

FIRST DIVISION

[G.R. No. 192591, June 29, 2011]

**EFREN L. ALVAREZ, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse and set aside the Decision^[1] dated November 16, 2009 and Resolution^[2] dated June 9, 2010 of the Sandiganbayan's Fourth Division finding the petitioner guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Petitioner Efren L. Alvarez, at the time of the subject transaction, was the Mayor of the Municipality (now Science City) of Muñoz, Nueva Ecija. In July 1995, the *Sangguniang Bayan* (SB) of Muñoz under Resolution No. 136, S-95 invited Mr. Jess Garcia, President of the Australian-Professional, Inc. (API) in connection with the municipal government's plan to construct a four-storey shopping mall ("Wag-wag Shopping Mall"), a project included in its Multi-Development Plan. Subsequently, it approved the adoption of the project under the Build-Operate-Transfer (BOT) arrangement in the amount of P240 million, to be constructed on a 4,000-square-meter property of the municipal government which is located at the back of the Municipal Hall. API submitted its proposal on November 7, 1995.^[3]

On February 9, 1996, an Invitation for proposals to be submitted within thirty (30) days, was published in *Pinoy* tabloid. On April 12, 1996, the Pre-qualification, Bids and Awards Committee (PBAC) recommended the approval of the proposal submitted by the lone bidder, API. On April 15, 1996, the SB passed a resolution authorizing petitioner to enter into a Memorandum of Agreement (MOA) with API for the project. Consequently, on September 12, 1996, petitioner signed the MOA with API, represented by its President Jesus V. Garcia, for the construction of the Wag-Wag Shopping Mall under the BOT scheme whereby API undertook to finish the construction within 730 calendar days.^[4]

On February 14, 1997, the groundbreaking ceremony was held at the site once occupied by government structures which included the old Motor Pool, the old Health Center and a semi-concrete one-storey building that housed the Department of Agriculture, BIR Assessor, old Post Office, Commission on Elections and Department of Social Welfare and Development. These structures were demolished at the instance of petitioner to give way to the construction project. Thereafter, API proceeded with excavation on the area (3-meter deep) and a billboard was put up informing the public about the project and its contractor. However, no mall was constructed as API stopped work within just a few months.

On August 10, 2006, petitioner was charged before the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 (SB-06-CRM-0389), under the following Information:

That on or about 12 September 1996, and sometime prior or subsequent thereto, in the then Municipality (now Science City) of Muñoz, Nueva Ecija, and within the jurisdiction of this Honorable Court, the above-named accused EFREN L. ALVAREZ, a high ranking public official, being then the Mayor of Muñoz, Nueva Ecija, taking advantage of his official position and while in the discharge of his official or administrative functions, and committing the offense in relation to his office, acting with evident bad faith or gross inexcusable negligence or manifest partiality did then and there willfully, unlawfully and criminally give the Australian-Professional Incorporated (API) unwarranted benefits, advantage or preference, by awarding to the latter the contract for the construction of Wag-Wag Shopping Mall in the amount of Two Hundred Forty Million Pesos (Php 240,000,000.00) under a Buil[d]-Operate-Transfer Agreement, notwithstanding the fact that API was and is not a duly-licensed construction company as per records of the Philippine Construction Accreditation Board (PCAB), which construction license is a pre-requisite for API to engage in construction of works for the said municipal government and that API does not have the experience and financial qualifications to undertake such costly project among others, to the damage and prejudice of the public service.

CONTRARY TO LAW.^[5]

On September 22, 2006, petitioner was duly arraigned, pleading not guilty to the charge.

