

## EN BANC

[ G.R. No. 108431, July 14, 2000 ]

**OSCAR G. RARO, PETITIONER, VS. THE HONORABLE  
SANDIGANBAYAN, (SECOND DIVISION), THE HONORABLE  
OMBUDSMAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

The Issue In This Special Civil Action Of Certiorari And Prohibition Is Whether Or Not The Sandiganbayan Gravely Abused Its Discretion In Denying A Motion To Quash An Information On The Ground That The Preliminary Investigation Allegedly Violated The Right Of The Accused To Due Process Of Law.

Petitioner Oscar G. Raro, A Lawyer, Was The Corporate Secretary Of The Philippine Charity Sweepstakes Office (Pcso). As Such, Petitioner Was The Acting Manager Of The Special Projects Department That Was In Charge Of The Experimental Small Town Lottery (Stl), Which Under Pcso Resolution No. 118, Dated April 1987, Was To Be Operated In Certain Areas Of The Country. On July 30, 1987, The Pcso, Through Atty. Reynaldo E. Ilagan Of The Special Projects Department, Authorized Elmec Trading And Management Corporation (Elmec) To Operate The Stl In The Province Of Camarines Norte. Elmec In Turn Employed Luis ("Bing") F. Abaño, A Resident Of Daet, Camarines Norte, As Provincial Manager Of The Experimental Stl In Said Province.<sup>[1]</sup> Abaño Allegedly Invested P100,000.00 In The Stl Operation In That Province.

In A Complaint That He Filed With The Tanodbayan In Manila On May 20, 1988, Abaño Alleged That Petitioner, In His Capacity As Pcso Corporate Secretary, "Personally And Directly Intervened In The Operation Of Said Lottery To His Financial Benefit And Advantage" By Committing The Following Acts:

- (1) Causing The Employment Of Members Of His Family In The Experimental Stl Project That Was Under His Supervision, In Violation Of Section 3 (D) Of The Anti-Graft Law;
- (2) Deciding On The Dismissal Of Certain Lottery Employees And In Bad Faith Driving Abaño "To Sever From The Management Of Lottery" Which At That Time Was Grossing About P250,000.00 Daily Under A "Profit-Sharing" Agreement, Thus Causing Abaño "Damage And Injury" In The Amount Of P1,300,000.00, In Violation Of Section 3 (E) Of The Anti-Graft Law; And
- (3) Regularly Demanding From Abaño Amounts Totaling More Than P100,000.00 As His Share In The Experimental Lottery, In Violation Of Section 3 (H) Of The Anti-Graft Law.

Abaño Maintained Further That Petitioner Got Mad At Him When He Gave Petitioner A Check Instead Of Cash, Which Petitioner Later Used To Accuse Abaño Of Issuing A Bouncing Check Notwithstanding That The Check Was Not Encashed. Abaño Added That Petitioner Was Not Only Dishonest But Displayed Such Dishonesty.<sup>[2]</sup> The Complaint Filed By Abaño'S Counsel Was Verified And Subscribed Before A Notary Public,<sup>[3]</sup> And Docketed In The Office Of The Ombudsman As Osp-88-01263.

Overall Ombudsman Jose G. Colayco, On July 1, 1988, Endorsed The Complaint To The National Bureau Of Investigation (Nbi).<sup>[4]</sup> On May 11, 1989, Nbi-Led Officer-In-Charge Gerarda G. Galang Submitted A Report Stating That The Investigation Conducted By Nbi Senior Agent Salvador A. Duka Yielded The Following Findings:

