

ZAFIRO L. RESPICIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 178701 and 178754. June 06, 2011

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Zafiro L. Respicio (petitioner) appeals the October 13, 2006 Decision and July 3, 2007 Resolution of the Sandiganbayan [1] which found him guilty of violating Section 3(e) of Republic Act No. 3019 [2] and of falsification under Article 171 of the Revised Penal Code.

From the six-volume records of the cases, the following facts are gathered:

Petitioner was the Commissioner of the Bureau of Immigration and Deportation (BID) when 11 Indian nationals (the Indians), [3] who were facing criminal charges for drug trafficking, left the country on August 12, 1994 on the basis of a BID Self-Deportation Order (SDO) No. 94-685 dated August 11, 1994

SDO No. 94-685 (the Order) reads:

O R D E R

It appears that on 09 August 1994, respondents filed their respective requests for self-deportation. They attached their airline tickets and travel documents.

The Bureau has not received any prior written request to hold the departure of the respondents from any government enforcement agency nor from any private person. Moreover, there is no indication from the records that the respondents are the subject of any written complaints before any government agency nor before any private person. Hence, the Board of Commissioners subject to the Immigration Act, Sections 38 and 229-A, hereby authorizes the respondents' requests for self-deportation on the following conditions:

- 1) The respondents shall exhibit their outbound tickets prior to their release from detention;
- 2) The respondents shall pay an overtime fee in the amount of One Thousand Pesos (P1,000.00) each which shall be remitted to the Bureau's Trust Fund; and
- 3) The respondents shall be escorted to the NAIA by authorized officers of the Bureau, the former being barred from returning to the Philippines.

x x x x (emphasis, italics and underscoring supplied),

The Order was signed by petitioner and then Associate Commissioners Bayani Subido, Jr. (Subido) and Manuel C. Roxas (Roxas). [4]

The issuance by petitioner, Subido and Roxas of the Order resulted in the filing before the Sandiganbayan by the Office of the Special Prosecutor of Information dated October 10, 1994 against them, docketed as Criminal Case No. 21545, charging them of falsification of official document under Art. 171 of the Revised Penal Code as

follows:

That on or about August 9, 1994, prior or subsequent thereto at the Bureau of Immigration and Deportation with its office situated in Intramuros, Manila, Philippines and within the jurisdiction of this Honorable Court, the following accused officials of the Bureau of Immigration and Deportation, namely: then Commissioner ZAFIRO L. RESPICIO; Associate Commissioner BAYANI M. SUBIDO, JR.; and Associate Commissioner MANUEL C. ROXAS, conspiring and confederating with each other, while in the performance of their officials [sic] functions, taking advantage of their official positions, and committing the crime in relation to their office, did then and there falsify Self-Deportation Order No. 84-685 dated August 9, 1994, a public document granting deportation of the eleven (11) Indian Nationals, by stating therein that ‘there is no indication from the records that the respondents eleven (11) Indian nationals are subject of any written complaints before any government agency,’ when in truth and in fact as above-named public officials are fully aware, a preliminary investigation is being conducted by State Prosecutor Reynaldo Lugtu against said eleven (11) Indian nationals for violation of Republic Act 6425, as amended (Dangerous Drugs Act), which case was ultimately filed before the Regional Trial Court of Las Piñas, Metro Manila, last July 29, 1994, the truth thereof they have a duty to disclose, to the damage and prejudice of the government. [5]

Contrary to law. (emphasis and underscoring supplied)

Petitioner Subido and Roxas were likewise, by Information also dated October 10, 1994, docketed as Criminal Case No. 21546, charged, together with them National Bureau of Investigation (NBI) Deputy Director and Chief of the Intelligence Service Arturo Figueras (Figueras) and John Does, of violating Section 3(e) [6] of Republic Act No. 3019 as follows:

