

DR. ARTURO L. ALEJANDRO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HONORABLE SANDIGANBAYAN, RESPONDENTS.

G.R. No. 81031. February 20, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for review on certiorari of the decision[*] of the Sandiganbayan, dated 30 July 1987, finding petitioner Dr. Arturo L. Alejandro guilty of the offense of violation of Section 3 (e) of R.A. 3019, known as the Anti-Graft and Corrupt Practices Act. The factual background of the case is as follows:

Dr. Arturo L. Alejandro was the duly appointed officer-in-charge (OIC) of the President Ferdinand E. Marcos Emergency Hospital (FEMEH) in Diffun, Province of Quirino, from 20 March 1982 until his retirement from the service on 31 July 1982, or for a period of at least four (4) months. The service record of the petitioner shows that had been in the public service since July 1942 until his retirement, serving the government for forty (40) long years. He first worked at the Bayombong Hospital in Nueva Viscaya, thereafter, he was made a resident physician of Kiangen Hospital (now known as Ifugao Community Hospital). He became the Chief of Itbayan Emergency Hospital in 1955 - 1971, Mayayao Emergency Hospital in 1971-1975 and the Aglipay Emergency Hospital in 1975 - 1982.[1]

On 20 March 1982, while still the Chief of Aglipay Emergency Hospital, petitioner was appointed as OIC of FEMEH. Petitioner held both positions concurrently, drawing his salary from the Aglipay Emergency Hospital. He shuttled from one hospital to the other to attend to and supervise both hospitals.[2]

On 20 September 1982, thirty (30) employees of FEMEH filed a complaint against petitioner Dr. Arturo L. Alejandro, Virgilio P. Bunao and Cesar R. Dupa, with the Office of the President, alleging that during the term of petitioner as OIC of FEMEH, the hospital received an allotment for the third quarter of 1982 (July, August and September) in the amount of P93,950.00 for personnel services and P74,300.00 for maintenance and other operating expenses. It is claimed that upon petitioner's retirement on 30 July 1982, nothing was left of the funds of the hospital with the bank except for the amount of P160.00 as a result of which, the employees of the hospital were not paid their salaries and allowances for the second half of July and for the months of August and September 1982.[3]

Acting on behalf of the President, the Ministry of National Defense referred the complaint to the Tanodbayan for appropriate action. Pursuant to such referral, an investigation was conducted by the NBI. After evaluating the evidence submitted, the Director of the NBI made a recommendation for further investigation of the case on the ground that the specific liabilities of the accused could not be ascertained due to the absence of vital evidence.[4]

The Director of Regional Health Office No. 2 of Tuguegarao, Cagayan also ordered the Regional Finance Officer and Accountant to conduct an investigation.

In an information dated 18 September 1985, petitioner Dr. Arturo L. Alejandro in his then capacity as OIC of FEMEH, together with Virgilio P. Bunao and Cesar R. Dupa, in their capacity as Administrative Officer and Bookkeeper of the hospital, respectively, were charged with the crime of Technical Malversation before the Sandiganbayan, docketed as Criminal Case No. 9721.[5]

Subsequently, another information was filed against the same accused for violation of Section 3(e) of the Anti-Graft and Practices Act (R. A. No. 3019),

"That during or between the period July 31, 1982 to September 30, 1982 in the Municipality of Diffun, Quirino, Philippines, and within the jurisdiction of this honorable Tribunal, accused Dr. Arturo L. Alejandro, Chief of Hospital, Virgilio A. (sic) Bunao, Administrative Officer and Cesar R. Dupa, Bookkeeper all of President Ferdinand E. Marcos District Hospital at Diffun, Quirino Province, taking advantage of their public positions through evident bad faith and/or gross inexcusable negligence, did then and there wilfully and unlawfully disbursed (sic) P236,299.00 for the maintenance and other operating expenses (MOOE) when the third quarter 1983 allotment for the purpose was only P74,000.00, thereby incurring over expenditures amounting to P93,950.00 intended for personnel services, resulting in the non-payment of salaries, wages and allowances of employees aforementioned hospital for the months of July, August and September 1982, thereby causing undue injury and damage to the employees of the said hospital.

