

SECOND DIVISION

[G.R. Nos. 163957-58, April 07, 2009]

**MUNIB S. ESTINO AND ERNESTO G. PESCADERA, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R. NOS. 164009-11]

**ERNESTO G. PESCADERA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

For review before the Court under Rule 45 are the April 16, 2004 Decision^[1] and June 14, 2004 Resolution^[2] of the Sandiganbayan in the consolidated Criminal Case Nos. 26192 and 26193 entitled *People of the Philippines v. Munib S. Estino and Ernesto G. Pescadera*. In G.R. Nos. 163957-58, petitioners Munib S. Estino and Ernesto G. Pescadera appeal their conviction of violation of Section 3(e), Republic Act No. (RA) 3019 or the *Anti-Graft and Corrupt Practices Act* for failure to pay the Representation and Transportation Allowance (RATA) of the provincial government employees of Sulu. In G.R. Nos. 164009-11, petitioner Pescadera alone appeals his conviction of malversation of public funds under Article 217 of the Revised Penal Code for failure to remit the Government Service Insurance System (GSIS) contributions of the provincial government employees amounting to PhP 4,820,365.30. In these consolidated appeals, petitioners pray for their acquittal.

The Facts

Estino was elected Vice-Governor of Sulu in the May 1998 elections along with Gov. Abdusakur Tan. On June 23, 1998, this Court issued a *status quo* order in G.R. No. 133676, suspending the effects of the proclamation of Gov. Tan and ordering Vice-Gov. Estino to assume the position of Governor until further orders. Thus, Estino acted as Governor of Sulu from July 27, 1998 up to May 23, 1999 when this Court lifted the suspension order against Gov. Tan. Ernesto G. Pescadera, on the other hand, was Provincial Treasurer of Sulu during Estino's stint as Acting Governor.^[3]

Pursuant to Commission on Audit (COA)-ARMM Office Order No. 99-165 dated August 26, 1999, a special audit team was created upon the request of the Provincial Government of Sulu. An audit of the disbursement vouchers and payrolls for the period starting July 27, 1998 up to May 23, 1999 was then conducted by COA State Auditor II Mona U. Balabaran and her team. The COA Special Audit Report stated that there were anomalies in the payment of salary differentials, allowances, and benefits, among others. The Ombudsman then filed three informations against petitioners, as follows:

CRIMINAL CASE NO. 26192

That sometime in or about January to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice-Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then willfully, unlawfully and feloniously, cause undue injury to the employees of the Provincial Government of Sulu through evident bad faith by failing to pay them their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), Representation and Travel Allowance (RATA), Mid-year Bonus, Cash Gift and Clothing Allowance in the total amount of P8,435,625.34.

CONTRARY TO LAW.

CRIMINAL CASE NO. 26193

That sometime in or about July 1998 to May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, take, convert and misappropriate the GSIS monthly contributions and loan amortizations collected from the provincial employees in the amount of P4,820,365.30 for their own personal benefit or advantage to the damage and prejudice of the said employees and the government as well.

CONTRARY TO LAW.

CRIMINAL CASE NO. 26194

That sometime in or about May 1999, or shortly prior or subsequent thereto, in Jolo, Sulu and within the jurisdiction of this Honorable Court, accused Munib S. Estino and Ernesto G. Pescadera, both high ranking public officers, being the Vice Governor and Provincial Treasurer of Sulu, respectively, taking advantage of their official positions and acting in relation to their official functions, conspiring and confederating with each other, did there and then, willfully, unlawfully and feloniously, cause undue injury to the government through evident bad faith by withdrawing from Philippine National Bank-Jolo Branch the amount of P21.5 million on 07 May 1999 out of the Internal Revenue Allotment of P28,268,578.00 which was deposited to the account of Sulu Provincial Government on the same day and using the said amount to pay "various expenses" without, however, specifying what the expenses are in violation of existing government accounting rules.

CONTRARY TO LAW. [4]

Petitioners pleaded not guilty to the offenses charged in the informations.

Criminal Case No. 26192

During trial in the Sandiganbayan, Balabaran testified that based on the disbursement vouchers and payrolls she and her team examined for the period January to May 1999, the Provincial Government of Sulu failed to pay the provincial government employees their salary differentials, Additional Compensation Allowance (ACA), Personal Emergency and Representation Allowance (PERA), and other benefits; that the Department of Budget and Management confirmed to the special audit team that funds were released to the Provincial Government of Sulu for January to May 1999 so there was no reason why the money was not released to the employees; and that the funds released came from the internal revenue allotment (IRA) of the provincial government for the 1999 budget. The prosecution submitted that this failure violated Sec. 3(e) of RA 3019 which provides:

Section 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

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In his defense, Estino testified that when he assumed office as Acting Governor of Sulu, he called for a general meeting of all the heads of departments, as well as officials and employees to inform them that the remaining money of the provincial government was PhP 47 only. He further informed them of the pending amortization for the loan from the Philippine National Bank (PNB) payable from April to June 1998, and suggested that the salary differentials of all the government employees be paid first while the GSIS remittance be deferred since the pending IRA for the provincial government was not yet released. As to the ACA, PERA, and clothing allowance, he said that these were not paid because the budget for 1999 was not yet approved and there was no provision for those items in the 1998 budget. The budget for 1999 was approved only on June 17, 1999 when Estino was no longer the Acting Governor. The RATA, on the other hand, was provided for in the 1998 budget; hence, the 1998 budget was used in paying the RATA. [5]

