

[G.R. No. 240209, June 10, 2019]

DOMINADOR C. FERRER, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated May 11, 2018 and the Resolution^[3] dated June 18, 2018 of the *Sandiganbayan* (SB) in Crim. Case No. 26546, which found petitioner Dominador C. Ferrer, Jr. (Ferrer) guilty beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. (RA) 3019,^[4] entitled the "Anti-Graft and Corrupt Practices Act."

The Facts

The instant case stemmed from an Information^[5] charging Ferrer with violation of Section 3 (e) of RA 3019, the accusatory portion of which states:

That, on or about August 20; 1998 or for sometime (sic) prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, DOMINADOR C. FERRER, JR., being the Administrator of the Intramuros Administration (IA), Manila, while in the performance of his official and administrative functions as such, and acting with manifest partiality, evident bad faith and gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefits to Offshore Construction and Development Company, by causing the award of the Lease Contracts to said company, involving Baluarte de San Andres, R[e]velling de Recolletos, and Baluarte de San Francisco de Dilao, Intramuros, Manila, without conducting any public bidding as required under Joint Circular No. 1 dated September 30, 1989 of the Department of Budget and Management, Department of Environment and Natural Resources and Department of Public Works and Highways, and by allowing the construction of new structures in said leased areas without any building permit or clearance required under the Intramuros Charter (P.D. 1616) and the National Building Code, to the damage and prejudice of public interest.

CONTRARY TO LAW.^[6]

The prosecution alleged that Ferrer, then Administrator of the Intramuros Administration (IA), gave unwarranted benefits to Offshore Construction and Development Company (OCDC) when he: (a) awarded to it three (3) contracts of lease covering three (3) areas^[7] in Intramuros without any public bidding; and (b) allowed OCDC to construct new structures without a building permit or clearance as required under the Intramuros Charter and the National Building Code.^[8] The

prosecution's witnesses testified that in August 1998, OCDC presented plans to the Technical Committee (Committee) – whose favorable recommendation is required before a building permit can be processed – for the development of structures on top of the Intramuros Walls. However, the plans were disapproved because they would impair the Walls' integrity and violate the laws relating to the conservation of heritage sites. Notwithstanding the Committee's disapproval, and without their knowledge, OCDC commenced construction in the leased areas.^[9] Later on, the Committee inspected the areas and found that air conditioning units had been installed through the Walls, that nails bored through them, and that the concrete added to put up a mezzanine was damaging the same. Seeing the unauthorized construction activities, they asked for building permits but OCDC could not produce any.^[10] Thereafter, the matter was reported to then Department of Tourism (DoT) Secretary Gemma Cruz-Araneta (Secretary Cruz-Araneta), to Ferrer as Administrator, and to the Urban Planning and Community Development Division. In his testimony, Victor B. Reyes (Reyes), then head of the Urban Planning and Community Development Division, confirmed that OCDC was not among those listed as recipients of building permits, and testified that his office prepared a Notice of Violation addressed to OCDC which Ferrer was supposed to sign but did not. This prompted their division to prepare a letter requiring OCDC to cease construction activities and to secure the necessary building permits. Reyes also confirmed that OCDC applied for development clearances, which were then issued to them upon Ferrer's instruction.^[11]

Pleading "not guilty" to the charge,^[12] Ferrer argued that it was at the instance of Secretary Cruz-Araneta that the lease contracts with OCDC were entered into. The former assured him that she will also sign the said contracts in her capacity as DoT Secretary. Both of them even signed the Letter dated August 19, 1998 allowing OCDC to enter the leased properties for purposes of site development and inspection. He claimed that after he received reports of OCDC's violations, he immediately visited the site and issued a Notice of Demolition. He further testified that the required clearances under the Intramuros Charter were issued to OCDC.^[13]

The SB Ruling

In a Decision^[14] dated May 11, 2018, the SB found Ferrer guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.^[15]

The SB found that while no public bidding was required for IA to enter into lease contracts,^[16] the prosecution had nevertheless established that Ferrer committed a violation of Section 3(e) of RA 3019 considering that: (a) Ferrer was a public officer, particularly the IA's Administrator, at the time material to this case; (b) he exhibited gross inexcusable negligence when he allowed the construction of the structures on top of the Intramuros Walls without the recommendatory approval of the Technical Committee, which is a requirement for getting a building permit;^[17] and (c) his acts gave OCDC a distinct advantage to enter the leased properties, occupy them, and commence construction activities.

Aggrieved, Ferrer filed a motion for reconsideration,^[18] which was denied in a Resolution^[19] dated June 18, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the SB correctly convicted Ferrer for violation of Section 3 (e) of RA 3019.

The Court's Ruling

The petition is without merit. Section 3 (e) of RA 3019 states:

Section 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

As may be gleaned above, the elements of violation of Section 3 (e) of RA 3019 are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.^[20]

After a judicious review of the case, the Court is convinced that the SB correctly convicted Ferrer of the crime . charged. The elements constituting a violation of Section 3 (e) of RA 3019 have been sufficiently established considering that: (a) Ferrer was indisputably a public officer at the time of the commission of the offense, discharging his administrative and official functions as the IA Administrator; (b) he acted with gross inexcusable negligence when he knowingly allowed OCDC to commence construction on the Intramuros Walls without the required permits or clearances; and (c) by his actions, he gave unwarranted benefits to a private party, *i.e.*, OCDC, to the detriment of the public insofar as the preservation and development plans for Intramuros are concerned.^[21]

Insisting on his innocence, Ferrer argues that the allegations in the Information, *i.e.*, "the construction of **new** structures in said leased areas **without** any building permit or clearance x x x[,]"^[22] were not actually proved during trial. He posits that what was involved was mere renovation, and the SB even conceded that clearances were eventually issued.^[23]