That on or about August 9 to 11, 1994, prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused officials of the Bureau of Immigration and Deportation, in Intramuros Manila namely: then Commissioner ZAFIRO L. RESPICIO; Associate Commissioner BAYANI M. SUBIDO, JR.; Associate Commissioner MANUEL C. ROJAS, ARTURO A. FIGUERAS, Deputy Director and Chief of the Domestic Intelligence Service, National Bureau of Investigation, Manila; and JOHN DOES, while in the performance of their official functions as such, acting with evident bad faith and manifest partiality, conspiring and confederating with each other, did then and there, willfully and criminally issue BID Self-Deportation Order No. 94-685 dated August 9, 1994 authorizing the release of the following eleven (11) Indian nationals, namely: PRAMOD SHIRIAD JOGDEO, SHAIK EASAF, SUNKAVALIVENKATA LAKSHIMANARAYA, AUGUSTINE RAJESH, NAGAYYA VANAM, MOHAMMAD RAFIQUE, KAUSAR ALI, NABI PASHAKHAN GULAM, MENGESH BENDU JADHAV, LAXMAN KUSHABA KADAM, CAJETAN MERWYN MLVARES who, with the prior knowledge of the aforementioned accused, were all facing criminal charges for violation of RA 6425, as amended (Dangerous Drugs Act), a heinous crime punishable with death, before the Regional Trial Court of Las Piñas, Metro Manila, and held without bail and placed in the custody of the National Bureau of Investigation – Domestic Intelligence Service (NBI-DIS), headed by accused ARTURO A. FIGUERAS, thereby giving unwarranted benefits to the above-named eleven (11) Indian nationals and depriving the government the right to prosecute them, to the prejudice of the public interest and the government.

CONTRARY TO LAW. [7] (emphasis and underscoring supplied)

The Indians, who were arrested and detained by the NBI for manufacturing methaqualone, were, on July 5, 1994, charged for violation of the Dangerous Drugs Act before the Department of Justice (DOJ) before which they were subjected to preliminary investigation. On even date, NBI Deputy Director Arturo Figueras (Figueras) wrote petitioner requesting

[i]n connection with the investigation [which] this Bureau is presently undertaking, [that the NBI] be furnished with a certification and/or all information in [the Bureau of Immigration] files concerning the status of the

following Indian Nationals, to wit:

x x x x [8] (emphasis and underscoring supplied)

Atty. Ernesto Zshornack Jr. (Atty. Zshornack), counsel for the Indians, later requested, by letter of July 13, 1994, the Secretary of Justice to deport his clients as a “protracted court investigation as to their culpability will serve no practical or useful purpose...and will entail costs to our government...” [9] Then DOJ Undersecretary Ramon Esguerra (Usec. Esguerra) endorsed Atty. Zshornack’s letter to then NBI Director Epimaco Velasco who in turn forwarded it to Figueras. [10]

Acting on the request of Atty. Zshornack, Figueras, by Disposition Form dated July 25, 1994, [11] recommended to the NBI Director the deportation of the Indians for violating immigration laws. Usec. Esguerra thereupon, by 3rd Indorsement dated July 28, 1994, [12] endorsed the matter to petitioner for appropriate action “with the information that the criminal cases against [the Indians] are under preliminary investigation being conducted by State Prosecutor Reynaldo J. Lugtu.”

It appears that on July 28, 1994, after concluding the preliminary investigation, State Prosecutor Reynaldo J. Lugtu (Prosecutor Lugtu) filed an Information against the Indians with the Regional Trial Court of Las Piñas for violation of the Dangerous Drugs Act. [13]

Petitioner later, by 4th Indorsement of August 4, 1994, referred Figueras’ recommendation for the deportation of the Indians to Prosecutor Lugtu for appropriate action. Petitioner’s Indorsement reads:

Respectfully forwarded to HON. REYNALDO J. LUGTU, State Prosecutor’s Office, Manila, for appropriate action the enclosed letter dated 13 July 1994 of Atty. Ernesto T. Zshornack, Jr., counsel for PRAMOD SHRIAD JOGORU et al. who are facing investigation for violation of Article III Section 14-A and 16 of Republic Act 6425 (Dangerous Drugs Act) together with the 1st, 2nd and 3rd Indorsement[s] appended to said letter. Anent the comment submitted by Atty. Arturo A. Figueras, CID Policy Guidelines of October 10, 1972 provides that:

“(6) A complaint charging a crime shall be referred to the proper Fiscal’s Office unless it has already been filed therewith or is pending in court. Meanwhile, the deportation case shall be provisionally dismissed.” (emphasis and underscoring supplied)

The August 4, 1994 4th Indorsement of petitioner was received by Prosecutor Lugtu on August 16, 1994. [14] Before that or on August 9, 1994, the Indians signed their respective requests for self-deportation, which requests were received by the BID on August 11, 1994 [15] on which latter date petitioner’s office prepared the Order to deport the Indians as in fact they left the country on August 12, 1994.