(A) On The Charge Of Employment Of Relatives, Abaño Charged That Petitioner Asked Him To Appoint His (Petitioner'S) Brother As Station Manager Of The Lottery In Labo, Camarines Norte. Likewise According To Abaño, Petitioner Imposed On Him The Appointment Of Petitioner'S Sister, Marissa Raro- Remigio As The Stl Provincial Cashier. Per The Joint Affidavit Of Yoly Malubay, Ruben Galeon, Rosalio Poblete And Francisco Villaluz, Petitioner'S Brother Named Antonio, The Lottery Station Manager, Signed Payrolls, Vouchers And Other Pertinent Papers Using The Name Joel Remigio, Marissa'S Husband. In 1988, Antonio Raro Was Appointed Assistant Provincial Operations Manager Of The Stl In Camarines Norte. On The Other Hand, Marissa Raro-Remigio Claimed That It Was Elmec That Offered Her The Position Of Treasurer Of The Stl And That On January 27, 1988, Elmec Terminated The Employment Of Abaño And The Employees He Had Hired. However, The Circumstances Surrounding Elmec'S Employment Of Petitioner'S Brother And Sister Were Not Verified From The Owners Of Elmec.

(B) With Respect To The Charge That Petitioner Demanded From Abaño The Total Amount Of P100,000.00, No Receipt Was Shown To Prove Petitioner'S Having In Fact Received That Sum Although Ruidera And Galeon, In Their Affidavits, Confirmed That Said Amount Was Given To Petitioner And To Atty. Ilagan. Since The Sworn Statements Of Ilagan And Cordez And Those Of Fernando Carrascoso And Rustico Manalo, Who Allegedly Received 25% Of The Proceeds Of The Stl, Had Not Yet Been Taken, There Were Certain Aspects Of The Charge That Should Be Considered. Hence, "No Definite Conclusion Could Be Made" Thereon.

(C) The Subject Of Dismissal Of Employees Was Not Yet Covered By The Investigation.

With These Findings, Galang Recommended That Further Investigation Be Conducted And That A Copy Of The "Evaluation Comment" Be Furnished The Ombudsman With The Information "That Further Investigation (Was) Still Being Conducted On Some Aspects Of The Case."<sup>[5]</sup> Accordingly, Nbi Director J. Antonio M. Carpio Endorsed On May 11, 1989 The "Evaluation Comment" And The Nbi Agent'S Report To The Ombudsman.<sup>[6]</sup>

On July 12, 1989, Nbi Agent Duka Submitted A Disposition Form Stating That Per The Joint Affidavit Of Yolly Manubay, Ruben Galeon, Rosario Poblete And Francisco

Villaluz, Petitioner'S Brother, Antonio Raro Signed "Numerous Vouchers, Payrolls And Other Papers" In The Name Of Joel Remigio. The Sworn Statement Of Teddy Aguirre And Xerox Copies Of Vouchers Supported This. However, The Original Copies Of The Vouchers Could Not Be Secured On Account Of The Cessation Of Operation Of The Stl In Camarines Norte Since July 1988. Neither Could The Sworn Statement Of Antonio Raro Be Secured. Thus, Nbi Agent Duka Recommended That Further Investigation Be Conducted In Coordination With Lucso In Lucena City.<sup>[7]</sup>

Ombudsman Graft Investigation Officer Ii (Gio Ii) Theresa Medialdea-Caraos Submitted To Ombudsman Conrado Vasquez A Memorandum Dated March 15, 1990, With The Following Recommendation:

"Recommended Action: The Initial Report Of The Nbi Points Only To The Anomalies Allegedly Committed By The Respondent'S Brother, Antonio. The Appointment Of His Sister Which Was Supposedly Imposed On The Complainant Is Not Supported By Evidence Other Than The Mere Allegation Of The Latter.

The Misdeeds Committed By Respondent Were Not Based On Facts As Presented By Nbi.

It Is Therefore Recommended That Further Investigation By Nbi Be Conducted In Order To Determine The Veracity Of The Charges."

