

JUANITO T. MERENCILLO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NOS. 142369-70. April 13, 2007

Ponente: CORONA, J.

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CORONA, J.:

This petition for review[1] assails the June 18, 1999 decision[2] of the Sandiganbayan in A.R. Case Nos. 004-005 affirming[3] the omnibus decision[4] of the Regional Trial Court (RTC) of Tagbilaran City, Branch 47, in Criminal Case Nos. 9482-83 finding petitioner Juanito T. Merencillo guilty of violating Section 3(b) of RA 3019[5] and Article 210[6] of the Revised Penal Code.

The information charging petitioner for violation of Section 3(b) of RA 3019 in Criminal Case No. 9482 read:

That, on or about the 28[th] day of September, 1995, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then a public official connected with the Bureau of Internal Revenue as its Group Supervising Examiner, did then and there willfully, unlawfully and feloniously and with intent of personal gain, directly demand and extort from a certain Mrs. Maria Angeles Ramasola Cesar the amount of TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, in connection, in consideration and in exchange for the release of the certification of her payment of the capital gains tax for the land purchased by the Ramasola [Superstudio] Inc. from one Catherine Corpuz Enerio, a transaction wherein the aforesaid accused has to intervene in his official capacity, and to which the said Mrs. Maria Angeles Ramasola Cesar reluctantly agreed but upon prior consultation with the military authorities particularly the elements of the 702nd Criminal Investigation Command [CIC] who set up the accused for a possible entrapment resulting to (sic) his being caught in the act of receiving an envelope supposedly containing the amount of TWENTY THOUSAND PESOS (P20,000.00) but consisting only of four (4) marked one hundred peso bills and the rest all bogus (paper) monies, to the damage and prejudice of the said Mrs. Maria Angeles Ramasola Cesar in particular and the public and the government in general in the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Section 3(b) of [RA] 3019.[7]

On the other hand, the information for direct bribery penalized under Article 210 of the Revised Penal Code in Criminal Case No. 9483 charged:

That, on or about the 28[th] day of September, 1995 in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then a public official connected with the performance of official duty as its Group Supervising Examiner, did then and there willfully, unlawfully and feloniously and with intent of personal gain, demand, extort and agree to perform an act constituting a crime, an act which is in violation of the Anti-Graft and Corrupt Practices Act, that is - that the certification for payment of the capital gains tax relative to the land purchased by the Ramasola Superstudio Incorporated from Catherine Corpus Enerio be released by him only upon payment of an additional under the table transaction in the amount of TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, which Mrs. Maria Angeles Ramasola Cesar reluctantly agreed, but upon prior consultation with the military authorities particularly the

elements of the 702[nd]Criminal [Investigation] Command (CIC) who set up the accused for a possible entrapment resulting to (sic) his being caught in the act of receiving an envelope supposedly containing the amount of TWENTY THOUSAND PESOS (P20,000.00) but, consisting only of four (4) marked one hundred pesos bills and the rest all bogus (paper) monies, an act performed by the accused in his official capacity as Group Supervising Examiner of the BIR, to the damage and prejudice of Mrs. Maria Angeles Ramasola Cesar in particular and the public and the government in general in the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Article 210 of the Revised Penal Code of the Philippines.[8]

Petitioner pleaded not guilty to both charges when arraigned. Thereafter trial ensued and the cases were tried jointly.

THE FACTS ESTABLISHED BY THE PROSECUTION

In the morning of September 13, 1995, Lucit Estillore went to the Bureau of Internal Revenue (BIR) office in Tagbilaran City to ask for the computation of taxes due on the sale of real property to Ramasola Superstudio, Inc. and to apply for a certificate authorizing registration (CAR).[9] At the BIR office, she was entertained by revenue examiner Lourdes Fuentes who computed the documentary stamp tax (P37,500) and capital gains tax (P125,000) due on the transaction. The computation was approved by petitioner in his capacity as group supervisor. Estillore paid the taxes in the bank and returned to apply for a CAR. She submitted the application together with relevant documents to Fuentes for processing. Fuentes prepared the revenue audit reports and submitted them together with the application for the CAR to petitioner for preliminary approval. [The application was to be forwarded thereafter to the Revenue District Officer (RDO) for final approval.] Fuentes advised Estillore that the CAR would be released after seven days.

