

## SECOND DIVISION

[ G.R. No. 176819, January 26, 2011 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, AND SANDIGANBAYAN, FIRST DIVISION, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

This is a petition<sup>[1]</sup> for certiorari under Rule 65 of the Rules of Court. The petition challenges the 2 March 2007 Resolution<sup>[2]</sup> of the Sandiganbayan in Criminal Case No. 26583.

#### The Facts

On 1 May 2001, Ombudsman Prosecutor II Raul V. Cristoria filed with the Sandiganbayan an information<sup>[3]</sup> dated 5 March 2001 against respondents Robert P. Balao (Balao), Josephine C. Angsico (Angsico), Virgilio V. Dacalos (Dacalos), Felicisimo F. Lazarte, Jr. (Lazarte, Jr.), Josephine T. Espinosa, Noel A. Lobrido, and Arceo C. Cruz for violation of Section 3(e) of Republic Act No. 3019 (RA 3019), as amended. The information stated:

The undersigned Ombudsman Prosecutor II of the Office of the Ombudsman-Visayas, accuses ROBERT P. BALAO, FELICISIMO F. LAZARTE, JR., VIRGILIO V. DACALOS, JOSEPHINE C. ANGSICO, JOSEPHINE T. ESPINOSA, NOEL A. LOBRIDO AND ARCEO C. CRUZ for VIOLATION OF SECTION 3(e) of REPUBLIC ACT NO. 3019, AS AMENDED (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), committed as follows:

That in or about the month of March, 1992, at Bacolod City, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ROBERT P. BALAO, JOSEPHINE C. ANGSICO, VIRGILIO V. DACALOS, FELICISIMO LAZARTE, JR., JOSEPHINE T. ESPINOSA, and NOEL H. LOBRIDO, Public Officers, being the General Manager, Team Head, Visayas Mgt. Office, Division Manager (Visayas), Manager, RPD, Project Mgt. Officer A and Supervising Engineer, respectively, of the National Housing Authority, Diliman, Quezon City, in such capacity and committing the offense in relation to office and while in the

performance of their official functions, conniving, confederating and mutually helping with each other and with accused ARCEO C. CRUZ, a private individual and General Manager of A.C. Cruz Construction, with address at 7486 Bagtikan Street, Makati City, with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously cause to be paid to A.C. Construction public funds in the amount of TWO HUNDRED THIRTY TWO THOUSAND SIX HUNDRED TWENTY EIGHT PESOS and THIRTY FIVE CENTAVOS (P232,628.35) PHILIPPINE CURRENCY, supposedly for the excavation and roadfilling works on the Pahanocoy Sites and Services Project in Bacolod City despite the fact that no such works were undertaken by A.C. Construction as revealed by the Special Audit conducted by the Commission on Audit, thus accused public officials in the performance of their official functions had given unwarranted benefits, advantage and preference to accused Arceo C. Cruz and A.C. Construction and themselves, to the damage and prejudice of the government.<sup>[4]</sup>

In its 22 May 2001 Order,<sup>[5]</sup> the Sandiganbayan found the 5 March 2001 information inadequate. The Sandiganbayan stated that:

This morning the Court expressed its anxiety over the inadequacy of the Information in that the participation of each of the accused did not appear clear in the resolution, much less in the Information.

In view hereof, Pros. Raymundo Julio A. Olaguer will be given ten (10) days to review the records and to inform this Court as to the course of action he proposes to take in order to enlighten the Court and, if necessary, himself so that a proper Information and a proper prosecution may be had before this Court.<sup>[6]</sup>

On 4 August 2004, Assistant Special Prosecutor II Julieta Zinnia A. Niduaza (Assistant Special Prosecutor Niduaza) filed with the Sandiganbayan a memorandum<sup>[7]</sup> dated 27 July 2004. In the memorandum, Assistant Special Prosecutor Niduaza recommended that the 5 March 2001 information be maintained.

In their 17 September 2004 motion,<sup>[8]</sup> Balao, Lazarte, Jr., Angsico, and Dacalos prayed for a reinvestigation of the case. In its 27 March 2005 Resolution,<sup>[9]</sup> the Sandiganbayan granted the motion. The Sandiganbayan held that:

The Court notes that the issue as to the participation of accused-movants in the acts complained of in the Information, as raised by the former First Division, appears not to have been addressed by the prosecution in the Memorandum dated July 27, 2004 of the Office of the Ombudsman, Office of the Special Prosecutor. In the said Memorandum, the prosecution found no reason to disturb the findings of probable cause and

recommended that the Information be maintained.

x x x x

The former Chairman and Members of the First Division expressed anxiety over the inadequacy of the x x x Information "in that the participation of each of the accused did not appear clear in the resolution, much less in the Information". Considering that the memorandum of the Ombudsman "recommended that the Information filed in Criminal Case No. 26583 be maintained and the prosecution of this case must proceed accordingly", without complying with the directive quoted above to clarify the participation of each of the accused, the Court finds merit in the accused-movants' prayer for reinvestigation.<sup>[10]</sup>

On 1 June 2006, Assistant Special Prosecutor Niduaza filed with the Sandiganbayan a memorandum<sup>[11]</sup> dated 30 May 2006. In the memorandum, Assistant Special Prosecutor Niduaza recommended that the 5 March 2001 information be maintained.

