

## SECOND DIVISION

[ G.R. No. 192866, July 09, 2014 ]

**PEDRO G. RESURRECCION, JOSEPH COMETA AND CRISEFORO LITERATO, JR., PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is a petition for review on *certiorari*<sup>[1]</sup> assailing the February 11, 2010 decision<sup>[2]</sup> and the July 10, 2010 resolution<sup>[3]</sup> of the Sandiganbayan in Criminal Case Nos. 25235-39, finding Pedro G. Resurreccion, Joseph Cometa, Criseforo Literato, Jr. (*collectively petitioners*) and Pilarito Orejas guilty of violating Section 3(e) of Republic Act No. 3019. Resurreccion was also convicted of malversation of public funds as defined under Article 217 of the Revised Penal Code (*RPC*).

#### The Antecedent Facts

At the time material to the controversy, the petitioners occupied their respective positions in the local government unit of the Municipality of Pilar, Surigao del Norte: Resurreccion was the Municipal Mayor; Cometa was the Municipal Budget Officer; and Literato was the Municipal Engineer. The other accused, Wilfredo B. Consigo<sup>[4]</sup> and Orejas, were the Municipal Treasurer and Municipal Accountant, respectively.

The State Auditor, Romeo Corral Uy, of the Commission on Audit (*COA*) Regional Office No. 13 of Butuan City and Freda Paller Napana of the Provincial Auditor's Office in Surigao City conducted a special audit and post audit of the various disbursements, transactions and financial accounts of the Municipality of Pilar, Surigao del Norte. The audit team's examination covered the period from 1992 to 1994.

In his *COA Special Audit Report (COA Report)*,<sup>[5]</sup> Auditor Uy reported that several disbursements of money for the payment of construction materials intended for the improvement of the Municipal Building, amounting to P831,420.17, P23,000.00, P158,394.00 and P163,000.00, were awarded to Kent Marketing, Samuel Trigo and Domingo Tesiorna without public bidding, in violation of Sections 362 of Republic Act No. 7160.<sup>[6]</sup> Auditor Uy also found that the basic procedures for the disbursement of public funds under Section 362 and 367 of Republic Act No. 7160,<sup>[7]</sup> Section 4(6) of Presidential Decree No. 1445<sup>[8]</sup> and Section 9 of *COA Circular No. 92-382* dated July 3, 1992 were not followed. As a result, Auditor Uy characterized the disbursements as irregular expenditures for not adhering to the aforementioned rules and regulations. Other irregularities found to have been committed included:

1. The purchases were made not through public bidding in violation of Sections 362 and 367 of Republic Act No. 7160;
2. There was no proof that the purchases were approved by the Committee on Awards as required under Section 367 of Republic Act No. 7160;
3. The disbursements were made in cash in violation of Section 9 of COA Circular No. 92-382 dated July 3, 1992;
4. The disbursements were not supported by complete documentation, in violation of Section 4(6) of Presidential Decree No. 1445;
5. There were no agency inspections, reports and deliveries;
6. Some of the construction/filling materials were purchased from unlicensed suppliers; and
7. The quantity procured exceeded the quantity per program of work.

Auditor Uy likewise reported that the municipality paid then Mayor Resurreccion the amount of P3,000.00 as reimbursement for his donation to the religious organization, Knights of Columbus of Pilar, in violation of Section 29(2), Article VI of the Constitution and Section 335 of Republic Act No. 7160. He found that the item of expenditure, taken from the municipality's Development Fund, is tantamount to malversation of public funds or illegal diversion of public funds, pursuant to Sections 217 and 220 of the RPC.

