

SECOND DIVISION

[G.R. NO. 148862, August 11, 2005]

**RUBIN TAD-Y Y BABOR, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

CALLEJO, SR., J.:

This is a petition for review of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 24162 affirming, on appeal, the Decision^[2] of the Regional Trial Court (RTC) of Bacolod City, Branch 49, in *People v. Rubin Tad-y, et al.*, Criminal Case No. 98-19401. The RTC ruling had affirmed the decision of the Municipal Trial Court in Cities (MTCC) in Criminal Case No. 57216 finding the petitioner guilty of direct bribery.

The Antecedents

Engineer Rubin Tad-y, Structural Analyst and Engineer Nestor Velez, Building Inspector, both of the Office of the City Engineer (OCE), Bacolod City, were charged with direct bribery under Article 210 of the Revised Penal Code in an Information filed on July 26, 1995 with the MTCC of Bacolod City, docketed as Criminal Case No. 57216. The accusatory portion of the Information for direct bribery reads:

That on or about the 24th day of July 1995, in the City of Bacolod, Philippines and within the jurisdiction of this Honorable Court, the herein accused, public officers, being then engineers at the City Engineer's Office, Bacolod City, with corrupt intent and motivated with pecuniary interest for themselves, did, then and there willfully, unlawfully and feloniously receive and accept marked money in the amount of Four Thousand (P4,000.00) Pesos from Julio Encabo, electrical contractor and duly-authorized representative of Mildred Wong, offended party and owner of Atrium Building located at Gonzaga Street, Bacolod City, in an entrapment operation conducted by the PNP Criminal Investigation Service Command at Andre's Bakeshop, Bacolod City, which amount was earlier solicited by said accused from the offended party in exchange for the signing/approval of permit for building occupancy of the building owned by the offended party, the signing/approval of said building permit is in connection with the performance of the official duties of said accused as engineers in the Office of the City Engineer, Bacolod City, in violation of the aforementioned law.

Acts contrary to law.^[3]

Velez and Tad-y were also charged with violation of Section 3(c) of Republic Act No. 3019^[4] in an Information filed with the RTC, docketed as Criminal Case No. 17186.

This case was raffled to Branch 44 of the RTC of Bacolod City.

The Case for the People^[5]

The prosecution presented Julio Encabo, a licensed master electrician and electrical contractor, who testified that Mildred Wong contracted his services for the construction of her 6-storey Atrium building along Gonzaga Street, in front of the Central Market in Bacolod City.^[6] On February 16, 1994, the Office of the City Engineer/Building Official issued Building Permit No. 0694509798^[7] for the construction of the building. The construction of the building was finished by April 25, 1995.^[8]

Between 1:30 and 2:00 p.m. of even date, Encabo arrived at the OCE to arrange the conduct of final building inspections, and, thereafter, the signing of the corresponding certificates. Rene Cornel, Jose Sotecinal, Ephraim Hechanova, Jose Mari Sales, Mateo Tuvida and Rubin Tad-y, were the OCE officers-in-charge of the various aspects^[9] of the building construction. If all went well, the Building Official would then sign the certificate of occupancy, conformably with the provisions of the National Building Code (Presidential Decree No. 1096).

Encabo had the certificates of final inspection and occupancy form typed by an OCE secretary. However, Tad-y, Encabo's *compadre*, approached the latter and dissuaded him from processing the certificates of final inspection and occupancy on the building since he (Tad-y) was the one responsible for it; also, Mildred Wong still had an unpaid balance of P4,000.00 for his services. When Encabo told Tad-y that collecting the amount from Wong would be problematic, Tad-y replied, "[It's] up [to] you."

Shortly thereafter, some of the officers at the OCE, including Tad-y and Tuvida, conducted their final inspection of the building. During the first week of May 1995, Encabo and Tad-y had an altercation and in his anger, Tad-y squeezed Encabo's neck in the presence of the latter's wife.^[10] Thus, the relations between Tad-y and Encabo became strained.

In the meantime, other officers of the OCE made their respective final inspections during the months of May to June 1995, and signed the respective certificates of final inspection for the building. Tad-y did not make his final inspection, and refused to do so unless the money he had demanded was given to him.^[11] Encabo even sought the aid of the City Mayor but did not tell the latter that Tad-y was demanding money because he did not want to place the latter in a bad light.

Nonetheless, on July 6, 1995, Encabo reported the matter to the Criminal Investigation Section (CIS) of the Philippine National Police (PNP) in Bacolod City, and signed a complaint sheet^[12] against Tad-y for extortion. Police officer Alexander Muñoz was then ordered to conduct an investigation on the complaint.

