

MARIANITO S. VICTORIANO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NOS. 171322-24. November 30, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

These consolidated petitions for review on certiorari assail the Decision[1] dated October 11, 2005 of the Sandiganbayan disposing of Criminal Case Nos. 18868 to 18870 as follows:

WHEREFORE:

x x x x

II. In Criminal Case Nos. 18868, 18869 and 18870, this Court finds accused Marianito Victoriano and Raymond Ilustre, both GUILTY, beyond reasonable doubt, for violation of Sec.3 (e) of R.A. 3019, and are hereby sentenced to suffer the penalty of imprisonment of, after applying the Indeterminate Sentence Law:

(A) In Crim. Case No. 18868, six years and one month as minimum, up to ten years as maximum;

(B) In Crim. Case No. 18869, six years and one month as minimum, up to ten years, as maximum;

(C) In Crim. Case No. 18870, six years and one month as minimum, up to ten years, as maximum;

(D) Perpetual Disqualification from Public Office; and,

(E) Accused Marianito Victoriano and accused Raymond Ilustre are ordered to reimburse, jointly and severally, the amount of P103,592.25 to Esteves Ent.

SO ORDERED.[2]

The Sandiganbayan's January 16, 2006 Resolution[3] denying petitioner's motion for reconsideration is likewise assailed.

On February 24, 1993, three Informations[4] for violation of Section 3(e) of Republic Act (R.A.) No. 3019(1960)[5] were filed against petitioner Marianito Victoriano and Raymond Ilustre before the Sandiganbayan. The informations were similarly worded except for the alleged dates of commission of the crime charged, the check numbers, the corresponding dates thereof, and the amounts misappropriated, to wit:

That on or about (February 20, 1991 in Criminal Case No. 18868, March 12, 1991 in Criminal Case No. 18869 and March 13, 1991 in Criminal Case No. 18870), in Mati, Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Marianito Victoriano, a public officer being then the Manager of the Philippine National Bank, Mati, Davao Oriental Branch, through manifest partiality and evident bad faith in the performance of his official functions and conspiring with accused Raymund Ilustre, a private individual, did then and there, willfully, unlawfully and criminally cause undue injury against Vicente L. Esteves, Jr., and give unwarranted benefits to accused Raymund Ilustre by allowing the latter to encash (PNB Check No. 076836 dated February 19, 1991 in Crim. Case No. 18868, PNB Check No. 065889

dated March 12, 1991 in Crim. Case No. 18869 and PNB Check No. 065888 dated March 12, 1991 in Crim. Case No. 18870) payable to Esteves Enterprises owned by said Vicente L. Esteves, Jr., on the basis of a falsified indorsement of said Vicente L. Esteves, Jr., when accused fully well knew that payee Vicente L. Esteves, Jr., never indorsed said checks or authorized Raymund Ilustre to encash the same, and thereafter, Raymund Ilustre received the proceeds of said checks in the amount of (P31, 810.00 in Crim. Case No. 18868, P12,871.00 in Crim. Case No. 18869 and P58,991.25 in Crim. Case No. 18870), and converted the same to his personal use and benefit to the damage and prejudice of Vicente L. Esteves, Jr., in the aforesaid sum(s).

CONTRARY TO LAW.

On February 26, 1993, three Informations for the complex crime of Estafa thru Falsification of Commercial Documents were also filed against Victoriano and Ilustre before the Sandiganbayan, thus:

That on or about (February 20, 1991 in Crim. Case No. 18867, March 13, 1991 in Crim. Case No. 18871 and March 20, 1991 in Crim. Case No. 18872) in the Municipality of Mati, Province of Davao Oriental, Philippines, and within the jurisdiction of this Honorable Court, above-named private accused Raymund Ilustre, did then and there willfully, unlawfully and feloniously falsify or cause to be falsified the signature of one Vicente L. Esteves, Jr., at the dorsal side of (PNB Check No. 076836 dated February 19, 1991 in the amount of P31,810.00 in Crim. Case No. 18867; PNB Check No. 065888 dated March 12, 1991 in the amount of P58,911.25 in Crim. Case No. 18871 and PNB Check No. 065889 dated March 12, 1991 in the amount of P12,871.00 in Crim. Case No. 18872) payable to Esteves Enterprises owned by said Vicente L. Esteves, Jr., to make it appear that the latter indorsed said checks for encashment when in truth and in fact, he did not and thereafter, by means of said falsified signature and with deliberate intent to defraud, accused Raymund Ilustre, in conspiracy with and through the indispensable cooperation of accused public officer Marianito Victoriano who approved the encashment of said checks in his capacity as the Manager of Philippine National Bank at its branch in Mati, Davao Oriental, did then and there actually collect and receive the proceeds of said checks from said bank in the aforesaid amounts when both accused fully well knew that payee Vicente L. Esteves, Jr., never indorsed said checks nor authorized accused Raymund Ilustre to encash the same and once in the possession of the said amounts of (P31,810.00 in Crim. Case No. 18867, P58,911.25 in Crim. Case No. 18871 and P12,871.00 in Crim. Case No. 18872) accused Ilustre converted the same to his personal use and benefit, to the damage and prejudice of Vicente Esteves, Jr.