At the trial, petitioner testified that during his term as Mayor of Muñoz, the municipal government planned to borrow money from GSIS to finance the proposed Wag-Wag Shopping Mall project. He learned about API when then Vice-Mayor Romeo Ruiz and other SB members showed him a copy of publication/advertisement in the Manila Bulletin and Business Bulletin showing that API was then building similar BOT projects for construction of shopping malls in Lemery, Batangas (P150 million) and in Calamba, Laguna (P300 million). Because it will not entail government funds and is an alternative to availment of GSIS loan, petitioner appointed Vice-Mayor Ruiz and other SB members to study the matter. A resolution was subsequently passed by the SB inviting API for detailed information on their mall projects. Thereafter, the SB approved the construction of Wag-Wag Shopping Mall under BOT scheme, which was favorably endorsed by the Municipal Development Council. A public hearing was also conducted by Municipal Engineer Armando E. Miranda. On November 8, 1995, the municipal government received the "unsolicited proposal" of API for the construction of Wag-Wag Shopping Mall. For three weeks, an Invitation to Bid was published in the *Pinoy* tabloid. But it was the lone bidder, API, whose proposal was eventually recommended by the PBAC and approved by the SB.^[6]

Petitioner emphasized that not a single centavo was spent by the municipal government for the Wag-Wag Shopping Mall project. It was an unsolicited proposal under the BOT law. API was required to submit pre-qualification statements containing, among others, their accomplished projects. Eventually the SB passed a resolution authorizing him to enter into the MOA with API. The municipal government issued the notice of award to API on September 16, 1996 in which it required the contractor to post notices prior to the start of the project and to submit other requirements such as performance bond. However, API did not comply as its counsel, Atty. Lydia Y. Marciano said these are not required under the BOT law (R.A. No. 7718) since there will be no government undertaking, equity or subsidy in the project. After securing an environmental clearance certificate from DENR, the groundbreaking ceremony was held on February 1, 1997. API, as promised, paid P500,000.00 as disturbance or relocation fee considering that the municipal government has caused the demolition of old buildings at the site. A certification^[7] of such payment was issued by City Treasurer Luzviminda P. De Leon and City Accountant June Franklyn A. Fernandez on February 5, 2007. The materials were then utilized for the construction of the new motor pool and new City Library. Thereafter, API began excavating an area of 30 x 30 meters (1,000 sq. ms.), about 3 meters deep. However, only the sales office was constructed. The project was not completed and API gave as excuse the 1997 financial crisis. They wrote a letter to Mr. Garcia reminding him of the 730-days completion period but then he was nowhere to be found and did not answer the letter. Hence, the SB authorized him to file a case against API, and later also granted him authority to enter into a compromise agreement in Civil Case No. 161-SD 98). Their compromise agreement was approved but they could not find a copy anymore because the Regional Trial Court at Balok, Sto. Domingo, Nueva Ecija where the settlement was done, was burned down.^[8]

On cross-examination, petitioner claimed that had the municipal government then borrowed funds from the GSIS, they envisioned annual return of P5 million from a P40 million loan for a modest mall (but for an area of 4,000 square meters, the loan would have to be P80 million). For a period of 8 years, the municipality would have an income of P40 million and the GSIS can be paid. As to the contractor's financial capability, it presented a credit line of P150 million to P250 million for Australian-Professionals Realty, Inc. (APRI). Petitioner clarified that API and APRI were one and the same entity having the same board of directors, but when asked if he verified this from the Securities and Exchange Commission (SEC), he answered in the negative. Petitioner asserted that it was the Vice-Mayor who is accountable for this project as he headed the working panel. As to whether API was a licensed contractor, he admitted that he did not verify this before awarding the BOT contract involving an infrastructure project. He insisted that the Wag-Wag Shopping Mall Project, being an unsolicited proposal under BOT law, is exempt from the pre-qualification requirement although they still conducted it. As far as he knows, the project proponent in this case is the Municipality of Muñoz. However, petitioner admitted that he is not familiar with the BOT law. He also admitted that the Invitation published stated a shorter period of submission of proposal (30 days instead of 60 days provided under the BOT law) and that he just signed the said notice without consulting their legal counsel.^[9]

