

## SECOND DIVISION

[ G.R. Nos. 233443-44, November 28, 2018 ]

**ALBERT G. AMBAGAN, JR., PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

#### **A. REYES, JR., J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by Albert G. Ambagan, Jr. (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision<sup>[2]</sup> dated April 5, 2017 and Resolution<sup>[3]</sup> dated August 8, 2017 of the Sandiganbayan in SB-11-CRM-0366 to 0367. The assailed rulings adjudged the petitioner guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

#### **The Antecedent Facts**

On September 25, 1998, the *Sangguniang Bayan* (SB) of Amadeo, Cavite issued Resolution No. 57, Series of 1998, declaring Balite Falls a tourist spot, barangay park, and a reserved area. The resolution was issued to preserve Balite Falls as a potential source of potable water. Among those who signed the resolution is the petitioner, in his capacity as *Sangguniang Kabataan* (SK) Federation Chairman.<sup>[4]</sup>

On October 19, 1998, Resolution No. 402-S-98 was passed by the *Sangguniang Panlalawigan* (SP) of Cavite approving Resolution No. 57.<sup>[5]</sup>

Located near Balite falls is a lot owned by Simplicio S. Lumandas (Simplicio) as evidenced by Transfer Certificate of Title (TCT) No. T-158087 (40069). The land is also where his ancestral house is built. Upon Simplicio's death, the property passed on to his heirs, one of which is Revina C. Lumandas (Revina), the private complainant in the case before the Sandiganbayan.<sup>[6]</sup>

Sometime in October 2007, Councilor Marlon Ambion (Ambion) informed Revina that the municipal government planned to temporarily rent their ancestral house for office purposes. Revina agreed as the house was then vacant.<sup>[7]</sup>

During the same time, the petitioner, then Mayor of Amadeo Cavite, called for a meeting to discuss the project to be undertaken near Balite Falls. Calixto Lumandas (Calixto), cousin of Revina and owner of the adjacent property TCT No. T-158086 (40068), attended the gathering.<sup>[8]</sup>

On January 31, 2008, the SB of Amadeo issued Resolution No, 58 approving the operating guidelines relating to the establishment of the Balite Falls as an eco-tourism area. On even date the SB also issued Resolution No. 59 authorizing the petitioner to enter into agreement with interested parties for the development of Balite Falls and the adjoining vicinity which covers Barangays Banaybanay, Halang

and Tamakan. The resolution was signed by the SB members and approved by the petitioner as Municipal Mayor.<sup>[9]</sup>

Sometime in February 2008, the house on the subject lot owned by the heirs of Simplicio was demolished, while the property of Calixto was levelled. Thereafter, Revina and Calixto saw construction activities being done on their property.<sup>[10]</sup>

On March 2, 2008, a meeting was called by the petitioner and attended by the owners of the lots near the Balite Falls. Revina therein asked why their house was demolished without notice, to which the staff of the petitioner replied "*tao lamang sya na nagkakamali.*" Calixto, who was also present handed the petitioner a letter demanding the cessation of construction activities.<sup>[11]</sup>

Revina's brother, witnessing that construction activities are being conducted on the property, also demanded the immediate cessation thereof, but his request was ignored. He together with other relatives attempted to mark the boundaries of the land, but was prevented by the petitioner, who together with armed men threatened to have them arrested.<sup>[12]</sup>

On March 6, 2008, Calixto met with the petitioner who proposed to lease the land for a period of 25 years, to which the former formally declined on March 24, 2008.<sup>[13]</sup>

On March 25, 2008, a meeting was called by the Barangay Chairman of Banaybanay in which the plans to expand and widen the road towards the Balite Falls were related to the affected property owners. The owners opposed as the project necessitate that they give up three (3) meters of their land.<sup>[14]</sup> On May 15, 2008, the SB of Amadeo passed Resolution No. 72, which ratified the levying of park maintenance fees on the residents of Amadeo.<sup>[15]</sup>