CONTRARY TO LAW.

Petitioner pleaded not guilty[6] to the crimes charged.

During trial, the prosecution offered the testimonies of private complainant Vicente L. Esteves, Jr., manager of V.L. Esteves Enterprises, and Quirino Aragon, Jr., a cashier at the Philippine National Bank's (PNB) Mati Branch.

Esteves[7] alleged that sometime in 1991, the company entered into contract with the Sub-District Office of the Department of Public Works and Highways (DPWH) in Baganga, Davao Oriental for the supply of construction materials. As payment for the same, the DPWH issued three checks in Esteves' name in the total amount of P103, 592.25, drawn against the PNB-Mati Branch, with the following particulars:

Check No. Date of Check Amount

1. AD-076836 February 19, 1991 P 31,810.00
2. AD-065888 March 12, 1991 P 58,911.25
3. AD-065889 March 12, 1991 P 12, 871.00

TOTAL P 103,592.25

Esteves claimed that without his knowledge and authority, accused Ilustre collected the checks from DPWH and thereafter forged his signature and encashed them with PNB-Mati through the assistance of petitioner.[8]

Aragon corroborated Esteves' allegations. He claimed that he initially refused to entertain Ilustre because the latter did not present a Special Power of Attorney (SPA) from Esteves, the payee of the subject checks[9] but petitioner who was then the bank manager prevailed upon him and authorized the encashment.

Petitioner testified that he was the Manager of PNB-Mati in 1991, and as such, he supervises banking operations and approves all banking transactions like check encashments. He related that as a matter of practice, checks are initially verified by the bank bookkeeper to determine its completeness, authenticity and whether or not it is funded.[10] In cases when the person cashing or indorsing a check is not the payee or the drawer thereof, the bank requires additional documents such as SPA, registration papers, business permits and other related documents as proof that the indorsement indeed belonged to such payee. But in this particular case, petitioner admitted that he dispensed with the usual requirements as the checks were released by DPWH Special Disbursing Officer Nenita C. Bijis to Ilustre who was also present at the bank when Ilustre was cashing the checks.[11]

Petitioner stated that he was not familiar with the signature of Esteves as the latter had no account with PNB-Mati and that it was not his duty to verify the signatures of the previous indorsers with respect to the encashment of second indorsed checks, his concern being limited to the last indorser only. He alleged that while standard banking practice requires a second indorser to produce documents proving the authenticity of the first indorser's signature, as bank manager, he has the discretion to approve or disapprove the encashment of checks.[12]

The Sandiganbayan acquitted petitioner of the charge of the complex crime of estafa through falsification of commercial documents. However, he was found liable for violation of Section 3(e) of R.A. No. 3019.

On January 16, 2006 the Sandiganbayan denied petitioner's motion for reconsideration hence, the instant petitions for review on certiorari.

The issues for resolution are: a) whether petitioner was denied his right to due process; and b) whether petitioner's conviction is contrary to law and prevailing jurisprudence.

In its comment,[13] the Office of the Special Prosecutor (OSP) asserts that petitioner was not denied due process as he was actually accorded an opportunity to be heard. He even took the witness stand and testified for himself on November 29, 1994, after which he was given the chance to file a memorandum. The OSP also maintains that petitioner was not denied his right to cross-examine the witnesses because he was given a chance to do so but his counsel waived the conduct of such cross-examination because he was not prepared allegedly due to petitioner's uncooperative attitude.

On the other hand, petitioner maintains that he was denied his right to due process and that he did not waive his right to participate in the trial or to cross-examine the witnesses presented by the prosecution. He also claims that the Sandiganbayan erred when it denied the introduction of the Affidavit of Desistance subsequently executed by Esteves which amounted to newly discovered evidence.[14]

The consolidated petitions are without merit.

Records show that petitioner was properly accorded his right to due process. During the pre-trial held on February 3, 1994, petitioner was present together with his counsel but the latter waived the conduct of pre-trial. Petitioner did not question the waiver hence, he is deemed to have impliedly approved the same. We see nothing irregular in the Sandiganbayan's holding of a trial on June 29, 1994. Petitioner was duly notified of said hearing but he failed

to appear.