On November 16, 2009, the Sandiganbayan rendered judgment convicting the petitioner after finding that: (1) petitioner railroaded the project; (2) there was no

competitive bidding; (3) the contractor was totally unqualified to undertake the project; and (4) the provisions of the BOT law and relevant rules and regulations were disregarded and not followed. The said court also found that the municipal government suffered damage and prejudice with the resulting loss of several of its buildings and offices, and having deployed its resources including equipment, personnel and financial outlay for fuel and repairs in the demolition of the said structures. Damage suffered by the municipal government was quantified at P4.8 million, or 2% of the total project cost of P240 million, representing the amount of liquidated damages due under the performance security had the same been posted by the contractor as required by law. As to the allegation of conspiracy, the Sandiganbayan held that such was adequately shown by the evidence, noting that this is one case where the Ombudsman should have included the entire Municipal Council in the information for the latter had conspired if not abetted all the actions of the petitioner in his dealings with API to the damage and prejudice of the municipality.

The dispositive portion of the decision reads:

ACCORDINGLY, accused Efren L. Alvarez is found guilty beyond reasonable doubt for *[sic]* violation of Section 3 (e) of Republic Act No. 3019 and is sentenced to suffer in prison the penalty of 6 years and 1 month to 10 years. He also has to suffer perpetual disqualification from holding any public office and to indemnify the City Government of Muñoz (now Science), Nueva Ecija the amount of Four Million Eight Hundred Thousand Pesos (Php 4,800,000.00) less the Five Hundred Thousand Pesos (Php 500,000.00) API earlier paid the municipality as damages.

Costs against the accused.

SO ORDERED.^[10]

The Sandiganbayan likewise denied petitioner's motion for reconsideration. It ruled that upon examination of Section 4-A of R.A. No. 6957 as amended by R.A. No. 7718, it was clear that petitioner, with manifest partiality and gross inexcusable negligence, failed to comply with the requirements and procedures for competitive bidding in unsolicited proposals. It also reiterated that API was a contractor and not a mere project proponent; hence, the license requirement applies to it. Petitioner's defense that he merely executed the resolutions of the SB was also rejected because as Chief Executive of the Municipality of Muñoz, it was his duty to protect the credits, rights and properties of the municipality and to exercise efficient, effective and economical governance for the general welfare of the municipality and its inhabitants under Section 444, R.A. No. 7160 (Local Government Code of 1991). Significant acts of the petitioner also showed that he opted to enter into the contract with API despite reckless disregard of the law.

Hence, this petition raising the following issues:

1. Whether or not the Honorable Sandiganbayan failed to observe the requirement of proof beyond reasonable doubt in convicting the

Accused-Petitioner;

2. Whether or not the Honorable Sandiganbayan failed to appreciate the legal intent of the BOT project;
3. Whether or not the Honorable Sandiganbayan utterly failed to appreciate that the BOT was a lawful project of the Sangguniang Bayan and not the project of the Mayor Accused-Petitioner herein; and
4. Whether or not the Honorable Sandiganbayan utterly failed to appreciate that there was no damage on the then Municipality of Muñoz as contemplated by law, to warrant the conviction of the Accused-Petitioner.^[11]

We deny the petition.

Petitioner was charged with violation of Section 3(e) of R.A. No. 3019. To be convicted under the said provision, the following elements must be established:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
3. 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.^[12]

In this case, the information alleged that while being a public official and in the discharge of his official functions and taking advantage of such position, petitioner "acting with evident bad faith or gross inexcusable negligence or manifest partiality" unlawfully gave API "unwarranted benefits, advantage or preference" by awarding to it the contract for the construction of the Wag-Wag Shopping Mall under the BOT scheme despite the fact that it was not a licensed contractor and "does not have the experience and financial qualifications to undertake such costly project, among others, to the damage and prejudice of the public service."

Petitioner argues that he cannot be held liable under Section 3(e) of R.A. No. 3019 since the Municipality of Muñoz did not disburse any money and the buildings demolished on the site of construction have been found to be a nuisance and declared structurally unsafe, as per notice issued by the Municipal Building Official. He points out that in fact, a demolition permit has been issued upon his application in behalf of the municipal government. API also paid P500,000.00 demolition/relocation fee.

We disagree.