Pescadera testified that the employees' benefits were not paid because the 1999 budget was not yet approved then. Also, he said that there was no appropriation for ACA and PERA in the 1998 budget; that the RATA for 1999 was paid; that the cash gift, mid-year bonus, and clothing allowance for the period January to May 1999

were not paid as these were supposed to be paid in December 1999; and that he was the Provincial Treasurer of Sulu up to May 1999 only.^[6]

The Sandiganbayan found petitioners not guilty with regard to the charge of nonpayment of PERA, ACA, cash gift, mid-year bonus, and clothing allowance. The court found that the Provincial Government of Sulu did operate under the 1998 reenacted budget which had no appropriation for PERA and ACA. Petitioners were not held liable for nonpayment of the Year-End Bonus and Cash Gift because these may be given from May 1 to May 31 of each year, while Estino held office as Acting Governor until May 23, 1999 and Pescadera was the Provincial Treasurer until May 1999. As to the clothing allowance, no evidence was presented as to when it should be given to the employees. Payment for the salary differentials for January to May 1999 could not also be done since the 1999 budget was not yet approved.^[7]

As regards the RATA, the Sandiganbayan held that petitioners' defense of payment was an affirmative allegation that required proof. The court stated:

x x x [N]o convincing evidence was presented by the defense to support their claim that they paid the same. Although accused Pescadera testified that Exhibits "3-O" to "3-T", "3-W", "3-X", "3-HH" and "3-II" were vouchers showing payment of RATA for the month of May 1999 for various officers of the Provincial Government of Sulu, the same were not signed by the claimants thereof.

There is budget for the payment of RATA. The IRA pertaining to the province was regularly released. The non-payment thereof constitutes a conscious and deliberate intent to perpetrate an injustice to the officials of the Provincial Government of Sulu. Evident bad faith therefore exists.

x x x x

In the instant case, failure to pay the RATA constitutes an inaction which caused actual damage to the officials entitled thereto, the amount of which was equivalent to the actual amount of the RATA that was due them for the period January to May 1999.

The information alleged that the two accused committed this offense by conspiring and confederating with each other. In conspiracy, it is essential that there must be unity of purpose and unity in the execution of the unlawful objective. These were present in the instant case. Both accused knew that they failed to pay the RATA to the officers entitled thereto.^[8]

The aforesaid judgment is the subject of the appeal docketed as G.R. Nos. 163957-58.

Criminal Case No. 26193

Auditor Balabaran testified that the GSIS premiums for the government and personal share of officials and employees of the Provincial Government of Sulu were deducted from their salaries, but upon confirmation with the Branch Manager of the GSIS in Jolo, the audit team learned that the GSIS premiums were not remitted. According to Estino, however, the audit reports showed that he and Pescadera did

not malverse the funds of the Provincial Government. In addition, Pescadera testified that when Estino assumed office as Acting Governor, the Provincial Government of Sulu was already indebted to the GSIS for its failure to remit the said GSIS monthly remittances which amounted to PhP 4 million. Pescadera stated that Estino called a general assembly of all the officers and employees of the provincial government to discuss the cash operation of Sulu. In that meeting, the officers and employees decided to prioritize the payment of the salary differentials first, followed by the loan amortization to the PNB, and lastly, the GSIS remittances. Pescadera added that the provincial government intended to pay or remit the accrued GSIS monthly remittances as soon as the cash position of the province improves and the 10% of the IRA is released.^[9]

Before the Sandiganbayan, the prosecution charged petitioners with malversation of public funds under Art. 217 of the Revised Penal Code. The Sandiganbayan consequently exonerated Estino but convicted Pescadera. The court held:

In the case at bar, there was evidence that GSIS contributions for the period July 1998 to May 1999 consisting of employee share and loan amortizations were deducted from the salaries of the employees of the province. The 1998 reenacted budget provided for GSIS Premiums (Government Share) and the IRA for the province was regularly released by the DBM. These GSIS contributions were not remitted. In fact contrary to accused Estino's claim, Provincial Auditor Nora A. Imlan stated in her 1998 and 1999 Annual Audit Report that the Province of Sulu had unremitted GSIS contributions for CY 1998 and 1999.

Accused Pescadera, being then the Provincial Treasurer, was the public officer charged with the disbursement of GSIS funds for remittance to the GSIS. He failed to disburse and to remit it to the GSIS at the time it became due. He failed to account for it upon demand by Provincial Auditor Nora A. Imlan and by the Special Audit Team. It is now incumbent upon the accused to rebut the presumption of conversion.

x x x x

However, no evidence was presented to support the claim that the employees agreed to prioritize the payment of PNB loan amortization. Even if there were such an agreement, it would still be contrary to Section 6(b) of the Government Service Insurance System Act of 1997 (R.A. 8291) which provides:

Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month to which the contributions apply. The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees.

Insufficiency of funds of the province is not a valid defense. The fact remained that the GSIS contributions consisting of employee share and loan amortizations were deducted from the salaries of the employees.