

GOVERNOR MARIANO UN OCAMPO, III, PETITIONER, VS. HON. SANDIGANBAYAN (SECOND DIVISION) AND OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS.

G.R. Nos. 103754-78. August 30, 1994

Ponente: VITUG, J.

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VITUG, J.:

On 06 June 1991, twenty-five (25) separate informations (Criminal Cases No. 16782 to 16806) were filed with the Sandiganbayan against Governor Mariano Un Ocampo (petitioner herein), Andres Flores and William Uy at the instance of the Ombudsman. The filing of the criminal charges was precipitated by several complaints received from various fora against petitioner for alleged violation of the Revised Penal Code, the Local Government Code, Republic Act No. 3019, and certain other laws and circulars.

A "Motion for Reinvestigation" filed by petitioner was, on 07 August 1991, denied by respondent Sandiganbayan. A subsequent Motion for Reconsideration and Motion for Deferment of Arraignment suffered the same fate. On 26 August 1991, petitioner ultimately moved to quash the twenty-five (25) informations filed against him.

On 06 February 1992, the Sandiganbayan issued its first questioned Resolution to this effect:

"In resume, We reiterate our finding that the facts charged in the instant informations do charge specific offenses and crimes and that accused-movants' presentation of matters of defense are not proper at this stage of the proceedings but have their proper place during the trial on the merits (*People vs. Abad*, supra). Consequently, the instant motions to quash are hereby denied for lack of merits." [1]

On 07 February 1992, respondent Sandiganbayan issued the second questioned Resolution, ordering the suspension pendente lite of petitioner, then the Provincial Governor of Tarlac, for a period of 90 days to take effect upon receipt of the Resolution.

The instant Petition for Certiorari was filed, on 15 February 1992, seeking the annulment of the foregoing Resolutions on the ground of grave abuse of discretion, amounting to lack of jurisdiction, on the part of respondent Sandiganbayan. On 30 March 1992, petitioner filed a Supplemental Petition asking this Court, in addition, to issue a preliminary mandatory injunction to lift the order of preventive suspension.

The Office of the Solicitor General (OSG) filed its "Comment to the Petition," on 06 October 1992, in behalf of Sandiganbayan.

This Court, in its Resolution of 22 October 1992, dismissed nineteen (19) of the twenty-five (25) criminal informations filed against petitioner. The resolution, in part, stated:

"x x x, the OSG recommended that Criminal Cases Nos. 16782, 16785, 16789, 16792, 16798 and 16806 be quashed. The informations on these cases charge petitioner with violations of Section 3(g) of R.A. No. 3019, which makes criminal the following act of a public officer:

“(g) Entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.’

“In denying the Motion to quash said criminal cases, the respondent argued that the matters therein contained should be raised during the trial as a matter of defense. However, the lack of criminal culpability of the petitioner is apparent from the informations as supported by the documentary evidence on record. Thus, we find no basis for prosecution under Section 3(g) of R.A. No. 3019.

“The informations in Criminal Cases Nos. 16783, 16784, 16788, 16790, 16791, 16793, 16797 and 16799 charge the petitioner with violation of Section 3(e) of R.A. 3019, as follows:

“‘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.’

“What the law penalizes is giving unwarranted benefits to any private party. We find that petitioner loaned the amounts to Lingkod Tarlac Foundation, Inc. (LTFI, in brief) interest free. LTFI re-loaned it to the Rural Banks of Gerona and Tarlac at 6% interest, and the rural banks further loaned them at 12% interest. The rate of interest charged by the rural banks cannot be described as unwarranted benefits to a third party because, by assuming the risk of collecting from borrowers, the banks are entitled to a reasonable return to meet administrative expenses.

“Criminal Cases Nos. 16800, 16801, 16804 and 16805 also charge petitioner of violation of Section 3(e) of R.A. 3019 for allegedly giving unwarranted benefits to IMCOR, a corporation to which petitioner's son is a stockholder. These informations further charge petitioner of having an interest, directly or indirectly, in IMCOR, in violation of Section 3(h) of R.A. 3019. However, these charges failed to allege that damage was suffered by the government or any private person, an element necessary to sustain a charge under Section 3(e) of R.A. 3019.

“Criminal Case No. 16803, involved amounts loaned after petitioner ceased to be President-Chairman of LTFI and actually involved transactions already covered in other cases. A single transaction or act cannot be the subject of two criminal complaints as it violates the rule on splitting of actions and the principle of double jeopardy.

“xxx xxx xxx.

