

SECOND DIVISION

[G.R. No. 189365, October 12, 2011]

HON. JUDGE JESUS B. MUPAS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 112 AND CARMELITA F. ZAFRA, CHIEF ADMINISTRATIVE OFFICER, DSWD, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, THRU ITS DULY AUTHORIZED REPRESENTATIVE, THE LEGAL SERVICE OF THE DSWD, QUEZON CITY AND THE OFFICE OF THE SOLICITOR GENERAL, RESPONDENTS.

D E C I S I O N

SERENO, J.:

In this Petition for Review on Certiorari under Rule 45, private petitioner seeks the reversal of the Decision^[1] dated 19 March 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 105199. The CA Decision reversed and set aside the Orders^[2] dated 19 December 2007 and 2 June 2008 of the Regional Trial Court of Pasay City (Branch 112), granting her demurrer to evidence in Criminal Case Nos. 02-0371 and 02-0372. Private petitioner also assails the CA Resolution dated 28 August 2009, denying her Motion for Reconsideration.

As the records and the CA found, private petitioner Carmelita F. Zafra (petitioner Zafra) was Supply Officer V^[3] of the Department of Social Welfare and Development (DSWD). On 14 November 1998, she arranged for the withdrawal for replacement, of two hundred (200) cartons of Bear Brand Powdered Milk that were nearing their expiry date. She made the arrangement for their withdrawal through DSWD personnel Marcelina Beltran, Administrative Officer III; and Manuelito Roga, Laborer 1.^[4]

Petitioner Zafra instructed Marcelina Beltran to have someone from the DSWD Property Division withdraw the 200 cartons of milk from the DSWD-Villamor Airbase Relief Operation Center (DSWD-VABROC) on 14 November 1998. Beltran relayed this instruction to Roga. On the appointed date, however, no one from the Property Division arrived to pick up the milk cases. Instead, three unidentified persons on board a four-wheeler truck came and hauled the 200 cases of milk. One of the three persons who came to pick up the milk cases at the DSWD-VABROC premises introduced herself as Ofelia Saclayan to Roga, the only DSWD employee present at that time.^[5] Saclayan turns out to be the sister of Zafra. The 200 cases of milk withdrawn by Saclayan and her unidentified companions were valued at three hundred six thousand seven hundred thirty-six pesos (P306,736).^[6]

An internal investigation was conducted by the DSWD on the persons involved in the loss of the milk cases. On 06 August 1999, the investigating committee of the DSWD issued a Memorandum^[7] entitled "Report and Recommendation on the Loss

of the Two Hundred (200) Cases of Bear Brand Powdered Milk from DSWD-VABROC." In brief, the committee report dismissed petitioner Zafra and her co-employees Beltran and Roga, whom they implicated in the loss of the milk cases. The committee found substantial evidence to hold petitioner Zafra guilty of dishonesty and "negligence of duty."^[8]

The report of the DSWD investigating committee finding petitioner Zafra and her co-employee Beltran guilty of dishonesty and negligence of duty was appealed to the Civil Service Commission (Commission). On 03 December 1999, the Commission promulgated Resolution No. 992652,^[9] which slightly modified the findings of the committee. The Resolution, while absolving petitioner Zafra of the charge of dishonesty, found her guilty of simple neglect as follows:

The Commission has noted, however, that Zafra is not that entirely innocent. For the records disclose that it was she who made representation with the MEGA Commercial, the supplier of said milk, to withdraw and replace those cases of milk that are nearing their expiry dates. Surprisingly, however, after November 14, 1998, when the 200 milk cases of milk were actually withdrawn from VABROC she never made any contact with MEGA Commercial as to what further steps to take on the case, such as to retrieve the loss thereof and have these replaced by the company. Neither did she make any further inquiry as to the condition of milk from VABROC. This unnatural inaction or callousness displayed by Zafra and her utter apathy in the performance of her official functions calls for the imposition of sanctions on her.

... ..

Being both government employees, Zafra and Beltran are required to perform their duties and functions with the highest degree of responsibility, integrity, loyalty and efficiency. And since both of them failed on this score, they must suffer the consequences of their negligence.