On July 1, 2008, two separate complaints were filed by Revina for and in behalf of the heirs of Simplicio, and Calixto, against the petitioner before the Deputy Ombudsman for Luzon for violation of Section 3(e) of R.A. No. 3019 and misconduct.<sup>[16]</sup>

On March 17, 2017, the Deputy Ombudsman for Luzon dismissed the case for misconduct.<sup>[17]</sup> However, the petitioner was charged with violation of Section 3(e) of R.A. No. 3019, as amended, in two separate Informations, the accusatory portions of which read:

SB-11-CRM-0366

That on 28 February 2008 or sometime prior or subsequent thereto, in Barangay Halang, Amadeo, Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of Amadeo, Cavite, acting in relation to his office, through evident bad faith, manifest partiality or gross inexcusable negligence, did then and there, willfully, unlawfully, and criminally cause undue injury to the Heirs of Simplicia Lumandas by ordering construction works to be undertaken upon the latter's private land covered by Transfer Certificate of Title No. T-158087 (40069) thereby depriving them of the enjoyment and use of three thousand eight hundred and ninety-two square meters (3,892), more or less, of their land, which affected area is

valued at approximately SEVEN HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED PESOS (Php778,400.00) to the damage and prejudice of the Heirs of Simplicia Lumandas in the afore-stated amount.<sup>[18]</sup>

SB-11-CRM-0367

That on 28 February 2008 or sometime prior or subsequent thereto, in Barangay Halang, Amadeo, Cavite Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of Amadeo, Cavite, acting in relation to his office, through evident bad faith, manifest partiality or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to Calixto C. Lumandas by ordering construction works to be undertaken upon the latter's private land covered by Transfer Certificate of Title No. T-158086 (40068) thereby depriving him of the enjoyment and use of three thousand nine hundred eighty-nine square meters (3,989), more or less, of his land, which affected area is valued at approximately SEVEN HUNDRED NINETY-SEVEN THOUSAND EIGHT HUNDRED PESOS (Php797,800.00) to the damage and prejudice of Calixto C. Lumandas in the afore-stated amount.<sup>[19]</sup>

On April 5, 2017, the Special Fourth Division of the Sandiganbayan rendered the herein assailed Decision,<sup>[20]</sup> the dispositive portion of which reads:

ACCORDINGLY, and in view of the foregoing, this Court finds [the petitioner]:

a. GUILTY beyond reasonable doubt in Criminal Case No. SB-11-CRM-0366 and applying the Indeterminate Sentence Law (ISL), there being no aggravating and mitigating circumstance to be appreciated, he is hereby ordered to suffer the penalty of imprisonment for Six (6) years and One (1) Month as minimum to Ten (10) Years as maximum and perpetual disqualification from holding public office.

b. GUILTY beyond reasonable doubt in Criminal Case No. SB-11-CRM-0367 and applying the Indeterminate Sentence Law (ISL), there being no aggravating and mitigating circumstance to be appreciated, he is hereby ordered to suffer the penalty of imprisonment for Six (6) years and One (1) month as minimum to Ten (10) years, as maximum and perpetual disqualification from holding public office.

c. No Costs.

SO ORDERED.<sup>[21]</sup>

Both parties filed their respective Motion for Reconsideration of the Decision dated April 5, 2017. On August 8, 2017, the Sandiganbayan issued a Resolution<sup>[22]</sup> denying both motions, *viz.*:

WHEREFORE, the following:

1.) Motion for Reconsideration (of the DECISION dated 05 April 2017) dated 20 April 2017 received by mail on 8 May 2017 by [the petitioner]; and

2.) Motion for Reconsideration (of Decision dated April 5, 2017) dated 20 April 2017 and received by mail on 8 May 2017 filed by private complainants, Heirs of Simplicio Lumandas and Rev. Fr. Calixto C. Lumandas;

are hereby **DENIED**.

SO ORDERED.<sup>[23]</sup>

### **Issues**

Thus, this petition for review for *certiorari* whereby the petitioner submits, in sum, *first*, that he should be charged only for a single offense, which is in the nature of a continuous crime; and *second*, that he cannot be held liable for the crimes charged as a) the Informations failed to sufficiently allege the element of "*performance of the act in the discharge of official functions*;" and b) all the other elements of the offense have not been proven.