"CONTRARY TO LAW."[6]

It was established that two (2) funding checks were released in favor of the hospital in July 1982 for the third quarter of that same year in the amounts of P93,950.00 and P74,500.00, earmarked for personnel services and for maintenance and other operating expenses, respectively.

Out of the P93,950.00 allotted for personnel for the third quarter of 1982, the amount of P45,389.93 was used for payment of the back salaries of the hospital employees for the second quarter of 1982, and the amount of P7,610.00 was used to pay for the salaries of the employees for the first half of July 1982. The remaining balance of P40,950.07 was spent for maintenance and other operating expenses, as a consequence of which the hospital employees were paid their salaries for the second half of July and for the whole months of August and September 1982. The allotment for the third quarter of 1982 for personnel services as well as the fund reserved for maintenance and operating expenses had already been used UP before the end of the third quarter or as early as 26 July 1982.

On 27 October 1982, the Regional Health Office undertook payment of the salaries of the employees of FEMEH for the remainder of the third quarter of 1982.

After joint hearing of the two (2) criminal cases against petitioner and his co-accused, the Sandiganbayan rendered a decision[7] dated 30 July 1987, acquitting the accused of the charge of Technical Malversation, holding that there was no proof of diversion of funds. As to the criminal charge for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act, the accused were found guilty thereof.

The dispositive part of the decision reads as follows:

"WHEREFORE, in Criminal Case No. 10947, the Court finds the accused Dr. Arturo L. Alejandro, Virgilio P. Bunao and Cesar R. Dupa GUILTY beyond reasonable doubt of the offense of Violation of Sec. 3 (E) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as approved on August 17, 1960. Appreciating in favor of the accused the fact that the accused gave themselves up to the authorities voluntarily and there being no circumstances in aggravation of the offense, the Court sentences each and every one of the aforesaid accused, namely, Dr. Arturo L. Alejandro, Virgilio P. Bunao and Cesar R. Dupa, to this indeterminate penalty of imprisonment of from ONE YEAR to THREE YEARS to perpetual disqualification from holding public office; and to pay costs.

"No civil liability is adjudged in view of the fact that the offended parties were paid their back salaries and allowances on October 27, 1982.

"In Criminal Case No. 9731, upon failure of proof beyond reasonable doubt, is the judgment of this Court that the accused should be, as they are, hereby ACQUITTED of the offense of Technical Malversation herein charged, with costs de officio

"The bail bonds posted by the accused for their temporary liberty in respect to this case is ordered cancelled.

"SO ORDERED."[8]

A motion for reconsideration was filed by petitioner Dr. Arturo L. Alejandro and Cesar H. Dupa, but the same was denied in a resolution dated 1 December 1987.[9] From the aforementioned decision, petitioner filed the appeal at bar questioning his conviction for alleged violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. It is the contention of petitioner that in signing the disbursing checks for July 1982, he did not commit any act amounting to evident bad faith and/or gross negligence for he never derived any pecuniary benefit from said checks. He further argues that he never had anything to do with the preparation or filling up of the material data in the checks and vouchers, and that all that he did was to ministerially sign them after verifying that the necessary signatures and approval of the administrative officer and the bookkeeper existed. Good faith and lack of malice is a valid defense to the charge of violation of Sec. 3(e) of the Anti-Graft and Corrupt Practices Act.

On the other hand, the public respondent through the Office of the Solicitor General, argues that when the accused overspent for maintenance and other operating expenses, utilizing in the process funds allocated for personnel services and thereby failed to pay the salaries of hospital employees for the entire third quarter of 1982, causing damages to the latter a violation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act was committed; and that petitioner's act amounted to a total abdication of duty and responsibility amounting to gross negligence which rules out the defense of good faith.

Sec. 3(e) of the Anti-Graft and Corrupt Practices Act punishes any public officer for -

"(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."