WHEREFORE, the respective appeals of Carmelita F. Zafra and Marcelina M. Beltran are hereby dismissed for want of merit. They are however, found guilty only of simple Neglect of Duty for which they are each imposed the penalty of six (6) months suspension without pay. The appealed decision is thus modified accordingly.

Quezon City, December 03, 1999.^[10]

On 15 February 2002, the Ombudsman filed two Informations with the Regional Trial Court of Pasay (RTC-Pasay) against petitioner Zafra, Beltran and Roga, docketed as Criminal Case Nos. 02-0371 and 02-0372.

Under Criminal Case No. 02-0371, petitioner Zafra and her co-accused Beltran and Roga were charged with violating Section 3 (e) of Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act." The

Information filed in this case reads:

The undersigned Prosecutor, Office of the Ombudsman hereby accuses Marcelina M. Beltran, Carmelita Zafra, Manuelito T. Roga and Ofelia Saclayan for Violation of Section 3 (e) of RA 3019, as amended, committed as follows:

That on or about 13 November 1998, or for sometime, prior, or subsequent thereto, in Pasay City, and within the jurisdiction of this Honorable Court, accused Marcelina M. Beltran, Carmelita F. Zafra, Carmelito T. Roga (sic), Administrative Officer III, Supply Officer V, and Laborer I, respectively of the Department of Social Welfare and Development, while in the performance of their official duties, and in connivance with Ofelia Saclayan, a private respondent, with evident bad faith, did then and there, wilfully, unlawfully, and criminally, cause damage or undue injury to the government, particularly the Department of Social Welfare and Development in the amount of Php 306,736.00, by making it appear that the 200 cases of Bear Brand Powdered Milk stocked at the DSWD Villamor Airbase Relief Operation Center (DSWD-VABROC) are about to expire and need to be changed, and thereafter, without complying with the standard operating procedure in withdrawing goods from the bodega, did then and there arrange for the immediate withdrawal of the subject goods on the next day which was a Saturday, a non-working day, and appropriate the said goods for themselves.

CONTRARY TO LAW.^[11]

Petitioner Zafra, Beltran and Roga were charged with malversation under Article 217 of the Revised Penal Code in Criminal Case No. 02-0372. The Information reads:

The undersigned Ombudsman Prosecutor, Office of the Ombudsman hereby accuses Carmelita Zafra, Marcelina M. Beltran Manuelito T. Roga and Ofelia Saclayan for Malversation under Article 217 of the Revised Penal Code, as amended, committed as follows:

That on or about 13 November 1998, or for sometime prior, or subsequent thereto, in Pasay City, and within the jurisdiction of this Honorable Court, accused Marcelina M. Beltran, Administrative Officer III of the Department of Social Welfare and Development, Villamor Airbase Relief Operation Center (DSWD-VABROC), an accountable public officer by virtue of her being the custodian of the goods inside the DSWD-VABROC bodega, in connivance with Carmelita F. Zafra, and Manuelito T. Roga, Supply Officer IV and Laborer I, respectively of the Department of Social Welfare and Development and with the indispensable cooperation of Ofelia T. Saclayan, a private respondent, did then and there, wilfully, unlawfully, and feloniously, cause the unauthorized withdrawal of the 200 cases of Bear Brand Powdered Milk, a public property owned by the DSWD stock[ed] at VABROC, and thereafter, did then and there appropriate the said goods for themselves to the prejudice of the DSWD

in the amount of Php 306,736.00.

CONTRARY TO LAW.^[12]

The cases against petitioner Zafra and her co-accused were raffled to Branch 112 of RTC-Pasay. Upon arraignment, they pleaded "not guilty" to the charges.

On 06 August 2003, the pretrial of the case was conducted, attended by only petitioner Zafra and Beltran.^[13] Thereafter, a joint trial for Criminal Case Nos. 02-0371 and 02-0372 ensued.

During the trial on the merits, the prosecution presented four witnesses to build up its case. The prosecution presented Consolacion Obrique dela Cruz, a utility worker at the DSWD Property and Supply; Atty. Nelson Todas, former DSWD Legal Officer V; Ruby Maligo Cresencio, the operations officer of Mega Commercial Trading, which supplied the stolen milk cases to DSWD; and Isidro Tuastumban, a security guard posted at the DSWD lobby at the time the incident happened.

