

THIRD DIVISION

[G.R. No. 233437, April 26, 2021]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE SANDIGANBAYAN (FOURTH DIVISION), AND LAURO L. BAJA, RESPONDENTS.

D E C I S I O N

LEONEN, J.:

Once a demurrer to evidence has been granted in a criminal case, the grant amounts to an acquittal. Any further prosecution for the same offense would violate the accused's constitutional right against double jeopardy.

This Court resolves a Petition for Certiorari^[1] assailing the Resolutions^[2] of the Sandiganbayan, which granted the Demurrer to Evidence filed by Lauro L. Baja, Jr. (Baja) and dismissed the prosecution's case against him for violation of Section 3(e) Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

From April 9, 2003 to February 2007, Baja was the Philippine Permanent Representative to the United Nations and Chief of Mission I, Department of Foreign Affairs,^[3] for the Philippine Mission to the United Nations, New York City, United States of America. During his tenure, he incurred representation expenses, some of which he advanced and then submitted claims for reimbursement. All of these claims were allowed.^[4]

On May 25, 2006, Commission on Audit Chairperson Guillermo N. Carague issued Office Order No. 2006-130, assigning personnel to audit foreign-based government agencies in New York City.^[5] An audit of the Philippine Mission to the United Nations and the Philippine Consulate was conducted by Audit Team 1, composed of Director Roberto T. Marquez (Marquez), the director-in-charge, Auditor Manalo C. Sy (Sy), the team leader, and Auditors Merenisa B. Cordera^[6] (Cordera) and Teresita D. Braga, the team members.^[7]

From July 17 to 28, 2006, the audit team examined the cash and accounts of the assigned accountable officers and the finance officer for the period of April 25, 2002 to July 17, 2006. They examined the cash, accounts; disbursements, and measures adopted by the Philippine Mission to the United Nations.^[8]

On July 27, 2006, Sy and Cordera prepared an Audit Observation Memorandum, which contained the following observations:

- a. Some reimbursements incurred in the calendar year 2005 totaling \$9,689.96 were not properly documented as required under Section 4(6) of P.D. No. 1445 and Section 231 of the 1995 Revised Regulations of the DFA.

- b. These expenses were supported only with a computerized receipt together with a photocopy of the check and the purpose of the expense was not indicated in the voucher or receipt.
- c. The computerized receipts were not pre-numbered and do not contain the name of the establishments to which payments were made. These are considered as merely temporary receipts which are not within the purview of Section 231.
- d. The photocopy of the checks did not show any indication that they were received by the payees and subsequently paid by the bank.
- e. The cancelled/paid checks should have been submitted in lieu of the official receipts to avoid suspension and/or disallowance in audit thereof pursuant to P.D. No. 1445.^[9]

Cordera also prepared a table that was attached to the Audit Observation Memorandum, detailing Baja's representation expenses and claims.^[10] A copy of the Audit Observation Memorandum was sent to Baja on July 28, 2006 for his comments.^[11]

On January 15, 2007, Marquez sent Foreign Affairs Secretary Alberto G. Romulo (Secretary Romulo) a "Management Letter on the Audit of the Philippine Mission to the United Nations New York, USA,"^[12] attached to which were copies of the Audit Observation Memorandum, Report of Cash Examination, and other annexes.^[13]

On February 8, 2007, Crescente R. Relacion (Relacion), Acting Assistant Secretary of the Department of Foreign Affairs' Office of Fiscal Management, sent a Memorandum to the Philippine Mission to the United Nations, requesting it to comment on the audit findings and recommendations.^[14] By the end of February, Baja finished his tour of duty at the Philippine Mission to the United Nations.^[15]

On March 14, 2007, Foreign Affairs Acting Secretary Rafael E. Seguis wrote the Commission on Audit to request the audit on the Philippine Mission to the United Nations, as well as that of the Philippine Consulate General in New York, for the first quarter of 2007.^[16]

In reply to the February 8, 2007 letter, Ambassador Hilario G. Davide, Jr., the Philippine Mission to the United Nations Permanent Representative; sent a Confidential Memorandum to Secretary Romulo. He requested that Baja be required to comment on the audit team's findings, comply with the recommendations, and submit supporting documents.^[17]

