

ANTONIO Y. DE JESUS, SR., ANATOLIO A. ANG AND MARTINA S. APIGO, PETITIONERS, VS. SANDIGANBAYAN-FOURTH DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 182539-40. February 21, 2011

Ponente: ABAD, J.

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ABAD, J.:

These are criminal cases involving a simulated bidding/canvassing in favor of the municipal mayor's son.

The Facts and the Case

The Office of the Ombudsman charged the accused public officers Antonio Y. de Jesus, Sr. (De Jesus, Sr.), Mayor of Anahawan, Southern Leyte, Anatolio A. Ang (Ang), his Vice-Mayor, and Martina S. Apigo (Apigo), the Treasurer, of falsification of public document before the Sandiganbayan in Criminal Case 26764 and all three, along with Antonio de Jesus, Jr. (De Jesus, Jr.), the mayor's son, of violation of Republic Act (R.A.) 3019 before the same court in Criminal Case 26766.[1]

The first information alleged that De Jesus, Sr., Ang, and Apigo (accused local officials) falsified the Requests for Quotation and Abstract of Proposal of Canvass on January 18, 1994 by making it appear that Cuad Lumber and Hinundayan Lumber submitted quotations for the supply of coco lumber, when they did not in fact do so, in violation of Article 171 of the Revised Penal Code.[2] The second information alleges that, taking advantage of their positions, the three municipal officers gave unwarranted advantage to De Jesus, Jr., who operated under the name Anahawan Coco Lumber Supply, by awarding to him the supply of coco lumber worth P16,767.00.[3]

On April 12, 2005, after the prosecution rested its case, all three accused filed a motion for leave to file demurrer to evidence, which motion the Sandiganbayan denied. Rather than present evidence, however, they proceeded to file their demurrer, in effect waiving their right to present evidence.[4] The prosecution opposed the demurrer.

On March 7, 2007 the Sandiganbayan rendered judgment, convicting the accused local officials of the crimes charged. It, however, acquitted accused De Jesus, Jr.[5] Upon denial of their motion for reconsideration in a Resolution dated April 16, 2008, the accused public officers came to this Court on petition for review.[6]

The Issues Presented

The petition presents four issues:

1. Whether or not the Sandiganbayan erred in finding the accused local officials guilty of the two crimes charged when these referred to only one transaction;
2. Whether or not the Sandiganbayan erred in denying the accused local officials the opportunity to present their defense after it denied their demurrer to evidence;
3. Whether or not the Sandiganbayan erred in finding that the accused local officials falsified the pertinent

Requests for Quotation and Abstract of Proposal of Canvass when they made it appear that Cuad Lumber and Hinundayan Lumber submitted quotations for the supply of coco lumber, when they did not in fact do so, in violation of Article 171 of the Revised Penal Code;

4. Whether or not the Sandiganbayan erred in finding that the accused local officials, taking advantage of their positions, gave unwarranted advantage to De Jesus, Jr. by awarding to him the supply of coco lumber worth P16,767.00 to the detriment of the municipality.

Rulings of the Court

The accused municipal mayor, vice-mayor, and treasurer point out that, since the two charges involved only one transaction, the Sandiganbayan made a mistake in finding them guilty of both. But, as the Sandiganbayan and the prosecution point out, Section 3 of R.A. 3019 expressly allows the filing of the two charges based on one transaction. Section 3 provides that the crimes described in it are "in addition to acts or omissions of public officials already penalized by existing laws."

The accused local officials assail the Sandiganbayan's refusal to allow them to present evidence of their defense after it denied their demurrer to evidence. But, contrary to their claim, the Sandiganbayan did not grant these officials leave to file their demurrer. It in fact denied them that leave without prejudice, however, to their nonetheless filing one subject to the usual risk of denial. Based on the Minutes of the Hearing on May 4, 2005,[7] the Sandiganbayan resolved as follows:

The defense's Motion for Leave of Court to File Demurrer to Evidence dated April 12, 2005 is DENIED, without prejudice, however, to its right to file such demurrer to evidence, without prior leave of court, but subject to the legal consequences stated in Section 23, Rule 119 of the 2000 Rules on Criminal Procedure.

WHEREFORE, the defense is hereby given a non-extendible period of ten (10) days from notice within which to file, if it so desires, a demurrer to evidence without prior leave of court. Should this Court fail to hear from the defense within the said period, it shall be understood to mean that the defense will forego the filing of the demurrer to evidence and will forthwith proceed with the presentation of its evidence on May 23, 2005 at 8:30 a.m. and 2:00 p.m. at the Palace of Justice, Cebu City, as previously scheduled.

