

ROLANDO P. BARTOLOME, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, AND HONORABLE SANDIGANBAYAN, RESPONDENTS.

G.R. No. 64548. July 07, 1986

Ponente: CRUZ, J.

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CRUZ, J.:

Before us is a decision of the Sandiganbayan convict-ing the petitioners in G.R. No. 64548 and G.R. No. 64559 of the crime of Falsification of a Public Document, as defined and penalized under Article 171, paragraph 4, of the Revised Penal Code.

The charge in this case reads in full as follows:

"I N F O R M A T I O N

The undersigned Tanodbayan Special Prosecutor accuses ROLANDO BARTOLOME Y PEREZ and ELINO CORONEL Y SANTOS of the crime of Falsification of Official Document as de-fined and penalized under paragraph 4, Ar-ticle 171 of the Revised Penal Code, committed as follows:

That on or about the 12th day of January, 1977, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused ROLANDO BARTOLOME Y PEREZ, a public officer having been duly appointed and qualified as Se-nior Labor Regulation Officer and Chief of the Labor Regulations Sec-tion, Ministry of Labor, National Capital Region, Manila, conspiring and conniving with the other accused ELINO CORONEL Y SANTOS, also a public officer having been duly appointed and qualified as Labor Regulation Officer of the same office, taking advantage of their official posi-tions, did then and there wilfully, unlawfully and feloniously prepare and falsify an official document, to wit: the CS Personal Data Sheet (Civil Service Form No. 212) which bears the Residence Certificate No. A-9086374 issued at Manila on January 12, 1977, by making it appear in said document that accused ROLANDO BARTOLOME Y PEREZ had taken and passed the 'Career Service (Professional Qualifying Examination)' on 'May 2, 1976' with a rating of '73.35% in Manila' and that he was a '4th Year AB' student at the Far Eastern Univer-sity (FEU), when in truth and in fact, as both accused well knew, accused ROLANDO BARTOLOME Y PEREZ had not taken and passed the same nor was he a '4th Year AB' student, thereby making untruthful statements in a narration of facts.

CONTRARY TO LAW.

Manila, Philippines, January 21, 1982.

RICARDO A. BUENVIAJE

Special Prosecutor"

We hold that the proceedings in the court a quo are null and void ab initio. The Sandiganbayan had no juris-diction over the case.

Under Section 4 of P.D. 1606, which created this special court:

"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;

(b)

Crime committed by public officers and employees, including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c)

Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office." (Underscoring supplied).

A careful reading of Republic Act No. 3019 and Republic Act No. 1379 will reveal that nowhere in either statute is falsification of an official document mentioned, even tangentially or by implication.

Title VII, Book Two, of the Revised Penal Code defines and penalizes a wide range of offenses committed by public officers, from knowingly rendering an unjust judgment under Article 204 to abuses against chastity in Article 245, but falsification of an official document is not included. This is punished in Article 171 under Title IV, Book Two, on Crimes against Public Interest.

The nearest approach to the claimed jurisdiction is paragraph (c) of the above-quoted section, which speaks of crimes committed by public officers and employees in relation to their office. Under existing jurisprudence, however, the crime imputed to the petitioners cannot come under this heading.

The pertinent case is *Montilla v. Hilario*,^[1] where a municipal mayor and three policemen charged with murder and frustrated murder retained Rep. Floro Crisologo as their counsel. The prosecution sought to disqualify him on the ground that a member of Congress could not appear as counsel "in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office."^[2] The Supreme Court allowed his appearance, interpreting the underscored phrase in this wise:

"The information charges that the defendants, 'taking advantage of their respective public positions conspiring together x x x did then and there x x x assault, attack and shoot with their firearms' several persons 'with the intent to kill' and did kill one Claudio Ragasa and inflict physical injuries on three others.

"From the allegations of the information it does not appear that the official positions of the accused were connected with the offenses charged. In fact, the attorneys for the prosecution stated that the motives for the crimes were 'personal with political character.' It does not even appear, nor is there assertion, that the crimes were committed by the defendants in line of duty or in the performance of their official functions.

"Judged by the context of section 17 of Article VI, *supra*, and the proceedings of the Constitutional Convention, the relation between the crime and the office contemplated by the Constitution is, in our opinion, direct and not accidental. To fall into the intent of the Constitution, the relation has to be such that, in the legal sense, the offense cannot exist without the office. In other words, the office must be a constituent element of the crime as defined in the statute, such as, for instance, the crimes defined and punished in Chapter Two to Six, Title Seven, of the Revised Penal Code.

