

SECOND DIVISION

[G.R. No. 228610, March 20, 2019]

**FLORO T. TADENA, PETITIONER, V. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

J. REYES, JR., J.:

A municipal mayor, who changed the wordings of a municipal ordinance, is guilty of falsification by a public officer of a public document.

The Facts

The Court adopts the concise narration of facts of the Sandiganbayan (SB), which is based on documentary and testimonial evidence and stipulations of the parties.

On 17 October 2001, the accused [Floro T. Tadena], then the Municipal Mayor of Sto. Domingo, Ilocos Sur, wrote a letter to the members of the [*Sangguniang Bayan*] requesting for the creation of the position of a Municipal Administrator.

On 10 December 2001, the [*Sangguniang Bayan*] adopted the First Version, for the appropriation of the annual budget of the Municipality of Sto. Domingo, Ilocos Sur, for the fiscal year of 2002. Paragraph (a) of the 4th "Whereas Clause" of said municipal ordinance addressed [Tadena's] request and provided for the creation of the position of a Municipal Administrator as follows:

"(a) The position "**MUNICIPAL ADMINISTRATOR**" shall not be created unless the proposed needs of all the Offices of the municipality will be satisfied through Supplemental Budgets and provided further that the Mandatory 5% Salary Increase for 2001 be implemented."

[Tadena vetoed the First Version]. In his veto message to the [*Sangguniang Bayan*], [Tadena] declared that the conditions given for the creation of the Office of the Municipal Administrator were unrealistic and demanding. He relayed to them, among others, that the only condition agreed upon during a previous conference of the municipality's heads of offices was that the office of the Municipal Administrator would be created at a later date. Hence, he returned the First Version unacted upon, with a request for the deletion of the conditions imposed therein and to be substituted by the agreement set during the heads of offices conference.

On 11 January 2002, the [*Sangguniang Bayan*] deliberated on [Tadena's] request and passed the Second Version. Paragraph (a) of the 4th

"Whereas Clause" thereof stated that:

"(a) The position "**MUNICIPAL ADMINISTRATOR**" shall not be created unless 2% of the Mandatory 5% Salary Increase for 2002 be implemented"

On 14 January 2002, the [*Sangguniang Bayan's*] Secretary, [Rodel M.] Tagorda [(Tagorda)], transmitted a copy of the Second Version to [Tadena] for his information, approval and appropriate action. On 15 January 2002, the transmittal letter as well as the copy of the Second Version was received by the Office of the Municipal Mayor.

On 23 January 2002, the Office of the Municipal Mayor returned the copy of the Second Version with the [Tadena's] signature but the first page thereof was substituted and an apparent change in paragraph (a) of the 4th "Whereas Clause" was noted, to wit:

"(a) The position "**MUNICIPAL ADMINISTRATOR**" shall be created and the 2% of the Mandatory 5% Salary Increase for 2002 be implemented."

On 25 January 2002, the [*Sangguniang Bayan*] issued Resolution No. 007 deleting paragraph (a) of the 4th "Whereas Clause" of Municipal Ordinance No. 2001-013. In the same resolution, the [*Sangguniang Bayan*] put on record the changes they observed in the Second Version thereof, thus:

"x x x **WHEREAS**, On 11 January 2002, during our 2nd Special Session, we unanimously approved said Mun. Ordinance No. 2001-013 with modification contained at page one thereof as follows "a) *The position 'MUNICIPAL ADMINISTRATOR' shall not be created unless the 2% of the Mandatory 5% Salary Increase for 2002 be implemented.*" The same was transmitted at the Office of the Hon. Mayor FLORO T. TADENA on January 15, 2002;

WHEREAS, On 23 January 2002, the said Office returned said copies of Municipal Ordinance No. 2001-013 for suppose transmittal to the [*Sangguniang Panlalawigan*] by the [*Sangguniang Bayan*] Secretary, however, it was observed that page one of such was substituted and the provisions contained at paragraph 5 thereof was changed into: "*The position ['MUNICIPAL ADMINISTRATOR'] shall be created and the 2% of the Mandatory 5% Salary Increase for 2002 be implemented.* x x x"

