

PRIMITIVO MARCELO, PETITIONER, VS. SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 69983. May 14, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner was indicted for violation of the Anti-Graft and Corrupt Practices Act in an information reading as follows:

That on or about March 6, 1982, in the Municipality of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused Primitivo Marcelo, a public officer being then a Deputy Sheriff in the Office of the Provincial Sheriff of Bulacan and Atty. Alberto Domingo, a private law practitioner, conspiring, confederating and confabulating with one another, did then and there wilfully, unlawfully and feloniously cause undue injury to Reynaldo Sanchez and give Osaka Merchandising Co., Inc. unwarranted benefits, advantage or preference in the discharge by accused Primitivo Marcelo of his official and administrative functions in connection with the enforcement of the Writ of Execution issued by the CFI of Bulacan in Civil Case No. 6336-M, entitled "Osaka Merchandising Co., Inc. v. Sanz Steel Corp." through manifest partiality and evident bad faith, by unlawfully taking, carrying and seizing one (1) Ford Fiera with Plate No. DCK 863, owned by and registered in the name of Reynaldo Sanchez, and as such not belonging to Sanz Steel Corp., which vehicle was not included in the notice of levy or execution of leased properties and without issuing any receipt therefor nor mentioning the same in the partial sheriff's returns on execution thereby making it appear that said vehicle was not seized, levied or taken away by accused Primitivo Marcelo and Alberto Domingo and, consequently deprived Reynaldo Sanchez of the use and possession of said vehicle.

After trial, he was convicted and sentenced to imprisonment from three to six years, perpetual disqualification from public office, and to pay the costs. His co-accused was acquitted on reasonable doubt that he had conspired with the petitioner.[1]

The petitioner now comes to us seeking reversal of the judgment on the ground that it is tainted with error and grave abuse of discretion.

The respondent court found that the petitioner abused his functions as a deputy sheriff in the implementation of a writ of execution. Specifically, he was held liable under Section 3(e) of the above-mentioned law, to wit:

(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.

It was established at the trial that on March 5, 1982, the petitioner went to the premises of the Sanz Steel Corporation to enforce a writ of execution against it in favor of the Osaka Merchandising Company.

Instead of limiting himself to the properties he had earlier listed in the notice of levy,[2] he also took a Ford Fiera with license plate No. DCK 863 over the objection of Reynaldo Sanchez, who said the vehicle belonged to him.

The petitioner did not issue a receipt for the vehicle.[3] He also did not list it in the partial sheriff's return on execution as among the properties seized by him in satisfaction of the judgment.[4]

Testifying on his behalf, the petitioner declared that the Ford Fiera had originally been included in the notice of levy but he had to erase the entry on orders of Sanchez, who had threatened him.[5] Curiously, though, the vehicle was seized nonetheless. The petitioner gave no explanation for the non-inclusion of the Ford Fiera in the sheriff's return except to say that Atty. Domingo told him he would deny any involvement in the seizure.[6]

The averment that the petitioner had been threatened is not acceptable in the light of the evidence that he was accompanied at the time by two armed constables.[7] The petitioner said that Sanchez closed the gates of the compound and turned off all the lights. Nevertheless, the petitioner does not deny that he was able to take out the Ford Fiera, along with all the articles listed in the partial return.

We agree with the respondent court that the petitioner did not act toward the judgment creditor with manifest partiality, which it described as "a clear, notorious or plain inclination or predilection to favor one side rather than the other." [8] The record does not disclose such motivation. As the respondent court observed, "the evidence falls short of that quantum necessary to establish the fact that he had been manifestly or patently partial to the plaintiff's corporation."

But while absolving the petitioner of such fault, the respondent court ascribes to him evident bad faith in acting as he did, resulting in injury to the complaining witness and incidental benefit to the judgment creditor. Citing authorities, the decision stresses that -

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. (*Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self interest or ill will for ulterior purposes. (*Air France v. Carrasco*, 18 SCRA 155, 166-167). Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.

Applying these very same definitions, we feel that the petitioner cannot in fairness be held liable under the indictment. We are persuaded from a study of the evidence that he was not actuated by a dishonest purpose or ill will partaking of a fraud or some furtive design or ulterior purpose to do wrong and cause damage.

