

SECOND DIVISION

[G.R. No. 114331, May 27, 1997]

**CESAR E. A. VIRATA, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN AND THE REPUBLIC OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

TORRES, JR., J.:

In times past, when due process was more of a myth - empty accusations have had its day. In a more enlightened age, a sage was heard to say - "Strike me if you must, but hear me first!" We have come a long way, indeed, for in our time one who is required to answer for an alleged wrong must at least know what is it all about.

This is the case before Us.

In this case, petitioner Cesar E. A. Virata (Virata, for brevity) is one of the defendants in Civil Case No. 0035, entitled Republic of the Philippines versus Benjamin (Kokoy) Romualdez, et. al.. The case, which was filed by the Presidential Commission on Good Government in behalf of the Republic of the Philippines (Republic, for brevity) against fifty three persons (53)^[1] including Virata, involves the recovery of ill-gotten wealth amassed by the defendants during the twenty year reign of former President Ferdinand Marcos.

The complaint against the defendants was amended three times. The last amended complaint filed with the Sandiganbayan, hereafter known as the expanded Second Amended Complaint, states, inter alia, the following relevant allegations against petitioner Virata:

V. SPECIFIC AVERMENTS OF DEFENDANTS' ILLEGAL ACTS

14. Defendants Benjamin (Kokoy) Romualdez and Juliette Gomez Romualdez, acting by themselves and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their relationship, influence and connection with the latter Defendant spouses, engaged in devises, schemes and strategems to unjustly enrich themselves at the expense of plaintiff and the Filipino people, among others:

(b) gave MERALCO undue advantage (i) by effecting the increase of power rates with automatic authority to tack into the consumers' electric bills the so-called purchase and currency adjustment, and (ii) with the active collaboration of Defendant Cesar E. A. Virata, by reducing the electric franchise tax from 5% to 2% of gross receipts and the tariff duty on fuel oil imports by public utilities from 20% to 10%, resulting in substantial savings for MERALCO but without any significant benefit to the consumers of electric power and loss of millions of pesos in much

needed revenues to the government;

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(g) secured, in a veiled attempt to justify MERALCO's anomalous acquisition of the electric cooperatives, with the active collaborations of Defendants Cesar E. A. Virata, Juanito R. Remulla, Isidro Rodriguez, Jose C. Hernandez, Pedro Dumol, Ricardo C. Galing, Francisco C. Gatmaitan, Mario D. Camacho and the rest of the Defendants, the approval by Defendant Ferdinand E. Marcos and his cabinet of the so-called "Three-Year Program for the Extension of MERALCO's Services to Areas Within the 60-Kilometer Radius of Manila," which required government capital investment amounting to millions of pesos;

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(m) manipulated, with the support, assistance and collaboration of Philguarantee officials led by Chairman Cesar E. A. Virata and the senior managers of FMMC/PNI Holdings Incorporated led by Jose S. Sandejas, Jr., Jose M. Mantecon and Kurt S. Bachman, Jr., among others, the formation of Erectors Holdings, Inc. without infusing additional capital solely for the purpose of making it assume the obligation of Erectors Incorporated with Philguarantee in the amount of P527,387,440.71 with insufficient securities/collaterals just to enable Erectors Inc. to appear viable and to borrow more capitals, so much so that its obligation with Philguarantee has reached a total of more than P2 Billion as of June 30, 1987.

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17. The following Defendants acted as dummies, nominees and/or agents by allowing themselves (i) to be used as instruments in accumulating ill-gotten wealth through government concessions, orders and/or policies prejudicial to plaintiff, or (ii) to be incorporators, directors or members of corporations beneficially held and/or controlled by Defendants Ferdinand E. Marcos, Imelda R. Marcos, Benjamin (Kokoy) T. Romualdez and Julliette Gomez Romualdez in order (to) conceal and prevent recovery of assets illegally obtained: xxx Cesar E. A. Virata xxx.

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18. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, acquisition of unexplained wealth, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people."^[2]

Asserting that the foregoing allegations are vague and are not averred with sufficient definiteness as to enable him to effectively prepare his responsive pleading, petitioner Virata filed a motion for a bill of particulars on January 31, 1992.

