

## FIRST DIVISION

[ G.R. No. 175457, July 06, 2011 ]

**RUPERTO A. AMBIL, JR., PETITIONER, VS. SANDIGANBAYAN  
AND PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R. NO. 175482]

**VS. ALEXANDRINO R. APELADO, SR., PETITIONER, VS. PEOPLE  
OF THE PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us are two consolidated petitions for review on certiorari filed by petitioner Ruperto A. Ambil, Jr.<sup>[1]</sup> and petitioner Alexandrino R. Apelado Sr.<sup>[2]</sup> assailing the Decision<sup>[3]</sup> promulgated on September 16, 2005 and Resolution<sup>[4]</sup> dated November 8, 2006 of the Sandiganbayan in Criminal Case No. 25892.

The present controversy arose from a letter<sup>[5]</sup> of Atty. David B. Loste, President of the Eastern Samar Chapter of the Integrated Bar of the Philippines (IBP), to the Office of the Ombudsman, praying for an investigation into the alleged transfer of then Mayor Francisco Adalim, an accused in Criminal Case No. 10963 for murder, from the provincial jail of Eastern Samar to the residence of petitioner, then Governor Ruperto A. Ambil, Jr. In a Report<sup>[6]</sup> dated January 4, 1999, the National Bureau of Investigation (NBI) recommended the filing of criminal charges against petitioner Ambil, Jr. for violation of Section 3(e)<sup>[7]</sup> of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended. On September 22, 1999, the new President of the IBP, Eastern Samar Chapter, informed the Ombudsman that the IBP is no longer interested in pursuing the case against petitioners. Thus, he recommended the dismissal of the complaint against petitioners.<sup>[8]</sup>

Nonetheless, in an Information<sup>[9]</sup> dated January 31, 2000, petitioners Ambil, Jr. and Alexandrino R. Apelado, Sr. were charged with violation of Section 3(e) of R.A. No. 3019, together with SPO3 Felipe A. Balano. Upon reinvestigation, the Office of the Ombudsman issued a Memorandum<sup>[10]</sup> dated August 4, 2000, recommending the dismissal of the complaint as regards Balano and the amendment of the Information to include the charge of Delivering Prisoners from Jail under Article 156<sup>[11]</sup> of the Revised Penal Code, as amended, (RPC) against the remaining accused. The Amended Information<sup>[12]</sup> reads:

That on or about the 6th day of September 1998, and for sometime prior [or] subsequent thereto, [in] the Municipality of Borongan, Province of

Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, [the] above-named accused, Ruperto A. Ambil, Jr.,] being then the Provincial Governor of Eastern Samar, and Alexandrino R. Apelado, being then the Provincial Warden of Eastern Samar, both having been public officers, duly elected, appointed and qualified as such, committing the offense in relation to office, conniving and confederating together and mutually helping x x x each other, with deliberate intent, manifest partiality and evident bad faith, did then and there wilfully, unlawfully and criminally order and cause the release from the Provincial Jail of detention prisoner Mayor Francisco Adalim, accused in Criminal Case No. 10963, for Murder, by virtue of a warrant of Arrest issued by Honorable Arnulfo P. Bugtas, Presiding Judge, RTC-Branch 2, Borongan, Eastern Samar, and thereafter placed said detention prisoner (Mayor Francisco Adalim) under accused RUPERTO A. AMBIL, JR.'s custody, by allowing said Mayor Adalim to stay at accused Ambil's residence for a period of Eighty-Five (85) days, more or less which act was done without any court order, thus accused in the performance of official functions had given unwarranted benefits and advantage to detainee Mayor Francisco Adalim to the prejudice of the government.

CONTRARY TO LAW.

BAIL BOND RECOMMENDED: P30,000.00 each.<sup>[13]</sup>

On arraignment, petitioners pleaded not guilty and posted bail.

At the pre-trial, petitioners admitted the allegations in the Information. They reason, however, that Adalim's transfer was justified considering the imminent threats upon his person and the dangers posed by his detention at the provincial jail. According to petitioners, Adalim's sister, Atty. Juliana A. Adalim-White, had sent numerous prisoners to the same jail where Mayor Adalim was to be held.

Consequently, the prosecution no longer offered testimonial evidence and rested its case after the admission of its documentary exhibits. Petitioners filed a Motion for Leave to File Demurrer to Evidence with Reservation to Present Evidence in Case of Denial<sup>[14]</sup> but the same was denied.

