crime. [People v. Paredes, G.R. No. L-19149, August 16, 1968, 24 SCRA 635; People v. Serante, G.R. No. L-46724, July 31, 1987, 152 SCRA 510.] Thus, it does not matter that it was only Tinaza who demanded and actually received the "grease money" from De Guzman.

That Antonio is guilty beyond reasonable doubt of violating Sec. 3(c) of R.A. No. 3019, as amended, which prohibits any public officer from "directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity has secured or obtained or will secure or obtain, any Government permit or license, in consideration for the help given or to be given" has been proven beyond reasonable doubt. In view of the foregoing, the petition must fail.

WHEREFORE, the petition is hereby DENIED and the Sandiganbayan's decision in Crim. Case No. 1525 is AFFIRMED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[*] The rule is that the cause of action is determined by the allegations in the complaint or petition. However, considering that the proper recourse to the Court would be a petition for review, the Petition shall be considered as such in spite of the allegation of grave abuse of discretion.

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