

## EN BANC

[ G.R. No. 168539, March 25, 2014 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HENRY T. GO,  
RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for review on *certiorari* assailing the Resolution<sup>[1]</sup> of the Third Division<sup>[2]</sup> of the Sandiganbayan (*SB*) dated June 2, 2005 which quashed the Information filed against herein respondent for alleged violation of Section 3 (g) of Republic Act No. 3019 (*R.A. 3019*), otherwise known as the Anti-Graft and Corrupt Practices Act.

The Information filed against respondent is an offshoot of this Court's Decision<sup>[3]</sup> in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* which nullified the various contracts awarded by the Government, through the Department of Transportation and Communications (*DOTC*), to Philippine Air Terminals, Co., Inc. (*PIATCO*) for the construction, operation and maintenance of the Ninoy Aquino International Airport International Passenger Terminal III (*NAIA IPT III*). Subsequent to the above Decision, a certain Ma. Cecilia L. Pesayco filed a complaint with the Office of the Ombudsman against several individuals for alleged violation of R.A. 3019. Among those charged was herein respondent, who was then the Chairman and President of *PIATCO*, for having supposedly conspired with then *DOTC* Secretary Arturo Enrile (*Secretary Enrile*) in entering into a contract which is grossly and manifestly disadvantageous to the government.

On September 16, 2004, the Office of the Deputy Ombudsman for Luzon found probable cause to indict, among others, herein respondent for violation of Section 3(g) of R.A. 3019. While there was likewise a finding of probable cause against Secretary Enrile, he was no longer indicted because he died prior to the issuance of the resolution finding probable cause.

Thus, in an Information dated January 13, 2005, respondent was charged before the *SB* as follows:

On or about July 12, 1997, or sometime prior or subsequent thereto, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the late ARTURO ENRILE, then Secretary of the Department of Transportation and Communications (*DOTC*), committing the offense in relation to his office and taking advantage of the same, in conspiracy with accused, **HENRY T. GO**, Chairman and President of the Philippine International Air Terminals, Co., Inc. (*PIATCO*), did then and there, willfully, unlawfully and criminally enter into a Concession

Agreement, after the project for the construction of the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT III) was awarded to Paircargo Consortium!PIATCO, which Concession Agreement substantially amended the draft Concession Agreement covering the construction of the NAIA IPT III under Republic Act 6957, as amended by Republic Act 7718 (BOT law), specifically the provision on Public Utility Revenues, as well as the assumption by the government of the liabilities of PIATCO in the event of the latter's default under Article IV, Section 4.04 (b) and (c) in relation to Article 1.06 of the Concession Agreement, which terms are more beneficial to PIATCO while manifestly and grossly disadvantageous to the government of the Republic of the Philippines.<sup>[4]</sup>

The case was docketed as *Criminal Case No. 28090*.

On March 10, 2005, the SB issued an Order, to wit:

The prosecution is given a period of ten (10) days from today within which to show cause why this case should not be dismissed for lack of jurisdiction over the person of the accused considering that the accused is a private person and the public official Arturo Enrile, his alleged co-conspirator, is already deceased, and not an accused in this case.<sup>[5]</sup>

The prosecution complied with the above Order contending that the SB has already acquired jurisdiction over the person of respondent by reason of his voluntary appearance, when he filed a motion for consolidation and when he posted bail. The prosecution also argued that the SB has exclusive jurisdiction over respondent's case, even if he is a private person, because he was alleged to have conspired with a public officer.<sup>[6]</sup>

On April 28, 2005, respondent filed a Motion to Quash<sup>[7]</sup> the Information filed against him on the ground that the operative facts adduced therein do not constitute an offense under Section 3(g) of R.A. 3019. Respondent, citing the show cause order of the SB, also contended that, independently of the deceased Secretary Enrile, the public officer with whom he was alleged to have conspired, respondent, who is not a public officer nor was capacitated by any official authority as a government agent, may not be prosecuted for violation of Section 3(g) of R.A. 3019.

