808 Phil. 586

FIRST DIVISION

[G.R. No. 186421*, April 17, 2017]

ROBERTO P. FUENTES, 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 September 30, 2008 and the Resolution[3] dated February 16, 2009 of the *Sandiganbayan* in Crim. Case No. 28342, which found petitioner Roberto P. Fuentes[4] (Fuentes) guilty beyond reasonable doubt of violation of Article 3 (e) of Republic Act No. (RA) 3019, entitled the "Anti-Graft and Corrupt Practices Act."[5]

The Facts

The instant case stemmed from an Information charging Fuentes of violation of Article 3 (e) of RA 3019, the accusatory portion of which states:

> That on January 8, 2002 and for sometime prior or subsequent thereto at the Municipality of Isabel, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused ROBERTO P. FUENTES, a high-ranking public officer, being the Municipal Mayor of Isabel, Leyte, in such capacity and committing the offense in relation to office, with evident bad faith and manifest partiality, did then and there, willfully, unlawfully and criminally cause undue injury to private complainant Fe N. Valenzuela by then and there refusing for unreasonable length of time, to renew the latter's Business Permit to engage in Ship Chandling Services in the Port of Isabel without any legal basis or reason despite the fact that Fe N. Valenzuela has complied with all the requirements and has been operating the Ship Chandling Services in the Port of Isabel since 1993, which act caused damage to the perishable ship provisions of Fe N. Valenzuela for M/V Ace Dragon and a denial of her right to engage in a legitimate business thereby causing damage and prejudice to Fe N. Valenzuela.
>
> CONTRARY TO LAW.[6]

On September 15, 2006, Fuentes pleaded "not guilty" to the aforesaid charge.[7]

The prosecution alleged that private complainant Fe Nepomuceno Valenzuela (Valenzuela) is the sole proprietor of Triple A Ship Chandling and General Maritime Services (Triple A), which was operating in the Port of Isabel, Leyte since 1993 until 2001 through the Business Permits issued by the Local Government Unit of Isabel (LGU) during the said period. However, in 2002, Fuentes, then Mayor of Isabel,

refused to sign Triple A's Business Permit, despite: (*a*) Valenzuela's payment of the renewal fees; (*b*) all the other municipal officers of the LGU having signed the same, thereby signifying their approval thereto; and (*c*) a Police Clearance[8] certifying that Valenzuela had no derogatory records in the municipality. Initially, Triple A was able to carry out its business despite the lack of the said Business Permit by securing temporary permits with the Port Management Office as well as the Bureau of Customs (BOC). However, Triple A's operations were shut down when the BOC issued a Cease and Desist Order[9] after receiving Fuentes's unnumbered Memorandum[10] alleging that Valenzuela was involved in smuggling and drug trading. This caused the BOC to require Valenzuela to secure a Business Permit from the LGU in order to resume Triple A's operations. After securing the Memorandum, Valenzuela wrote to Fuentes pleading that she be issued a Business Permit, but the latter's security refused to receive the same. Valenzuela likewise obtained certifications and clearances from Isabel Chief of Police Martin F. Tamse (Tamse),[11] Barangay Captain Dino A. Bayron,[12] the Narcotics Group of Tacloban National Police Commission (NAPOLCOM), the Philippine National Police (PNP) Isabel Police Station, and the Police Regional Office 8 of the PNP similarly stating that she is of good moral character, a law-abiding citizen, and has not been charged nor convicted of any crime as per verification from the records of the locality. Despite the foregoing, no Business Permit was issued for Triple A, causing: (*a*) the spoilage of its goods bought in early 2002 for M/V Ace Dragon as it was prohibited from boarding the said goods to the vessel due to lack of Business Permit; and (*b*) the suspension of its operations from 2002 to 2006. In 2007, a business permit was finally issued in Triple A's favor.[13]

In his defense, Fuentes averred that as early as 1999, 2000, and 2001, he has been hearing rumors that Valenzuela was engaged in illegal activities such as smuggling and drug trading, but he did not act on the same. However, in 2002, he received written reports from the Prime Movers for Peace and Progress and Isabel Chief of Police Tamse allegedly confirming the said rumors, which prompted him to hold the approval of Valenzuela's Business Permit for Triple A, and to issue the unnumbered Memorandum addressed to port officials and the BOC. Fuentes maintained that if he went on with the approval of such permit and the rumors turned out to be true, many will suffer and will be victimized; on the other hand, if the rumors were false, then only one stands to suffer. Further, Fuentes presented corroborative testimonies of other people, essentially: (*a*) refuting Valenzuela's claim that Triple A was unable to resume operations due to lack of Business Permit; and (*b*) accusing Valenzuela of pulling out her application for Business Permit from the Mayor's Office, which precluded Fuentes from approving the same.[14]

The *Sandiganbayan* Ruling

In a Decision[15] dated September 30, 2008, the *Sandiganbayan* found Fuentes 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 and six (6) months, as maximum, with perpetual disqualification from public office, and ordered to pay Valenzuela the amount of P200,000.00 as nominal damages.[16]

The *Sandiganbayan* found that the prosecution had established all the elements of

violation of Section 3 (e) of RA 3019, considering that: (*a*) Fuentes was admittedly the Mayor of Isabel, Leyte at the time relevant to the case; (*b*) he singled out Valenzuela's Triple A despite the fact that the rumors relative to the illegal smuggling and drug-related activities covered all ship chandlers operating in the Port of Isabel; (*c*) he still refused to approve Valenzuela's Business Permit for Triple A even though she had already secured clearances not only from the other offices of the LGU, but from the PNP itself, exculpating her from any illegal activities; and (*d*) as a result of Fuentes's acts, Valenzuela was unable to operate her ship chandling business through Triple A, thus, causing her undue injury.[17]

Aggrieved, Fuentes moved for reconsideration, which was, however, denied in a Resolution[18] dated February 16, 2009; hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the *Sandiganbayan* correctly convicted Fuentes of the crime of 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 benefit, 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 giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[19]

After a judicious review of the case, the Court is convinced that the *Sandiganbayan* correctly convicted Fuentes of the crime charged, as will be explained hereunder.