At around 10:00 a.m. of the same day, private complainant Maria Angeles Ramasola Cesar[10] (Cesar) received a call from Estillore. She was told that petitioner wanted to see her "for some negotiation." She proceeded to petitioner's office where the latter demanded P20,000 in exchange for the approval of the CAR. Cesar replied that she needed to confer with her two brothers who were her business associates.

The following day, on September 14, 1995, Cesar received a call from petitioner who was following up his demand. Later that day, Cesar received another call from petitioner who told her that she could get the CAR after four or five days.

Cesar was able to return to the BIR only on September 20, 1995. When petitioner saw her, he repeated his demand for P20,000 although the CAR had in fact been signed by RDO Galahad Balagon the day before, on September 19, 1995, and was therefore ready for release. On Cesar's inquiry, the releasing clerk, Susan Cabangon, informed Cesar that she (Cabangon) was still waiting for petitioner's go signal to release the document.

On September 22, 1995, Cesar visited RDO Balagon and complained about petitioner's refusal to release the CAR unless his demand was met. RDO Balagon assured Cesar that he would look into her complaint. Subsequently, Cesar received a call from petitioner informing her that she could get the CAR but reminded her of his demand. He told her that he was willing to accept a lesser amount. It was at this point that Cesar decided to report the matter to the authorities. She sought the help of the Provincial Director of the Philippine National Police (PNP) in Bohol, Senior Superintendent Dionaid Baraguer.

The following day, Sr. Supt. Baraguer referred Cesar's complaint to the chief of police of Tagbilaran City who coordinated with Cesar for the entrapment of petitioner. Cesar was instructed to prepare two bundles of bogus money by putting a one-hundred peso bill on each side of each of the two bundles to make it appear that the two

bundles amounted to P10,000 each or a total of P20,000. After the serial numbers of the four one-hundred peso bills were recorded, the entrapment was set for September 28, 1995.

On the appointed day, Cesar called petitioner and pleaded for the release of the CAR as well as for the reduction of petitioner's demand. Petitioner cautiously told Cesar not to talk about the matter on the phone and asked her to see him instead. Cesar went to petitioner's office with the two bundles of bogus money inside a white envelope.

Petitioner was entertaining a lady visitor when Cesar arrived. The members of the PNP entrapment team were already in petitioner's office posing as civilians. On seeing Cesar, petitioner handed the CAR to her and, as she was signing the acknowledgment for the release of the CAR, he informed her that he was going down to the second floor. Cesar took this as a cue for her to follow.

As petitioner left his office, he held the door open for Cesar to follow. On reaching the third floor lobby, petitioner uttered "Here only." Cesar handed the envelope containing the two bundles of marked money to petitioner who, upon receiving it, asked "Why is this thick?" Before Cesar could answer, a member of the PNP entrapment team photographed petitioner holding the envelope. Petitioner panicked, hid the envelope behind his back and turned towards the window at the back of the BIR building. On seeing that the window was closed, he turned around towards the open window facing the street. He threw the envelope towards the window but it hit the ceiling instead, bounced and fell to the first floor of the BIR building.[11] The PNP entrapment team then introduced themselves to petitioner and invited him to go with them to their headquarters.

Charges were filed against petitioner. During the trial, petitioner's evidence consisted of nothing more than a general denial of the charges against him. He claimed that he never asked for money and that the allegations of demand for money existed only in Cesar's mind after she was told that there was a misclassification of the asset and additional taxes had to be paid. He was surprised when policemen suddenly arrested him as soon as Cesar handed him a white envelope the contents of which he suspected to be money.