Thereafter, the [*Sangguniang Bayan*] enacted and implemented the Final Version.^[1] [The Final Version contained the same matters as the Second Version except the alleged falsified details. The First and Second Versions were not implemented by the municipality but were kept in its records.]^[2]

This notwithstanding, [*Sangguniang Bayan*] Secretary Tagorda filed a complaint for Falsification of Public Document against [Tadena] with the

Office of the Ombudsman. Initially, the Ombudsman dismissed the case. Upon Motion for Reconsideration, the latter reversed its resolution in an Order dated 28 August 2002 and directed the filing of an Information against [Tadena].^[3]

On July 4, 2014, the Office of the Special Prosecutor (OSP) of the Office of the Ombudsman (Ombudsman) filed an Information^[4] against accused-petitioner (Tadena) and charged him of falsification of public document under Article 171, paragraph 6 of the Revised Penal Code (RPC).^[5] On arraignment, Tadena pleaded not guilty to the offense charged.^[6]

During pre-trial, the parties stipulated on the following facts:

1. That at the time material to the allegations in the Information, accused Tadena was a high-ranking public official, being then the Municipal Mayor of Sto. Domingo, Ilocos Sur[; and]
2. That the private complainant, Rodel Tagorda, was (and still is) the Secretary of the [*Sangguniang Bayan*] of Sto. Domingo, Ilocos Sur, at the time of the incident.^[7]

The parties also proposed the following issues for resolution: 1. Whether or not accused Floro T. Tadena changed, altered or intercalated paragraph (a) of the 4th Whereas Clause of the original Municipal Ordinance No. 2001-013 which was duly enacted by the [*Sangguniang Bayan*] of Sto. Domingo, Ilocos Sur, thus changing its meaning [; and] 2. Whether or not the accused falsified Municipal Ordinance No. 2001-013 dated January 11, 2002.^[8]

On September 15, 2016, the SB rendered a Decision^[9] in Criminal Case No. SB-14-CRM-0327, finding Tadena guilty beyond reasonable doubt of the offense charged. The SB discussed that all the elements of the offense were present in this case; thus, a conviction is in order.^[10] Tadena moved for reconsideration, which the SB denied in its December 7, 2016 Resolution.^[11]

The Issues Presented

Unconvinced, Tadena filed the present Petition for Review on Certiorari^[12] before the Court and assigned the following errors:

- I. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN NOT DISMISSING THE CASE DESPITE PETITIONER'S MOTION TO DISMISS FOR INORDINATE DELAY IN THE PROSECUTION OF THE CASE.
- II. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN DISREGARDING THE JUDICIAL ADMISSION OF THE COMPLAINANT THAT HE LOST INTEREST IN PROSECUTING HIS COMPLAINT AFTER THE OFFICE OF THE OMBUDSMAN DISMISSED THE SAME, BUT WAS LATER REVIVED UPON FILING OF A MOTION FOR RECONSIDERATION BY A LAWYER NOT AUTHORIZED BY SAID COMPLAINANT TO FILE THE SAME AND DESPITE COMPLAINANT'S DECLARATION THAT THE RESPONDENT IN HIS COMPLAINT, HEREIN PETITIONER, HAS NOT COMMITTED ANY FALSIFICATION AS CHARGED.

- III. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN HOLDING IN EFFECT, THAT THE DOCUMENT FALSIFIED BY PETITIONER WAS A GENUINE DOCUMENT WHEN IT WAS NOT.
- IV. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN ERRED IN NOT FINDING THAT THE CHANGES WHICH PETITIONER MADE IN THE SUBJECT ALLEGED DOCUMENT WERE DONE WITH THE ACTUAL PARTICIPATION AND CONCURRENCE OF THE MAJORITY MEMBERS OF THE *SANGGUNIAN BAYAN* OF STO. DOMINGO, ILOCOS SUR.
- V. WITH DUE RESPECT, THE PETITIONER ACTED IN GOOD FAITH AND WITH NO CRIMINAL INTENT IN MAKING THE CHANGES HE MADE IN SAID ALLEGED DOCUMENT.
- VI. WITH DUE RESPECT, THE PETITIONER MADE THE CHANGES BEING A PART OF THE LOCAL LEGISLATION PROCESS AND AS SUCH HE WAS AUTHORIZED TO MAKE THE CHANGES BEFORE THE ORDINANCE WAS FINALLY ENACTED INTO LAW.
- VII. WITH DUE RESPECT, IF THERE WAS ANY DOUBT THE SAME SHOULD HAVE BEEN RESOLVED IN FAVOR OF THE ACCUSED.
- VIII. WITH DUE RESPECT, THE PROSECUTION FAILED TO OVERCOME THE PRESUMPTION OF INNOCENCE USUALLY ACCORDED BY LAW TO THE ACCUSED IN CRIMINAL CASES.
- IX. WITH DUE RESPECT, THE HONORABLE SANDIGANBAYAN FAILED TO APPRECIATE MITIGATING CIRCUMSTANCES IN FAVOR OF PETITIONER.^[13]

