

EN BANC

[G.R. No. 166510, April 29, 2009]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. BENJAMIN
"KOKOY" ROMUALDEZ, AND SANDIGANBAYAN, RESPONDENT.**

RESOLUTION

TINGA, J.:

The relevant antecedent facts are stated in the Decision of the Court dated 23 July 2008^[1]. We reproduce them, to wit:

The Office of the Ombudsman (Ombudsman) charged Romualdez before the Sandiganbayan with violation of Section 3 (e) of Republic Act No. 3019 (R.A. 3019), as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The Information reads:

That on or about and during the period from 1976 to February 1986 or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused Benjamin "Kokoy" Romualdez, a public officer being then the Provincial Governor of the Province of Leyte, while in the performance of his official function, committing the offense in relation to his Office, did then and there willfully, unlawfully and criminally with evident bad faith, cause undue injury to the Government in the following manner: accused public officer being then the elected Provincial Governor of Leyte and without abandoning said position, and using his influence with his brother-in-law, then President Ferdinand E. Marcos, had himself appointed and/or assigned as Ambassador to foreign countries, particularly the People's Republic of China (Peking), Kingdom of Saudi Arabia (Jeddah), and United States of America (Washington D.C.), knowing fully well that such appointment and/or assignment is in violation of the existing laws as the Office of the Ambassador or Chief of Mission is incompatible with his position as Governor of the Province of Leyte, thereby enabling himself to collect dual compensation from both the Department of Foreign Affairs and the Provincial Government of Leyte in the amount of Two Hundred Seventy-six Thousand Nine Hundred Eleven Dollars and 56/100 (US \$276,911.56), US Currency or its equivalent amount of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (P5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty-eight Pesos and 86/100 (P293,348.86) both Philippine Currencies, respectively, to the damage and prejudice of the Government in the aforementioned amount of P5,806,709.50.

CONTRARY TO LAW.

Romualdez moved to quash the information on two grounds, namely: (1) that the facts alleged in the information do not constitute the offense with which the accused was charged; and (2) that the criminal action or liability has been extinguished by prescription. He argued that the acts imputed against him do not constitute an offense because: (a) the cited provision of the law applies only to public officers charged with the grant of licenses, permits, or other concessions, and the act charged — receiving dual compensation — is absolutely irrelevant and unrelated to the act of granting licenses, permits, or other concessions; and (b) there can be no damage and prejudice to the Government considering that he actually rendered services for the dual positions of Provincial Governor of Leyte and Ambassador to foreign countries.

To support his prescription argument, Romualdez posited that the 15-year prescription under Section 11 of R.A. 3019 had lapsed since the preliminary investigation of the case for an offense committed on or about and during the period from 1976 to February 1986 commenced only in May 2001 after a Division of the Sandiganbayan referred the matter to the Office of the Ombudsman. He argued that there was no interruption of the prescriptive period for the offense because the proceedings undertaken under the 1987 complaint filed with the Presidential Commission on Good Government (PCGG) were null and void pursuant to the Supreme Court's ruling in *Cojuangco, Jr. v. PCGG and Cruz, Jr.* [sic]. He likewise argued that the Revised Penal Code provision that prescription does not run when the offender is absent from the Philippines should not apply to his case, as he was charged with an offense not covered by the Revised Penal Code; the law on the prescription of offenses punished under special laws (Republic Act No. 3326) does not contain any rule similar to that found in the Revised Penal Code.

The People opposed the motion to quash on the argument that Romualdez is misleading the court in asserting that Section 3 (e) of R.A. 3019 does not apply to him when Section 2 (b) of the law states that corrupt practices may be committed by public officers who include "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government." On the issue of prescription, the People argued that Section 15, Article XI of the Constitution provides that the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel, and that prescription is a matter of technicality to which no one has a vested right. Romualdez filed a Reply to this Opposition.

The Sandiganbayan granted Romualdez' motion to quash in the first Resolution assailed in this petition. The Sandiganbayan stated:

We find that the allegation of damage and prejudice to the Government in the amount of P5,806,709.50 representing the accused's compensation is without basis, absent a showing that the accused did not actually render services for his two concurrent positions as Provincial Governor of the Province of Leyte and as Ambassador to the People's Republic of China, Kingdom of Saudi Arabia, and United States of America. The accused alleges in the subject Motion that he actually rendered services to the government. To receive compensation for actual services rendered would not come within the ambit of improper or illegal use of funds or properties of the government; nor would it constitute unjust enrichment tantamount to the damage and prejudice of the government.

Jurisprudence has established what "evident bad faith" and "gross negligence" entail, thus:

In order to be held guilty of violating Section 3 (e), R.A. No. 3019, the act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. But bad faith per se is not enough for one to be held liable under the law, the "bad faith" must be "evident".

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. . . . "Gross negligence" is characterized by the want of even slight care, acting or omitting to act in a willful or omitting to act in a willful or intentional manner displaying a conscious indifference to consequences as far as other persons may be affected. (Emphasis supplied)

The accused may have been inefficient as a public officer by virtue of his holding of two concurrent positions, but such inefficiency is not enough to hold him criminally liable under the Information charged against him, given the elements of the crime and the standards set by the Supreme Court quoted above. At most, any liability arising from the holding of both positions by the accused may be administrative in nature.