In fact, what we see here is a rather confused person, prodded on the one hand by the judgment creditor's counsel and resisted on the other by the president of the judgment debtor. Both apparently exerted some kind of influence upon him that befuddled his mind and warped his judgment. In the end, he was left holding the bag, so to speak, and hardly able to explain himself.

But despite his general confusion, this much he could say convincingly about the Ford Fiera. It was not unreasonable for him to mistake it as property of the judgment debtor because the name of Sanz Steel Corporation was clearly painted on its sides. Anyone would have assumed that it belonged to the corporation. Sanchez claimed having exhibited his registration certificate, but the petitioner denies this; and the respondent court noted that this document was produced only much later.[9] Significantly, after the vehicle had been towed away, Sanchez merely reported to the police that it had been "carnapped" and then simply left it at that.[10] As the respondent court observed:

x x x Sanchez could have filed a third-party claim with the court issuing the writ of execution or he could have

officially notified the Sheriff that he was adversely claiming the same. The fact remains that he submitted the certificate of registration long after the seizure.

Our reading of this sorry mess is that because of the conflicting pressures exerted on him by Domingo and Sanchez, the petitioner excluded the Ford Fiera in the notice of levy he had earlier prepared and then, to be consistent, omitted it also in the list of the seized articles in his partial sheriff's return on execution.

The petitioner says it was only after his arrest that he realized he had not included the vehicle in the return. This may or may not be true. But what we may ourselves say is that this omission was as much the fault of the petitioner as of the complaining witness, who should have demanded its inclusion for his own protection.

We go further and add this. We believe that the petitioner is not liable even for "gross inexcusable negligence," as there is no showing that he had acted in a wantonly careless manner to the prejudice of the complaining witness. The breach of duty was not flagrant and palpable.[11] The petitioner had not acted recklessly or in utter disregard of consequences so as to suggest some degree of intent to cause injury.[12]

Notably, the petitioner did not appropriate the vehicle for himself but left it in the compound of the judgment creditor.[13] As previously observed, there was plausible reason to suppose that the Ford Fiera belonged to the Sanz Steel Corporation which, significantly, was a family corporation with Sanchez as its president.[14] If the petitioner mistook the vehicle for property of the corporation, such mistake certainly cannot be considered so gross or inexcusable as to come under the sanctions of the Anti-Graft and Corrupt Practices Act.

In any event, we are not prepared to affirm that the petitioner's acts and omissions border on the criminal and justify the penalty imposed on him.

It seems to us that a more appropriate relief against the petitioner would be a civil action for damages or an administrative complaint for the faulty implementation of the writ of execution. This observation should, of course, not be taken as a prejudgment of such cases if they are filed. We do feel, though, that the criminal action lodged against the petitioner was ill-advised and that his conviction, on the basis of the meager evidence submitted, was less than warranted.

While this Court has always been implacable in the face of guilt that must be punished, it has also never hesitated to protect the innocent against an accusation that is palpably unjust, as in the case at bar. In earlier decisions, we have cautioned the prosecution against hasty indictments, lest the accused be needlessly molested and irreparably stigmatized. We now address a similar admonition, and in the same spirit, to the lower courts. That the innocent may not suffer from an undeserved sentence, we urge the judges to be more careful in their evaluation of the evidence, always remembering that what is presumed in the free society is not the guilt of the accused but his innocence.

WHEREFORE, the petition is GRANTED and the challenged decision is REVERSED. The petitioner is ACQUITTED, with no pronouncement as to costs.

SO ORDERED.

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

[1] Decision penned by Quimbo, J., with Guerrero and Molina, JJ., concurring.

[2] Exhibit "C."

[3] TSN, June 13, 1984, p. 10.

[4] Exhibit "D."

[5] TSN, June 13, 1984, p. 6.

[6] Ibid, p. 12.

[7] Id., p. 16.

[8] Rollo, p. 25.

[9] Ibid., p. 16.

[10] Exhibit "2."

[11] Juan vs. Arias, 72 SCRA 404.

[12] Ballentine's Law Dictionary.

[13] Exhibit "D."

[14] Exhibit "1."

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