

## THIRD DIVISION

[ G.R. No. 110353, May 21, 1998 ]

**TOMAS H. COSEP, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.**

### DECISION

**ROMERO, J.:**

Petitioner, Tomas Cosep, was the Municipal Planning and Development Coordination Officer of Olutanga, Zamboanga del Sur. In 1987, the Municipality decided to construct an artesian well for one of its localities. Hence, it secured the services of private complainant Angelino E. Alegre to undertake the said project, under a "pakyaw" arrangement for the contract price of P5,000.00 payable after completion of the project. Petitioner, being the Planning Officer of the Municipality, monitored the progress of the construction.

After the project was finished, petitioner secured the amount of P5,000.00 from the Municipal Treasurer. However, only P4,500.00 was given to the private complainant, the balance being allegedly withheld by petitioner as reimbursement for his expenses in processing the papers in the Municipal Treasurer's Office.

Aggrieved, private complainant filed a complaint before the Sandiganbayan, First Division, docketed as Criminal Case No. 17503 against petitioner for violating Section 3(b) of R.A. No. 3019. The information reads:

"That on or about August of 1987, or immediately prior and subsequent thereto, in Olutanga, Zamboanga del Sur, and within the jurisdiction of this Honorable Court, accused, a public officer, being the Municipal Planning and Development Officer of the said municipality, with the duty to administer and award government projects and to prepare the necessary documents required for money claims against the municipality of OLUTANGA, Zamboanga del Sur, did then and there, wilfully and unlawfully demand and receive five hundred pesos (500.00) from a certain Angelino Alegre as a consideration for awarding the construction of the artesian well, Solar, Olutanga and for facilitation the necessary documents for the money claims of the latter from the Municipality of Olutanga for constructing the above mentioned Artesian Well.

Contrary to law."

On April 10, 1992, petitioner entered a plea of not guilty to the charge. Thereafter, trial on the merits ensued.

In an effort to escape liability, petitioner advances the theory that private complainant was never a contractor, but was merely a laborer entitled to a daily rate of P20.00. Moreover, the amount of P4,500.00 he gave to the private complainant represents the total salary of the other thirteen (13) workers who constructed the

artesian well. Hence, he could not have withheld the said P500.00 since there was none in the first place. To bolster his contention, petitioner presented as evidence the Time Book and Payroll Sheet,<sup>[1]</sup> and a Memorandum dated May 10, 1987, issued by the Mayor of Olutanga indicating that private complainant was hired as the head laborer during the construction of the artesian well.<sup>[2]</sup>

Apparently, not impressed with petitioner's defense, the Sandiganbayan, in a decision dated April 15, 1993<sup>[3]</sup> ruled against him, viz.:

"WHEREFORE, the Court finds the accused, Tomas Cosep y Hibayan, guilty beyond reasonable doubt of the crime defined in Section 3, paragraph (b), Republic Act 3019, as amended, and applying the Indeterminate Sentence Law, imposes upon him the penalties of imprisonment ranging from six (6) years and one (1) month, as minimum, to nine (9) years and twenty (20) days, as maximum, and of perpetual disqualification from public office. The court orders him to pay Angelino E. Alegre, the private complainant, P500.00 representing the amount which the accused demanded and received from him.

SO ORDERED."

Petitioner has filed the instant petition contending that: (a) he was not accorded an impartial trial by the Sandiganbayan and (b) his guilt was not proven beyond reasonable doubt to justify his conviction. Regarding the first assignment of error, petitioner bewails the fact that during his testimony the Justices of the Sandiganbayan actively participated in the proceeding by propounding no less than sixty-eight questions<sup>[4]</sup> which, in his opinion, were indications of partiality or prejudgment of guilt. Specifically, he cites the questions on pages 34 to 42 of the Transcript of Stenographic Notes<sup>[5]</sup>

as indications of the Justices' hostility against him.

We do not agree.

Admittedly, petitioner, like any other accused individual, is entitled to a fair trial before an "impartial and neutral judge" as an indispensable imperative of due process.<sup>[6]</sup> Judges must not only be impartial, but must also appear to be impartial as an added assurance to the parties that the decision will be just.<sup>[7]</sup> However, this is not to say that judges must remain passive or silent during the proceedings. Since they are in a better position to observe the demeanor of the witness as he testifies on the witness stand, it is only natural for judges to ask questions to elicit facts with a view to attaining justice for the parties. Questions designed to clarify points<sup>[8]</sup> and to elicit additional relevant evidence are not improper.<sup>[9]</sup> Also, the judge, being the arbiter, may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time.<sup>[10]</sup>

With the above doctrines serving as guidelines, we have scrutinized carefully the questions propounded by the Justices, and none was indicative of their partiality for the prosecution in proving its case against the petitioner. More precisely, on pages 34 to 35 of the Transcript of Stenographic Notes, the gist of the questions were on the monitoring procedure being undertaken by the petitioner in supervising the project. While on pages 36 to 39, the questions dealt with the identities and

qualifications of the workers who participated in the construction of the project. Those on pages 41 to 42, referred to queries which sought to clarify the facts and circumstances of another case filed against the petitioner by a certain Mr. Macapala. All told, these questions cannot be said to have crossed the limits of propriety. In propounding these questions, the Justices merely attempted to ferret the the truth as to the facts to which the witness was testifying.

In any case, if petitioner were under the impression that the Justices were unduly interfering in his testimony, he was free to manifest his objection.<sup>[11]</sup> However, the records show that he answered the questions freely and without any objection from his counsel on the alleged active participation of the Justices when he gave his testimony.

While we do not see any merit in petitioner's first assigned error, we, however, agree with him that his guilt was not adequately proven beyond reasonable doubt by the prosecution.

It is well settled that whether the accused is guilty or not of the offense charged is a question which involves a determination of facts as presented by the prosecution and the defense. The duty to ascertain which is more credible is lodged with the trial court which had the opportunity to observe the witness directly and to test his credibility by his demeanor on the stand. Thus, the Sandiganbayan's factual findings are generally accorded respect, even finality, unless: (1) the conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) the inferences made are manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts or premised on the absence of evidence on the record.<sup>[12]</sup> A re-examination of the entire proceedings of the instant case compels us to take exception to the aforementioned general rule.

It must be borne in mind that criminal cases elevated by convicted public officials from the Sandiganbayan deserve the same thorough review by this Court as criminal cases involving ordinary citizens, simply because the constitutional presumption of innocence must be overcome by proof beyond reasonable doubt.<sup>[13]</sup>

Where the state fails to meet the quantum of proof required to overcome the constitutional presumption, the accused is entitled to acquittal, regardless of the weakness or even the absence of his defense<sup>[14]</sup> for any conviction must rest on the strength of the prosecution's case and not on the weakness of the defense.

Going over the records and the TSN of the private complainant, we entertain serious misgivings about his testimony, especially after he had erred as regards important facts and information, not to mention the questionable lapses of memory. Indeed, for evidence to be believed, it must not only proceed from the mouth of a credible witness but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.<sup>[15]</sup>

It is worthy to note that private complainant narrated that he was the one who paid the workers their wages during the construction of the well.<sup>[16]</sup> However, it baffles us that in paying these workers, he never bothered to have them sign any payroll or voucher receipt,<sup>[17]</sup> a practice which is routine for those engaged in hiring workers for construction projects. At the very least, the payroll or voucher receipts are necessary, not only for accounting purposes, but for protection against spurious or