

MAXIMO G. RODRIGUEZ, PETITIONER, VS. THE HON. SANDIGANBAYAN, SECOND DIVISION, THE PEOPLE OF THE PHILIPPINES, HEREIN REPRESENTED BY THE HON. TANODBAYAN AND ATTY. DIGNO A. ROA, RE...

G.R. No. 61355. February 18, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for certiorari and prohibition with prayer for preliminary injunction to declare the Sandiganbayan without jurisdiction over Criminal Case No. 3693, entitled, "People of the Philippines versus Maximo G. Rodriguez", petitioner advancing as grounds therefor: (1) the ex-post facto character of Presidential Decree No. 1606 creating the Sandiganbayan and (2) the exclusive jurisdiction of the regular courts of first instance over the offense alleged in the Information. Petitioner further assails the validity of the Information filed by the Tanodbayan in said case for alleged failure on the part of the latter to conduct a proper preliminary investigation, in violation of petitioner's fundamental right to due process as well as Republic Act No. 5180, as amended by Presidential Decrees No. 77 and 911.

On January 24, 1964, petitioner Maximo G. Rodriguez was appointed provincial fiscal of the Province of Misamis Oriental, with official station at Cagayan de Oro City. On September 23, 1975, following the acceptance by the President of the Philippines of the courtesy resignation of the Register of Deeds of Misamis Oriental, petitioner was designated as Ex-Officio Register of Deeds of Misamis Oriental and Cagayan de Oro City.

On October 13, 1977, respondent Digno A. Roa filed an affidavit-complaint before the Office of the City Fiscal of Cagayan de Oro, docketed as Criminal Case No. I.S. 15247, charging petitioner with the crimes of estafa, falsification and usurpation of public functions. A subpoena was issued to petitioner on November 2, 1977, and on November 11, 1977, petitioner submitted his counter-affidavit to the City Fiscal.

On March 20, 21 and 22, 1978, State Prosecutor Lilia Lopez, who had been assigned by the Ministry of Justice to assist the City Fiscal of Cagayan de Oro in the said case, conducted a lengthy preliminary investigation. Barely two months later, on May 1, 1978, petitioner was separated from the service by reason of the acceptance by the President of the Philippines of his letter of resignation dated October 10, 1972.

On December 12, 1978, State Prosecutor Lopez issued a resolution finding petitioner, together with Isidro Udang and Josefa Eborá Pacardo, "probably guilty of estafa thru falsification." However, before this resolution could be approved by the then Undersecretary of Justice Catalino Macaraig, Jr., the Office of the Tanodbayan was created and the entire records of the case were transferred to it. The case was referred to Tanodbayan Prosecutor Francisco P. Rabanes, who, on February 25, 1980, issued a subpoena to petitioner, setting the case for another preliminary investigation. In response, petitioner asked Rabanes to just consider in said proceedings the counter-affidavit he had earlier submitted to the City Fiscal of Cagayan de Oro. Thus, on the basis of the records, Rabanes issued a resolution, dated June 18, 1980, recommending dismissal of Criminal Case No. I.S. 15247 for

lack of probable cause.

After the Rabanes resolution had been forwarded to the Tanodbayan for review, Tanodbayan Legal Officer Cesar Mindaro, after reviewing the records, came out with a recommendation to the Tanodbayan Prosecution and Investigation Office that the Rabanes resolution be set aside and that said office be directed to cause the filing of an information against petitioner for violation of Sec. 3[e] of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. In a Memorandum dated October 1, 1980, addressed to the Hon. Vicente G. ERICTA, then Tanodbayan, the Tanodbayan Prosecution and Investigation Office, thru Prosecutor Florencio Ruiz, Jr., approved Mindaro's recommendation with the additional suggestion, to wit:

"However, considering that the basic complaint (affidavit of Digno A. Roa, dated October 11, 1977) specifically charged Maximino G. Rodriguez, Rosalio Pacardo, Josefa Eborá Pacardo and three (3) Does with violations of Articles 316, paragraph I, and 237, in relation to Art. 171, paragraph 4, all of the Revised Penal Code, it would be in keeping with the fundamental principles of fair play [cf: *Bandiola v. CFI of Misamis Oriental*, 35 SCRA] if a new preliminary investigation focused on the proper charge under Section 3[e] of the Anti-Graft and Corrupt Practices Act [R.A. 3019] be conducted."