After trial, the RTC found petitioner guilty as charged. The dispositive portion of the decision read:

WHEREFORE, premises considered, the Court finds the accused Juanito T. Merencillo, guilty beyond reasonable doubt as principal by direct participation, defined and penalized by Section 3(b) of [RA] 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and sentences him to suffer the indeterminate penalty of imprisonment for eight (8) years and one (1) month as minimum to fifteen (15) years as maximum, there being aggravating circumstances considered under Section 3(e) and Section (f) of [RA] 3019 in relation to Article 14(1) and (11) of the [RPC] in the sense that the offender have taken advantage of his public position, and that the crime was committed in consideration of a price or promise, without any mitigating or extenuating circumstances to neutralize or offset any of the aggravating circumstances, with perpetual disqualification from public office, and the Court further finds the accused guilty beyond reasonable doubt as principal by direct participation, for the crime of Direct Bribery defined and penalized by Article 210 of the Revised Penal Code and sentences him to suffer the indeterminate penalty of four (4) years and one (1) day as minimum to eight (8) years of prision mayor as maximum and a fine of Sixty Thousand (P60,000.00) Pesos, all as mandated by law. The accused Juanito T. Merencillo likewise is ordered to indemnify private complainant [Cesar] to pay moral damages in the amount of P50,000.00 and attorney's fees in the amount of Five Thousand (P5,000.00) Pesos. Costs shall also be taxed against the accused.

CONTRARY TO LAW.[12]

Petitioner appealed the RTC decision to the Sandiganbayan. The Sandiganbayan, however, denied the appeal and affirmed the RTC decision with modification reducing the penalty of imprisonment for violation of Section 3(b) of RA 3019 to an indeterminate sentence of six years and one month of prision mayor, as minimum, to ten years of prision mayor, as maximum.[13] Thus, this petition.

Petitioner basically raises two points: (1) the Sandiganbayan's refusal to believe his evidence over that of the prosecution's and (2) the Sandiganbayan's failure to recognize that he was placed in double jeopardy.

Petitioner faults the Sandiganbayan for affirming the RTC decision and disregarding his evidence. He claims that, had the RTC and the Sandiganbayan not ignored the inconsistencies in the testimonies of the prosecution's witnesses,[14] he would have been acquitted. He also asserts that he was placed twice in jeopardy when he was prosecuted for violation of Section 3(b) of RA 3019 and for direct bribery.

Petitioner is wrong.

TRIAL COURT'S EVALUATION OF EVIDENCE WILL NOT BE DISTURBED

Both the RTC and the Sandiganbayan found the testimonies of the prosecution's witnesses (that petitioner demanded and received money from private complainant Cesar for the release of the CAR) sufficient and credible enough to sustain conviction.

This notwithstanding, petitioner now asks this Court to review the entire evidence anew, re-evaluate the credibility of witnesses and make another factual determination of the case — a course of action clearly improper given the nature of the instant petition.[15] Questions of fact cannot generally be raised for the consideration of this Court.

The calibration of evidence and the relative weight thereof belongs to the appellate court.[16] Its findings and conclusions cannot be set aside by this Court unless there is no evidence on record to support them.[17] In this case, however, the findings of fact of the Sandiganbayan, affirming the factual findings of the RTC, were amply supported by evidence and the conclusions therein were not against the law and jurisprudence. There is no reason to disturb the congruent findings of the trial and appellate courts.

Moreover, findings and conclusions of the trial court on the credibility of witnesses enjoy the respect of appellate courts because trial courts have the distinct advantage of observing the demeanor of witnesses as they testify.[18] In the absence of any arbitrariness in the trial court's findings and evaluation of evidence tending to show that it overlooked certain material facts and circumstances, its findings and evaluation of evidence should be respected on review.[19] The presiding judge of the trial court had the opportunity to actually observe the conduct and demeanor of the witnesses on the witness stand on direct examination by the prosecution, cross-examination by the defense as well as during clarificatory questioning by the trial judge himself.[20] Between the trial judge and this Court, the former was concededly in a better position to determine whether or not a witness was telling the truth.[21] Based on the records, we find no reason to disagree with the trial court's assessment and to discredit the prosecution's witnesses.

