

POTENCIANA M. EVANGELISTA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND THE HONORABLE SANDIGANBAYAN, (FIRST DIVISION), RESPONDENTS.*G.R. Nos. 108135-36. August 14, 2000*

Ponente: YNARES-SANTIAGO, J.

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On September 30, 1999, we rendered a Decision in this case acquitting petitioner of the charge of violation of then Section 268 (4) of the National Internal Revenue Code^[1] but affirming her conviction for violation of Republic Act No. 3019, Section 3 (e),^[2] thus imposing on her an indeterminate sentence of imprisonment for six (6) years and one month as minimum to twelve (12) years as maximum, and the penalty of perpetual disqualification from public office.

The basic facts are briefly restated as follows:

On September 17, 1987, Tanduay Distillery, Inc. filed with the Bureau of Internal Revenue an application for tax credit in the amount of P180,701,682.00, for allegedly erroneous payments of ad valorem taxes from January 1, 1986 to August 31, 1987. Tanduay claimed that it is a rectifier of alcohol and other spirits, which per previous ruling of the BIR is only liable to pay specific taxes and not ad valorem taxes. Upon receipt of the application, Aquilino Larin of the Specific Tax Office sent a memorandum to the Revenue Accounting Division (RAD), headed by petitioner, requesting the said office to check and verify whether the amounts claimed by Tanduay were actually paid to the BIR as ad valorem taxes. Larin's memorandum was received by the Revenue Administrative Section (RAS), a subordinate office of the RAD. After making the necessary verification, the RAS prepared a certification in the form of a 1st Indorsement to the Specific Tax Office, dated September 25, 1987, which was signed by petitioner as RAD chief.

The 1st Indorsement states that Tanduay made tax payments classified under Tax Numeric Code (TNC) 3011-0001 totalling P102,519,100.00 and payments classified under TNC 0000-0000 totalling P78,182,582.00. Meanwhile, Teodoro Pareño, head of the Tax and Alcohol Division, certified to Justino Galban, Jr., Head of the Compounders, Rectifiers and Repackers Section, that Tanduay was a rectifier not liable for ad valorem tax. Pareño recommended to Larin that the application for tax credit be given due course. Hence, Larin recommended that Tanduay's claim be approved, on the basis of which Deputy Commissioner Eufracio D. Santos signed Tax Credit Memo No. 5177 in the amount of P180,701,682.00.

Sometime thereafter, a certain Ruperto Lim wrote a letter-complaint to then BIR Commissioner Bienvenido Tan, Jr. alleging that the grant of Tax Credit Memo No. 5177 was irregular and anomalous. Based on this, Larin, Pareño, Galban and petitioner Evangelista were charged before the Sandiganbayan with violation of Section 268 (4) of the National Internal Revenue Code and of Section 3 (e) of R.A. 3019, the Anti-Graft and Corrupt Practices Act. Larin, Pareño and petitioner were later convicted of both crimes, while Galban was acquitted inasmuch as his only participation in the processing of Tanduay's application was the preparation of the memorandum confirming

that Tanduary was a rectifier.

The three accused filed separate petitions for review. Pareño's and Larin's petitions were consolidated and, in a decision dated April 17, 1996, both were acquitted by this Court in Criminal Cases Nos. 14208 and 14209.[3] In this petition, on the other hand, we acquitted petitioner in Criminal Case No. 14208, for violation of Section 268 (4) of the NIRC. However, we found petitioner guilty of gross negligence in issuing a certification containing TNCs which she did not know the meaning of and which, in turn, became the basis of the Bureau's grant of Tanduary's application for tax credit. Thus, we affirmed petitioner's conviction in Criminal Case No. 14209, i.e., for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act.

Petitioner seasonably filed a Motion for Reconsideration,[4] wherein she asserts that there was nothing false in her certification inasmuch as she did not endorse therein approval of the application for tax credit. Rather, her certification showed the contrary, namely, that Tanduary was not entitled to the tax credit since there was no proof that it paid ad valorem taxes. Petitioner also claims that she was neither afforded due process nor informed of the nature and cause of the accusation against her. She was found guilty of an offense different from that alleged in the information; consequently, she was unable to properly defend herself from the crime for which she was convicted.

The Information against petitioner and her co-accused in Criminal Case No. 14209 alleges in fine that they caused undue injury to the Government and gave unwarranted benefits to Tanduary when they endorsed approval of the claim for tax credit by preparing, signing and submitting false memoranda, certification and/or official communications stating that Tanduary paid ad valorem taxes when it was not liable for such because its products are distilled spirits on which specific taxes are paid, by reason of which false memoranda, certification and/or official communications the BIR approved the application for tax credit, thus defrauding the Government of the sum of P107,087,394.80, representing the difference between the amount claimed as tax credit and the amount of ad valorem taxes paid by Tanduary to the BIR.[5] According to petitioner, instead of convicting her of the acts described in the Information, she was convicted of issuing the certification without identifying the kinds of tax for which the TNCs stand and without indicating whether Tanduary was really entitled to tax credit or not.

The Solicitor General filed his Comment[6] wherein he joined petitioner's cause and prayed that the motion for reconsideration be granted. In hindsight, even the Solicitor General's comment on the petition consisted of a "Manifestation and Motion in lieu of Comment,"[7] where he recommended that petitioner be acquitted of the two charges against her.

We find that the Motion for Reconsideration is well-taken.

After a careful re-examination of the records of this case, it would appear that the certification made by petitioner in her 1st Indorsement was not favorable to Tanduary's application for tax credit. Far from it, petitioner's certification meant that there were no payments of ad valorem taxes by Tanduary in the records and hence, it was not entitled to tax credit. In other words, the certification was against the grant of Tanduary's application for tax credit.