In compliance with the above cited recommendation, a team of special prosecutors was created, headed by Legal Officer Cesar Mindaro. Another subpoena dated October 3, 1980 was issued to petitioner requiring him to appear "in the Office of the City Fiscal of Cagayan de Oro City, on October 20, 1980 and thereafter until the investigation is finished." The subpoena was hand-carried to Cagayan de Oro City and on October 15, 1980 was served upon petitioner's wife, Martha B. Rodriguez, in the absence of petitioner who was then in Catarman Northern Samar Hospital attending to his sick mother, and who, on October 19, 1980, proceeded directly to Manila for an appearance before the Court of Appeals as counsel for one Dr. Julio Ruiz.

In the resolution signed by Special Prosecutors Carlos D. Montemayor and Cesar J. Mindaro, dated August 17, 1981, it appears that the preliminary investigation on the new charge against petitioner was conducted from October 19-25, 1981 at the appointed place.

While petitioner himself was absent during said proceedings, his law partner, Atty. Alberto Martinez, as well as his son, the Hon. Rufus Rodriguez of the Provincial Board of Misamis Oriental, were present and they actively participated therein by examining the complainant and his witnesses.

Petitioner, however, denied the representative character of the appearance of his law partner and his son before the investigating body, arguing that he could not have possibly authorized them to act in his behalf as he himself was unaware of the holding of said preliminary investigation. He further disputed the number of days during which the preliminary investigation was reported to have been conducted for the reason that upon his return to Cagayan de Oro from Manila on October 23, 1980, he immediately proceeded to the Fiscal's Office only to discover that the investigating body had already left for Manila. Thus, on October 29, 1980, petitioner went to Manila to file his memorandum and to argue orally before the Tanodbayan team of special prosecutors.

On August 17, 1981, the investigating team issued a resolution directing the filing of an Information against petitioner and Josefa Eborá Pacardo before the Sandiganbayan for violation of Sec. 3[e] of the Anti-Graft and Corrupt Practices Act. Petitioner filed a motion for reconsideration of this resolution, but the same was denied. The Information was finally filed before the Sandiganbayan on September 9, 1981.

On November 25, 1981, petitioner filed a motion to quash the Information, which was opposed by the prosecution. On December 11, 1981, petitioner was arraigned. He entered a plea of not guilty, without prejudice to the resolution of his pending motion to quash. On April 16, 1982, the Sandiganbayan, Second Division, denied the motion to quash. His motion for reconsideration of May 17, 1982 having been likewise rejected, petitioner

now seeks relief from this Court.

The fallacy in characterizing Presidential Decree No. 1606 as an ex-post facto law in so far as the statutory right of recourse to the Court of Appeals is denied petitioner, has been exhibited by Chief Justice Fernando in the case of *Núñez v. Sandiganbayan*[1], reiterated in *De Guzman v. People of the Philippines and the Sandiganbayan*, G.R. No. 54288, December 15, 1982. It was there expounded that:

"The test as to whether the ex-post facto clause is disregarded, in the language of Justice Harlan in the just—cited *Thompson V. Utah* decision taking 'from an accused any right that was regarded, at the time of the adoption of the constitution as vital for the protection of life and liberty, and which he enjoyed at the time of the commission of the offense charged against him.' The crucial words are 'vital for the protection of life and liberty,' of a defendant in a criminal case. Would the omission of the Court of Appeals as an intermediate tribunal deprive petitioner of a right vital to the protection of his liberty? The answer must be in the negative. In the first place, his innocence or guilt is passed upon by the three-judge court of a division of respondent court. Moreover, a unanimous vote is required, failing which, 'the Presiding Judge shall designate two other justices from among members of the Court to sit temporarily with them, forming a division of five justices, and the concurrence of a majority of such division shall be necessary for rendering judgment.' Then if convicted, this Court has the duty if he seeks a review to see whether any error of law was committed to justify a reversal of the judgment. Petitioner makes much, perhaps excessively so as is the wont of advocates, of the fact that there is no review of the facts. What cannot be sufficiently stressed is that this Court in determining whether or not to give due course to the petition for review must be convinced that the constitutional presumption of innocence has been overcome. In that sense, it cannot be said that on the appellate level there is no way of scrutinizing whether the quantum of evidence required for a finding of guilt has been satisfied. The standard as to when there is proof of such weight to justify a conviction is set forth in *People v. Dramayo*."

Petitioner's view that "based on the standpoint of territorial jurisdiction, the Sandiganbayan is a National Court with station in the City of Manila, and therefore, the tremendous expenses to be incurred by the petitioner and his witnesses in coming back and forth to the City of Manila are factors that are really prejudicial to the petitioner." This Court is fully aware of the harsh reality that expenses are a necessary evil in the prosecution or defense of a suit. But the fact alone that a person may, by circumstances, be put to a greater expense in defending his cause in court of justice cannot justify the categorization of Presidential Decree 1606 as an ex-post facto legislation. For as petitioner himself pointed out:

"It is now well-settled that statutory changes in the mode of trial or the rules of evidence, which do not deprive the accused of a defense and which operate only in a limited and unsubstantial manner to his disadvantage, are not prohibited." [*Beazell v. Ohio*, 269 U.S. 167, 170 (1925)].