Contrary to petitioner's contention, the RTC and the Sandiganbayan considered the alleged inconsistencies in the testimonies of the prosecution witnesses. Both courts, however, ruled that the inconsistencies referred only to minor details that did not detract from the truth of the prosecution's testimonial evidence. We agree.

Witnesses testifying on the same event do not have to be consistent in each and every detail. Differences in the recollection of the event are inevitable and inconsequential variances are commonly regarded as signs of truth instead of falsehood. Inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony.[22] In fact, such minor flaws may even enhance the worth of a testimony for they guard against memorized falsities.[23]

Minor discrepancies or inconsistencies do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty.[24] The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole.[25] Thus, inconsistencies and discrepancies in details which are irrelevant to the elements of the crime cannot be successfully invoked as grounds for acquittal.[26]

The RTC and the Sandiganbayan correctly ruled that the inconsistencies pointed out by petitioner were neither material nor relevant to the elements of the offenses for which he was charged. For instance, whether or not it was petitioner himself who handed the CAR to private respondent was immaterial. The fact was that petitioner demanded and received money in consideration for the issuance of the CAR.

PETITIONER WAS NOT PLACED IN DOUBLE JEOPARDY

Section 3 of RA 3019 begins with the following statement:

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

xxx xxx xxx (emphasis supplied)

One may therefore be charged with violation of RA 3019 in addition to a felony under the Revised Penal Code for the same delictual act, that is, either concurrently or subsequent to being charged with a felony under the Revised Penal Code.[27] There is no double jeopardy if a person is charged simultaneously or successively for violation of Section 3 of RA 3019 and the Revised Penal Code.

The rule against double jeopardy prohibits twice placing a person in jeopardy of punishment for the same offense.[28] The test is whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether one offense necessarily includes or is necessarily included in the other, as provided in Section 7 of Rule 117 of the Rules of Court.[29] An offense charged necessarily includes that which is proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter; and an offense charged is necessarily included in the offense proved when the essential ingredients of the former constitute or form a part of those constituting the latter.[30]

A comparison of the elements of the crime of direct bribery defined and punished under Article 210 of the Revised Penal Code and those of violation of Section 3(b) of RA 3019 shows that there is neither identity nor necessary inclusion between the two offenses.

Section 3(b) of RA 3019 provides:

Sec. 3. 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 unlawful:

xxx xxx xxx

(b) Directly or indirectly requesting or receiving any gift, present, share percentage or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

xxx xxx xxx

The elements of the crime penalized under Section 3(b) of RA 3019 are:

(1) the offender is a public officer;

- (2) he requested or received a gift, present, share, percentage or benefit;
- (3) he made the request or receipt on behalf of the offender or any other person;
- (4) the request or receipt was made in connection with a contract or transaction with the government and
- (5) he has the right to intervene, in an official capacity under the law, in connection with a contract or transaction has the right to intervene.[31]

On the other hand, direct bribery has the following essential elements:

- (1) the offender is a public officer;
- (2) the offender accepts an offer or promise or receives a gift or present by himself or through another;
- (3) such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do and
- (4) the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.[32]

Clearly, the violation of Section 3(b) of RA 3019 is neither identical nor necessarily inclusive of direct bribery. While they have common elements, not all the essential elements of one offense are included among or form part of those enumerated in the other. Whereas the mere request or demand of a gift, present, share, percentage or benefit is enough to constitute a violation of Section 3(b) of RA 3019, acceptance of a promise or offer or receipt of a gift or present is required in direct bribery. Moreover, the ambit of Section 3(b) of RA 3019 is specific. It is limited only to contracts or transactions involving monetary consideration where the public officer has the authority to intervene under the law. Direct bribery, on the other hand, has a wider and more general scope: (a) performance of an act constituting a crime; (b) execution of an unjust act which does not constitute a crime and (c) agreeing to refrain or refraining from doing an act which is his official duty to do.