It has been established that the BIR adopted tax numeric codes (TNCs) to classify taxes according to their kinds and rates, in order to facilitate the preparation of statistical and other management reports, the improvement of revenue accounting and the production of tax data essential to management planning and decision-making. These codes include TNC No. 3011-0001 for specific tax on domestic distilled spirits, TNC No. 3023-2001 for ad valorem tax on compounded liquors, and TNC No. 0000-0000 for unclassified taxes.

Petitioner's 1st Indorsement dated September 25, 1987 lists down the confirmation receipts covering tax

payments by Tanduary for the period January 1, 1986 to August 31, 1987, during which Tanduary alleges that it made erroneous ad valorem tax payments, classified according to TNC numbers. The tax payments therein are described only as falling under TNC No. 3011-0001, i.e., specific tax, and TNC No. 0000-0000, i.e., unclassified taxes. There are no tax payments classified as falling under TNC No. 3023-2001, the code for ad valorem taxes. The import of this, simply, is that Tanduary did not make any ad valorem tax payments during the said period and is, therefore, not entitled to any tax credit.

Further, petitioner contends that she was convicted of a supposed crime not punishable by law.[8] She was charged with violation of Section 3 (e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act, which states:

SEC. 3. Corrupt practices of public officers. --- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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(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, judicial or administrative 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.

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The elements of the offense are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[9]

R.A. 3019, Section 3, paragraph (e), as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the Government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3, paragraph (e), or as aptly held in Santiago,[10] as two (2) different modes of committing the offense. This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.[11]

In the instant case, we find that petitioner, in issuing the certification, did not cause any undue injury to the Government. She also did not give unwarranted benefits, advantage or preference to Tanduary. Neither did petitioner display manifest partiality to Tanduary nor act with evident bad faith or gross inexcusable negligence. Quite the contrary, petitioner's certification was against the interest of Tanduary. It did not advocate the grant of its application for tax credit. The certification can even be read as a recommendation of denial of the application.

Petitioner further argues that her conviction was merely based on her alleged failure to identify with certainty in her certification the kinds of taxes paid by Tanduary and to indicate what the TNCs stand for, which acts were different from those described in the Information under which she was charged. This, she claims, violated her constitutional right to due process and to be informed of the nature and cause of the accusation against her.

It is well-settled that an accused cannot be convicted of an offense unless it is clearly charged in the complaint or

information. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. To convict him of an offense other than that charged in the complaint or information would be a violation of this constitutional right.[12] In the case at bar, we find merit in petitioner's contention that the acts for which she was convicted are different from those alleged in the Information. More importantly, as we have discussed above, petitioner's act of issuing the certification did not constitute corrupt practices as defined in Section 3 (e) of R.A. 3019.

Employees of the BIR were expected to know what the TNCs stand for. If they do not, there is a "Handbook of Tax Numeric Code of Revenue Sources" which they can consult. With this, petitioner should not be required to describe in words the kinds of tax for which each TNC used stands for. Precisely, the purpose of introducing the use of tax numeric codes in the Bureau was to do away with these descriptive words, in order to expedite and facilitate communications among the different divisions therein. We find that petitioner's omission to indicate what kind of taxes TNC Nos. 3011-0001 and 0000-0000 stand for was not a criminal act. Applicable here is the familiar maxim in criminal law: *Nullum crimen nulla poena sine lege*. There is no crime where there is no law punishing it.

On the whole, therefore, we find that petitioner was not guilty of any criminal offense. The prosecution's evidence failed to establish that petitioner committed the acts described in the Information which constitute corrupt practices. Her conviction must, therefore, be set aside. For conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged. Short of these constitutional mandate and statutory safeguard --- that a person is presumed innocent until the contrary is proved --- the Court is then left without discretion and is duty bound to render a judgment of acquittal.[13]

WHEREFORE, the Motion for Reconsideration is GRANTED. This Court's Decision dated September 30, 1999 is RECONSIDERED and SET ASIDE. Petitioner is ACQUITTED of the charge against her.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Criminal Case No. 14208, Sandiganbayan, First Division.

[2] Criminal Case No. 14209, Sandiganbayan, First Division.

[3] Pareño v. Sandiganbayan, G.R. Nos. 107119-20, *Larin v. Sandiganbayan*, G.R. Nos. 108037-38, April 17, 1996, 256 SCRA 242.

[4] Rollo, pp. 500-532.

[5] Rollo, pp. 67-68.

[6] Rollo, pp. 599-609.

[7] Rollo, pp. 267-320.

[8] Rollo, p. 513.

[9] *Ingco v. Sandiganbayan*, 272 SCRA 563, 574 (1997); citing *Medija, Jr. v. Sandiganbayan*, 218 SCRA 219 (1993); *Ponce de Leon v. Sandiganbayan*, 186 SCRA 745 (1990)

[10] *Santiago v. Garchitorena*, 228 SCRA 214 (1993)

[11] *Bautista v. Sandiganbayan*, G.R. No. 136082, May 12, 2000.

[12] *People v. Ortega*, 276 SCRA 166, 186 (1997); citing *People v. Guevarra*, 179 SCRA 740, 751, December 4, 1989, *Matilde, Jr. v. Jabson*, 68 SCRA 456, 461, December 29, 1975 and *U.S. v. Ocampo*, 23 Phil. 396 (1912)

[13] *People v. Legaspi*, G.R. No. 117802, April 27, 2000.

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