At the trial of subject cases, before the Sandiganbayan, Subido narrated how he came to sign the Order as follows: After partaking lunch on August 11, 1994 with petitioner, whose birthday fell on that day, together with other BID personnel at petitioner’s Office, he (Subido) repaired back to his office. He was soon presented the Order by Levi Navata (Navata), a staff member of petitioner, for his signature. Noting that the Order had already been signed by petitioner, and recalling the verbal assurance of then DOJ Secretary Silvestre Bello III (Secretary Bello) also on that day that there were no pending charges against the Indians and that the “preliminary investigation was of no moment to the deportation request,” he signed the Order. [16]

Roxas for his part related that on the request of petitioner, he proceeded to the latter’s office where he saw Secretary Bello and several other guests. He was there presented the Order for his signature. Noting from the Order that there was no pending case nor any Hold Departure Order against the Indians and that the Order already bore the signatures of petitioner and Subido, he affixed his. [17]

As for petitioner, he declared that upon receipt of the Indians' requests for self-deportation, he requested his technical assistant Arthel Caronongan (Caronongan) and the Chief of the Intelligence Division Remigio Sta. Ana (Sta. Ana) to review them. After Sta. Ana verbally communicated to him that there were no pending cases against the Indians, [18] he asked Navata and Caronongan to prepare the Order.

Petitioner disclaimed knowledge that the Indians were already charged before the RTC of Las Piñas, Prosecutor Lugtu never having communicated to him that he had, on July 28, 1994, filed a charge against the Indians before the RTC of Las Piñas City. [19] He admitted, however, being aware that the Indians had been undergoing preliminary investigation. [20]

Corroborating petitioner, Caronongan declared that petitioner instructed him on August 10, 1994 to conduct a record check of the Indians; that he referred the matter to Sta. Ana who informed him that the Indians had "no criminal records"; and that when he and Sta. Ana met with petitioner the next day, August 11, 1994, petitioner directed him to prepare the necessary order for the deportation of the Indians. [21]

Caronongan clarified that the BID only maintains "derogatory records" of aliens in its watch list, black list or hold departure list, but not criminal or administrative records. [22] Albeit he admitted being aware that the Indians were apprehended by the NBI for the manufacture of illegal drugs, he took Sta. Ana's word that there was no pending criminal case against any of them. [23]

On the basis of the Order, the NBI, through Figueras, turned over on August 12, 1994, at 1:00 p.m., to the BID agents the custody of the Indians who at once proceeded to the airport for their 3:30 p.m. flight. [24]

As earlier stated, the Office of the Special Prosecutor filed before the Sandiganbayan Information for violation of Section 3(e) of RA 3019 against petitioner, Subido, Roxas, Figueras and John Does, and another for falsification of official document under Article 171 of the Revised Penal Code against petitioner, Subido and Roxas.

All of the accused pleaded not guilty to the charges. [25]

Pending trial or on February 27, 2003, [26] Figueras died. The case against him for violation of Section 3(e) of RA No. 3019 was thus dismissed.

By Decision of October 13, 2006, the Sandiganbayan in both cases exonerated Subido and Roxas but found petitioner guilty, disposing as follows:

WHEREFORE, premises considered, the Court hereby finds COMMISSIONER ZAFIRO L. RESPICIO GUILTY beyond reasonable doubt of the offenses of Violation of Section 3 (e) of R.A. No. 3019 and Falsification of Official Document under Article 171, paragraph 4 of the Revised Penal Code, and after applying the Indeterminate Sentence Law, imposes upon him the following penalties:

1) Imprisonment for a period ranging from six (6) years and one (1) month as minimum to twelve (12) years as maximum in Criminal Case No. 21546 for Violation of Section 3 (e) of R.A. No. 3019; and

2) Imprisonment for a period ranging from six (6) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum and a fine of P5,000.00 in Criminal Case No. 21545 for Falsification of Public Document under Article 171, paragraph 4 of the Revised Penal Code.

Further, he is henceforth perpetually disqualified from holding public office.

The prosecution having failed to prove beyond reasonable doubt the guilt of COMMISSIONER BAYANI SUBIDO, JR. and COMMISSIONER MANUEL C. ROXAS, they are hereby ACQUITTED of both charges in Criminal Cases Nos. 21545 and 21546.