On March 23, 2007, Relacion sent an Urgent and Confidential Memorandum to the Assistant Secretary of the Department of Foreign Affairs' Office of Personnel and Administrative Services, submitting the Commission on Audit Observations. He requested that the audit documents be submitted to Baja for his clarifications and justifications.^[18]

On April 26, 2007, Secretary Romulo issued Travel Authority No. 351-07 to a Department of Foreign Affairs fact-finding team to go to New York and validate the audit team's findings. The fact-finding team was composed of Relacion and Senior Special Assistant Mario De Leon, Jr. (De Leon) from the Office of the Undersecretary for Administration.^[19]

On August 2, 2007, the fact-finding team validated the audit team's findings. In their report,^[20] De Leon and Relacion stated that the Commission on Audit only audited representation expenses for 2005 and identified exceptions amounting to US\$9,869.96.^[21]

The Commission on Audit "observed that the computerized receipts were not pre-numbered and [did] not contain the name of the establishment to which payments were made."^[22] The photocopies of the checks that Baja submitted to support his reimbursement claims did not show that they were received by the payees and subsequently paid by the bank.^[23]

After reviewing the books of the Philippine Mission to the United Nations for 2003 and 2004,^[24] the fact-finding team also identified additional questionable representation expenses amounting to US\$8,145.00 for 2003 and US\$11,100.00 for 2004.^[25] It found that only photocopies of checks from Chemical Bank, Jericho Quadrangle branch in New York, were presented a proof of payment to suppliers.^[26] The original checks, which amounted to US\$13,656.00 from 2003 to 2004, were not presented.^[27] It also attempted to secure Baja's bank account, but failed due to bank privacy laws.^[28]

Moreover, the fact-finding team interviewed a Mr. Sung, the manager of Azure, one of the establishments from which expenses were claimed. Sung stated that while the receipts were genuine, he did not recognize the handwriting as his or his staffs. He observed that the amounts involved were "unusually high"^[29] and he did not recall having the Philippine Mission to the United Nations as a customer. He also pointed out that while Azure's usual charge was US\$10.00 per head with additional US\$6.00 for drinks, the receipt showed US\$40.00 per head with service charges, contrary to Azure's practice.^[30]

On March 12, 2008, Jaime D. Jacob (Jacob), a representative of the Philippine Anti-Graft Commission, filed a Complaint-Affidavit before the Office of the Ombudsman against Baja. He accused Baja of violating Republic Act No. 9184, Republic Act No. 3019, and Article 220 of the Revised Penal Code. He alleged that Baja violated Section 3(e) of Republic Act No. 3019 by causing "undue injury to the government" through "gross negligence and/or evident bad faith" in reimbursing certain expenses without proper documentation.^[31]

Accordingly, an Information was filed. It reads:

That on Calendar Years 2003, 2004 and 2005, or sometime prior or subsequent thereto, in the Philippine Mission to the United Nations, New York City, United States of America, which is an extension of the Philippine territory and within the jurisdiction of this Honorable Court, herein accused LAURO L. BAJA, JR., a high ranking public officer with Salary Grade 29, holding then the position of Philippine Permanent

Representative to the United Nations and Chief of Mission I, Department of Foreign Affairs, who by reason of his office and while in the exercise and discharge of his functions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, and committing the offense in relation to office, did then and there, willfully, unlawfully, and criminally claim and receive from the Department of Foreign Affairs his reimbursement for non-existent or fictitious representation expenses in the total amounts of US\$8,145.00, US\$11,100.00, and US\$9,689.96 for Calendar Years 2003, 2004, and 2005, respectively, without proper documentation in the sum total of the above amounts of TWENTY EIGHT THOUSAND NINE HUNDRED THIRTY FOUR & 96/100 DOLLARS, United States Currency (US\$28,934.96), thereby causing undue injury to the Government in the said amount.^[32]

The prosecution presented as witnesses Relacion, Fe Osea Balerite (Balerite), Jesus G. Salvador (Salvador), Edna V. De Leon (Edna), Clarence Joson (Joson), Cordera, and Sy.^[33] Relacion testified as a member of the fact-finding team that validated the audit team's findings.^[34] Balerite, as state auditor assigned to the Department of Foreign Affairs, identified documents in her Judicial Affidavit.^[35] Salvador's, Edna's, and Joson's testimonies were dispensed with.^[36]