On receipt of the above, the accused local officials informed the court that they would file a demurrer to evidence even without leave of court.[8] The Sandiganbayan acknowledged the defense's manifestation and ordered the prosecution to comment on or oppose it.[9]

Having denied the accused local officials' demurrer to evidence, the Sandiganbayan was justified in likewise denying their motion to be allowed to present evidence in their defense. The 2000 Rules on Criminal Procedure, particularly Section 23, Rule 119, provide:

Section 23. Demurrer to evidence. — x x x

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

The accused local officials contend that the prosecution failed to prove conspiracy among them. The Sandiganbayan itself, they say, did not believe prosecution witness Maria Fe Lakilak's testimony that she saw Ang and Apigo sign the Requests for Quotation for Hinundayan Lumber and Cuad Lumber.

But the prosecution is not required to prove conspiracy by evidence that the three local officials sat down and came to an agreement to commit the crimes of which they were charged. Such conspiracy may be proved by a

number of circumstances from which one may infer that the accused were animated by a common criminal purpose.[10]

Here, the accused municipal treasurer certified by her signature that a canvass of suppliers was undertaken and that their quotations on the Requests for Quotations were correct. This obviously did not take place since the document lacked the required signatures of two supposed bidders. Besides, the Cuad Lumber's owner testified that he took no part in the canvass and that his business name was Cuad General Merchandise and not Cuad Lumber as stated in the Requests. During pre-trial the defense admitted that the accused local officials signed the Requests for Quotation and the Abstract of Proposal of Canvass despite the absence of bidders' signatures.[11] The accused local officials acted in concert.

The Court also finds their signing in two capacities unusual or irregular. Normally, the roles of witnesses are performed by subordinates since superior officers assume the job of assessing the correctness of the transaction. This circumstance is suspicious and supports the belief that the accused local officials conspired to falsify the documents to favor the mayor's son.

Further the Court notes that the Purchase Request[12] did not bear the signature of the local auditor, whose task is to examine or inspect transactions, accounts, or books to prevent irregular government expenditures. Additionally, the accused municipal mayor signed the document as "Head of Department/Office" that executed the purchase request in connection with the repair of the municipal building. His signing as such is irregular since it is normally the proper subordinate official in charge of procurement for building repair, the municipal engineer, who signs the same. This circumstance strengthens the Court's belief that the accused local officials limited the signatories among themselves to prevent discovery of the illicit purchase.

The accused local officials point out, citing *Arias v. Sandiganbayan*,[13] that "heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." But the documents and other circumstances of these cases negate reliance on the competence and good faith of subordinates. First, the accused local officials knew or could have known that the winning supplier was the accused mayor's son. Second, the accused local officials signed the documents both in their official capacities and as witnesses evidently to avoid, as stated above, exposing the deal to other eyes. And third, the rejected suppliers did not sign the quotations they supposedly submitted. Indeed, the space for their signatures was just above the space where the accused local officials signed.[14]

The accused local officials seek rejection of the relevant documents presented in court on the ground that these were mere certified copies that were inadmissible under the best evidence rule. But the prosecution established by testimony that the original documents could no longer be found, paving the way for the introduction of secondary evidence. Indeed, the accused themselves adopted these documents as common exhibits.

The accused local officials also argue that, since what were involved were emergency purchases, canvassing could be dispensed with. But, although Section 366 of the Local Government Code authorized such kind of purchases, here the documents show on their faces that there was actual resort to canvassing. Indeed, the documents do not recite the supposed circumstances that render the procurement an urgent one that under Section 368 did not require bidding or canvassing.

Accused local officials point out that, since the resident auditor did not detect any anomaly in the transaction, they could not be held liable on account of it.[15] But an adverse audit finding by the resident auditor is not a requisite for prosecution for graft. The offense could be proved sans an auditor's report.

The accused local officials also contend that, although the coco lumber the municipality bought in this case was

pricier, it was sturdier being of the best kind. They doubt if Cuad Lumber's products had the same quality.[16] But this argument is based on pure conjecture since Cuad Lumber did not submit a quotation for its products nor did it mention the quality of its inventory.

The Court upholds the Sandiganbayan's conclusion that the accused local officials went along with the evidently falsified quotation documents to favor De Jesus, Jr., the mayor's son. This renders such officials guilty of violation of R.A. 3019.

WHEREFORE, the Court DENIES the petition and AFFIRMS the Sandiganbayan Decision promulgated on March 7, 2007 and its Resolution dated April 16, 2008.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

[1] Rollo, pp. 148 and 151.

[2] Id.

[3] Id.

[4] Id. at 54-55.

[5] Id. at 88-89.

[6] Id. at 147.

[7] Records, Vol. 1, p. 432.

[8] Id. at 438.

[9] Id. at 440.

[10] People v. Maralit, 247-A Phil. 505, 514 (1988).

[11] Records, Vol. 2, p. 54.

[12] Folder of Exhibits, Exhibit "A" with sub-markings.

[13] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309.

[14] Folder of Exhibits, Exhibits "C" to "E" with sub-markings.

[15] Rollo, p. 48.

[16] Id. at 38-41.

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