Petitioner further advances the theme that since the allegations in the Information define an offense punishable under Sections 117 and 119 of the Land Registration Act [Act No. 496], the proper forum for its prosecution is the regular court of first instance, specifically the Court of First Instance of Misamis Oriental, as provided in Section 118 of said Act 496.

The argument is bereft of merit. The Information [Annex "A", p. 26, Rollo] in Criminal Case No. 3693 reads as follows:

"That on or about August, 1977 or for sometime prior or subsequent thereto in the City of Cagayan de Oro, Misamis Oriental, Philippines, the accused Maximo G. Rodriguez, a public officer having been appointed and qualified as Provincial Fiscal of Misamis Oriental and at the same time was the Ex-Officio Register of Deeds of Cagayan de Oro City, conspiring and confederating with Josefa E. Pacardo, a private individual, and mutually helping each other, did then and there wilfully, unlawfully and feloniously through manifest partiality, evident bad faith and/or gross inexcusable negligence issued TCT No. T-24213-A in favor of his

co-accused Josefa E. Pacardo without petition from the registrant for segregation and without any subdivision plan as required by Section 44 of the Land Registration Act and while it appears in T.C.T. No. 24213-A that the same is a transfer from Subdivision Original Certificate of Title No. P-47 the same was not recorded in the Original Certificate of Title giving the impression that TCT No. 24213-A was not derived from Title No. P-47 likewise failing to carry over the encumbrances appearing in the old title further he issued the title to his co-accused immediately thereafter while issuing that of Digno Roa a month later, or more particularly only on August 11, 1977, as a consequence thereof his co-accused was able to sell to one Wilson Gaw, portions of the land covered by Original TCT No. P-47 thereby causing undue injury to Digno Roa and giving unwarranted benefit to his co-accused Josefa E. Pacardo."

The phraseology of the above-quoted information leaves no doubt whatsoever that petitioner is being charged with a violation of Section 3[e] of the Anti-Graft and Corrupt Practices Act, in that as a public officer, he allegedly committed an act "causing any undue injury to any party including the government, or giving any private party any unwarranted benefits, or preference in the discharge of his administrative or judicial functions thru manifest partiality, evident bad faith or gross inexcusable negligence . . ." [Sec. 3(e), R.A. 3019]. Under P.D. 1606, it is the Sandiganbayan that is vested with original and exclusive jurisdiction over this offense in accordance with Section 4 thereof, to wit:

"Sec. 4. Jurisdiction.— The Sandiganbayan shall have jurisdiction over:

[a] Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379."

Thus, as pointed out by the respondent court in upholding its jurisdiction over Criminal Case No. 3693,

"The fact that the Information contains allegations which accused [referring to petitioner] contends are recitals of facts constituting violation of Sec. 44 of Art. [sic] 496 is neither decisive nor controlling, since the same allegations also constitute a corrupt practice within the purview of Sec. 3, par. [e] of the Anti-Graft Law, which declares unlawful, certain acts or omissions of public officers, in addition to those already penalized by existing laws including the provisions of the Land Registration Act." (Resolution dated July 8, 1982, of the Sandiganbayan, Second Division, p. 128, Rollo).

Petitioner would characterize the information in Criminal Case No. 3693 as a patent nullity for alleged failure of the Tanodbayan Team of Special Prosecutors to conduct a proper preliminary investigation. It is contended that the irregularities committed in the conduct of the preliminary investigation had divested the Tanodbayan of any authority to file the challenged information.

Petitioner's thesis is untenable. The information in question contains the following certification[2] by Special Prosecutor Christina J. Corral-Paterno—

"Preliminary investigation has been conducted in this case; that the complainant and his witnesses have been examined; that the accused were given an opportunity to submit controverting evidence; that on the basis of the sworn statements and other evidence submitted, there is reasonable ground to believe that the offense charged has been committed and that the accused are probably guilty thereof."

In the absence of clear and convincing evidence to the contrary, We accord credence to this certification in accordance with the presumption that "official duty has been regularly performed."