In order that one may be held criminally liable under said section, the act of the accused which caused undue injury must have been done with evident bad faith or with defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully intentionally with a conscious indifference to consequences in so far as other persons may be affected.[10] It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.[11]

It has been established before the court a quo that in the disbursements of funds of the hospital, a procedure had to be faithfully complied with. Upon filing of a Requisition and Issue Voucher (RIV), the Administrative Officer must first certify that the expenditure is necessary and lawful. The RIV is then sent to the Bookkeeper for certification as to the availability of funds for the purpose. Only after the Chief of the Hospital has approved the disbursement can the same be given due course. The check covering the disbursement voucher has to be signed by the Chief of the Hospital and the Administrative Officer.[12]

In case of refusal of any of said three (3) officials (i.e., Administrative Officer, Bookkeeper and Chief of the Hospital) to sign the requisition and issue voucher (RIV), no fund could be released for disbursement. The reason

why each of these three (3) officials was required to sign the RIV was to prevent any unofficial expenditure, in the disbursement of funds, each of said official having a separate responsibility or obligation.

It was the responsibility of the Bookkeeper to inform the Chief of the hospital whether or not there was an available fund from the allocated amount for a given expenditure. If there was, he would issue a certification attached to the RIV upon its submission for approval to the Chief of the Hospital. It was not therefore, really the duty of the Chief of the hospital to verify from the books of accounts of the hospital whether there was an available fund every time a disbursement was needed for release. The same rule was also applied to the Administrative Officer who was required to issue a certification to the effect that the expenditure was necessary and lawful.

To impose criminal liability upon petitioner who was misled into giving his approval to a particular disbursement on the basis of the Bookkeeper's certification that there was fund available for said expenditure would be too harsh and inequitable (even if such fund turned out to be unavailable).

Petitioner's reliance on the correctness of the certifications of the Bookkeeper and Administrative Officer which resulted in the application of a portion of the fund for personnel services to maintenance and other operating expenses for the hospital, cannot be classified as "gross inexcusable negligence". There was no evident bad faith or malicious intent on his part to cause undue injury to the hospital employees. In giving his approval to the disbursements for that period, it was evident that he was merely misled by the certification of the Bookkeeper. Furthermore, fund for personnel services was not solely used for maintenance and other operating expenses of the hospital but also in payment of the back salaries of the hospital employees.

It was also shown in the court a quo that transfer or "juggling" (if you may) of funds from one quarter to a proceeding quarter had been practiced by the former Chief of the hospital as early as 1978, and it was merely carried over during the term of heroin petitioner.

Petitioner acted as OIC of the hospital for only about four (4) months, concurrently with his position as Chief of the Aglipay Emergency Hospital. Considering that his duties as Chief of both hospitals entailed a lot of responsibility not only on the management side but also in the treatment of their patients, it is almost unreasonable to have expected petitioner to directly and personally check the books of accounts of FEMEH to find out if indeed there was an available fund from the allotted amount whenever a disbursement was submitted to him for approval. His act of relying upon the Bookkeeper's certification to the effect that there was an available fund for the disbursement sought to be approved cannot be considered gross inexcusable negligence.

Moreover, one of the elements of the crime described in Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act is that there should be undue injury caused to any party. However, in the 30 July 1987 decision of the respondent Sandiganbayan. it is recognized that there was no proof of damage caused to the employees of the hospital since they were in fact paid on 27 October 1982 their salaries for the entire third Quarter of 1982.[13]

WHEREFORE, the petition is GRANTED, and the decision of the Sandiganbayan dated 30 July 1987 in Criminal Case No. 10947 is SET ASIDE. Petitioner is ACQUITTED of the charge of violation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act (R.A. 3019).

SO ORDERED.

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

[*] Penned by Justice Regino Hermosisima, Jr., with the concurrence of Justices Romeo M. Escareal and Augusto M. Amores.

[1] Rollo, pp. 15-16

[2] Ibid.

[3] Rollo, pp. 43-44

[4] Rollo, p. 47

[5] Rollo, p. 40

[6] Rollo, pp. 41-42

[7] Rollo, pp. 40-43

[8] Rollo, pp. 61-62

[9] Rollo, p. 64-69

[10] Ballentine's Law Dictionary, 3rd Edition, p. 537

[11] Bouvier's Law Dictionary, Vol. I, 3rd Revision, p. 1383

[12] Rollo, p. 59

[13] Rollo, p. 61.

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