Cordera testified that she prepared the tabulation on Baja's representation expenses for the period of January 1 to December 31, 2005, and signed the Audit Observation Memorandum.^[37] On cross-examination, she stated that no notice of disallowance was issued because the audit was suspended to await the submission of other documents, and that to her knowledge, no disallowance order or notice of suspension was issued by the Commission on Audit or the Department of Foreign Affairs-Commission on Audit.^[38]

Sy, who reviewed the Audit Observation Memorandum, was no longer presented as his testimony would only corroborate Cordera's testimony.^[39]

The prosecution filed its Formal Offer of Exhibits, to which Baja filed his Comments and Objections. Then the prosecution filed its Reply, and Baja filed his Rejoinder.^[40]

On May 27, 2016, Baja moved for leave to file the demurrer to evidence, to which the prosecution filed its Comment. The Sandiganbayan denied the motion without prejudice to Baja filing such a demurrer despite the lack of leave of court, although subject to the consequences stated in Rule 119 Section 23 of the Rules of Court.^[41]

On July 27, 2016, Baja filed his Demurrer to Evidence^[42] which stated that the prosecution failed to present sufficient evidence to sustain the Information. Among others, he argued that the expenses for which reimbursement claims had been made were not proven to be "non-existent or fictitious[.]"^[43] That Baja improperly documented the expenses, he said, did not mean that these expenses did not exist.^[44]

Baja also claimed that there was no basis to charge him with a violation of Section 3(e) of Republic Act No. 3019 in relation to Section 4(6) of Presidential Decree No. 1445 and Section 231 of the Rules and Regulation of the Department of Foreign

Affairs. He pointed out that there was no notice of disallowance issued, and failure to properly document expenses was not crime under the cited laws.^[45]

Finally, Baja argued that the prosecution failed to prove his bad faith, or that there was "undue injury, unwarranted benefits, advantage or preference in the discharge of his functions."^[46]

On March 20, 2017, the Sandiganbayan issued its Resolution^[47] granting Baja's Demurrer to Evidence. It explained that there are four elements for a violation of Section 3(e)^[48] of Republic Act No. 3019:

1. The offender is a public officer or a private person charged in conspiracy with the former;
2. The act was done in the discharge of the public officer's official, administrative or judicial functions;
3. The act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and,
4. The public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.^[49]

While the first two elements were unquestionable, the Sandiganbayan found that the prosecution failed to sufficiently prove the third and fourth elements.^[50] It found that the prosecution was unable to establish that Baja's reimbursements were fictitious, owing to the improper documentation by the audit team and the fact-finding team.^[51]

The Sandiganbayan faulted the prosecution for failing to present corroborating evidence, such as statements from persons with personal knowledge of the alleged nonpayment, to show that the expenses did not exist.^[52] It also noted the fact-finding team's failure to sufficiently inquire if the expenses reimbursed were indeed made.^[53] Even Sung did not categorically declare that the receipts from Azure were fictitious, but only that they were irregular. The Sandiganbayan found that, while there was improper documentation of the reimbursement of expenses, these documents were not evidence of non-existent or fictitious transactions. Thus, the case against Baja was dismissed for insufficiency of evidence.^[54]

The Sandiganbayan denied the prosecution's Motion for Reconsideration in its June 27, 2017 Resolution.^[55]

On September 14, 2017, the People of the Philippines, represented by the Office of the Ombudsman through the Office of the Special Prosecutor, filed a Petition for Certiorari^[56] before this Court, assailing the March 20, 2017 and June 27, 2017 Resolutions of the Sandiganbayan.

Petitioner argues that the Sandiganbayan gravely abused its discretion in finding insufficient evidence to show that respondent Baja claimed expenses for fictitious transactions.^[57] It claims that as a lawyer, he knowingly submitted improper documents to claim reimbursements, demonstrating his intent to defraud the government.^[58] It argues that he should have known that the computerized receipts, which were not pre-numbered and did not indicate the name of the