“For reasons indicated, We find the Resolution of respondent dated February 6, 1992 as having been issued in grave abuse of discretion insofar as respondent denied the Motion to Quash Criminal Cases Nos. 16782, 16785, 16789, 16792, 16798, 16806, 16783, 16784, 16788, 16790, 16791, 16793, 16797, 16799, 16800, 16801, 16803, 16804, and 16805. Accordingly, We grant the Motion to Quash the cases enumerated above. As to the other criminal cases, We find no cogent reason to order the quashal of the same.”[2]

In the same resolution, this Court lifted and set aside the order of preventive suspension imposed on petitioner for having become moot and academic with the expiration of petitioner's governorship.

With respect to the remaining six (6) criminal cases (Criminal Cases No. 16786, 16787, 16794, 16795, 16796 and 16802), this Court, finding no cogent reason to order their immediate quashal, ordered petitioner to instead file a reply to the comment. On 13 January 1994, the petition was given due course, and the parties were required to submit their respective memoranda.

Petitioner insists that the remaining six (6) cases against him should likewise be outrightly dismissed. He ascribes

grave abuse of discretion on the part of respondent Sandiganbayan in ruling that "petitioner's presentation of matters of defense in support of the motion to quash are properly invocable (sic) only during trial on the merits." Petitioner avers that certain circumstances shown by documentary evidence on record have been overlooked by respondent court and which, if aptly considered, would also warrant the quashal of the remaining six (6) malversation cases. These circumstances, he points out, are that -

"(a) Petitioner had resigned his positions as President and Chairman of the Board of Trustees of LTFI on June 22, 1988;

"(b) As alleged in the Informations, the alleged violations took place more than two months after petitioner had divested himself of any position in the LTFI;

"(c) The subject NALGU funds were transferred by the Province of Tarlac to LTFI pursuant to valid loan agreements;

"(d) LTFI became the owner of the funds borrowed from the province of Tarlac in accordance with the law on mutuum (Art. 1953, Civil Code of the Phils.); and

"(e) The NALGU funds having become private funds after they had been loaned to LTFI, a private entity, the said funds are outside the ambit of Article 217 of the Revised Penal Code." [3]

Petitioner's submission lacks merit.

The findings and the recommendation of the Office of the Special Prosecutor (OSP)/Ombudsman regarding these malversation cases were initially based on "COA-SAO" reports and the results of investigation conducted by the Senate Blue Ribbon Committee, quoted by the Office of the Special Prosecutor, in its Resolution No. OSP-88-02864 and OMB-0-90-1354, thusly:

"According to COA-SAO Report No. 89-100 dated June 4, 1990, on the audit of the Province of Tarlac for the years 1987, 1988 and on the first eight (8) months of 1989, and the result of the Special Audit of Lingkod Tarlac Foundation, Inc., COA-SAO Report No. 90-21 dated September 1, 1990 x x x x revealed the following anomalous transactions, namely:

"a. The amount of P1,180,463.48 representing the discrepancy between the amount paid to William Uy and the actual remittances to PNB for the importation of JUKI embroidery machines. The amount when audited was found in the joint account of Andres S. Flores and William Uy, see Savings Account No. 26127, Rural Bank of Tarlac. That this amount was released and transferred to the account of Mr. Andres S. Flores and William Uy. This could not have been possibly done without the knowledge and consent of respondent Mariano Un Ocampo III considering the big amount involved;

"b. The amount of P33,999.00 allegedly paid to Golden Phoenix Brokerage to facilitate the release of embroidery machines, not supported by any document/receipt, also, not recorded in LTFI book of accounts;

"c. Balance of interest earned of time deposits placed in the Rural Bank of Tarlac from October 26, 1988 to January 4, 1989 in the amount of P66,932.70 also found unrecorded in the LTFI book of accounts;

"d. Unauthorized withdrawal by Andres S. Flores of P58,000.00 in the remaining balance in LTFI Account No. 490-555744 dated April 28, 1989 from PNB, again found unrecorded in the LTFI book of accounts;

"e. Payment made by the People's Livelihood Foundation Inc. (PLFI), to AVT Construction for LTFI in the sum of P1,205,604.70 was not also recorded in LTFI book of accounts; and

"f. A Nursery project was granted a loan of P100,000.00 for the Unlad Paz Foundation, Inc., however, when checked by COA examiners and the supposed designated place could not be found. Only few persons benefited thereby." ¹

The corresponding informations on the six (6) remaining charges filed with the Sandiganbayan are hereunder reproduced:

Criminal Case No. 16786

"That on or about February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then Governor of Tarlac and at the same time President-Chairman of the Board of Trustees, Lingkod Tarlac Foundation Inc. (LTFI), a private entity, having received by reason of his official position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00) Philippine Currency, from the National Aid for Local Government Unit (NALGU) funds which by reason of his official duties is accountable therefor together with interest derived from deposits of the same as well as repayments of loans extended out of said funds, did then and there with intent to gain and to defraud the government wilfully, unlawfully, feloniously and in connivance with his co-accused Andres S. Flores; then Executive Officer of LTFI, misappropriate, misapply and convert to their own personal use and benefit the sum of ONE MILLION TWO HUNDRED FIVE THOUSAND SIX HUNDRED FOUR PESOS AND SEVENTY CENTAVOS (P1,205,604.70), Philippine Currency, representing payments made to them by the People's Livelihood Foundation, Inc., of loans extended to the latter out of NALGU Funds, thereby, resulting to the damage and prejudice of the government in the aforesaid sum of P1,205,604.70, Philippine Currency.