Anent the first element, it is undisputed that Fuentes was a public officer, being the Municipal Mayor of Isabel, Leyte at the time he committed the acts complained of.

As to the second element, it is worthy to stress that the law provides three modes of commission of the crime, namely, through "manifest partiality", "evident bad faith", and/or "gross negligence." In *Coloma, Jr. v. Sandiganbayan*,[20] the Court defined the foregoing terms as follows:

> **"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud."** "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[21] (Emphasis and underscoring supplied)

In other words, there is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[22]

In the instant case, Fuentes's acts were not only committed with manifest partiality, but also with bad faith. As can be gleaned from the records, Fuentes himself testified that according to the rumors he heard, all five (5) ship chandlers operating in the Port of Isabel were allegedly involved in smuggling and drug trading. Yet, it was only Valenzuela's chandling operations through Triple A that was refused issuance of a Business Permit, as evidenced by Business Permits issued to two (2) other chandling services operators in the said port, namely: S.E. De Guzman Ship Chandler and General Maritime Services; and Golden Sea Kers Marine Services. Moreover, if Fuentes truly believed that Valenzuela was indeed engaged in illegal smuggling and drug trading, then he would not have issued Business Permits to the latter's other businesses as well. However, and as aptly pointed out by the *Sandiganbayan*, Fuentes issued a Business Permit to Valenzuela's other business, Gemini Security, which provides security services to vessels in the Port of Isabel. Under these questionable circumstances, the Court is led to believe that Fuentes's refusal to issue a Business Permit to Valenzuela's Triple A was indeed committed with manifest partiality against the latter, and in favor of the other ship chandling operators in the Port of Isabel.

As regards the issue of bad faith, while it is within the municipal mayor's prerogative to suspend, revoke, or refuse to issue Business Permits pursuant to Sections 16[23] and 444 (b) (3) (iv)[24] of the Local Government Code as an incident of his power to issue the same, it must nevertheless be emphasized that: (*a*) the power to suspend or revoke is premised on the violation of the conditions specified therein; and (*b*)

the power to refuse issuance is premised on non-compliance with the pre-requisites for said issuance. In the exercise of these powers, the mayor must observe due process in that it must afford the applicant or licensee notice and opportunity to be heard.[25]

Here, it is clear that Valenzuela had complied with all the pre-requisites for the issuance of a Business Permit for Triple A, as her application already contained the prior approval of the other concerned officials of the LGU. In fact, Valenzuela even submitted numerous certifications issued by various law enforcement agencies clearing her of any kind of participation from the alleged illegal smuggling and drug trading activities in the Port of Isabel. Despite these, Fuentes still refused to issue a Business Permit for Valenzuela's Triple A without affording her an opportunity to controvert the rumors against her. Worse, he even issued the unnumbered Memorandum which effectively barred Triple A from conducting its ship chandling operations without a Business Permit. Quite plainly, if Fuentes truly believed the rumors that Valenzuela was indeed engaged in illegal activities in the Port of Isabel, then he should have already acted upon it in the years 1999, 2000, and 2001, or when he allegedly first heard about them. However, Fuentes's belated action only in 2002 - which was done despite the clearances issued by various law enforcement agencies exonerating Valenzuela from such activities - speaks of evident bad faith which cannot be countenanced.

Anent the third and last element, suffice it to say that Fuentes's acts of refusing to issue a Business Permit in Valenzuela's favor, coupled with his issuance of the unnumbered Memorandum which effectively barred Triple A from engaging in its ship chandling operations without such Business Permit, caused some sort of undue injury on the part of Valenzuela. Undeniably, such suspension of Triple A's ship chandling operations prevented Valenzuela from engaging in an otherwise lawful endeavor for the year 2002. To make things worse, Valenzuela was also not issued a Business Permit for the years 2003, 2004, 2005, and 2006, as it was only in 2007 that such permit was issued in Triple A's favor. Under prevailing case law, "[p]roof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible."[26]

In view of the foregoing, Fuentes committed a violation of Section 3 (e) of RA 3019, and hence, must be held criminally liable therefor.

As regards the proper penalty to be imposed on Fuentes, Section 9 (a)[27] of RA 3019 states that the prescribed penalties for violation of the aforesaid crime includes, *inter alia*, imprisonment for a period of six (6) years and one (1) month to fifteen (15) years, and perpetual disqualification from public office. Thus, the *Sandiganbayan* correctly 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 and six (6) months, as maximum, with perpetual disqualification from public office.

Finally, the Court deems it proper to modify the award of damages in Valenzuela's favor. To recapitulate, the *Sandiganbayan* awarded her P200,000.00 as nominal damages occasioned by Fuentes's non-issuance of a Business Permit to Triple A. As defined under Article 2221[28] of the Civil Code, nominal damages are "recoverable