Additionally, Auditor Uy found that two unapproved and unauthorized payrolls, representing the honoraria for unspecified purpose, in the amounts of P32,000.00 and P47,000.00 were fully disbursed, in violation of Sections 179(h) and 289 of the Government Accounting and Auditing Manual (GAAM). Pertinent portions of the COA Report read:

1. Two unapproved payrolls representing honorarium (sic) and for unspecified purpose, in the amount of P47,000.00 and P32,000.00, respectively, were reported fully disbursed although P20,000.00 of which was not acknowledged by payees. [Moreover], they were not supported with authority to pay honorarium in violation of Section 289 [of the] GAAM[,] Volume 1.

x x x x

2. The Municipality paid Mayor Pedro G. Resurrec[c]ion in the amount of P3,000.00 as reimbursement for donation to religious organization, in violation of Article VI, Section 29, No. 2 of the Philippine Constitution and Section 335 of R.A. 7160.

x x x x

5. Purchase of construction materials and one (1) unit typewriter amounting [to] P831,420.17 and P23,000.00, respectively[,] were made without public bidding in violation of Section 362 of Republic Act No. 7160. Moreover, P790,741.67 of the said construction materials were paid in cash and not supported with complete documentation, in violation of Section 9 of COA Circular No. 92-382 and Section 4 (6) of P.D. 1445, respectively. Thus, were considered irregular expenditures.

x x x x

6. Lumber materials and filling materials totaling P158,394.00 and P163,000.00, respectively, were purchased not through public bidding. Moreover, they were purchased from unlicensed suppliers and its quantity exceeded the quantity as programmed. Thus, the said disbursements were considered irregular expenditures.<sup>[9]</sup>

The petitioners, together with their co-accused Consigo and Orejas, were charged with violation of Section 3(e) of Republic Act No. 3019 before the Sandiganbayan: Resurreccion, Consigo and Cometa were charged with four counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 25235, 25237, 25238 and 25239; Orejas was charged with two counts in Criminal Case Nos. 25235 and 25237; while Literato was charged with two counts in Criminal Case Nos. 25238 and 25239. Resurreccion was also charged with malversation of public funds.

On arraignment, all the accused pleaded not guilty. During the pre-trial, the parties entered into the following stipulation of facts:

1. That the accused admit their positions in the government as stated in the Informations;
2. That prosecution admits the authenticity, genuineness and due execution of defense'[s] exhibits from Exhibits "1" to "9" with submarkings inclusive;
3. The defense admits the authenticity, genuineness and due execution of x x x exhibits "A" to "Z" with submarkings inclusive[.]

[10]

### **Evidence of the Prosecution**

The prosecution presented Auditor Uy and Auditor Napana as its witnesses. Auditor Uy confirmed the COA Report findings in his testimony before the Sandiganbayan. His testimony was corroborated by Auditor Napana who testified that the purchases of construction materials by the municipality were made without conducting a public bidding; that the disbursements were made in cash and not in check; and that she disallowed the disbursement of funds pertaining to the reimbursement of cash donation to the religious organization.

After the prosecution had rested its case, the accused filed a Demurrer to Evidence, [11] which the Sandiganbayan denied.

### **Evidence of the Defense**

Despite the ample opportunity given, the accused still failed to present evidence on their behalf. The accused, however, were able to file their memorandum [12] where they alleged that the prosecution's evidence fell short of the settled yardstick which would justify their conviction for violation of Section 3(e) of Republic Act No. 3019. There, they argued that the head of an agency can resort to any of the modes of procurement prescribed by law as long as it is advantageous to the government.

Resurreccion also justified the lack of public bidding by claiming that a resort to public bidding for all the municipality's transactions in procurement would be a financial burden for a 4<sup>th</sup> or 5<sup>th</sup> class municipality like Pilar. [13]

Resurreccion further claimed that his act of using the amount of P3,000.00 from his discretionary funds to pay the members of the Knights of Columbus of Pilar does not constitute the crime of malversation. Even assuming that the payments were made to the members of the Knights of Columbus of Pilar, there was no violation of the principle of separation of the church and the state since the Knights of Columbus of Pilar is not a religious institution. [14]

Anent the unauthorized grant of monetary benefits, the accused averred that the payment of honoraria to the government employees is allowed under Section 288 of the GAAM and that the law does not require an authority from the Provincial Government to grant the same.