"CONTRARY TO LAW."¹

Criminal Case No. 16787

"That on or about February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then Governor of Tarlac and at the same time President-Chairman of the Board of Trustees, Lingkod Tarlac Foundation Inc. (LTFI), a private entity, having received by reason of his official position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00) Philippine Currency, from the National Aid for Local Government Unit (NALGU) funds which by reason of his official duties is accountable therefor together with interest derived from deposits of the same as well as repayments of loans extended out of said funds, did then and there with intent to gain and to defraud the government wilfully, unlawfully, feloniously and in connivance with his co-accused Andres S. Flores, then Executive Officer of LTFI, misappropriate, misapply and convert, to their own personal use and benefit the sum of SIXTY SIX THOUSAND NINE HUNDRED THIRTY TWO PESOS AND SEVENTY CENTAVOS (P66,932.70), Philippine Currency, representing NALGU funds interest in Time Deposit of said funds with the Rural Bank of Tarlac between the period from October 26, 1988 to January 4, 1989, thereby resulting to the damage and prejudice of the government in the aforesaid sum of P66,932.70, Philippine Currency.

"CONTRARY TO LAW."¹

Criminal Case No. 16794

"That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the Province of Tarlac, and at the same time President/Chairman of the Board of Trustees of the Lingkod Tarlac Foundation Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00), Philippine Currency, from the National Aid for Local Government Unit (NALGU) funds, which he is accountable by reason of his official duties, did, then and there with intent to defraud the government aforethought release out of the aforesaid funds thru the said LTFI, the amount of EIGHT MILLION EIGHT HUNDRED SIXTY THOUSAND PESOS (P8,860,000.00), Philippine Currency, for the payment of the importation of Juki Embroidery Machines which actually cost SEVEN MILLION SIX

HUNDRED SEVENTY NINE THOUSAND FIVE HUNDRED THIRTY PESOS AND FIFTY TWO CENTAVOS (P7,679,530.52), Philippine Currency, thereby leaving a balance of P1,180,463.48 which ought to have been returned, but far from returning the said amount, accused Mariano Un Ocampo III, in connivance with his co-accused Andres S. Flores and William Uy wilfully, unlawfully and feloniously misapply, misappropriate and convert for their own personal use and benefit the said amount resulting to the damage and prejudice of the government in the aforesaid sum of One Million One Hundred Eighty Thousand Four Hundred Sixty Three Pesos and Forty Eight Centavos (P1,180,463.48).

"CONTRARY TO LAW."1

Criminal Case No. 16795

"That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the Province of Tarlac, and at the same time President/Chairman of the Board of Trustees of the Lingkod Tarlac Foundation Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00), Philippine Currency, from the National Aid For Local Government Unit (NALGU) Funds, which he is accountable by reason of his official duties, caused the withdrawal by co-accused Andres S. Flores on April 28, 1989, then Executive Officer, LTFI, from the PHILIPPINE NATIONAL BANK LTFI account the sum of FIFTY EIGHT THOUSAND PESOS (P58,000.00), portion of the said NALGU funds deposited by LTFI under Account No. 400?555244, both accused conniving and confederating with one another, with intent to gain and to defraud the government, did then and there, wilfully, unlawfully and feloniously misappropriate, misapply and convert the same to their own personal use and benefit to the damage and prejudice of the government in the aforesaid sum of P58,000.00, Philippine Currency.

"CONTRARY TO LAW."1

Criminal Case No. 16796

"That on or about the periods between November 2, 1988 to February 27, 1989, or sometime subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then the Governor of the Province of Tarlac, and at the same time President/Chairman of the Board of Trustees of the Lingkod Tarlac Foundation Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00), Philippine Currency, from the National Aid for Local Government Unit (NALGU) Funds, which he is accountable by reason of his official duties, conniving and confederating with his co-accused Andres S. Flores, caused the release out of the said funds the amount of Thirty Three Thousand Nine Hundred Ninety Nine Pesos (P33,999.00), Philippine Currency, to Golden Phoenix Brokerage, for the purpose of facilitating the release of the importation of Juki Embroidery Machines, which amount was not actually paid to Golden Phoenix Brokerage, but instead, accused, with intent to gain and to defraud the Government, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert the same to their own use and benefits to the damage and prejudice of the government in the aforementioned amount.