As regards the right to confront and cross-examine the opposing party's witnesses, the same is indeed a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.[15] In the instant case, petitioner's counsel did not cross-examine the opposing party's witnesses due to his failure to cooperate in preparing his defense. In fact, records show that it was petitioner's counsel who suggested to the court to cite him in contempt and to cancel his bail bond for failure to attend the hearings. Thus, he could not complain at this stage of the proceedings that he was denied the right to confront the witnesses against him.

Petitioner's claim that his testimony was virtually "hijacked" by the Sandiganbayan justices during the November 29, 1994 trial deserves scant consideration. In propounding clarificatory questions upon petitioner, the justices merely exercised one of the inherent rights of a judge in the exercise of judicial function. The right of a trial judge to question the witnesses with a view to satisfying his mind upon any material point which presents itself during the trial of a case over which he presides is well established to merit further discussion. The trial judges in this jurisdiction are judges of both the law and the facts, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material fact upon which the judgment of the case should turn.[16]

As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.[17] By itself, an affidavit of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court.[18] Vicente Esteves, Jr. executed an affidavit of desistance on October 8, 1996, long after the case has been submitted for decision on November 29, 1994. Thus, petitioner's claim that the Sandiganbayan erred in denying his motion for new trial on the basis of said affidavit of desistance must likewise fail.

Section 3(e) of R.A. No. 3019 provides:

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:

x x x x

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. x x x

To hold a person liable under this section, the concurrence of the following elements must be established beyond reasonable doubt by the prosecution: (1) that the accused is a public officer or a private person charged in conspiracy with the former; (2) that said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position; (3) that he causes undue injury to any party, whether the government or a private party; and (4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.[19]

In the instant case, it is undisputed that petitioner as Manager of the Philippine National Bank was a public officer since at the time of the commission of the crime in 1991, PNB was a government entity. There is likewise no dispute that petitioner allowed the encashment of the subject checks without following the usual banking procedure which requires prior verification by the bookkeeper and the submission of additional documents to determine the genuineness of the signatures of prior indorsers. The conduct of the petitioner caused undue injury to Esteves and unwarranted benefit to Ilustre. Petitioner acted in gross negligence, which has been so 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 willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.[20]

During his testimony, petitioner admitted that he did not follow the usual banking practice of requiring additional documents but merely relied on the word of Bijis, the DPWH's disbursing officer, who vouched for Ilustre. Thus, the Sandiganbayan correctly held that such conscious doing of a wrong on the part of petitioner is evident bad faith.

The penalty for violation of Section 3(e) of R.A. No. 3019 is imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office.[21] Under the Indeterminate Sentence Law, if the offense is punished by special law, the Court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by said law and the minimum term shall not be less than the minimum prescribed by the same.[22] Hence, the Sandiganbayan correctly imposed the indeterminate penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to ten (10) years as maximum, with perpetual disqualification from public office for each count of violation of Section 3(e).

WHEREFORE, the petition is DENIED. The Decision of the Sandiganbayan dated October 11, 2005 in Criminal Case Nos. 18868-70, finding petitioner Marianito S. Victoriano guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 and sentencing him to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years as maximum, for each count, with perpetual disqualification from public office and to reimburse the amount of P103,592.25 to Esteves Enterprises, jointly and severally with Raymond Ilustre, is AFFIRMED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 39-63. Penned by Associate Justice Norberto Y. Goraldez and concurred in by Associate Justices Godofredo L. Legaspi and Efren N. Dela Cruz.

[2] Id. at 60-61.

[3] Id. at 126-127.

[4] Records, pp. 1-2, Vol. 1.

[5] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[6] Records, p. 53.

[7] Also referred to as Estevez in the Records.

[8] TSN, June 29, 1994, pp. 11-15; 17; 20-21.

[9] TSN, July 2, 1998, pp. 6-7; 11.

[10] TSN, November 29, 1994, pp. 4-5.

[11] Id. at 5-7; 8-9; 10.

[12] Id.

[13] Rollo, pp. 184-203.

[14] Id. at 15.

[15] Vertudes v. Buenaflor, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 226.

[16] United States v. Hudieres, 27 Phil. 45, 47-48 (1914).

[17] People v. Ramirez, G.R. Nos. 150079-80, June 10, 2004, 431 SCRA 666, 676.

[18] Id. at 677.

[19] Llorente, Jr. v. Sandiganbayan, 350 Phil. 820, 837 (1998).

[20] Fonacier v. Sandiganbayan, G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53415 and 53520, December 5, 1994, 238 SCRA 655, 687-688.

[21] Republic Act No. 3019, Sec. 9.

[22] Act No. 4103, Sec. 1.

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