The prosecution filed its Opposition.<sup>[8]</sup>

On June 2, 2005, the SB issued its assailed Resolution, pertinent portions of which read thus:

Acting on the Motion to Quash filed by accused Henry T. Go dated April 22, 2005, and it appearing that Henry T. Go, the lone accused in this case is a private person and his alleged co-conspirator-public official was already deceased long before this case was filed in court, for lack of jurisdiction over the person of the accused, the Court grants the Motion

to Quash and the Information filed in this case is hereby ordered quashed and dismissed.<sup>[9]</sup>

Hence, the instant petition raising the following issues, to wit:

I

WHETHER OR NOT THE COURT A *QUO* GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR APPLICABLE JURISPRUDENCE IN GRANTING THE DEMURRER TO EVIDENCE AND IN DISMISSING CRIMINAL CASE NO. 28090 ON THE GROUND THAT IT HAS NO JURISDICTION OVER THE PERSON OF RESPONDENT GO.

II

WHETHER OR NOT THE COURT A *QUO* GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR APPLICABLE JURISPRUDENCE, IN RULING THAT IT HAS NO JURISDICTION OVER THE PERSON OF RESPONDENT GO DESPITE THE IRREFUTABLE FACT THAT HE HAS ALREADY POSTED BAIL FOR HIS PROVISIONAL LIBERTY

III

WHETHER OR NOT THE COURT A *QUO* GRAVELY ERRED WHEN, IN COMPLETE DISREGARD OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, IT QUASHED THE INFORMATION AND DISMISSED CRIMINAL CASE NO. 28090<sup>[10]</sup>

The Court finds the petition meritorious. Section 3 (g) of R.A. 3019 provides:

*Sec. 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

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of the above provision are:

- (1) that the accused is a public officer;
- (2) that he entered into a contract or transaction on behalf of the government; and
- (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.<sup>[11]</sup>

At the outset, it bears to reiterate the settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.<sup>[12]</sup> This is the controlling doctrine as enunciated by this Court in previous cases, among which is a case involving herein private respondent.<sup>[13]</sup>

The only question that needs to be settled in the present petition is whether herein respondent, a private person, may be indicted for conspiracy in violating Section 3(g) of R.A. 3019 even if the public officer, with whom he was alleged to have conspired, has died prior to the filing of the Information.

Respondent contends that by reason of the death of Secretary Enrile, there is no public officer who was charged in the Information and, as such, prosecution against respondent may not prosper.

The Court is not persuaded.

It is true that by reason of Secretary Enrile's death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Sections 3 (e) and (g) of R.A. 3019.<sup>[14]</sup> Were it not for his death, he should have been charged.

The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone.

Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy.<sup>[15]</sup> If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor.<sup>[16]</sup> This means that everything said, written or done by any of the conspirators in execution or furtherance of the

common purpose is deemed to have been said, done or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial.<sup>[17]</sup> The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors.<sup>[18]</sup> Thus, this Court held that:

x x x [a] conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. **Yet, it does not follow that one person cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases of a charge for conspiracy, one defendant may be found guilty of the offense.**<sup>[19]</sup>

The Court agrees with petitioner's contention that, as alleged in the Information filed against respondent, which is deemed hypothetically admitted in the latter's Motion to Quash, he (respondent) conspired with Secretary Enrile in violating Section 3 (g) of R.A. 3019 and that in conspiracy, the act of one is the act of all. Hence, the criminal liability incurred by a co-conspirator is also incurred by the other co-conspirators.

Moreover, the Court agrees with petitioner that the avowed policy of the State and the legislative intent to repress "acts of public officers and private persons alike, which constitute graft or corrupt practices,"<sup>[20]</sup> would be frustrated if the death of a public officer would bar the prosecution of a private person who conspired with such public officer in violating the AntiGraft Law.

In this regard, this Court's disquisition in the early case of *People v. Peralta*<sup>[21]</sup> as to the nature of and the principles governing conspiracy, as construed under Philippine jurisdiction, is instructive, to wit:

x x x A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason, rebellion and sedition. The crime of conspiracy known to the common law is not an indictable offense in the Philippines. An agreement to commit a crime is a reprehensible act from the view-point of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed. However, **when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators.** In stressing the significance of conspiracy in criminal law, this Court in *US. vs. Infante and Barreto* opined that

While it is true that the penalties cannot be imposed for the mere act of conspiring to commit a crime unless the statute specifically prescribes a penalty therefor, nevertheless the existence of a conspiracy to commit a crime is in many cases