The Memorandum Was Recommended For Approval By Acting Director Gualberto J. De La Llana And Approved On March 22, 1990 By Ombudsman Vasquez.<sup>[8]</sup>

On September 19, 1990, The Nbi Recommended The Prosecution Of Petitioner Based On Abaño'S Complaint.<sup>[9]</sup> Thus, On May 14, 1991, Gio Ii Caraos Formally Directed Petitioner To File His Counter-Affidavit And Controverting Evidence To The Complaint Of May 6, 1988, With A Warning That His Failure "To Do So Shall Be Construed As A Waiver Of His Right To Be Heard And The Preliminary Investigation Shall Proceed Accordingly."<sup>[10]</sup> On Petitioner'S Motion, The Ombudsman Granted Him Until September 7, 1991 Within Which To File His Counter-Affidavit. On September 7, 1991, Petitioner Sought Another Extension Within Which To File His Counter-Affidavit.<sup>[11]</sup>

Petitioner Filed His Counter-Affidavit On October 25, 1991.<sup>[12]</sup> He Asserted That He Removed Some Employees From The Lottery To Avoid Undue Injury To The Government. He Denied That He Hired Or Caused To Be Hired His Brother And Sister In The "Experimental Lottery Research" As They Maintained Their Affairs Without His Interference. He Also Denied Demanding Or Receiving Any Amount From Abaño Or From The Lottery Operator As It Was Impossible For Him To Demand Bribe Money In The Form Of A Check. He Claimed That Abaño'S Complaint Was A Desperate Effort To Malign Him.<sup>[13]</sup>

On November 29, 1991, Gio Ii Caraos Issued A Resolution Stating That:

"Evaluating The Complaint, As Well As The Controverting Evidence Presented By The Respondent, We Find Prima Facie Case Against Herein Respondent For Violation Of R.A. 3019.

"At The Outset, It Must Be Stressed That In A Preliminary Investigation, It Is Not Required That All Reasonable Doubts On The Accused'S Guilt Must Be Removed; What Is Required Only Is That Evidence Be Sufficient To Establish Probable Cause That The Accused Committed The Offense Charged. Moreover, As Between The Positive Assertions Of Complainant Abano And The Mere Denials Of The Respondent, The Former Deserves More Credence As It Is Acknowledged That The Same Has Greater Evidentiary Value Than The Latter. Probable Cause Has Been Established By The Clear And Positive Testimonies Of The Complainant And His Witnesses Pointing To The Herein Respondent As Responsible For Various Acts Relative To The Operation Of The Lottery In Violation Of The Anti-Graft Law Specifically Sec. 3 (A), (B), (C), (H) And (K). Such Finding Is Duly Supported By The Recommendation Of The Nbi Report Which Also Recommended The Filing Of Proper Criminal Charge Against The Respondent.

"Furthermore, Most Of The Allegations Of The Respondents As Contained In His Counter-Affidavit Are Matters Of Defense Which Can Be Best Ventilated In Court During Trial. In Fact, The Other Allegations Of Respondents Which Are Mere Insinuations As To The Motive Of The Complainant In Filing The Case, Only Deserve Scant Consideration.

"Wherefore, All Legal Premises Considered, Let An Information Be Filed Before The Proper Court Against Respondent Raro.

"So Resolved."<sup>[14]</sup>

Director Cesar T. Palana Recommended Approval Of The Above Resolution On December 5, 1991.<sup>[15]</sup> However, On January 27, 1992, Assistant Ombudsman Abelardo L. Aportadera, Jr., Who Reviewed The Resolution, Recommended Its Disapproval And The Dismissal Of The Complaint, On The Ground That The Nbi Report Was "Based Merely On Testimonial Evidence" That "Would Not Suffice To Establish A Prima Facie Case" Against Herein Petitioner. He Averred That More Than Oral Evidence Should Support The Charge Of Extortion And That Petitioner'S Witnesses Had Amply Clarified The Charge Of Nepotism.<sup>[16]</sup>