In its Comment,^[14] the People of the Philippines, as represented by the OSP of the Ombudsman, alleged that the SB correctly ruled that Tadena's right to speedy disposition of his case was not violated. This issue was first raised in Tadena's Motion to Quash/Motion to Dismiss. After the SB denied the motion, Tadena did not pursue further relief. Thus, the resolution had attained finality.^[15]

The OSP recounted that the Ombudsman completed the preliminary investigation with dispatch, and that the prosecutor acted promptly in filing the Information against Tadena.^[16] The OSP averred that the prosecution of the case was not attended with inordinate delay.^[17]

The OSP asserted that Tadena is guilty beyond reasonable doubt of falsification of public document because all the elements of the offense are present, and he admitted on record that he made the changes on the municipal ordinance.^[18]

Lastly, the OSP maintained that the SB was correct to disregard Tadena's voluntary surrender as a mitigating circumstance since a warrant of arrest had been issued before he posted bail. The OSP argued that the essence of voluntary surrender is spontaneity, and the intent to give oneself up and submit to the authorities because one acknowledges his/her guilt and wishes to save the authorities the trouble and expense that may be incurred for the search and capture. However, when the reason for the surrender is the inevitability of the arrest and to ensure safety, the

surrender is not spontaneous and voluntary. Hence, it is not a mitigating circumstance.^[19]

In its Reply,^[20] Tadena essentially reiterated his arguments in the petition.

The issues to be resolved by the Court can be summarized as:

- I. Whether or not the SB erred in ruling that Tadena's right to speedy disposition of his case was not violated;
- II. Whether or not the SB erred in finding Tadena guilty beyond reasonable doubt of falsification under Article 171, Paragraph 6 of the RPC, and
- III. Whether or not the SB imposed the proper penalty.

The Court's Ruling

The petition is denied.

I.

Tadena contends that the SB should have dismissed the case because (1) of inordinate delay, and (2) private complainant Tagorda desisted from pursuing the case after it was dismissed by the Ombudsman.^[21]

The issue of whether or not there was inordinate delay in the prosecution of the case raises a question of fact, which is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Although there are exceptions found in jurisprudence, none of them apply in this case as Tadena did not allege and substantiate its application. Thus, the Court shall not entertain a factual issue.

As to the issue of Tagorda's desistance as a ground for dismissal of the case, it is conceded that the State has the sovereign right to prosecute criminal offenses under the full control of the fiscal and that the dismissal of criminal cases by the execution of an affidavit of desistance by the complainant is not looked upon with favor.^[22] An affidavit of desistance is merely an additional ground to buttress the accused's defenses, not the sole consideration that can result in acquittal. There must be other circumstances which, when coupled with the retraction or desistance, create doubts as to the truth of the testimony given by the witnesses at the trial and accepted by the judge.^[23]

The OSP commented that in Tagorda's affidavit of desistance, he did not repudiate the material points in the Information referring to the offense of falsification.^[24] His main reason for the desistance was to keep the peace in the municipality.^[25] Notably, in his Reply, Tadena did not object or offer counter arguments to the OSP's observations. Thus, the charges in the Information were intact and unaffected by the desistance. The Court concurs with the SB in not dismissing the case based solely on Tadena's contentions. The records contain pieces of evidence that prove Tadena's guilt beyond reasonable doubt.

II.

In the prosecution of falsification by a public officer, employee, or notary public under Article 171 of the RPC, the following are the elements: