

FIRST DIVISION

[G.R. NO. 149175, October 25, 2005]

**JAIME H. DOMINGO, PETITIONER, VS. HON. SANDIGANBAYAN
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. NO. 149406

**DIOSDADO T. GARCIA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

AZCUNA, J.:

Before us are petitions for review on *certiorari* under Rule 65 of the Rules of Court seeking a reversal of the decision, dated May 28, 2001, and resolution, dated July 23, 2001, of the 4th Division of the Sandiganbayan in Criminal Case No. 23415, entitled, "People of the Philippines vs. Jaime H. Domingo and Diosdado T. Garcia" finding herein petitioners guilty beyond reasonable doubt of violating Section 3(h) of R.A. No. 3019, otherwise known as "Anti-Graft and Corrupt Practices Act," as follows:

WHEREFORE, premises considered, judgment is hereby rendered, finding accused Jaime Domingo y Halili and Diosdado Garcia y Tabelisma guilty of Violation of Sec. 3(h) of R.A. 3019 as amended and applying the Indeterminate Sentence Law, they are hereby sentenced to suffer imprisonment of six (6) years and one (1) month as minimum to ten (10) years and one (1) day as maximum. Accused Jaime H. Domingo is further disqualified perpetually from holding public office.

SO ORDERED.^[1]

Section 3(h) of R.A. No. 3019 provides:

"Sec 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:

...

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

The penalty for violation of the above provision is stated as follows:

"Sec. 9. Penalties for violation. -- (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income."

The petitioners are Jaime H. Domingo in G.R. No. 149175, entitled "Jaime H. Domingo, et al. vs. People of the Philippines," and Diosdado T. Garcia in G.R. No. 149406, entitled "Diosdado T. Garcia vs. People of the Philippines."

Petitioner Domingo, at the time the petition was filed, was serving his third term as mayor of the Municipality of San Manuel, Isabela.^[2] He was elected to the post in 1992 but was unseated in November 1993 after his opponent, Reynaldo P. Abesamis, won in his election protest. In 1995, however, Domingo ran again and won in the mayoralty election.^[3]

Petitioner Garcia, on the other hand, is the proprietor of D.T. Garcia Construction Supply, and, incidentally, is the godson of Domingo in marriage.

The antecedents of the case are as follows:

During Domingo's incumbency in 1993 and prior to his ouster in November of the same year, a Multi-Purpose Pavement (MPP) project was undertaken on the eighteen barangays of the municipality for the paving and repair of the barangay roads. The allocated budget for the project was P520,000 to be charged against the 20% Economic Development Fund (EDF). Congressman Faustino Dy, Jr. donated a total of 3,600 bags of cement for the project to be divided equally among the eighteen barangays.^[4] The mixed gravel and sand was to be subsidized by the municipality through its EDF, while the labor was to be provided by the constituent barangays.

On June 7, 1994, pursuant to Resolution No. 94-40 of the Sangguniang Bayan of San Manuel, Isabela, a special audit team was created by Commission on Audit (COA) Regional Director Pedro M. Guiang, Jr. to examine the infrastructure and EDF expenditures of the municipality during the incumbency of petitioner Domingo for the period January 1 to December 31, 1993.

The audit was conducted from June 13 to 17, 1994, during which two checks, namely, PNB Check No. 901363-S in the amount of P114,350 and PNB Check No. 901365-S in the amount of P20,000, were discovered to have been issued by the municipality to Domingo on June 18, 1993. The disbursement voucher for said checks, however, indicated that the claimant for the sum of the two checks totaling P134,350 was D.T. Garcia Construction Supply for the payment of the cost of gravel and sand delivered to the barangays. Another PNB check, No. 901362, with a face value of P264,350, dated June 11, 1993, appeared to have been issued to D.T. Garcia Construction Supply but was indorsed by Garcia himself to the Municipality of San Manuel. Domingo handed said check to the municipal treasurer who later encashed it to replenish the various cash items of the former. Apparently, Domingo would occasionally advance the salaries of the municipal employees when the same were not remitted to the municipality in time for payday. The municipal treasurer, in

turn, would reimburse Domingo when the funds become available.^[5]

The findings and recommendations of the audit team were incorporated in the November 8, 1994 Audit Report of COA on the Infrastructure Projects and 20% Economic Development Fund of the Municipality of San Manuel, Isabela for the period January 1 to December 31, 1993.