On June 11, 1992, Special Prosecution Officer I (Spo I) Wendell E. Barreras-Sulit, After Reviewing The Resolution Of Gio Ii Caraos, Issued A Memorandum Finding That Said Resolution "Did Not Fully Discuss The Evidence That Would Support The Particular Charges Recommended To Be Filed" Against Petitioner. After Analyzing Each Of The Charges, Spo I Barreras-Sulit Concluded That Petitioner Should Only Be Charged With Violation Of Section 3 (B) Of R.A. 3019 As There Was Prima Facie Case That Petitioner Received The Total Amount Of P116,000.00 On Four Different Occasions. Attached To The Memorandum Was The Information Charging Petitioner With Violation Of Section 3 (B) Of Republic Act No. 3019.<sup>[17]</sup>

Spo I Barreras-Sulit'S Memorandum Was Approved By Deputy Special Prosecutor Jose De G. Ferrer, Special Prosecutor Aniano A. Desierto And Ombudsman Vasquez.<sup>[18]</sup> Hence, On July 2, 1992, An Information Dated May 19, 1992 Prepared By Spo I

Barreras-Sulit Was Filed With The Sandiganbayan,<sup>[19]</sup> Accusing Petitioner With Violation Of Section 3 (B) Of Republic Act No. 3019 Committed As Follows:

"That On Or About The Period From October, 1987 To January 1988, In Daet, Camarines Norte, Manila And Quezon City, Philippines, And Within The Jurisdiction Of This Honorable Court, The Above Named Accused, A Public Officer Being Then The Corporate Secretary And Acting Department Manager Of The Special Projects Department Of The Philippine Charity Sweepstakes Office (Pcso), San Marcelino, Malate, Metro Manila, Tasked To Monitor And Oversee The Small Town Lottery Experimental Project Of The Pcso In Certain Areas Including Camarines Norte, Taking Advantage Of His Said Public Position And While In The Performance Of His Official Duties As Such, Did Then And There, Wilfully, Unlawfully And Criminally Demand And Receive On Four Different Occasions The Amount Totalling To One Hundred Sixteen Thousand Seven Hundred Ninety Nine Pesos And Ninety Nine Centavos (P116,799.99), Philippine Currency, From Mr. Luis "Bing" F. Abaño, Provincial Manager Of The Stl Operations In Camarines Norte, As His Share In The Net Proceeds Of The Said Stl Which Was Not Authorized Under The Law But Which Amount Was Given To And Received By Him In His Capacity As Overseer And Monitoring Arm Of The Pcso In The Small Town Lottery Operation In Camarines Norte.

"Contrary To Law."

On July 6, 1992, The Sandiganbayan Issued An Order For Petitioner'S Arrest And Fixed Bail In The Amount Of P12,000.00.<sup>[20]</sup> On The Same Day, Petitioner Applied For Bail Before The Regional Trial Court Of Cabanatuan City, Branch 26,<sup>[21]</sup> Which Forthwith Approved The Application.<sup>[22]</sup> On July 8, 1992, Petitioner Filed With The Sandiganbayan A Manifestation And Motion For The Lifting Of The Order Of Arrest.<sup>[23]</sup> Accordingly, The Sandiganbayan Recalled Its Order Of Arrest The Following Day.<sup>[24]</sup>

Petitioner Subsequently Filed With The Sandiganbayan A Motion For The Reinvestigation Of The Resolution Of The Ombudsman Dated 11 June 1992,<sup>[25]</sup> Alleging That:

1. The "Prejudicial And Indecent Delay In The Preliminary Investigation" Violated His Rights To Due Process Of Law And To Speedy Disposition Of The Case Because While The Complaint Was Filed On May 20, 1988, The Information Against Him Was Filed More Than Four (4) Years Later.
2. Despite The Delay In Filing The Information, Hastiness Attended The Proceedings In That He Was Not Furnished A Copy Of The Resolution On Which The Information Was Based. Moreover, The Information Was Dated May 19, 1992 Or Even Before The Resolution That Gave Rise To It Was Finished On June 11, 1992. There Was A Need For A Reinvestigation To Protect Him From Hasty, Malicious And Oppressive Prosecution.
3. The Resolution Of June 11, 1992 Was A "Picture Of Legal And Factual Infirmities." While No Evidence Supported The Complaint Other Than The