

FIRST DIVISION

[G.R. No. 152789, October 21, 2004]

ATTY. ISAGANI B. RIZON, PETITIONER, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS THE OMBUDSMAN, RESPONDENT.

DECISION

QUISUMBING, J.:

This special civil action for certiorari and prohibition imputes to respondent Ombudsman Aniano A. Desierto grave abuse of discretion amounting to lack or excess of jurisdiction when he disapproved the **Recommendation**^[1] of the Ombudsman Prosecutor that the Information be withdrawn in Criminal Case No. 26266, charging herein petitioner Mayor Isagani B. Rizon of Baroy, Lanao del Norte, with violation of Republic Act No. 3019.^[2]

The antecedent facts are as follows:

On June 21, 1999, Eugenio L. Dayo, a *Sangguniang Bayan* member of the Municipality of Baroy, Lanao del Norte, lodged a **Complaint**^[3] against petitioner for malversation through falsification of public documents and violation of Rep. Act No. 3019. The Complaint alleged irregularities committed by the petitioner involving the repair of the municipality's cultural center, the purchase of a second-hand Mitsubishi Grader, and the purchase of 552 sacks of rice amounting to P458,160.

After preliminary investigation, Graft Investigation Officer II Agnes Altea-Monfort of the Office of the Deputy Ombudsman for Mindanao found probable cause to charge petitioner of having violated Section 3(e)^[4] of Rep. Act No. 3019 for the purchase of 552 sacks of rice. Parenthetically, no irregularity was found with respect to the purchase of the Mitsubishi Grader nor the repair of the cultural center. The pertinent portion of the Graft Investigator's Resolution reads:

This Office finds that respondent is liable for violation of Section 3(e) of RA 3019 for purchasing 552 sacks of rice even prior to the enactment of a Resolution by the SB authorizing said purchase and for having negotiated with Belma['s] Store for the issuance of blank receipts to make it appear that the municipality received 552 bags of rice when it was only about 50 to 60 bags of rice that were actually delivered by Belma['s] Store.

...

From the evidence submitted by the complainant, it was established that respondent, even prior to the enactment of the SB Resolution No. 98-24, Series of 1998 dated 27 April 1998 (Record[s], p. 5) had already caused

the purchase of 552 sacks of rice from Belma's Store in the aggregate amount of P458,160.00 on several dates as can be gleaned from the Sales Invoice Nos. 9359 dated 16 April 1998, 9360 dated 17 April 1998 and 9361 dated 20 April 1998. . . .

. . .

We cannot close our eyes to the fact that the owner of Belma's Store, Mr. Isabelo Seno admitted, during the conduct of an investigation on the alleged irregularity in the purchase of 552 sacks of rice, the following relevant and significant statements that convinced us that indeed there was an anomaly in the transaction (Record[s], pp. 25-26):

1. that the store issued blank receipts to respondent;
2. that the total number of sacks of rice purchased from his store is actually about 50 to 60 sacks only;
3. that some of the sales invoice were not signed by him; and
4. that it was respondent who negotiated with him on this particular transaction.

Although, respondent submitted an Affidavit (Record[s], p. 40) executed by Isabelo Seno recanting his statements before the SB Fact-Finding Committee, this cannot overcome the presumption of liability. It is a prevailing doctrine in our jurisprudence that testimonial evidence carries more weight than an affidavit and the court loathe to put any reliance on an affidavit of retraction.

Moreover, it is noteworthy that the Municipal Accountant, Mrs. Durante, also testified before the fact-finding committee that the documents pertaining to the 552 sacks of rice were processed after the election and she did not sign the documents because these were incomplete, without the list of recipients, and sacks of rice were not even delivered to the municipal office (Record[s], p. 26).^[5]

The Resolution was reviewed by Director Corazon A. Arancon of the Office of the Deputy Ombudsman for Mindanao. It was recommended for approval by Deputy Ombudsman for Mindanao, Antonio E. Valenzuela, and duly approved by respondent Ombudsman Aniano A. Desierto. Accordingly, on September 18, 2000, an Information for violation of the Anti-Graft and Corrupt Practices Act was filed with the *Sandiganbayan*, docketed as Criminal Case No. 26266. The accusatory portion of the charge sheet reads:

That on or about 13, 14, 16 and 17 April 1998 or thereabout, in the Municipality of Baroy, Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, accused Isagani B. Rizon, a high-ranking public officer, being then the Municipal Mayor of Baroy, Lanao del Norte, committing the offense in relation to his office, acting with evident bad faith, did then and there willfully, unlawfully and feloniously, make it appear that he purchased Five Hundred Fifty-Two (552) sacks of rice from Belma's Store without the required SB Resolution authorizing its

purchase, then negotiated with the said store for the issuance of blank receipts in order to make it appear that 552 sacks of rice were delivered to the Municipality of Baroy in the total amount of Four Hundred Fifty-Eight Thousand, One Hundred Sixty Pesos (P458,160.00) when in truth and in fact, as the accused very well knew only about Fifty (50) to Sixty (60) sacks of rice were purchased and delivered to the municipality, thereby causing undue injury to the community and to the government.

CONTRARY TO LAW.^[6]

On October 18, 2000, petitioner filed a Motion for Reinvestigation, which the *Sandiganbayan* granted. Petitioner presented new evidence consisting of copies of a certified weather information on the *El Niño* occurrence over Lanao del Norte during the period 1997-1998; a copy of the Special Rainfall Assessment for Mindanao during the 1997-1998 *El Niño* episode; a map showing rainfall extreme index in areas with severe drought impact; a copy of the overview record of rainfall deficit all over the country; and a copy of the municipal board resolution implementing the annual budget for calendar year 1998.^[7]

Petitioner also submitted a copy of the audit report conducted by a team of government auditors. The audit report contained a motion for the dismissal of the criminal charge against petitioner for lack of factual basis, but recommended that petitioner, along with the municipal treasurer and engineer, be held jointly and solidarily liable for refund of the disallowed sum of P641,210.11.^[8]

The petitioner likewise presented again the affidavit^[9] of Isabelo Seno, proprietor of Belma's Store. The affiant originally testified before the fact-finding committee that about 50 to 60 sacks of rice were purchased by petitioner, although he stressed that he was unsure of the actual quantity since there were other people who tended the store. Later, he recanted this testimony in his affidavit confirming, instead, that indeed 552 sacks of rice were purchased at P830/sack for a total of P458,160.

After reinvestigation, Ombudsman Prosecutor Florita S. Linco, in a **Memorandum**^[10] dated March 12, 2001, recommended the withdrawal of the Information and the dismissal of the criminal case against the petitioner. However, respondent Ombudsman disapproved Prosecutor Linco's recommendation, thus:

The recommendation to withdraw information is purely based on appreciation of evidence which should be subjected to the scrutiny of the court in a full-blown trial.

There is no compelling reason to reverse the conclusion of the preliminary investigation officer who evaluated the evidence. The supervising director's review and that of the Deputy Ombudsman which confirm the investigator's findings have reinforced the latter's finding of probable cause.^[11]

Unconvinced, petitioner filed with the Office of the Ombudsman a Motion for Reconsideration of the disapproval of Prosecutor Linco's recommendation to dismiss the case against him and withdraw the Information filed with the Sandiganbayan. While said motion was pending, respondent Ombudsman filed a Comment to the