At the trial, petitioners presented three witnesses: petitioner Ambil, Jr., Atty. Juliana A. Adalim-White and Mayor Francisco C. Adalim.

Petitioner Ambil, Jr. testified that he was the Governor of Eastern Samar from 1998 to 2001. According to him, it was upon the advice of Adalim's lawyers that he directed the transfer of Adalim's detention to his home. He cites poor security in the provincial jail as the primary reason for taking personal custody of Adalim considering that the latter would be in the company of inmates who were put away by his sister and guards identified with his political opponents.<sup>[15]</sup>

For her part, Atty. White stated that she is the District Public Attorney of Eastern Samar and the sister of Mayor Adalim. She recounted how Mayor Adalim was arrested while they were attending a wedding in Sulat, Eastern Samar, on

September 6, 1998. According to Atty. White, she sought the alternative custody of Gov. Ambil, Jr. after Provincial Warden and herein petitioner Apelado, Sr. failed to guarantee the mayor's safety.<sup>[16]</sup>

Meanwhile, Francisco Adalim introduced himself as the Mayor of Taft, Eastern Samar. He confirmed his arrest on September 6, 1998 in connection with a murder case filed against him in the Regional Trial Court (RTC) of Borongan, Eastern Samar. Adalim confirmed Atty. White's account that he spotted inmates who served as bodyguards for, or who are associated with, his political rivals at the provincial jail. He also noticed a prisoner, Roman Akyatan, gesture to him with a raised clenched fist. Sensing danger, he called on his sister for help. Adalim admitted staying at Ambil, Jr.'s residence for almost three months before he posted bail after the charge against him was downgraded to homicide.<sup>[17]</sup>

Petitioner Apelado, Sr. testified that he was the Provincial Jail Warden of Eastern Samar. He recalls that on September 6, 1998, SPO3 Felipe Balano fetched him at home to assist in the arrest of Mayor Adalim. Allegedly, Atty. White was contesting the legality of Mayor Adalim's arrest and arguing with the jail guards against booking him for detention. At the provincial jail, petitioner was confronted by Atty. White who informed him that he was under the governor, in the latter's capacity as a provincial jailer. Petitioner claims that it is for this reason that he submitted to the governor's order to relinquish custody of Adalim.<sup>[18]</sup>

Further, petitioner Apelado, Sr. described the physical condition of the jail to be dilapidated and undermanned. According to him, only two guards were in charge of looking after 50 inmates. There were two cells in the jail, each housing 25 inmates, while an isolation cell of 10 square meters was unserviceable at the time. Also, there were several nipa huts within the perimeter for use during conjugal visits.<sup>[19]</sup>

On September 16, 2005, the Sandiganbayan, First Division, promulgated the assailed Decision<sup>[20]</sup> finding petitioners guilty of violating Section 3(e) of R.A. No. 3019. The court ruled that in moving Adalim to a private residence, petitioners have conspired to accord him unwarranted benefits in the form of more comfortable quarters with access to television and other privileges that other detainees do not enjoy. It stressed that under the Rules, no person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail.<sup>[21]</sup>

The Sandiganbayan brushed aside petitioners' defense that Adalim's transfer was made to ensure his safety. It observed that petitioner Ambil, Jr. did not personally verify any actual threat on Adalim's life but relied simply on the advice of Adalim's lawyers. The Sandiganbayan also pointed out the availability of an isolation cell and nipa huts within the 10-meter-high perimeter fence of the jail which could have been used to separate Adalim from other prisoners. Finally, it cited petitioner Ambil, Jr.'s failure to turn over Adalim despite advice from Assistant Secretary Jesus Ingeniero of the Department of Interior and Local Government.

Consequently, the Sandiganbayan sentenced petitioner Ambil, Jr. to an indeterminate penalty of imprisonment for nine (9) years, eight (8) months and one (1) day to twelve (12) years and four (4) months. In favor of petitioner Apelado, Sr., the court appreciated the incomplete justifying circumstance of obedience to a

superior order and sentenced him to imprisonment for six (6) years and one (1) month to nine (9) years and eight (8) months.

Hence, the present petitions.

Petitioner Ambil, Jr. advances the following issues for our consideration:

I

WHETHER OR NOT SECTION 3(e) REPUBLIC ACT NO. 3019, AS AMENDED, APPLIES TO PETITIONER'S CASE BEFORE THE SANDIGANBAYAN.