In a Resolution promulgated on 4 August 1992, the Sandiganbayan partially granted the said motion by requiring the Republic to submit a bill of particulars concerning the charges against petitioner Virata stated only in paragraph 17 (acting as dummy, nominee and/or agent) and paragraph 18 (gross abuse of authority and violation of laws and the Constitution) of the expanded Second Amended Complaint. However, as to the other charges, namely: 1) Virata's alleged active collaboration in the reduction of electric franchise tax and the tariff duty on fuel oil imports, as stated in paragraph 14 b (ii), 2) his active collaboration in securing the approval by Ferdinand Marcos of the "Three Year Program for the Extension of MERALCO's Services to Areas within the 60 Kilometer Radius of Manila," mentioned in paragraph 14 g, and 3) his support, assistance and collaboration in the formation of Erectors Holdings Incorporated as reflected in paragraph 14 m of the expanded Second Amended Complaint, the Sandiganbayan declared that these accusations are clear and specific enough to allow Virata to submit an intelligent responsive pleading, hence, the motion for a bill of particulars respecting the foregoing three charges was denied.

In view of the Sandiganbayan's order of August 4, 1992 requiring the Republic to amplify the charges in paragraphs 17 and 18 of the expanded Second Amended Complaint, the Republic through the Office of the Solicitor General submitted the bill of particulars dated October 22, 1992, hereafter called as the Limited Bill of Particulars, which was signed by a certain Ramon A. Felipe IV, who was designated in the bill of particulars as "private counsel", the relevant portion of which provides that:

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1. Defendant Virata, while being one of the members of the Central Bank's Monetary Board, approved Resolution No. 2320 dated December 14, 1973, allowing the Benpres Corporation, Meralco Securities Corporation (MSC) and Manila Electric Company (MERALCO) to refinance/restructure their outstanding loan obligations, a 'sweetheart' or 'behest' accommodation which enabled Meralco Foundation, Inc. to acquire ownership and control of Manila Electric Company. Meralco Foundation, Inc. was then controlled by the Marcos-Romualdez Group with Benjamin (Kokoy) Romualdez being the beneficial owner and, thereby, expanding the said group's accumulation of ill-gotten wealth.

2. On July 11, 1978 defendant Virata representing the Republic of the Philippines as Finance Minister, executed an Agreement with the Manila Electric Company (MERALCO) whereby the government agreed to buy the parcels of land, improvements and facilities known as Gardner Station Unit No. 1, Gardner Station Unit No. 2, Snyder Station Unit No. 1, Snyder Station Unit No. 2 and Malaya Station Unit No. 1 for One Billion One Hundred Million Pesos (P1,100,000,000.00), a transaction which was so disadvantageous to the government and most favorable to MERALCO which gained a total of P206.2 million. As a result of this transaction, MERALCO is relieved of its heavy burden in servicing its foreign loans which were assumed by the government. Furthermore, the agreement clearly showed the 'sweetheart' deal and favors being given by the government to MERALCO which was then owned/and or controlled by Benjamin Romualdez representing the Marcos-Romualdez group, when it

provided that the 'sale is subject to the reservation of rights, leases and easements in favor of Philippine Petroleum Corp., First Philippine Industrial Corp. (formerly MERALCO Securities Industrial Corp.) and Pilipinas Shell Petroleum Corp. insofar as the same are presently in force and applicable.' This enabled the Marcos-Romualdez Group to further accumulate and expand the ill-gotten wealth and plunder the nation.

3. At the meeting of the Board of Directors of the Philippine Export and Foreign Loan Guarantee Corp. held on September 16, 1983 defendant Virata acting as Chairman, together with the other members of the board, approved the request of Erectors, Inc., a Benjamin Romualdez owned and/or controlled corporation, for a guarantee to cover 100 % of its proposed behest loan of US \$33.5 Million under the Central Bank Consolidated Foreign Borrowing Program with the Philippine National Bank, Development Bank of the Philippines, Interbank, Philippine Commercial International Bank and Associated Bank as conduit banks, to refinance Erectors, Inc.'s short term loans guaranteed by Philguarantee, which at present forms part of the government's huge foreign debt. Such act of defendant Virata was a flagrant breach of public trust as well as a violation of his duty to protect the financial condition and economy of the country against, among others, abuses and corruption.”^[3]

On 3 December 1992, a motion to strike out the Limited Bill of Particulars and to defer the filing of the answer was filed by Virata on the grounds that the Limited Bill of Particulars avers for the first time new actionable wrongs allegedly committed by him in various official capacities and that the allegations therein do not indicate that Virata acted as dummy, nominee or agent but rather as a government officer, acting as such in his own name. This motion was not acted upon by the Sandiganbayan.

Way back on September 1, 1992, Virata, who was dissatisfied with the Sandiganbayan Resolution of August 4, 1992, filed a petition for certiorari (G.R. No. 106527) with this Court questioning the Sandiganbayan 's denial of his motion for a bill of particulars as regards the first three charges stated in paragraph 14 b(ii), paragraph 14g and paragraph 14m of the expanded Second Amended Complaint. The petition was granted by this Court in our decision promulgated on April 6, 1993. Accordingly, the Sandiganbayan Resolution of August 4, 1992 to the extent that it denied the motion for a bill of particulars with respect to the first three (3) charges was set aside and the Republic was required by this Court to submit to Virata a bill of particulars containing the facts prayed for by the latter insofar as to these first three (3) 'actionable wrongs' are concerned.^[4]

On August 20, 1993, the Office of the Solicitor General (OSG) filed a manifestation and motion dated August 18, 1993 alleging, inter alia, that the OSG and PCGG agreed that the required bill of particulars would be filed by the PCGG since the latter is the investigating body which has the complete records of the case, hence, in a better position to supply the required pleading. The Sandiganbayan took note of this manifestation in a Resolution dated August 26, 1993. On the basis of this arrangement, the PCGG submitted the bill of particulars dated November 3, 1993, which was apparently signed by a certain Reynaldo G. Ros, who was named in the bill of particulars as "deputized prosecutor" of the PCGG. This bill of particulars, which incorporates by reference the Limited Bill of Particulars of October 22, 1992, states, inter alia:

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1. On the 'Specific Averments of Defendant's Illegal Acts a (i)' [paragraph 14 b (ii) of the expanded Second Amended Complaint]

Immediately after defendants Ferdinand E. Marcos and Benjamin 'Kokoy' Romualdez took complete control of Meralco and its subsidiaries, defendant Ferdinand E. Marcos issued Presidential Decree No. 551 on September 11, 1974 which effected the reduction of electric franchise tax being paid by Meralco from 5% to 2% as well as lowered tariff duty of fuel oil imports from 20% to 10% and allowed Meralco to retain 3% reduction in franchise tax rates thereby allowing it to save as much as P258 million as of December 31, 1992.

Defendant Cesar Virata then Minister of Finance, supported PD 551 and in fact issued the guidelines on its implementation which were heavily relied upon by the Board of Energy in its questioned ruling dated 25 November 1982 by allowing Meralco to continue charging higher electric consumption rates despite their savings from the aforesaid reduction of franchise tax without any significant benefit to the consumers of electric power and resulting in the loss of millions of pesos in much needed revenues to the government.

2. On the 'Specific Averments of Defendant's Illegal Acts a (ii)' [par. 14g of the expanded Second Amended Complaint]

Defendant Cesar E.A. Virata, then Prime Minister [sic], caused the issuance of a confidential memorandum dated October 12, 1982 to then President Ferdinand E. Marcos informing the latter of the recommendation of the cabinet of the so called Three Year Program for the Extension of Meralco Services of Areas within the 60 Kilometer Radius of Manila in order to justify Meralco's anomalous acquisition of electric cooperatives and which later required the Monetary Board and Philguarantee then headed by defendant Virata to recommend the restructuring of Meralco's foreign and local obligation which led to the extending of loan accommodations by the Development Bank of the Philippines and Philippine National Bank in favor of Meralco.

3. On the 'Specific Averments of Defendant's Illegal Acts a (iii)' [par. 14m of the expanded Second Amended Complaint]

Defendant Cesar Virata, as Chairman of Philguarantee and the Senior Managers of FMMC/PNI Holdings Inc. led by Jose S. Sandejas, J. Jose N. Mantecon and Kurt S. Bachmann, Jr., supported and assisted the formation of Erectors Holdings, Inc. for the purpose of making it assume the obligation of Erectors Inc. with Philguarantee in the amount of P527,387,440.71 without sufficient securities/collateral and despite this outstanding obligation, defendant Virata, as Chairman of Philguarantee, approved the Erectors Inc. Applications for loan guarantees that reached more than P2 Billion as of June 30, 1987.

4. On the 'Specific Averments of Defendant's Illegal Acts a (iv)' [par. 17 of