After the prosecution rested its case, petitioner Zafra filed a Motion for Demurrer to Evidence.^[14] She alleged therein that the prosecution failed to present proof that she and her co-accused had wilfully, unlawfully, and feloniously caused the withdrawal of the 200 cases of Bear Brand Powdered Milk and appropriated these for themselves to the prejudice of DSWD. Thus, she concluded that the prosecution failed to establish the elements of the crime of malversation under Art. 217 of the Revised Penal Code. She likewise contended that the prosecution was not able to present proof that she and her co-accused had done so in violation of Section 3 (e) of R. A. 3019.

The lower court required the prosecution to comment on petitioner Zafra's demurrer to evidence. In its Comment,^[15] the prosecution contradicted the allegations therein and claimed to have established and proved the elements of the crimes as charged against petitioner and her co-accused. It also alleged that it was able to establish conspiracy among the accused and had evidence to show that petitioner Zafra caused the withdrawal of the goods, subject matter of this case, through her sister - co-accused Ofelia Saclayan, who was an unauthorized person.

On 19 December 2007, public respondent Judge Mupas issued an Order^[16] granting the demurrer to evidence of petitioner Zafra. Public respondent ruled that, after evaluating the testimonies of the witnesses for the prosecution, he found them substantially insufficient to warrant the conviction of petitioner Zafra under the charges filed against her by the Ombudsman. With the grant of her demurrer to evidence, petitioner was acquitted. ^[17] The decretal portion of the Order reads:

WHEREFORE, the demurrer to evidence is **GRANTED**.

Consequently, accused **CARMELITA ZAFRA y FUENTES** is hereby **ACQUITTED**.

SO ORDERED.

On 28 January 2008, the prosecution, through its private prosecutor, filed a Motion for Reconsideration of the Order dated 19 December 2007 issued by public respondent. On 2 June 2008, the motion was denied for lack of merit.^[18]

On 09 September 2008, the *People* filed with the CA a Petition for Certiorari under Rule 65, assailing the lower court's grant of petitioner Zafra's demurrer to evidence, resulting in her acquittal.^[19] The petition, filed through the DSWD, which was represented by its legal officers, raised the following issues:

Whether or not the Honorable Judge committed grave abuse of discretion in denying petitioner's Motion for Reconsideration of its Order granting private respondent's demurrer to evidence;

Whether or not the Honorable Judge committed grave abuse of discretion when he failed to appreciate the evidence of the prosecution providing beyond reasonable doubt private respondent's negligence which resulted to (sic) the unauthorized withdrawal of the 200 cases of Bear Brand Powdered Milk at the VABROC belonging to the government.^[20]

The *People's* Petition for Certiorari was docketed as CA-G.R. SP No. 105199 and was raffled to the appellate court's Special Sixth Division. On 22 September 2008, a Resolution^[21] was promulgated, directing petitioner Zafra to file a Comment on the certiorari petition and thereafter instructing the Office of the Solicitor General to file a Reply thereto.

On 06 October 2008, petitioner Zafra, as private respondent in the appeal, filed her Comment and sought to dismiss the Petition for Certiorari instituted by the prosecution.^[22] In her Comment, she assailed the appeal of the DSWD for being improper, having been filed directly with the appellate court instead of seeking the intervention of the Office of the Solicitor General (OSG) to act on DSWD's behalf. She also pointed out the lack of authority of the signatory who had executed the certificate of non-forum shopping attached to the petition.

On 06 November 2008, the OSG filed a Manifestation and Motion^[23] adopting the Petition for Certiorari filed by the DSWD. It prayed for the relaxation of the Rules on Procedure pertaining to the authority of the person signing the Verification and Certification against forum-shopping attached to the petition filed by the DSWD.

On 19 November 2008, petitioner Zafra filed a Comment/Opposition^[24] to the OSG's Manifestation and Motion and moved that it be expunged from the records, as it was filed out of time.

On 23 January 2009, the CA, through its Fourth Division, issued a Resolution^[25] granting the OSG's Manifestation and Motion.

On 19 March 2009, the appellate court, through its Third Division, promulgated a Decision^[26] granting the *People's* petition and revoking and setting aside the lower