II

WHETHER OR NOT A PUBLIC OFFICER SUCH AS PETITIONER IS A PRIVATE PARTY FOR PURPOSES OF SECTION 3(e), REPUBLIC ACT NO. 3019, AS AMENDED.

III

WHETHER OR NOT PETITIONER ACTED WITH DELIBERATE INTENT, MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSABLE NEGLIGENCE IN THE CONTEXT OF SAID SECTION 3(e).

IV

WHETHER OR NOT PETITIONER AS PROVINCIAL GOVERNOR AND JAILER UNDER SECTIONS 1730 AND 1733, ARTICLE III, CHAPTER 45 OF THE ADMINISTRATIVE CODE OF 1917 AND SECTION 61, CHAPTER V, REPUBLIC ACT 6975 HAS THE AUTHORITY TO TAKE CUSTODY OF A DETENTION PRISONER.

V

WHETHER OR NOT PETITIONER IS ENTITLED TO THE JUSTIFYING CIRCUMSTANCE OF FULFILLMENT OF A DUTY OR THE LAWFUL EXERCISE OF A RIGHT OR OFFICE.

VI

WHETHER OR NOT PETITIONER SHOULD HAVE BEEN ACQUITTED BECAUSE THE PROSECUTION EVIDENCE DID NOT ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.<sup>[22]</sup>

For his part, petitioner Apelado, Sr. imputes the following errors on the Sandiganbayan:

THERE WAS MISAPPREHENSION OF FACTS AND/OR MISAPPLICATION OF THE LAW AND JURISPRUDENCE IN CONVICTING ACCUSED APELADO, EITHER AS PRINCIPAL OR IN CONSPIRACY WITH HIS CO-ACCUSED AMBIL.

## II

IN THE ABSENCE OF COMPETENT PROOF BEYOND REASONABLE DOUBT OF CONSPIRACY BETWEEN ACCUSED AMBIL AND HEREIN PETITIONER, THE LATTER SHOULD BE ACCORDED FULL CREDIT FOR THE JUSTIFYING CIRCUMSTANCE UNDER PARAGRAPH 6, ARTICLE 11 OF THE REVISED PENAL CODE.

## III

THE COURT *A QUO'S* BASIS IN CONVICTING BOTH ACCUSED AMBIL AND HEREIN PETITIONER OF HAVING GIVEN MAYOR ADALIM "UNWARRANTED BENEFITS AND ADVANTAGE TO THE PREJUDICE x x x OF THE GOVERNMENT IS, AT THE MOST, SPECULATIVE.<sup>[23]</sup>

The issues raised by petitioner Ambil, Jr. can be summed up into three: (1) Whether he is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019; (2) Whether a provincial governor has authority to take personal custody of a detention prisoner; and (3) Whether he is entitled to the justifying circumstance of fulfillment of duty under Article 11(5)<sup>[24]</sup> of the RPC.

Meanwhile, petitioner Apelado, Sr.'s assignment of errors can be condensed into two: (1) Whether he is guilty beyond reasonable doubt of violating Section 3(e), R.A. No. 3019; and (2) Whether he is entitled to the justifying circumstance of obedience to an order issued by a superior for some lawful purpose under Article 11(6)<sup>[25]</sup> of the RPC.

Fundamentally, petitioner Ambil, Jr. argues that Section 3(e), R.A. No. 3019 does not apply to his case because the provision contemplates only transactions of a pecuniary nature. Since the law punishes a public officer who extends unwarranted benefits to a private person, petitioner avers that he cannot be held liable for extending a favor to Mayor Adalim, a public officer. Further, he claims good faith in taking custody of the mayor pursuant to his duty as a "Provincial Jailer" under the Administrative Code of 1917. Considering this, petitioner believes himself entitled to the justifying circumstance of fulfillment of duty or lawful exercise of duty.

Petitioner Apelado, Sr., on the other hand, denies allegations of conspiracy between him and petitioner Ambil, Jr. Petitioner Apelado, Sr. defends that he was merely following the orders of a superior when he transferred the detention of Adalim. As well, he invokes immunity from criminal liability.

For the State, the Office of the Special Prosecutor (OSP) points out the absence of jurisprudence that restricts the application of Section 3(e), R.A. No. 3019 to transactions of a pecuniary nature. The OSP explains that it is enough to show that