The cash bonds posted for the provisional liberty of Commissioners Subido, Jr. and Roxas are hereby ordered returned to them, subject to the usual accounting and auditing procedures. The Hold-Departure Order issued against them is hereby lifted and set aside.

The case against NBI Deputy Director ARTURO A. FIGUERAS is hereby DISMISSED, pursuant to Article 89, paragraph 1 of the Revised Penal Code.

SO ORDERED. [27] (emphasis, capitalization and italics in the original)

In convicting petitioner of violation of Section 3 (e) of RA No. 3019, the Sandiganbayan declared:

It cannot therefore be categorically stated that Commissioner Respicio had ample information or knowledge about the case of the eleven Indians, starting from the query of NBI Deputy Director Figueras, on to the 3rd Indorsement of Undersecretary Esguerra and his own 4th Indorsement. Despite such official communication, however, he never relayed any information about the eleven Indians to Remigio Sta. Ana, who was tasked with obtaining and keeping information about aliens in the country. This is quite uncanny because as head of the agency, he should have exercised his responsibility of coursing valuable information to the Intelligence Service in order that records of the Bureau would be updated. Instead, he merely contented himself with going through the motions of having Mr. Sta. Ana assure him verbally that they had no derogatory record, when requests for self-deportation were filed with the BID.

x x x x

Granting, however, that the eleven Indians had no derogatory record, as the phrase is understood within the BID to mean any violation of immigration laws, undesirability, term of residency or permission to work of an alien, the Self-Deportation Order should have specifically mentioned that fact, because that was in essence Mr. Sta. Ana's report, instead of phrasing it in an extenuating statement that the records of the Bureau did not indicate any written complaint filed against them with any government agency. For obvious reasons, having no derogatory record and having no written complaint filed refer to two different things. x x x x (emphasis and italics supplied)

x x x x

True, it is the filing in court of a case that may bar deportation, based on Memorandum Order No. 02-94 of the BID and as argued by Commissioner Respicio, but the tenacity of his argument pales in the light of his statement in his 4th Indorsement that a complaint charging a crime shall be referred to the proper Fiscal's Office unless it has already been filed therewith or is pending in Court and that meanwhile, the deportation case shall be provisionally dismissed. The necessary implication of this statement is that since no copy of the resolution of State Prosecutor Lugtu recommending the filing of charges in court against the eleven Indians has been furnished the Bureau, and that as such, the Bureau was not aware of the action of the Prosecutor conducting the preliminary investigation, the deportation would remain unavailing to the eleven Indians. However, the reverse situation happened.

x x x x [28] (emphasis and underscoring supplied)

In convicting petitioner of the falsification charge, the Sandiganbayan declared:

. . . [T]he statement contained in Self-Deportation Order No. 94-685, that "there is no indication from the records that the respondents (eleven Indian nationals) are subject of any written complaints before any written complaints before any government agency", is absolutely false because the truth is that these eleven Indians were the subject of preliminary investigation being conducted by State Prosecutor Lugtu, and more importantly, when the requests for self-deportation of the eleven Indians were referred to Commissioner Respicio on August 4, 1994, earlier communications had indeed already been sent to him containing the precise information that a preliminary investigation was being conducted by State Prosecutor Lugtu against Pramod Shriad Jogoru, et al. Nevertheless, he approved and signed their self-deportation order without batting

an eyelash. It must be emphasized that Commissioner Respicio could not have been oblivious to such information which he received through the 3rd Indorsement of Undersecretary Esguerra and to which he responded through his own 4th Indorsement addressed to State Prosecutor Lugtu.

x x x x [29] (emphasis and underscoring supplied)

His motion for reconsideration having been denied, petitioner filed the present petition for review, imputing error to the Sandiganbayan's Decision and Resolution as

. . . not [being] in accord with and/or not sustained by applicable decision[s] of this Honorable Court [for] being based on insufficient evidence/overlooking vital facts and circumstances which if given their proper perspective and significance would negate the alleged finding of guilt. [30]

To petitioner, the prosecution failed to present any evidence pointing to his receipt or knowledge of Figueras' letter dated July 5, 1994. In any event, he assists that the conduct of a preliminary investigation is not a bar to a self-deportation order in light of Memorandum Order No. 04-92, the pertinent provision [31] of which reads:

Section 1. Offer of self-deportation.—An offer of self-deportation by the alien shall be granted provided there is no pending case in court against him. Self-deportation shall not be allowed as a means of evading criminal prosecution or civil liability.