In his motion<sup>[12]</sup> dated 2 October 2006, Lazarte, Jr. prayed that the information be quashed. In their 4 October 2006 motion,<sup>[13]</sup> Balao, Angsico, and Dacalos prayed that their motion to quash the information be admitted. In another motion,<sup>[14]</sup> also dated 4 October 2006, Balao, Angsico, and Dacalos prayed that the information be quashed.

### **The Sandiganbayan's Ruling**

In its 2 March 2007 Resolution, the Sandiganbayan denied Lazarte's 2 October 2006 motion and granted Balao, Angsico, and Dacalos' 4 October 2006 motions. The Sandiganbayan held that:

The Court finds that the above Information and subsequent memoranda submitted by the prosecution in support of the said information, with respect to the accused-movants Balao, Angsico and Dacalos, fail to satisfy the requirements of Section 6, Rule 110. The Information and the supporting memoranda, still fail to state the acts or omissions of accused-movants Balao, Angsico and Dacalos with sufficient particularity so as to enable them to make a carefully considered plea to the charges against them.

It may be recalled that a reinvestigation of the case was ordered by this Court because the prosecution failed to satisfactorily comply with an earlier directive of the former Chairperson and Members of the first Division, after noting the inadequacy of the information, to clarify the participation of each of the accused. In ordering the reinvestigation, this Court noted the the prosecution's July 27, 2004 Memorandum did not address the apprehensions of the former Chairperson and Members of the First Division as to the inadequacy of the allegations in the information.

This time, despite a reinvestigation, the prosecution's Memorandum dated May 30, 2006 still failed to specify the participation of accused-movants Balao, Angsico and Dacalos. The most recent findings of the prosecution still do not address the deficiency found by the Court in the information. The prosecution avers that pursuant to Section 3, Rule 117 of the rules of Court, in determining the viability of a motion to quash based on the ground of "facts charged in the information do not constitute an offense," the test must be whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime as defined by law. The prosecution contends that matters *aliunde* should not be considered. However, in the instant case, the Court has found the information itself to be inadequate, as it does not satisfy the requirements of particularly alleging the acts or omissions of the said accused-movants, which served as the basis of the allegation of conspiracy between the aforementioned accused-movants and the other accused, in the commission of the offense charged in the information.

It appears from the prosecution's May 30, 2006 Memorandum that at the time material in this case, accused Roberto P. Balao was the General Manager of the NHA; accused Josephine C. Angsico, was the Team Head of the Visayas Management Office of the NHA; accused Virgilio V. Dacalos, was the Division Manager of the NHA's Visayas Management Office and accused Felicisimo F. Lazarte, Jr., was the Manager of the NHA's Regional Project Department. All four accused contend that they cannot be held accountable as they are high-ranking officials based in Metro Manila and that they relied solely on the recommendation of their subordinates in affixing their signatures. The prosecution concedes that high-ranking officials are not expected to personally examine every single detail of a transaction. But in this particular case, the general averment or conclusion of the prosecution in its memorandum that the accused allegedly had foreknowledge of the supposed anomalies and yet the accused did nothing to verify this, does not sufficiently show the basis of the charge of conspiracy insofar as accused Balao, Angsico and Dacalos are concerned.

The prosecution's May 30, 2006 Memorandum does not describe how accused Balao, Angsingco [sic] and Dacalos may have known or when they became aware of the alleged anomalies, before they allegedly caused payment to the alleged errant contractor. The said Memorandum states only that they failed to enforce the contract against the alleged errant private contractor, which is not even the act imputed against them in the information.

The prosecution contends that the allegation of conspiracy is sufficient, since there is no need to allege the individual acts of the conspirators because the act of one is imputable to all. The allegation of conspiracy in the information may be adequate if there is no uncertainty in the acts or omissions imputed against some of the accused and the findings of the prosecution, such as in the case at bar. To allow accused Balao, Angsico and Lazarte [sic] to be arraigned despite the seeming inadequacy of the instant information as to their actual involvement in the offense charged, which is not addressed by the mere allegation of conspiracy, infringes on