"CONTRARY TO LAW."2

Criminal Case No. 16802

"That on or about September 1, 1988 or immediately subsequent thereto, in the Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused Mariano Un Ocampo III, then Governor of the Province of Tarlac and at the same time President/Chairman of the Board of Trustees of the Lingkod Tarlac Foundation Inc. (LTFI), a private entity, having received by reason of his position, public funds amounting to more than Fifty Two Million Pesos (P52,000,000.00), Philippine Currency, from the National Aid for Local

Government Unit (NALGU) funds, which he is accountable by reason of official duties, accused Ocampo III, conniving with co-accused Andres S. Flores did then and there wilfully, unlawfully and feloniously grant a loan out of the aforesaid NALGU funds the sum of ONE HUNDRED THOUSAND PESOS (P100,000.00), Philippine Currency, for a non-existent Nursery Project of Unlad Paz Foundation Inc., and once the said amount was released, both accused misapplied, misappropriated and converted the same to their own personal use and benefit resulting to the damage and prejudice of the government in the aforementioned amount.

"CONTRARY TO LAW."¹

The pertinent provisions of Article 217 of the Revised Penal Code, the law with which violation petitioner is charged, provide:

"ART. 217. Malversation of public funds or property. - Presumption of malversation. - Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

"xxx xxx xxx.

"The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses:"

In gist, the informations filed with the Sandiganbayan identifies the questioned funds to be public funds and charges that these funds have been received and misapplied or misappropriated by petitioner, then incumbent Governor of Tarlac, in connivance with an officer of LTFI, his co-accused in the court below. The statements adequately express, in essence, the elements of the crime of malversation under the aforequoted Article 217 of the Revised Penal Code.

Petitioner's insistence that the sums involved in the criminal charges are private, not public funds, and that he did not take undue advantage of his office, contradict the averments of the informations, as well as the findings and the recommendation of the Office of the Special Prosecutor, hereinbefore adverted to. For purposes of petitioner's motion to quash, the allegations contained in the informations must be deemed hypothetically admitted (*Milo vs. Salanga*, 152 SCRA 113; *People vs. Alagao*, 16 SCRA 879; *People vs. Lim Hoa*, 103 Phil 1169).

While it would indeed appear that petitioner had ceased to be the Chairman/President of LTFI at the time the funds were alleged to have been misapplied or misappropriated, the informations also averred, nevertheless, that said acts complained of had been perpetrated in connivance with LTFI, particularly with his co-accused below, when petitioner was still the incumbent Governor of Tarlac in which capacity he was also the accountable officer for the funds' proper disposition.

In the case of the nineteen (19) informations which we ordered to be dismissed in our resolution of 22 October 1992, the offenses charged were for violation of Section 3 of Republic Act No. 3019, the essential elements of which, predicated on the admitted records, were indisputably wanting. To stress, we there observed, that the lack of criminal culpability of the petitioner was "apparent from the informations as supported by the documentary evidence on record."

We cannot, however, with like definitive basis conclude similarly as regards the six (6) informations for malversation under Article 217 of the Revised Penal Code hereinbefore quoted. Unfortunately, not all the so-called uncontroverted facts Alleged by him are conceded by the prosecution; on the contrary, the latter continues to uphold, except on petitioner's incumbency in LTFI, the material contents of the questioned

informations. Petitioners' defenses, not thus being indubitable, must first be threshed out during trial and passed upon by the Sandiganbayan. It would be precipitate for this Court to even now look into, and to peremptorily decide on, said matters pending that initial determination.

This Court, accordingly, must yet yield to the Sandiganbayan on the remaining six (6) informations still in question.

WHEREFORE, the Court CONFIRMS its resolution of 22 October 1992 ordering, among other things, the quashal of the informations in Criminal Cases No. 16782, 16783, 16784, 16785, 16788, 16789, 16790, 16791, 16792, 16793, 16797, 16798, 16799, 16800, 16801, 16803, 16804, 16805, and 16806, but AFFIRMS the Sandiganbayan in denying the quashal of Criminal Cases No. 16786, 16787, 16794, 16795, 16796 and 16802.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, and Mendoza, JJ., concur.

Cruz, J., on leave.

Kapunan, J., no part.

[1] Rollo, p. 62.

[2] Rollo, pp. 291-293.

[3] Rollo, pp. 406-407.

1 Rollo, p. 78.

1 Rollo, p. 91.

1 Rollo, p. 93.

1 Rollo, pp. 197-198.

1 Rollo, p. 109.

2 Rollo, p. 111.

1 Rollo, p. 123.

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