Some of these findings were:

1. There was no contract or agreement between the municipality and D.T. Garcia Construction Supply;
2. Procurement of goods and services through public bidding was not properly observed, in violation of Sections 356 to 365 of the Local Government Code of 1991 and Sections 430 to 436 of the Government Accounting and Auditing Manual (GAAM Vol. 1) as there was actually no public bidding undertaken;
3. Disbursement vouchers were not properly accomplished and not fully documented, hence the regularity and appropriateness of the transaction could not be validated;
4. The contractor had no performance bond;
5. Canvass papers were not properly accomplished;
6. The purchase order served to D.T. Garcia Construction Supply and the attached canvass sheet differed in amount;
7. A certification, dated June 16, 1994, by Municipal Engineer Edwin A. Abarra who supervised the project, revealed that dump trucks owned by Domingo were used to haul the 226.5 truckloads of mixed gravel and sand to the different barangays.
8. The purchase order, sales invoice, official receipt and the disbursement voucher indicated that D.T. Garcia Construction Supply sold the gravel and sand to the municipality but it was Domingo's name that appeared as the payee of the checks, namely, PNB Check No. 901363-S in the amount of P114,350 and PNB Check No. 901365-S in the amount of P 20,000.^[6]

Based on the above findings, the audit team concluded that D.T. Garcia Construction Supply was used by Domingo as a dummy to cover up his business transaction with the municipality of San Manuel in connection with the 226.5 truckloads of mixed gravel and sand in violation of Section 34 of R.A. 7160, Section 108 of P.D. 1445 and Section 3(h) of R.A. 3019. ^[7]

Consequently, Domingo was charged with violation of Section 3(h) of R.A. 3019 before the Office of the Deputy Ombudsman for Luzon for having financial interest in a business transaction involving the delivery of 226.5 truckloads of mixed gravel and sand to the aforesaid barangays in San Manuel.

During the preliminary investigation, Garcia submitted an Affidavit, dated August 9, 1995, and a Counter Affidavit, dated September 6, 1996, supporting Domingo's

claim that the contract for the supply and delivery of gravel and sand to the different barangays was between his firm, D.T. Garcia Construction Supply and the municipality of San Manuel, and it was by his instance that the checks in payment for the transaction were to be issued in the name of Domingo to pay off the loan obtained by his mother, Anicia Garcia, from Domingo's wife, Consolacion Domingo.
[8]

On November 29, 1996, Domingo filed a Motion for Reinvestigation. After the prosecution conducted a reinvestigation, Garcia was impleaded as co-accused, along with Domingo, for violating Section 3(h) of R.A. 3019.[9]

In a minute resolution, dated February 19, 1997, the Sandiganbayan, through the First Division, admitted the Amended Information, dated October 20, 1996, charging Jaime H. Domingo and Diosdado T. Garcia of conspiracy for violating Section 3(h) of R.A. 3019, to wit:

"That on or about June 18, 1993, or sometime subsequent thereto, in San Manuel, Isabela, Philippines, and within the jurisdiction of this Honorable Court, accused Jaime H. Domingo, a public officer, being then the Mayor of the Municipality of San Manuel, Isabela, committing the crime herein charged in relation to his office and while in the performance and taking advantage of his official functions, conspiring with and with full consent of the accused Diosdado T. Garcia, a private individual and owner of D.T. Garcia Construction, did then and there, willfully, unlawfully and criminally, have a direct financial or pecuniary interest in the local government's Muti-Purpose Pavement (MPP) project, a transaction in connection with which accused Domingo takes part in his official capacity, by then and there causing PNB Check Nos. 901363-S and 901365-S, both dated June 18, 1993, in the amounts of P114,350.00 and P20,000.00, respectively, supposedly representing full payment to D.T. Garcia Construction owned and operated by accused Garcia for the delivery of 226.5 truckloads of mixed gravel and sand for the project, to be made payable to accused Domingo who subsequently encashed the same or through his wife, Consolacion Domingo.