The account of what transpired during the preliminary investigation, as reflected on the records, strengthens, rather than destroys, this presumption. It is not disputed that a subpoena dated October 3, 1980 was sent to petitioner and, as admitted by petitioner himself, said subpoena was received by his wife, Martha B. Rodriguez, on October 15, 1980. The records likewise disclose that, although petitioner himself was absent during the

preliminary investigation, he was represented by his law partner, Atty. Alberto Martinez, and his son, Rufus, who actively participated in the proceedings by examining the complainant and his witnesses. And while petitioner denies the representative character of their appearance, it appears that petitioner had not only submitted a memorandum to the Tanodbayan but had in fact ventilated his arguments at a hearing before said body. Thus, petitioner had more than ample opportunity to be heard, and as he, in fact, had been heard, he cannot now claim denial of due process.

It is also significant to note that P.D. 911 which petitioner claims to have been violated, authorizes the holding of an ex-parte preliminary investigation under Section 1[b] thereof, which provides:

" . . . If respondent cannot be subpoenaed, or if subpoenaed does not appear before the investigating fiscal or state prosecutor, the preliminary investigation shall proceed without him. . . ."

IN VIEW OF THE FOREGOING, the instant petition for certiorari and prohibition is dismissed. No costs.

SO ORDERED.

Fernando, C.J., Aquino, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., joins the dissent of Justice Makasiar.

Makasiar, J., dissents.

[1] 111 SCRA 433.

[2] Annex "A", p. 27, Rollo.

DISSENTING OPINION

MAKASIAR, J.:

I reiterate my dissent in *Núñez vs. Sandiganbayan* (G.R. Nos. 50581-50617).

It should be stressed that the alleged crimes of estafa, falsification and usurpation of public functions were allegedly committed before October 11, 1977—"long before the creation of the Sandiganbayan on December 10, 1978 by P.D. No. 1606 which expressly repealed P.D. No. 1486, the original Charter of the Sandiganbayan promulgated on June 11, 1978," which is patently an ex-post facto law when applied to acts committed prior to its promulgation.

Moreover, due process requires that the accused be accorded a fair hearing, which includes the preliminary investigation. In the case at bar, petitioner was not given a fair preliminary investigation on the date set for hearing. The prosecutors set the preliminary investigation for October 20-October 25, 1980. A subpoena dated October 3, 1980 was sent to petitioner to require him to appear "on October 20, 1980 and thereafter until the investigation is finished." The said subpoena was received by petitioner's wife and said subpoena was not known to petitioner; because petitioner was then in Catarman Northern Samar Hospital attending to his sick mother. On October 19, 1980, petitioner proceeded to Manila because he had to appear before the Court of Appeals as counsel of one Dr. Julio Ruiz. The preliminary investigation actually was conducted from October 19 to 23, 1980. Consequently, petitioner could not appear at the preliminary investigation in the office of the City Fiscal of Cagayan de Oro City, although his law partner and son actively participated in the said preliminary investigation by examining the complainant and his witnesses but without any authorization from petitioner who was totally

unaware of the holding of said preliminary investigation. On October 23, 1980, petitioner proceeded to the Fiscal's Office "only to discover that the investigating body had already left for Manila." Thus, on October 29, 1980, petitioner went to Manila to file his memorandum and to argue orally before the Sandiganbayan in his defense.

It is obvious that petitioner was in a better position to cross-examine the complainant and his witnesses as he was acquainted with the facts of the case, of which his law partner and son were ignorant, for the simple reason that he did not confer with them, much less authorize them to appear for him at the said preliminary investigation. Facts consistent with his innocence or favorable to him could have been elicited by the petitioner if he conducted the cross-examination of the complainant and his witnesses at the preliminary investigation. This impairment of the right of petitioner to be heard at the preliminary investigation could have been cured by the investigating body by waiting for him until October 25, 1980, the last scheduled day of the preliminary investigation, and allowing him to cross-examine the complainant and his witnesses and to submit his own affidavit and witnesses before the filing of the information against him. As heretofore stated, petitioner appeared at the City Fiscal's Office on October 23, 1980.

Furthermore, there is merit in the claim of petitioner that compelling him to attend trial in Manila would entail enormous expenses on his part which he could ill afford. With all the superior resources of the government pitted against the meager resources of petitioner, the Sandiganbayan as a national court could hold hearings as fair and as equal as that accorded to the complainant and his witnesses.

It is patent that the battle is unequal, because most of the cards, as it were, are stacked up against petitioner who has to spend for himself and his witnesses, including their transportation to, and their board and lodging in, Manila.

As Justice Frankfurter emphasized, procedural due process is a restatement of the "sporting idea of fair play." Under the facts of the case, petitioner had not been accorded fair play and therefore was denied his constitutional right to due process.

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