### **Ruling of the Court**

The petition is **partly meritorious**.

Anent the issue, the petitioner claims that he cannot be held liable for two separate offenses as the acts referred to the Informations arise out of a single act constituting of a single continuing offense.

The petitioner submits that in determining the multiplicity of an offense, "[i]t is not really the number of properties and private parties that matters but x x x the singularity of intent and purpose in the commission of the complained act."<sup>[24]</sup>

Finally, the petitioner argues that his prosecution of a continuing offense under two separate Informations, calls for the dismissal of both cases on the ground of double jeopardy.<sup>[25]</sup>

In *Gamboa v. CA*,<sup>[26]</sup> the Court defined *delito continuado*, or continuous crime as-

[A] single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, *each of which* although of a delictual character, merely *constitutes a partial execution* of a single particular delict, such concurrence or delictual acts is called a "*delito continuado*". In order that it may exist, there should be "plurality of acts performed separately during a period of time: unity of penal provision infringed upon or violated and unity of criminal intent and purpose, *which means* that two or more violations of the same penal provision *are united in one and the same intent leading to the perpetration* of the same criminal purpose or aim."<sup>[27]</sup>

The concept is distinguished from the so-called complex crimes, contemplated under Article 48 of the Revised Penal Code, which arise (a) when a single act constitutes two or more grave or less grave felonies (described as "*delito compuesto*" or compound crime); and (b) when an offense is a necessary means for committing another offense (described as "*delito complejo*" or complex proper).<sup>[28]</sup>

Tested against the attendant circumstances in this case, the Court is inclined to rule that what is involved in this case is a continuous crime, and as such, there should only be one Information to be filed against the petitioner.

In *Santiago v. Hon. Justice Garchitorea*,<sup>[29]</sup> the Court made an instructive disquisition on the concept of *delito continuado* or continuous crimes, viz.:

[I]t should be borne in mind that the concept of *delito continuado* has been a vexing problem in Criminal Law — difficult as it is to define and more difficult to apply.

According to Cuello Calon, for *delito continuado* to exist there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose, which means that two or more violations of the same penal provisions are united in one and same instant or resolution leading to the perpetration of the same criminal purpose or aim (II Derecho Penal, p. 520; I Aquino, Revised Penal Code, 630, 1987 ed.).

According to Guevarra, in appearance, a *delito continuado* consists of several crimes but in reality there is only one crime in the mind of the perpetrator (Commentaries on the Revised Penal Code, 1957 ed., p. 102; Penal Science and Philippine Criminal Law, p. 152).

Padilla views such offense as consisting of a series of acts arising from one criminal intent or resolution (Criminal Law, 1988 ed. pp. 53-54).

Applying the concept of *delito continuado*, we treated as constituting only one offense the following cases:

- (1) The theft of 13 cows belonging to two different owners committed by the accused at the same time and at the same period of time (People v. Tumlos, 67 Phil. 320 [1939]).
- (2) The theft of six roosters belonging to two different owners from the same coop and at the same period of time (People v. Jaranillo, 55 SCRA 563 [1974]).
- (3) The theft of two roosters in the same place and on the same occasion (People v. De Leon, 49 Phil. 437 [1926]).
- (4) The illegal charging of fees for services rendered by a lawyer every time he collects veteran's benefits on behalf of a client, who agreed that the attorney's fees shall be paid out of said benefits (People v. Sabbun, 10 SCRA 156 [1964]). The collection of the legal fees was impelled by the same motive, that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse (People v. Lawas, 97 Phil. 975 1955]).

On the other hand, we declined to apply the concept to the following cases:

- (1) Two estafa cases, one of which was committed during the period from January 19 to December 1955 and the other from January 1956 to July 1956 (People v. Dichupa, 113 Phil. 306 [1961]). The said acts were committed on two different occasions.
- (2) Several malversations committed in May, June and July, 1936, and