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However, as discussed above, the Information does not sufficiently aver how the act of receiving dual compensation resulted to undue injury to the government so as to make the accused liable for violation of Section 3 (e) of R.A. No. 3019.

The Sandiganbayan found no merit in Romualdez' prescription argument.

The People moved to reconsider this Resolution, citing "reversible errors" that the Sandiganbayan committed in its ruling. Romualdez opposed the People's motion, but also moved for a partial reconsideration of the

Resolution's ruling on prescription. The People opposed Romualdez' motion for partial reconsideration.

Thereafter, the Sandiganbayan denied via the second assailed Resolution the People's motion for reconsideration under the following terms —

The Court held in its Resolution of June 22, 2004, and so maintains and sustains, that assuming the averments of the foregoing information are hypothetically admitted by the accused, it would not constitute the offense of violation of Section 3 (e) of R.A. 3019 as the elements of (a) causing undue injury to any party, including the government, by giving unwarranted benefits, advantage or preference to such parties, and (b) that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, are wanting.

As it is, a perusal of the information shows that pertinently, accused is being charged for: (a) having himself appointed as ambassador to various posts while serving as governor of the Province of Leyte and (b) for collecting dual compensation for said positions. As to the first, the Court finds that accused cannot be held criminally liable, whether or not he had himself appointed to the position of the ambassador while concurrently holding the position of provincial governor, because the act of appointment is something that can only be imputed to the appointing authority.

Even assuming that the appointee influenced the appointing authority, the appointee only makes a passive participation by entering into the appointment, unless it is alleged that he acted in conspiracy with his appointing authority, which, however, is not so claimed by the prosecution in the instant case. Thus, even if the accused's appointment was contrary to law or the constitution, it is the appointing authority that should be responsible therefor because it is the latter who is the doer of the alleged wrongful act. In fact, under the rules on payment of compensation, the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the appointment been lawful. As it is, the appointing authority herein, then President Ferdinand E. Marcos has been laid to rest, so it would be incongruous and illogical to hold his appointee, herein accused, liable for the appointment.

Further, the allegation in the information that the accused collected compensation in the amounts of Five Million Eight Hundred Six Thousand Seven Hundred Nine Pesos and 50/100 (P5,806,709.50) and Two Hundred Ninety-three Thousand Three Hundred Forty Eight Pesos and 86/100 (P293,348.86) cannot sustain the theory of the prosecution that the accused caused damage and prejudice to the government, in the absence of any contention that receipt of such was tantamount to giving unwarranted benefits, advantage or preference to any party and to acting with manifest partiality, evident bad faith or gross inexcusable negligence. Besides receiving

compensation is an incident of actual services rendered, hence it cannot be construed as injury or damage to the government.

It likewise found no merit in Romualdez' motion for partial reconsideration.^[2]

Petitioner filed a Petition for Certiorari under Rule 65, imputing grave abuse of discretion on the part of the Sandiganbayan in quashing the subject information. Private respondent responded with a Motion to Dismiss with Comment *Ad Cautelam*, wherein he argued that the proper remedy to an order granting a motion to quash a criminal information is by way of appeal under Rule 45 since such order is a final order and not merely interlocutory. Private respondent likewise raised before this Court his argument that the criminal action or liability had already been extinguished by prescription, which argument was debunked by the Sandiganbayan.

The Court granted the petition in its 23 July 2008 Decision. While the Court acknowledged that the mode for review of a final ruling of the Sandiganbayan was by way of a Rule 45 petition, it nonetheless allowed the Rule 65 petition of petitioners, acceding that such remedy was available on the claim that grave abuse of discretion amounting to lack or excess of jurisdiction had been properly and substantially alleged. The Decision then proceeded to determine that the quashal of the information was indeed attended with grave abuse of discretion, the information having sufficiently alleged the elements of Section 3(e) of Rep. Act No. 3019, the offense with which private respondent was charged. The Decision concluded that the Sandiganbayan had committed grave abuse of discretion by premising its quashal of the information "on considerations that either not appropriate in evaluating a motion to quash; are evidentiary details not required to be stated in an Information; are matters of defense that have no place in an Information; or are statements amounting to rulings on the merits that a court cannot issue before trial."

Private respondent filed a Motion for Reconsideration, placing renewed focus on his argument that the criminal charge against him had been extinguished on account of prescription. In a Minute Resolution dated 9 September 2008, the Court denied the Motion for Reconsideration. On the argument of prescription, the Resolution stated:

We did not rule on the issue of prescription because the Sandiganbayan's ruling on this point was not the subject of the People's petition for certiorari. While the private respondent asserted in his Motion to Dismiss *Ad Cautelam* filed with us that prescription had set in, he did not file his own petition to assail this aspect of the Sandiganbayan ruling, he is deemed to have accepted it; he cannot now assert that in the People's petition that sought the nullification of the Sandiganbayan ruling on some other ground, we should pass upon the issue of prescription he raised in his motion.

Hence this second motion for reconsideration, which reiterates the argument that the charges against private respondent have already prescribed. The Court required the parties to submit their respective memoranda on whether or not prescription lies in favor of respondent.

The matter of prescription is front and foremost before us. It has been raised that following our ruling in *Romualdez v. Marcelo*,^[3] the criminal charges against private