"Public office is not of the essence of murder. The taking of human life is either murder or homicide whether done by a private citizen or public servant, and the penalty is the same except when the perpetrator, being a

public functionary, took advantage of his office, as alleged in this case, in which event the penalty is increased.

"But the use or abuse of office does not adhere to the crime as an element; and even as an aggravating circumstance, its materiality arises, not from the allegations but on the proof, not from the fact that the criminals are public officials but from the manner of the commission of the crime."

Montilla must be read with *People v. Montejo*[3] which laid down the exception to the basic rule. In this case, a city mayor and several members of the police were also accused of murder. They retained as their counsel- Sen. Roseller Lim who was also challenged on the basis of the same Article VI, Section 17, of the 1935 Constitution. The legislator was disqualified because, as the Court put it, there was on the face of the information an intimate connection between the commission of the offense and the discharge of public office that made the crime an offense committed in relation to the office of the accused.

"With respect to the question whether or not Senator Roseller Lim may appear as counsel for the main respondents herein, as defendants in said criminal case, the Constitution provides that no Senator or Member of the House of Representatives shall 'appear as counsel x x x in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation of his office x x x (Art. VI Sec. 17, Const. of the Phil.). The issue, therefore, is whether the defendants in Criminal case No. 672 are 'accused of an offense committed in relation' to their office.

"A mere perusal of the amended information therein readily elicits an affirmative answer. It is alleged in said amended information that 'Leroy S. Brown, City Mayor of Basilan City, as such, has organized groups of police patrol and civilian commandoes consisting of regular policemen and x x x special policemen, appointed and provided by him with pistols and high power guns' and then 'established a camp x x x at Tipo-Tipo,' which is under his 'command, x x x supervision and control,' where his codefendants were stationed, entertained criminal complaints and conducted the corresponding investigations, as well as assumed the authority to arrest and detain person without due process of law and without bringing them to the proper court, and that, in line with this set-up established by said Mayor of Basilan City as, such, and acting upon his orders, his co-defendants arrested and maltreated Awalin Tebag, who died in consequence thereof.

"It is apparent from these allegations that, although public office is not an element of the crime of murder in abstract, as committed by the main respondents herein, according to the amended information, the offense therein charged is intimately connected with their respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, they had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. The co-defendants of respondent Leroy S. Brown, obeyed his instructions because he was their superior officer, as Mayor of Basilan City."

The difference between *Montilla* and *Montejo* is that whereas in the former the murder was committed outside office hours and for personal or political motives, the victim in the latter case was killed while he was undergoing custodial investigation in the police substation. The crime in *Montejo* would not have been committed were it not for the fact that the accused were actually discharging official functions at the time.

"The case of *Montilla vs. Hilario and Crisologo*, 90 Phil., 49, relied upon by respondent Judge, in overruling the objection of the prosecution to the appearance of Senator Roseller Lim, is not in point, for, as stated in the decision therein:

'From the allegations of the information it does not appear that the official positions of the accused were connected with the offense charged. In fact, the attorneys for the prosecution stated that the motives for the crimes were personal with political character. It does not even appear, nor is there assertion, that the crimes were committed by the defendants in line of duty or in the performance of their official functions.'

"Such is not the situation obtaining in the case at bar."

In the instant case, there is no showing that the alleged falsification was committed by the accused, if at all, as a consequence of, and while they were discharging, official functions. The information does not allege that there was an intimate connection between the discharge of official duties and the commission of the offense. Besides, falsification of an official document may be committed not only by public officers and employees but even by private persons only. To paraphrase Montilla, public office is not an essential ingredient of the offense such that the offense cannot exist without the office.

Clearly, therefore, as the alleged falsification was not an offense committed in relation to the office of the accused, it did not come under the jurisdiction of the Sandiganbayan. It follows that all its acts in the instant case are null and void ab initio.[4]

WHEREFORE, the petitions are granted and the decision of the Sandiganbayan is set aside, without any pronouncement as to costs. It is so ordered.

Teehankee, C.J., Abad Santos, Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] 90 Phil. 49.

[2] Art. VI, Section 17, 1935 Constitution.

[3] 108 Phil. 613.

[4] Trimsica Inc. vs. Polaris Mktg. Corp., 60 SCRA 321; Urbayan vs. Salvoro, 8 SCRA 74; Reyes vs. Paz, 60 Phil. 440; Echevarria vs. Parsons, 51 Phil. 980; Cañeda vs. C.A., 5 SCRA 1131.

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