CONTRARY TO LAW."[10]

Upon arraignment, Domingo and Garcia entered pleas of "Not guilty."

On April 30, 1997, Prosecutor Raymundo Julio A. Olaguer filed a "Motion to Discharge Diosdado T. Garcia as a State Witness," alleging:

...

"5. That the testimony of Diosdado T. Garcia is vitally needed to secure the conviction of Mayor Jaime H. Domingo since he will attest to the fact that the transactions involved are not really his; that his trucks did not really make any delivery of gravel and sand to the Municipality; that the supporting documents and papers were signed by him on the assurance of Mayor Jaime H. Domingo that everything had been arranged or settled by the Congressman of the place; that he must have accommodated

Mayor Jaime H. Domingo because somehow the Mayor has a moral ascendancy over him."^[11]

Domingo opposed the aforesaid motion. The First Division of the Sandiganbayan where the case was initially heard resolved to hold in abeyance any action on said motion until after the prosecution would have presented its evidence in order to give the court the opportunity to evaluate whether or not there was a need for the discharge of Garcia as State witness.

Later, the case was unloaded to the Fourth Division of the Sandiganbayan.

The prosecution presented as witnesses Marilyn P. Cortez, COA State Auditor II, and Jose C. Lavadia, COA Technical Audit Specialist, who testified on the findings of the special audit team relating to the infrastructure projects and the EDF disbursements made by the municipality during the incumbency of Domingo as mayor of San Manuel in 1993.

On January 29, 1998, after the testimonial evidence of the COA officers was concluded, the Fourth Division resolved to deny the Motion to Discharge Diosdado T. Garcia as a State witness in view of the allegation of conspiracy between Domingo and Garcia in the Amended Information.^[12]

During the trial, the prosecution posited that it was really Domingo who supplied and delivered the gravel and sand to the eighteen barangays, and that he merely used Garcia as a front, being aware that as municipal mayor, he is prohibited by law from having any pecuniary interest or business involvement in any projects in his municipality.^[13]

Domingo, on the other hand, contended that he had no participation in the supply of gravel and sand to the different barangays of the municipality; that the two checks issued in his name were intended for D.T. Garcia Construction Supply; that the municipal treasurer issued said checks in his name in view of the written request made by Garcia as Garcia's mother, Anicia Garcia, was indebted to Consolacion Domingo, his wife, in the amount of P300,000 as evidenced by a Promissory Note, dated February 19, 1992.^[14] Garcia allegedly deemed it more convenient to have the checks issued in Domingo's name since, after all, he would have used the amount to pay Consolacion Domingo for his mother's indebtedness.

To prove the existence of the questioned transaction, Domingo presented a contract purportedly showing the sales agreement between the municipality and D.T. Garcia Construction Supply, dated May 10, 1993.^[15] He likewise presented the Certificate of Emergency Purchase, dated May 7, 1993, to justify the absence of a public bidding for the supply and delivery of mixed gravel and sand.^[16]

Also presented as witnesses were Domingo's wife, Consolacion Domingo,^[17] who testified and showed receipts and documents as proof of Anicia Garcia's indebtedness; Municipal Treasurer Rodolfo P. Isidro^[18] who corroborated the existence of the contract and the letter of request by Garcia for the issuance of the checks in question to Domingo's name; then Municipal Accountant Pete Gerald Javier^[19] who stated that the contract for the subject transaction was signed in the