

THIRD DIVISION

[G.R. Nos. 185729-32, June 26, 2013]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE
HONORABLE SANDIGANBAYAN (FOURTH DIVISION), ANTONIO
P. BELICENA, ULDARICO P. ANDUTAN, JR., RAUL C. DE VERA,
ROSANNA P. DIALA AND JOSEPH A. CABOTAJE, RESPONDENTS.**

D E C I S I O N

ABAD, J.:

This case arose from the issuance of two Tax Credit Certificates in favor of JAM Liner, Inc. which were investigated and found fraudulent by the Presidential Task Force 156, created by then President Joseph E. Estrada.

The Facts and the Case

The principal respondent in this case, Homero A. Mercado, was the President of JAM Liner, Inc. The other respondents, Antonio A. Belicena, Uldarico P. Andutan Jr., Raul C. De Vera, and Rosanna P. Diala, were Department of Finance (DOF) officials formerly assigned at its One-Stop Shop Inter-Agency Tax Credit and Drawback Center (DOF One-Stop Shop).

Sometime in 2000, showing willingness to testify against the criminal syndicate that allegedly ran the tax credit scam at the DOF One-Stop Shop, Mercado applied with the Department of Justice (DOJ) for immunity as state witness under its witness protection program. On June 5, 2000 the DOJ favorably acted on the application and granted immunity to Mercado. Still, since the investigation of the case fell within the authority of the Office of the Ombudsman (Ombudsman), the latter charged him and the other respondents before the Sandiganbayan's Fourth Division with violations of Section 3(j) of Republic Act (R.A.) 3019 and two counts of falsification under Article 171, paragraph 4, of the Revised Penal Code in Criminal Cases 27511-14.

The first information alleged that respondent DOF officials approved and issued in 1996 Tax Credit Certificate 7711 for P7,350,444.00 in favor of JAM Liner, Inc. for domestic capital equipment although it did not qualify for such tax credit. The second Information alleged that they further illegally issued in 1996 Tax Credit Certificate 7708 for P4,410,265.50 in favor of the same company covering its purchase of six Mitsubishi buses.

Mercado filed a motion for reconsideration or reinvestigation before the Ombudsman, citing the DOJ's grant of immunity to him. Acting favorably on the motion, on September 4, 2003 the Ombudsman executed an Immunity Agreement^[1] with Mercado. The agreement provided that, in consideration for granting him immunity from suit, Mercado would produce all relevant documents in

his possession and testify against the accused in all the cases, criminal or otherwise, that may be filed against them. Accordingly, on the same date, the Ombudsman filed a motion to discharge Mercado^[2] from the information involving him.

But on April 30, 2008 the Sandiganbayan issued a Resolution,^[3] denying the Ombudsman's motion. That court held that the pieces of evidence adduced during the hearing of the Ombudsman's motion failed to establish the conditions required under Section 17, Rule 119 of the Rules of Court for the discharge of an accused as a state witness. The Ombudsman filed a motion for reconsideration but the court denied it on November 6, 2008,^[4] hence, this petition of the People of the Philippines.

Issue Presented

The central issue that this case presents is whether or not the Sandiganbayan gravely abused its discretion in refusing to recognize the immunity from criminal prosecution that the Ombudsman granted respondent Mercado and, as a result, in declining to discharge him from the information as a state witness.

Ruling of the Court

In denying the Ombudsman's motion to drop Mercado from the information, the Sandiganbayan largely dwelt on the question of whether or not the prosecution complied with the requirements of Section 17, Rule 119 of the Rules of Criminal Procedure.

Respondents De Vera and Diala, Mercado's co-accused who opposed the grant of immunity to him, contend that the immunity that the Ombudsman gave Mercado does not bind the court, which in the meantime already acquired jurisdiction over the case against him. That immunity merely relieves Mercado from any further proceedings, including preliminary investigation, which the state might still attempt to initiate against him.^[5]

This in a way is true. But the filing of the criminal action against an accused in court does not prevent the Ombudsman from exercising the power that the Congress has granted him. Section 17 of R.A. 6770 provides:

Section 17. *Immunities.* – x x x Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

His above authority enables the Ombudsman to carry out his constitutional mandate

to ensure accountability in the public service.^[6] It gives the Ombudsman wide latitude in using an accused discharged from the information to increase the chances of conviction of the other accused and attain a higher prosecutorial goal.^[7] Immunity statutes seek to provide a balance between the state's interests and the individual's right against self-incrimination. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from prosecution.^[8] In such a case, both interests and rights are satisfied.

As it happened in this case, the Ombudsman had already filed with the Sandiganbayan the criminal action against Mercado and the other respondents in Criminal Cases 27511-14 prior to the Ombudsman's grant of immunity to Mercado. Having already acquired jurisdiction over Mercado's case, it remained within the Sandiganbayan's power to determine whether or not he may be discharged as a state witness in accordance with Section 17, Rule 119 of the Rules of Criminal Procedure.

The Ombudsman premised its grant of immunity to Mercado on his undertaking to produce all the documents in his possession relative to the DOF tax credit scam and to testify in all pending criminal, civil, and administrative cases against those involved. Indeed, he had consistently cooperated even prior to immunity agreement in the investigation and prosecution of the case. His testimony gave the prosecution a clearer picture of the transactions that led to the issuance of the subject certificates.

In any event, the question before the Sandiganbayan was whether or not Mercado met, from its point of view, the following requirements of Section 17, Rule 119 for the discharge of an accused to be a state witness: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be the most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

The authority to grant immunity is not an inherent judicial function.^[9] Indeed, Congress has vested such power in the Ombudsman as well as in the Secretary of Justice. Besides, the decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the several accused before the courts. The latter do not as a rule have a vision of the true strength of the prosecution's evidence until after the trial is over. Consequently, courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119.

Here, the Sandiganbayan held that Mercado's testimony is not absolutely necessary because the state has other direct evidence that may prove the offenses charged. It held that Mercado's testimony, in large part, would only help (1) identify numerous documents and (2) disclose matters that are essentially already contained in such documents.