

THIRD DIVISION

[G.R. No. 184537, April 23, 2010]

**QUINTIN B. SALUDAGA AND SPO2 FIEL E. GENIO, PETITIONERS,
VS. THE HONORABLE SANDIGANBAYAN, 4TH DIVISION AND THE
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari, prohibition and mandamus under Rule 65 of the 1997 Rules on Civil Procedure with a prayer for the issuance of a writ of preliminary injunction and temporary restraining order assailing the July 14, 2008 Resolution^[1] of the Sandiganbayan in Criminal Case No. SB-08 CRM 0263, denying the Motion for Preliminary Investigation filed by the petitioners who were charged with a violation of Section 3(e) of Republic Act No. 3019, and the denial of their Motion for Reconsideration done in open court on August 13, 2008.

An Information^[2] dated September 13, 2000 charging both petitioners with having violated Section 3(e) of Republic Act No. 3019, *by causing undue injury to the government*, reads:

The undersigned Graft Investigation Officer of the Office of the Ombudsman-Visayas, accuses QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, 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 months of November and December, 1997, at the Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officials, being the Municipal Mayor and PNP Member of Lavezares, Northern Samar in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with one another, and with the late Limpio Legua, a private individual, with deliberate intent, with evident bad faith and manifest partiality, did then and there willfully, unlawfully and feloniously enter into a Pakyaw Contract for the Construction of Barangay Day Care Centers for Barangays Mac-arthur and Urdaneta, Lavezares, Northern Samar, each in the amount of FORTY-EIGHT THOUSAND FIVE HUNDRED PESOS (P48,500.00), Philippine Currency, or a total amount of NINETY-SEVEN THOUSAND PESOS (P97,000.00), Philippine

Currency, without conducting a competitive public bidding, thus depriving the government the chance to obtain the best, if not, the most reasonable price, and thereby awarding said contracts to Olimpio Legua, a non-license contractor and non-accredited NGO, in violation of Sec. 356 of Republic Act No. 7160 (The Local Government Code) and COA Circular No. 91-368, to the damage and prejudice of the government.

CONTRARY TO LAW.

This case was initially raffled to the Third Division of Sandiganbayan and was docketed as Criminal Case No. 26319.

In a Resolution^[3] promulgated on June 14, 2002, the Third Division granted petitioners' Motion to Quash and dismissed the information "for failure of the prosecution to allege and prove the amount of actual damages caused the government, an essential element of the crime charged."

In a Memorandum^[4] dated July 1, 2003, the Ombudsman directed the Office of the Special Prosecutor (*OSP*) to study the possibility of having the information amended and re-filed with the Sandiganbayan.

Thus, the *OSP* re-filed the Information^[5] dated August 17, 2007, this time, docketed as Criminal Case No. SB-08 CRM 0263, with the Fourth Division of the Sandiganbayan, charging the petitioners for violation of Section 3(e) of R.A. No. 3019, *by giving unwarranted benefit to a private person, to the prejudice of the government.*

The information, subject of the petition, now reads:

The undersigned Prosecutor of the Office of the Special Prosecutor/Office of the Ombudsman, hereby accuses, MAYOR QUINTIN B. SALUDAGA and SPO2 FIEL E. GENIO, for the violation of Section 3(e) of Republic Act 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

That in or about the months of November and December, 1997 at the Municipality of Lavezares, Province of Northern Samar, Philippines, and within the jurisdiction of this Honorable Court, accused **QUINTIN B. SALUDAGA**, a high ranking public official being then the Mayor of Lavezares, Northern Samar, and committing the crime herein charged while in the discharge of his official administrative function, conspiring and conniving with accused **SPO2 FIEL B. GENIO**, a member of Lavezares Police Force (PNP) and with the late **OLIMPIO LEGUA**, a private individual, with deliberate intent, did then and there willfully, unlawfully and criminally give unwarranted benefit or advantage to the late Olimpio Legua, a non-license contractor and non-accredited NGO, through

evident bad faith and manifest partiality by then and there entering into a Pakyaw Contract with the latter for the Construction of Barangay Day Care Centers for barangays Mac-Arthur and Urdaneta, Lavezares, Northern Samar, in the amount of FORTY EIGHT THOUSAND FIVE HUNDRED PESOS (P48,500.00) each or a total of NINETY SEVEN THOUSAND PESOS (P97,000.00) Philippine Currency, without the benefit of a competitive public bidding to the prejudice of the Government and public interest.