Muñoz decided to conduct entrapment operations against Tad-y. He asked Encabo to procure P4,000.00, consisting of forty (40) pieces of P100.00 bills for the purpose.^[13] Encabo complied. Muñoz listed the serial numbers of the bills and placed his initials "AM" on the right lower corner of each bill.^[14] The PNP Crime Laboratory in

Bacolod City applied ultraviolet powder on the bills.^[15] The money was placed in a white envelope,^[16] and the envelope was turned over to Encabo for the entrapment.^[17] The police officers and Encabo had agreed that the police officers would position themselves within the vicinity of the Andre's Bakeshop, and after giving the envelope to Tad-y, Encabo would place his eyeglasses in front of his shirt collar to indicate that Tad-y had already received the money.^[18]

After two aborted attempts,^[19] Encabo informed Muñoz by telephone that he and Tad-y would inspect the building at about 3:00 p.m. on July 24, 1995, and that Tad-y would sign the certificate of final inspection afterwards.^[20] Police officers Eriberto Castañeda and Muñoz, along with civilian agents, proceeded to Gonzaga Street and positioned themselves as planned.^[21]

Encabo and Tad-y, accompanied by OCE building inspector Engr. Nestor Velez, arrived at the building at about 5:00 p.m. on July 24, 1995. Encabo brought with him the envelope^[22] containing the forty P100.00 bills and the certificate of final inspection bearing the signatures of all the other OCE officers concerned, which Tad-y was to sign after the inspection of the building. Tad-y was then wearing his orange OCE bowling team t-shirt. Encabo and Tad-y inspected the building together for about ten to twenty minutes. Velez, on his own, made a separate inspection of the building. After the inspection, Encabo, Tad-y and Velez agreed to have a snack and proceeded to the Andre's Bakeshop at the ground floor of the Atrium Building along Gonzaga Street.^[23] Velez and Tad-y walked side by side while Encabo followed.^[24] By then, Muñoz, Castañeda and the other police officers were already in the vicinity to await Encabo's signal.

Inside the bakeshop, Encabo brought out the certificate of final inspection, which Tad-y forthwith signed.^[25] Encabo then gave the envelope containing the forty P100.00 bills to Tad-y. The latter asked Encabo, "What is it for?" Encabo replied that it was the money Tad-y had been waiting for.^[26] Tad-y opened the envelope and saw its contents.^[27] He asked Encabo if it was dangerous for him to receive the envelope, and the latter answered that it was not.^[28] Instead of putting the envelope in his pocket, Tad-y handed the same to Velez under the table. Velez asked Tad-y what it was, and Tad-y told Velez to just keep it.^[29] Thereafter, Tad-y and Velez, followed by Encabo, exited from the bakeshop. Encabo then removed his eyeglasses and placed it on his shirt collar, the signal that Tad-y had received the money.^[30] The police officers then accosted Velez and Tad-y, and asked the latter where the white envelope was. Tad-y denied that he received the envelope. Encabo told the police officers that Velez had the envelope.^[31] When asked where the envelope was, Velez brought it out from the right pocket of his pants.^[32] Muñoz told Velez to open the envelope and inspected its contents. Velez did as he was told, and saw that the envelope contained P100.00 bills.^[33] Tad-y and Velez were arrested and brought to the CIS Headquarters, PNP Crime Laboratory.^[34] Tad-y's shirt was turned over by the accosting officers. Castañeda also turned over to the PNP Crime Laboratory the white envelope and its contents, with a request^[35] for the PNP Crime Laboratory to test Velez and Tad-y for ultraviolet powder and the latter's shirt to be tested.^[36]

Forensic Chemist Rea Villavicencio conducted the examination and prepared an Initial Laboratory Report,^[37] stating that Rubin B. Tad-y was positive for the presence of yellow ultraviolet powder on his right arm. Villavicencio, likewise, prepared a sketch^[38] depicting the body of Tad-y, and showing that his right forearm was positive for ultraviolet powder.

On cross-examination, Encabo admitted that Velez was not aware of everything.^[39]

Edgar Occeña, the Chief of the Inspection Division, later affixed his signature on the certificate of final inspection bearing Tad-y's signature.^[40] The City Building Official approved and issued the certificate of occupancy on July 27, 1995.^[41]

The Case for the Accused Tad-y

Accused Tad-y denied demanding and receiving P4,000.00 from Encabo in consideration for the conduct of the building inspection, and his signature on the certificate of inspection and the certificate of occupancy. He insists that under P.D. No. 1096, he is not authorized to sign and issue a certificate of occupancy. He testified that in the afternoon of April 25, 1995, Encabo arrived at the OCE requesting that the appropriate officials inspect the 6-storey Atrium building preparatory to the issuance of a certificate of final inspection.^[42] The next day, he, Tuvida, Tordesillas, Baja and Danoy conducted the building inspection.^[43] They discovered that only four floors were completed.^[44] Encabo agreed to inspect the building at 3:00 p.m. of July 24, 1995, which, at Encabo's request, was reset to 4:30 p.m.^[45] He and Engr. Velez conducted the inspection of the building on that day and found some defects in the construction of the building.