Although the two charges against petitioner stemmed from the same transaction, the same act gave rise to two separate and distinct offenses. No double jeopardy attached since there was a variance between the elements of the offenses charged.[33] The constitutional protection against double jeopardy proceeds from a second prosecution for the same offense, not for a different one.[34]

WHEREFORE, the petition is hereby DENIED. The June 18, 1999 decision of the Sandiganbayan in A.R. Case Nos. 004-005 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

* The Sandiganbayan (Fifth Division) was impleaded as a respondent. However, under Rule 45, Section 4, of the Rules of Court, the lower court or judges thereof need not be impleaded in petitions for review filed in this Court.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Ma. Cristina Cortez-Estrada (retired) and concurred in by Associate Justices Minita V. Chico-Nazario (now a member of the Supreme Court) and Anacleto D. Badoy, Jr. (retired) of the Fifth

Division of the Sandiganbayan; rollo, pp. 60-83.

[3] With modification as to the penalty of imprisonment imposed for petitioner's violation of Sec. 3(b) of RA 3019.

[4] Dated January 13, 1997 and penned by Judge Raineldo T. Son; Sandiganbayan records (A.R. Case No. 004), pp. 122-151 and (A.R. Case No. 005), pp. 114-142.

[5] Anti-Graft and Corrupt Practices Act.

[6] Defining and punishing the crime of direct bribery.

[7] Sandiganbayan records (A.R. Case No. 004), pp. 4-5.

[8] Sandiganbayan records (A.R. Case No. 005), pp. 4-5.

[9] Estillore was acting as agent of the parties to the sale.

[10] Co-owner of Ramasola Superstudio, Inc.

[11] The envelope was recovered at the first floor of the BIR building and was presented to court during the trial.

[12] Supra note 4.

[13] Supra note 3. The Sandiganbayan ruled that the RTC erred in appreciating the aggravating circumstances of abuse of authority and in consideration of a price, promise or reward because these circumstances are integral elements of the crime.

[14] As pointed out by petitioner, these inconsistencies include the testimony of SPO4 Manuelito Antipala (a member of the entrapment team) that he saw petitioner hand the CAR to Cesar while SPO2 Genaro Boja (another member of the entrapment team) failed to mention the handing over of the CAR to Cesar by petitioner.

[15] See *Siccuan v. People of the Philippines*, G.R. No. 133709, 28 April 2005, 457 SCRA 458.

[16] *Ceremonia v. Court of Appeals*, 373 Phil. 511 (1999).

[17] *Id.*

[18] *People v. Cabiles*, 348 Phil. 220 (1998).

[19] *People v. Dio*, G.R. No. 106493, 8 September 1993, 226 SCRA 176.

[20] *People of the Philippines v. Gado*, 358 Phil. 956 (1998).

[21] *Id.*

[22] *People of the Philippines v. Quimzon*, G.R. No. 133541, 14 April 2004, 427 SCRA 261.

[23] *Id.*

[24] *People of the Philippines v. Sibug*, G.R. No. 108520, 24 January 1994, 229 SCRA 489.

[25] *Id.*

[26] *People of the Philippines v. Crisanto*, 411 Phil. 289 (2001).

[27] *Ramiscal, Jr. v. Sandiganbayan*, G.R. Nos. 169727-28, 18 August 2006.

[28] When one act violates two different statutes or two different provisions of a statute and that act results in two

distinct offenses, prosecution under one (statute or provision) is not a bar to prosecution under the other (statute or provision). (Bernas, S.J. Joaquin G., *The 1987 Philippine Constitution: A Comprehensive Reviewer*, 2006 edition, Rex Bookstore, pp. 189-190) The test is not whether the accused has already been tried for the same act but whether he has been put in jeopardy for the same offense. (*People of the Philippines v. Cabrera*, 43 Phil. 82 [1922])

[29] *Suero v. People of the Philippines*, G.R. No. 156408, 31 January 2005, 450 SCRA 350.

[30] Sec. 5, Rule 120, Rules of Court.

[31] *Chang v. People of the Philippines*, G.R. No. 165111, 21 July 2006, 496 SCRA 321.

[32] *Tad-y v. People of the Philippines*, G.R. No. 148862, 11 August 2005, 466 SCRA 474.

[33] *Suero v. People of the Philippines*, *supra*.

[34] *Id.*

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