### **The Ruling of the Sandiganbayan**

In its decision [15] dated February 11, 2010, the Sandiganbayan found the prosecution's evidence more persuasive.

- *Criminal Case Nos. 25235 and 25237*

Criminal Case Nos. 25235 and 25237 involve procurement and payment of construction materials without the benefit of public bidding and adequate documentary support. The Sandiganbayan found that all the elements under Section 3(e) of Republic Act No. 3019 were duly established by the prosecution's evidence: *first*, the petitioners are all public officials; *second*, the public officials acted with manifest partiality and evident bad faith in awarding government contracts without following the prescribed procedure; and *third*, the petitioners gave unwarranted benefits to Kent Marketing, Samuel Trigo and Domingo Tesiorna, which resulted in undue injury to the government.

The Sandiganbayan observed that the procurements for which the public funds were disbursed did not undergo public bidding. It relied largely on the COA report issued by Auditor Uy and the post audit of Auditor Napana showing that the disbursement vouchers involved were issued without complying with the auditing rules and regulations (*i.e., rule on public bidding, payment of cash instead of checks and rule on supporting documents*) and hence illegal. It also noted that the lack of public

bidding and the irregularities attending the disbursement of public funds were not denied by the accused.

Both in Criminal Case Nos. 25235 and 25237, the Sandiganbayan convicted Resurreccion and Orejas of violation of Section 3(e) of Republic Act No. 3019, as amended; and acquitted Cometa for failure of the prosecution to prove his guilt beyond reasonable doubt.

- Criminal Case Nos. 25238 and 25239

In Criminal Case Nos. 25238 and 25239, the Sandiganbayan found that the payment of honoraria to the personnel of the Provincial Engineer's Office (PEO) without authority and legal basis was tainted with irregularities. It noted that the monetary grant to the PEO personnel had no legal ground to stand on as the same was not authorized under Section 288 of the GAAM on the grant of honoraria and per diem. Relying on the COA Report, it ruled that the grant of unauthorized honoraria gave unwarranted benefits to the recipients which resulted in undue injury to the government.

In Criminal Case No. 25238, the Sandiganbayan convicted Literato Jr. of violation of Section 3(e) of Republic Act No. 3019; and acquitted Resurreccion and Cometa for failure of the prosecution to prove their guilt beyond reasonable doubt.

In Criminal Case No. 25239, the Sandiganbayan convicted Cometa of violation of Section 3(e) of Republic Act No. 3019; and acquitted Resurreccion and Literato for failure of the prosecution to prove their guilt beyond reasonable doubt.

- Criminal Case No. 25236

Anent the charge for malversation against Resurreccion in Criminal Case No. 25236, the Sandiganbayan found that all the elements are present: *first*, Resurreccion was a public officer at the time of the commission of the crime; *second*, the P3,000.00 reimbursement came from the 20% Development Fund; *third*, by virtue of his position as Mayor of Pilar, Resurreccion was accountable for the public funds; and *fourth*, by reimbursing the donation he made to a religious organization, Resurreccion allowed a third person (*Knights of Columbus*) to take the P3,000.00 from the 20% Development Fund without legal basis. Accordingly, the Sandiganbayan convicted Resurreccion and ordered him to pay a fine of P3,000.00.

The petitioners sought, but failed, to obtain a reconsideration.<sup>[16]</sup> Hence, this present petition.

### **The Petitioners' Arguments**

The petitioners contend that the Sandiganbayan gravely erred in convicting them based only on the evidence presented by the prosecution. They attribute their failure to present evidence to their former counsel's (*Atty. Manuel Corpuz's*) negligence and claim that they were denied due process of law. They argue that *Atty. Corpuz's* failure to inform them about the developments affecting their case and the scheduled hearing for the reception of evidence – resulting in the waiver of presentation of defense evidence, as they were not able to present evidence in their behalf – constitutes gross negligence that warrants the application of the exception to the general rule that "negligence and dereliction of duty of the counsel bind the