After the inspection, Tad-y left Velez and Encabo behind as he was going to a bowling tournament, but, as he was crossing Gonzaga Street, Velez and Encabo called him and invited him to join them for a snack at Andre's Bakeshop.^[46] He agreed because he was hungry. He and Encabo were seated beside each other at the table in the bakeshop, while Velez was seated at the opposite side.^[47] While taking their snacks, Encabo brought out the certificate of final inspection bearing the signatures of the other officers of the OCE who had inspected the building. Tad-y affixed his signature above his typewritten name with the notation "see back page for structural requisites" at the dorsal portion of the document. Appearing at the dorsal portion of the certificate is Tad-y's handwritten notation: "Please Post the Allowable Load on [conspicuous] places especially [in the] area to be used as storage."^[48] Before then, he inquired from Encabo where the other requisite certificates of final inspection, plumbing, Fire Safety Inspection and logbook were, and Encabo replied that he brought the requisite certificates with him gesturing to his portfolio. Encabo assured him that all the requirements were in his portfolio.^[49] With Encabo's assurance, he then affixed his signature in the certificate of final inspection.^[50]

Momentarily, Encabo told him that he had another document, and forthwith handed a white envelope to him. Believing that the envelope contained the requisite certificate of final inspection signed by the other officers in the OCE, he received the envelope and, without opening it, immediately handed it over to Velez who would

examine its contents. He then left the bakeshop with Velez ahead of him, followed by Encabo. He was crossing Gonzaga Street on his way to the bowling tournament when he was arrested by policemen, who asked him where the white envelope he had earlier received from Encabo was. He told them that the envelope was with Velez.^[51]

Tad-y then saw Velez being held by a policeman, and that the envelope was already opened. A policeman forced Velez to go near him. Another policeman forced him (Tad-y) to touch the envelope, but he parried the arm of the policeman with his right forearm and refused to touch it.^[52] They were then brought to the PNP headquarters where they were tested for ultraviolet powder.

Encabo filed a complaint against him because on four (4) prior occasions, he refused to sign the certificate of final inspection of a house owned by a certain Nelson Señores, as well as the application for a building permit of Joey Yao, unless the latter paid a 100% surcharge for deficiencies.^[53] Señores and Yao were the principals of Encabo. In the evening of April 25, 1995, after he, Tuvida, Baja and Tordesillas had their initial inspections of the building, they had dinner at the Tasty Treat. When he was about to pay the bill for their food and drinks, Encabo insisted that he would pay the said bill. This infuriated him, and he squeezed Encabo's chin with his hand.^[54]

Jimmy Gonzales, a newspaper vendor, corroborated the testimony of the accused that someone forced Velez to hand over the opened envelope to Tad-y,^[55] but that Tad-y parried the attempt and refused to receive the envelope.^[56]

Tad-y marked and offered in evidence the transcript of stenographic notes^[57] taken during the trial of September 25, 1995 in Criminal Case No. 17186.

The Case For the Accused Nestor Velez

Nestor Velez denied the charge. He corroborated the testimony of Tad-y and declared that he was appointed as building inspector of the OCE only on March 16, 1995.^[58] When he and Tad-y inspected the building in the afternoon of July 24, 1995, they did so separately. After the inspection, Tad-y told him and Encabo that he was going ahead because he was going to play bowling.^[59] When Encabo invited him and Tad-y for a snack, Tad-y reluctantly agreed.^[60]

Momentarily, Encabo brought out the certificate of final inspection and handed it to Tad-y for the latter's signature. However, Tad-y told Encabo that he would note the deficiencies of the building. Tad-y then signed the certificate after being assured by Encabo that he had all the other certificates. Tad-y gave Velez the envelope and told him to keep it because he was going to a bowling game.^[61] Velez received the envelope and put it inside the right pocket of his pants, thinking that it contained the requisite final safety inspection certificate and other certificates.^[62]

On his way from the bakeshop, he and Tad-y were arrested by policemen. He opened the white envelope as the policemen ordered, and saw money inside. He was forced to approach Tad-y, and another policeman forced the latter to touch the