The offer of self-deportation shall be approved by the Commissioner upon the favorable recommendation of the Special Prosecutor, the Chief of the Intelligence Division or the Board of Special Inquiry, as the case may be. (emphasis, italics and underscoring supplied)

The immediately-quoted rule, petitioner argues, pertains only to an actual case filed in court, but no evidence was presented that he was aware of the filing of a case in court against the Indians. He thus maintains that he relied on the representations of his subordinates Caronongan and Sta. Ana about the lack of any criminal record of the Indians; and that he had discretion whether to grant or deny requests for self-deportation provided that there is no pending court case against the requesting party. [32]

Petitioner goes on to posit that the prosecution failed to present any evidence of any ulterior motive on his part in allowing the deportation of the Indians as in fact it was advantageous to the government to deport the aliens.

Petitioner furthermore posits that the Order bore the approval and signature of the two other commissioners. [33]

Petitioner thus concludes that in light of the foregoing circumstances, he had no legal obligation to disclose the truth of something that he had no knowledge about. [34]

The Office of the Special Prosecutor counters that it was able to prove all the elements of the offense under Section 3 (e) of RA No. 3019 and that of falsification. It asserts that it proved bad faith on the part of petitioner, as despite the July 5, 1994 letter to him of Figueras inquiring about the status of the Indians who were "presently" under investigation by the NBI, and the July 27, 1994 3rd Indorsement to him of Usec. Esguerra about the "criminal cases against [the Indians which were] under preliminary investigation . . . by State Prosecutor . . . Lugtu," petitioner issued the Order.

With the deportation of the Indians, the Office of the Special Prosecutor laments that prosecution of the criminal charge filed in court against the Indians had been barred. [35]

The Office of the Special Prosecutor additionally contends that the issuance of the Order required petitioner's intervention on account of his position and that the statement in the Order that "there is no indication from the records that the eleven Indian [n]ationals are subject of any written complaints before any government agency" is false because petitioner was in fact informed that they were under preliminary investigation. The Office thus

concludes that petitioner indubitably made an untruthful statement on the matter. [36]

The petition fails.

Section 3(e) of RA 3019, violation for which petitioner was charged, 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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are thus:

- a) the accused is a public officer discharging administrative, judicial or official functions;
- b) one must have acted with manifest partiality, evident bad faith or inexcusable negligence;
- c) the action caused undue injury to any party including the Government, or has given any party unwarranted benefit, advantage or preference in the discharge of his functions. [37]

The elements of falsification under paragraph 4 of Article 171 of the Revised Penal Code for which petitioner was likewise charged are:

- a)
the offender is a public officer;
- b)
the accused takes advantage of his official position;
- c)
accused knows that what he imputes is false;
- d)
the falsity involves a material fact;
- e)
there is a legal obligation for him to narrate the truth;
- f)
and such untruthful statements are not contained in an affidavit or a statement required by law to be sworn in. [38]

The two offenses share two common elements—that the accused is a public officer and that the assailed act is related to the public officer's position. These two common elements are present in the two cases against petitioner as he was a public officer at the time he signed the Order and his intervention in issuing it was in relation to his position as a public office- BID Commissioner.

RESPECTING THE CHARGE OF VIOLATING 3(E) OF RA 3019, the elements which must be indubitably proved are whether petitioner acted with manifest partiality or evident bad faith, and whether such action caused undue injury to any party including the Government, or gave any party unwarranted benefit, advantage or preference in the discharge of his functions. Both elements are present in this case.

Partiality is differentiated from bad faith in this wise:

“Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” [39]

The presence of manifest partiality and evident bad faith on the part of petitioner is gathered from his hardsell stance that he never was aware of a case filed in court. Even if indeed that were true, he had priorly been informed by Usec. Esguerra’s 3rd Indorsement of July 27, 1994 that the Indians were undergoing preliminary investigation. In fact, at the witness stand, after vacillating, he finally admitted that the criminal charges against the Indians were “under preliminary investigation.” Consider petitioner’s testimony:

JUSTICE NAZARIO:

Q

But you were aware of a reinvestigation (sic) being conducted even before the deportation order, is it not?

A

Yes, your Honor, but our regulations require the filing of a case in court.