CONTRARY TO LAW.

Petitioners filed a Motion for Preliminary Investigation^[6] dated June 4, 2008 which was strongly opposed by the prosecution in its Opposition^[7] dated June 18, 2008.

Petitioners contend that the failure of the prosecution to conduct a new preliminary investigation before the filing of the second Information constituted a violation of the law because the latter charged a different offense-that is, violation of Section 3(e) by giving unwarranted benefit to private parties. Hence, there was a substitution of the first Information. They argue that assuming that no substitution took place, at the very least, there was a substantial amendment in the new information and that its submission should have been preceded by a new preliminary investigation. Further, they claim that newly discovered evidence mandates re-examination of the finding of a *prima facie* cause to file the case.

On July 14, 2008, the Sandiganbayan Fourth Division issued the assailed Resolution denying the petitioners' motion for preliminary investigation. The graft court found that there is no substituted information or substantial amendment that would warrant the conduct of a new preliminary investigation. It gave the following ratiocination:

The re-filed information did not change the nature of the offense charged, but merely modified the mode by which accused committed the offense. The substance of such modification is not such as to necessitate the conduct of another preliminary investigation.

Moreover, no new allegations were made, nor was the criminal liability of the accused upgraded in the re-filed information. Thus, new preliminary investigation is not in order.

The dispositive portion of the Resolution states:

Finding the arguments of accused-movants indefensible, the sufficiency of the information must be sustained.

WHEREFORE, having established the sufficiency of the Information, the motion under consideration is hereby DENIED for lack of merit. Accordingly, the arraignment of both accused shall proceed as scheduled.

^[8]

Petitioners filed a Motion for Reconsideration^[9] dated August 6, 2008, submitting that the two Informations substantially charged different offenses, such that the present information constituted a substitution that should have been preceded by a new preliminary investigation.

On August 13, 2008, in a hearing for the arraignment of petitioners, the Sandiganbayan denied the Motion^[10] in open court.

Hence, petitioners interpose the present petition for certiorari, prohibition and mandamus with prayer for the issuance of a writ of preliminary injunction and temporary restraining order under Rule 65 of the Rules of Court anchored on the following grounds:

I

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE PRELIMINARY INVESTIGATION OF THE CASE A QUO, WHEN THE SECOND INFORMATION IN THE INSTANT CASE CONSTITUTED SUBSTITUTED INFORMATION WHOSE SUBMISSION REQUIRED THE CONDUCT OF PRELIMINARY INVESTIGATION.

II

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE CONDUCT OF A PRELIMINARY INVESTIGATION OF THE CASE A QUO, SINCE THE SECOND INFORMATION THEREIN CONTAINED SUBSTANTIAL AMENDMENTS WHOSE SUBMISSION REQUIRED THE CONDUCT OF PRELIMINARY INVESTIGATION.

III

THE HONORABLE SANDIGANBAYAN ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO ORDER THE PRELIMINARY INVESTIGATION OF THE CASE A QUO, ALTHOUGH THE NEWLY DISCOVERED EVIDENCE MANDATES DUE RE-EXAMINATION OF THE FINDING THAT *PRIMA FACIE* CAUSE EXISTED TO FILE THE CASE A QUO.^[11]

From the arguments raised by petitioners, the core issue is whether or not the two (2) ways of violating section 3(e) of Republic Act 3019, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference constitute two distinct and separate offenses that would warrant a new or another preliminary investigation.

In its Comment^[12] dated January 12, 2009, respondent People of the Philippines, represented by the Office of the Special Prosecutor, counters that there is no

substituted information in contemplation of law and jurisprudence that would require the conduct of another preliminary investigation. There is no newly-discovered evidence that would lead to a different determination should there be another preliminary investigation conducted.

In their Reply,^[13] dated April 24, 2009, petitioners insist that the offenses charged in the first and second Information are not the same, and what transpired was a substitution of Information that required prior conduct of preliminary investigation. Even assuming there was no substitution, substantial amendments were made in the second Information, and that its submission should have been preceded by a new preliminary investigation.

We find no merit in this petition.

Petitioners were charged with a violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act which reads:

Section 3. *Corrupt practices of public officers.*- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be Unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees charged with the grant of licenses or permits or other concessions.

The essential elements of the offense are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. ^[14]

In a string of decisions, the Court has consistently ruled: