

## SECOND DIVISION

[ G.R. No. 160718, May 12, 2010 ]

**ANUNCIO C. BUSTILLO, EMILIO SUMILHIG, JR., AND AGUSTIN BILLED0, JR., PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### DECISION

#### **DEL CASTILLO, J.:**

It is disputably presumed that official duty has been regularly performed. In this case, this presumption remains un rebutted; hence, petitioners who were charged with violations of Section 3(e) of Republic Act (RA) No. 3019, deserve an acquittal. It was not proven that they gave undue preference or acted in evident bad faith in effecting the transfer of the properties owned by the local government unit.

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the July 31, 2003 Decision<sup>[2]</sup> of the *Sandiganbayan* in Criminal Case No. 24741, finding herein petitioners guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019. Also assailed is the November 6, 2003 Resolution<sup>[3]</sup> denying the Motion for Reconsideration.

#### ***Factual Antecedents***

Congressman Ceferino Paredes, Jr. (Congressman Paredes) used a portion of his Countryside Development Fund (CDF) to purchase one unit of Toyota Tamaraw FX and six units of Kawasaki motorcycles. All vehicles were registered in the name of the Municipality of Bunawan and were turned over to the municipality through its mayor, herein petitioner Anuncio C. Bustillo (Bustillo).

On May 17, 1995, the *Sangguniang Bayan* of Bunawan passed Resolution No. 95-27<sup>[4]</sup> which authorized the transfer without cost of the aforesaid vehicles to the San Francisco Water District (SFWD). Pursuant thereto, Bustillo executed on June 19, 1995, a Deed of Transfer<sup>[5]</sup> relative to the aforementioned vehicles in favor of the SFWD represented by its General Manager, Elmer T. Luzon (Luzon).

On July 27, 1995, the *Sangguniang Panlalawigan* of Agusan del Sur passed Resolution No. 183<sup>[6]</sup> disapproving the *Sangguniang Bayan's* Resolution No. 95-27 for being violative of Section 381<sup>[7]</sup> of RA 7160 or the Local Government Code. On August 17, 1995, it passed Resolution No. 246<sup>[8]</sup> canceling and declaring the Deed of Transfer as null and void for being highly irregular and grossly violative of Section 381 of RA 7160.

On May 23, 1996, a complaint<sup>[9]</sup> was filed charging Bustillo, Vice-Mayor Agustin Billedo, Jr. (Billedo), and *Sangguniang Bayan* members Teogenes Tortor (Tortor), Emilio Sumilhig, Jr. (Sumilhig), Ruth C. Orot (Orot), and Ernesto Amador, Jr., with

violation of Section 3(e) of RA 3019. Also included in the complaint were Antonio Taotao and Luzon, the Board Secretary and General Manager, respectively, of SFWD.

On August 13, 1996, the Office of the Ombudsman for Mindanao issued a Resolution which provides:

WHEREFORE, PREMISES CONSIDERED, this Office finds probable cause to prosecute respondents Antonio C. Bustillo, Agustin Billedo, Jr., Teogenes Tortor, Emilio Sumilhig, Jr., Ruth C. Orot, Ernesto Amador, Jr., and Elmer T. Luzon for violation of Section 3 (e) of Republic Act 3019. It is hereby recommended that the enclosed Information be filed with the Sandiganbayan against the above- named respondents.

FINDING insufficient evidence to hold respondent Antonio Taotao, Board Secretary of SFWD, liable for the charge, let the instant case against him be dismissed.

SO RESOLVED.<sup>[10]</sup>

Consequently, on June 24, 1998, an Information was filed with the *Sandiganbayan* docketed as Criminal Case No. 24741 charging Bustillo, Billedo, Tortor, Sumilhig, Orot, Amador, and Luzon, for violation of Section 3(e) of RA 3019, committed as follows:

That on or about 19 June 1995, or shortly prior or subsequent thereto, in San Francisco, Agusan del Sur, and within the jurisdiction of this Honorable Court, the accused Anuncio C. Bustillo, a public officer being then the Mayor of Bunawan, Agusan del Sur, with salary grade 27, Agustin Billedo, Jr., Vice Mayor of Bunawan, Agusan del Sur, Teogenes Tortor, Emilio Sumilhig, Jr., Ruth C. Orot, Ernesto Amador, being then members of the Sangguniang Bayan (SB) of Bunawan, and Elmer T. Luzon, General Manager of San Francisco Water District (SFWD), all public officers with salary grades below 27, committing the offense in relation to their official duties and taking advantage of their official positions, conspiring and confederating with each other [sic], thru evident bad faith, did there and then, willfully, unlawfully and criminally, cause undue injury to the government, by passing Sangguniang Bayan Resolution No. 95-27 which transferred without cost one (1) unit of Tamaraw FX vehicle and six (6) units of KE Kawasaki motorcycles purchased for the Municipality of Bunawan out of the Countryside Development Fund of Congressman Ceferino Paredes, Jr. and municipal counterpart fund and which were newly purchased and in perfect running condition, to the San Francisco Water District in violation of Section 381 of R.A. 7160, and despite the subsequent nullification of SB Resolution No. 95-27 by the Sangguniang Panlalawigan of Agusan del Sur and the repeated demands by the municipal government of Bunawan, accused Elmer T. Luzon and the San Francisco Water District refused to surrender the afore-enumerated motor vehicle and motorcycles to the Municipality

of Bunawan, thereby depriving it of the possession, ownership and use thereof, to the damage and prejudice of said local government unit.

CONTRARY TO LAW.<sup>[11]</sup>

All the accused posted their respective bail for their provisional liberty, with the exception of Orot who died on June 28, 1998.<sup>[12]</sup>

On April 16, 1999, Bustillo, Billedo, Tortor and Sumilhig entered pleas of "Not Guilty".<sup>[13]</sup>

During pre-trial conference<sup>[14]</sup> held on June 7, 1999, the following facts were admitted by both the prosecution and the defense:

"1) At the time material to this case all the accused are public officers namely, Anuncio C. Bustillo as Municipal Mayor and Agustin Billedo, Jr., as Vice Mayor, Teogenes Tortor and Emilio Sumilhig, Jr., as members of the Sangguniang Bayan all of the Municipality of Bunawan, Agusan del Sur;

2) That during the local election held on May 8, 1995, accused Anuncio C. Bustillo was not re-elected as Mayor of the Municipality of Bunawan, Agusan del Sur;

3) That on May 17, 1995, the Sangguniang Bayan of Bunawan, Agusan del Sur, during its 17<sup>th</sup> regular session passed Resolution No. 95-27 transferring without any consideration and cost to the San Francisco Water District the following properties: one (1) unit of Tamaraw Toyota FX and six (6) units of Kawasaki Motorcycles; Accused Agustin Billedo, Jr., Teogenes Tortor and Emilio Sumilhig, Jr., were among the members of the said council who voted to approve said Resolution;

4) That on June 19, 1995, accused Anuncio C. Bustillo in behalf of the Municipality of Bunawan, Agusan del Sur executed a Deed of Transfer relative to the above mentioned vehicles in favor of San Francisco Water District represented by Elmer T. Luzon, General Manager;

5) That on July 27, 1995, the Sangguniang Panlalawigan of Agusan del Sur in its 3<sup>rd</sup> regular session passed Resolution No. 183, series of 1995 disapproving Sangguniang Bayan Resolution No. 95-27 of the Municipality of Bunawan;

6) That on August 17, 1995, the Sangguniang Panlalawigan of Agusan del Sur passed Resolution No. 246, series of 1995, canceling and declaring the aforementioned Deed of Transfer executed by and between the Municipality of Bunawan and San Francisco Water District as null and void;

7) That, in a letter dated July 11, 1995, of Leonardo Barrios, Municipal

Mayor of Bunawan, Agusan del Sur addressed to the Director of San Francisco Water District, it was requested that the subject Tamaraw FX and Kawasaki Motorcycles owned by the Municipality of Bunawan, Agusan del Sur be returned to the Municipality of Bunawan;

8) That in response to said letter dated July 11, 1995, of Municipal Mayor Leonardo Barrios, Antonio Tao-Tao, Acting Board Secretary of San Francisco Water District on his letter dated July 16, 1995, refused to return the subject vehicles;

9) That the subject vehicles are all newly purchased and serviceable and in good running condition at the time of the transfer in question;"

The other set of facts agreed upon were:

a) That the purchase price or value of the Toyota Tamaraw FX was P400,000.00 and the six (6) units Kawasaki Motorcycles P305,100.00, or a total purchase price or value of P705,100.00 Pesos;

b) That Resolution No. 95-27 was unanimously approved by the members of the Sangguniang Bayan of Bunawan, Agusan del Sur and was not judicially declared null and void.

On June 15, 1999, the SFWD executed a Deed of Donation <sup>[15]</sup> effecting the transfer of the aforesaid vehicles in favor of the Municipality of Bunawan because according to SFWD, the water projects funded by the CDF of Congressman Paredes were already completed.

Thereafter, Luzon and Amador also entered pleas of "Not Guilty".

On December 9, 1999, the *Sandiganbayan* was informed of the death of Tortor.<sup>[16]</sup>

During trial, the prosecution presented three witnesses, namely: 1) Florencia Ilorde, 2) Lilia J. Nacorda, and 3) Leonardo Barrios. After the testimonies of the witnesses and the admission of its exhibits, the prosecution rested its case.<sup>[17]</sup>

On December 6, 1999, herein petitioners filed a Demurrer to Evidence<sup>[18]</sup> but it was denied<sup>[19]</sup> for lack of merit. Luzon's Demurrer to Evidence<sup>[20]</sup> was likewise denied on February 4, 2000.<sup>[21]</sup> Thus, the defense presented its evidence. Four witnesses, namely: 1) Luzon, 2) Benigno G. Asis, 3) Sumilhig, and 4) Ceferino S. Paredes, were presented along with other exhibits.

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

On July 31, 2003, the *Sandiganbayan* rendered its Decision<sup>[22]</sup> finding petitioners guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019. Luzon and Amador were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt. The case against Tortor and Orot was dismissed on account of their demise.