Q

At the time there was a preliminary investigation being conducted, did it not occur to you to inquire from Lugtu what happened to the preliminary investigation before you signed the self-deportation order?

A

Your Honor, I must admit that I did not bother to call Prosecutor Lugtu because he never communicated with us and besides, the 11 Indians were arrested upon the surveillance of the NBI and the NBI also through Lugtu knew about the cases filed against the 11 Indians and we were never informed about these cases, your Honor.

Q

Yes, but don’t you think prudence would dictate to you that since you were aware of this investigation being conducted about the 11 Indians, you should have told them “what happened to the preliminary investigation you informed us?” before you signed the self-deportation order on August 9, 1994?

A

I relied on the recommendation of my Special Assistant Atty. Karunungan (sic) and Chief [of] Intelligence Mr. Sta. Ana. [40] (emphasis and underscoring supplied)

On further questioning, petitioner became evasive and wavered in his testimony.

PROS. TURALBA

Q:

But can you recall that 4th Indorsement dated August 4, 1994 addressed to Prosecutor Reynaldo Lugtu?

A:

May I see it, sir?

x x x x

WITNESS

A:

Yes, sir. It appears to be an Indorsement signed by me last August 4, 1994.

PROS. TURALBA

Q:

And you have mentioned in your Indorsement of the letter of Atty. Ernesto Zshornack, Jr., counsel for Promod Shiriad Jogdeo, and others who are facing investigation for Violation of Article III, Sec. 14-A and 16 of Republic Act 6425, otherwise known as the Dangerous Drugs Act?

A:

That is the content of the Indorsement, sir.

Q:

So, are you now confirming that before August 11 you were already informed of a pending investigation against these 11 Indians by Prosecutor Reynaldo Lugtu of the DOJ?

WITNESS

A:

Sir, our regulation requires the filing of the case not just an investigation that is why we approved the Deportation Order.

PROS. TURALBA

Q:

I would like to read to you the second paragraph of your Indorsement which says:

“A complaint charging a crime shall be referred to the proper Fiscal’s Office unless it has already been filed therewith or is pending in court.”

Do you remember having stated this in your Indorsement?

A:

Yes, sir. But at the time when I sent that Indorsement, we were not yet informed of the filing of the case in court.

Q:

But would you agree with me that these are supposed to be alternative situations? It is either filed with the Fiscal’s Office or is pending in court?

A:

Our regulation is more on pending in court, sir.

Q:

But you have mentioned in this Indorsement the paragraph of your Guidelines dated October 10, 1972, is that correct?

A:

May I read the Indorsement, sir.

“A complaint charging a crime shall be referred to the proper Fiscal’s Office unless it has already been filed therewith or is pending in court.”

That is all what it means.

x x x x

Q:

By the way, but you were aware that there was a pending preliminary investigation before the Fiscal’s Office?

A:

No, your Honor. We just assumed that since it was with the NBI, some kind of an investigation must be ongoing but actually, we have not received any communication from them informing us of a pendency of a—

Q:

An investigation?

A:

Yes, Your Honor. That is why we approved the Order of Deportation.

x x x x

PROS. TURALBA

Q:

Mr. Witness, do you remember having answered during the direct examination when asked by the Honorable Justice if you were aware of a reinvestigation and you answered “yes”?

x x x x

A:

We were never informed, sir.

Q:

You were never informed?

A:

Yes, before we approved the Deportation Order, sir.

Q:

When for the first time did you learn of the pending case before Prosecutor Lugtu?

A:

That was after we approved the Deportation Order last August 11, sir. [41] (emphasis, italics and underscoring supplied)

As reflected above, petitioner eventually admitted knowledge of the pendency of a preliminary investigation of the criminal cases against the Indians before he issued the Order.

PROS. TURALBA

x x x x

Q:

Will you agree with me that in this particular indorsement [dated August 4, 1994] you already knew of the investigation being conducted against these eleven (11) Indians for Violation of Article 3, Sec[tions] 14-a and 16 of Republic Act [No.] 6425?

A:

Yes, Sir, but please remember that under our guidelines what was prohibited was the filing of a case in court.

Q:

Can you still recall in this answer of yours appearing on page 18 that there was no mention of a pending case before the court?

A:

Yes, Sir. At the time when we approved the order, we were not informed about the pendency of a case in court.

Q:

But you knew of a pending investigation before the prosecutor of the [DOJ][?]

A:

It was mentioned that there was a preliminary investigation.

Q:

In other words, you were already aware of the charges against these eleven (11) Indians, is that not correct?

A:

We knew only of the preliminary investigation, Sir...

PROS. TURALBA

Q:

When for the first time did you learn of a pending investigation against these eleven (11) Indians?

A:

Sometime in the 4[th] of August before I approved that ... [42] (emphasis, italics and underscoring supplied)

That petitioner's approval of the Order caused injury to the government, more particularly to its right and duty to prosecute a heinous crime, over and above the supposed "costs to our government" in having a "protracted court investigation as to [the Indians'] culpability," is without question. Needless to state, the deportation benefitted the Indians who would otherwise have stood trial.

RESPECTING THE CHARGE FOR FALSIFICATION, petitioner untruthfully stated that there is no indication from the records that the Indians are the subject of any written complaints before any government agency nor before any private person. For that statement is belied by documentary evidence - the July 5, 1994 letter of Figueras to petitioner, the July 28, 1994 Indorsement of Usec. Esguerra to petitioner (of Figueras recommendation for the deportation of the Indians) and petitioner's own August 4, 1994 4th Indorsement to Lugtu.

Petitioner's refuge by blaming his subordinates does not lie. For one, he failed to disclose to Caronongan or to Sta. Ana the information which he had received about the Indians undergoing preliminary investigation. Such omission is telling. For another, while the BID may indeed have had only in its possession at that time only "derogatory records" of aliens but not criminal or administrative as Caronongan claimed, since the BID is an attached agency of the DOJ, petitioner could have easily requested information on the outcome of the preliminary investigation, of which he was informed about, or if a case had already been filed in court against the Indians.

Petitioner's reliance on the earlier-quoted pertinent provision of Memorandum Order No. 04-94 fails. It bears emphasis that petitioner's justification in issuing the Order was the lack of "any written complaints before any government agency nor before any private person" against the Indians, which was not the case. Recall that petitioner himself quoted in his August 4, 1994 Indorsement to Prosecutor Lugtu the BID policy that [43] a deportation case should be provisionally dismissed when a criminal complaint charging a crime has been referred to the proper [Prosecutor]'s Office or is pending in court."

In another vein, petitioner harps on the supposed absence of a request by Prosecutor Lugtu to prevent the flight of the Indians. In laying the blame on Prosecutor Lugtu, petitioner proffers an August 15, 1990 DOJ Circular No. 38 [44] that directs prosecutors to move for the issuance of a hold departure order "to ensure that criminal offenders are punished and put in their proper places by taking the steps to prevent them from leaving for abroad during the pendency of criminal proceedings."

Petitioner's stance fails too. Whether the Prosecutor moved to obtain a hold departure order is beside the point, what is material being that there was a pending preliminary investigation against the Indians, contrary to the statement in the Order that "there is no indication from the records that the [Indians] are the subject of any written complaint . . .," which pending preliminary investigation called for the provisional dismissal of the deportation case.

In any event, the cited August 15, 1990 DOJ Circular No. 38 cannot be made to apply in the instant case as it clearly pertains to Filipinos, and not to foreigners, who opt to fly the coop to evade criminal prosecution.

The untruthful assertion of petitioner not having been made in an affidavit or in a statement required by law to be sworn in, he is, without any doubt, liable for falsification under paragraph 4 of Article 171 of the Revised Penal Code.

WHEREFORE, the petition is DENIED. The Decision and Resolution of the Sandiganbayan in Criminal Case Nos. 21545 and 21546 are, in light of the foregoing discussions, AFFIRMED.

Costs against petitioner.

SO ORDERED.

Brion, Bersamin, Abad,[*] and Villarama, Jr., JJ., concur.

[*] Additional member Per Special Order No. 997 dated June 6, 2011 in lieu of Associate Justice Ma. Lourdes P.A. Sereno.

[1] Penned by Associate Justice Teresita V. Diaz-Baldos with the concurrence of Associate Justices Ma. Cristina Cortez Estrada and Roland B. Jurado.

[2] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[3] They are PRAMOD SHIRIAD JOGDEO, SHAIK EASAF, SUNKAVALIVENKATA LAKSHIMANARAYA, AUGUSTINE RAJESH, NAGAYYA VANAM, MOHAMMAD RAFIQUE, KAUSAR ALI, NABI PASHAKHAN GULAM, MENGESH BENDU JADHAV, LAXMAN KUSHABA KADAM and CAJETAN MERWYN MLVARES

[4] Exhibit “O” for the prosecution; Exhibit “8” for the defense.

[5] Records, Vol. I pp. 1-2.

[6] 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.

[7] Records, Vol. III, pp. 4-5.

[8] Exhibit “C-7.”

[9] Exhibit “F” and Exhibit “1” (Respicio).

[10] By 1st and 2nd Indorsements dated July 21, 1994 and July 26, 1994, respectively. Vide Exhibits “G” and “K” for the prosecution.

[11] Exhibit “H”; Exhibit “3” (Respicio); and Exhibit “10” (Figueras).

[12] Exhibit “L”; Exhibit “5” (Respicio); Exhibit “11” (Figueras); and Exhibit “12” (Roxas).

[13] Transcript of Stenographic Notes (TSN), August 11, 1998, pp. 15-17.

[14] Exhibit “M-1.” Vide Sworn Statement of Prosecutor Lugtu.

[15] Exhibits “N,” “N-1,” “N-2,” “N-3,” “N-4,” “N-5,” “N-6,” “N-7,” “N-8,” “N-9” and “N-10.”

[16] TSN, August 14, 2005, pp. 11-15; TSN, April 21, 2005, pp. 13-15. Vide: Exhibit “X” to “X-3, inclusive (Affidavit of Mr. Bayani Subido Jr.).

[17] TSN, March 3, 2001, pp. 21-30.

[18] Id. at pp. 16.

[19] TSN, May 29, 2003, pp. 23-24.

[20] TSN, September 22, 2003, pp. 6-7.

[21] TSN, July 6, 2004, pp. 10-12.

[22] TSN, October 14, 2004, pp.

[23] Id. at 18-20.

[24] After Deportation Report of Rodelio Silapian, Chief, Civil Security Unit of BID; Exhibit “Q.”

[25] Records, Vol. I, pp. 155, 206 and 207; and II Records, pp. 102.

[26] Records, Vol. IV, p. 345.

[27] Rollo, pp. 99-100.

[28] Id. at 86-89.

[29] Id. at 95.

[30] Id. at 19-20.

[31] Rule XI, Section 1.

[32] Id. at 21-23.

[33] Id. at 26.

[34] Id. at 27-28.

[35] Id. at 176-178.

[36] Id. at 179-181.

[37] *Evangelista v. People*, 392 Phil. 449, 456 (2000).

[38] *Lecaroz v. Sandiganbayan*, 364 Phil. 890 (1999).

[39] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

[40] TSN, May 29, 2003, pp. 23-25.

[41] TSN, Sept. 11, 2003, pp. 35-40.

[42] TSN, Sept. 22, 2003, pp. 7-8.

[43] CID Policy Guidelines of October 10, 1972, quoted above.

[44] Exhibit "9" (Respicio). DOJ Circular No. 38 reads:

It has been observed that many persons accused of serious offenses seek refuge in other countries where the Philippines has no extradition treaty in order to escape prosecution and enjoy thereby the fruits of their crimes. This kind of situation should not be allowed to continue for it will embolden the criminally minded into committing more crimes, knowing that they can get away with their misdeeds in a foreign country. It is thus imperative for prosecutors to ensure that criminal offenders are punished and put in their proper places by taking the steps to prevent them from leaving for abroad during the pendency of criminal proceedings.

Towards this end and so as not to frustrate the ends of justice, you are hereby directed to move for the issuance by the court of Hold Departure Order (HDO) against the accused and for the Bureau of Immigration to implement, in the following cases:

- 1) x x x x
- 2) x x x x
- 3) x x x x

4) Violations of Dangerous Drugs Act of 1972, as amended, when the charge is cognizable by Regional Trial Courts under Batas Pambansa Blg. 29.

5) x x x x

6) x x x x

7) x x x x

In cases where accused has jumped bail and fled to another country, the same shall be immediately reported to the Chief State Prosecutor who shall, with the approval of the Secretary of Justice, make appropriate representations with the Department of Foreign Affairs for the cancellation of accused's passport and other travel documents so as to make him an undocumented alien in the host country subject to deportation.

Strict compliance herewith is enjoined.

FRANKLIN M. DRILON (Sgd.)

Secretary

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