

SECOND DIVISION

[G.R. NOS. 154239-41, February 16, 2005]

FELIX L. SARIGUMBA, SHERLITA R. GALLEG0, AND EMMA C. DAGONDON, PETITIONERS, VS. THE SANDIGANBAYAN, FIRST DIVISION, RESPONDENT.

DECISION

CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 of the Rules of Court for the nullification of the March 20, 2002 Resolution^[1] of the Sandiganbayan denying the motion to dismiss Criminal Cases Nos. 24505-07 as well as the June 13, 2002 Resolution which denied the motion for reconsideration thereof.

The Antecedents

Sometime in 1994, in a meeting held at the residence of Atty. Bernadette P. Encinarel, then Congressman Hilarion J. Ramiro, Jr. promised to give P10,000.00 to each of the 33 barangay captains of the Municipality of Tudela, Misamis Occidental. The Congressman assured the barangay captains that the amount was his personal gift to each of them.

It turned out that the amount provided by Congressman Ramiro came from his Countrywide Development Fund (CDF) which was remitted to the Municipal Treasurer of Tudela per Allotment Advice No. F2-6781-94-315 in the amount of P220,000.00 under Check No. 497664; and Allotment Advice No. F2-7784-94-415 in the amount of P110,000.00 under Check No. 497679. Forthwith, petitioner Mayor Felix Sarigumba secured a cash advance chargeable against the CDF of Congressman Ramiro and submitted to the Municipal Treasurer Voucher Nos. 9411-422 and 9412-445 in the total amount of P330,000.00. The particulars contained in the said vouchers read: "to cash advance the CDF for payment of snacks during assembly meeting for peace and order meeting of 33 barangays of Tudela, Misamis Occidental."

Petitioner Sarigumba, thereafter, gave P9,500.00 to each of the barangay captains through two members of his staff, Loreta Salinasal and Crosita Singidas. As per his agreement with the barangay captains, each of the latter was to give P500.00 to the Association of Barangay Captains (ABC) which would serve as contributions for projects. The barangay captains thought that the amount given to each of them was a "cash gift" or "*pahalipay*" from Congressman Ramiro.^[2]

Petitioner Sarigumba later liquidated his cash advance of P220,000.00 via Liquidation Voucher No. 9412-478, stating therein that the said amount was used as follows:

(1) "For the liquidation of cash advance amounting TWO HUNDRED TWENTY THOUSAND PESOS, to furnish to various barangays of Tudela under check #497664 for meals and snacks during peace and order meeting as per supporting papers hereto attached in the total amount of P220,000...."^[3]

The petitioner-mayor also liquidated his cash advance of P110,000.00 via Voucher No. 9412-488, in which he stated that he used the amount –

(2) "For the liquidation of cash advance under check #497679 on V #9412-445 to cover up expenses on peace and order meeting to various barangays of Tudela, Misamis Occidental from CDF Fund under AA #F2-6781-94-315 in the total amount P110,000. ..."^[4]

He then supported his liquidation vouchers with attendance sheets bearing the signatures of those who purportedly attended the assembly meetings. Petitioner Emma C. Dagondon approved Voucher No. 9412-478, while petitioner Sherlita R. Gallego approved Voucher No. 9412-488.

Subsequently, Flaviano Zaide, William Gumisad, Edilberto Quinalagan, Maria Pacaro and Virginia Tampooog, filed a complaint before the Ombudsman against the petitioners Sarigumba, Gallego and Dagondon, alleging, *inter alia* –

That we strongly deny that there had been an assembly or meeting where free meals and snacks during a peace and order meeting were given to the barangay people in the year 1994 and 1995 except during the SOT at Barangays Napurog, Duangican and Maribojoc but we knew for a fact that the said snacks were not given from the above vouchers but the money out of the above disbursements were given as cash gifts to the Barangay Captains of Tudela, Misamis Occidental. In support to the liquidation of the withdrawal of the aforesaid amount were the signatures of the barangay people not for the purpose as alleged in those vouchers but obtained in different manners like attendance during the monthly barangay assembly, or signatures for the retention of the Tudela, Public High School at the Tudela Central School while other signatures were obtained to reimburse payment of a hand-set radio (two-way) procured for the different barangays by the Mayor;

That signatures of the undersigned and numerous signatures of barangay folks including children were forged or obtained under other pretense by the aforesaid mayor in support of the vouchers thereby cheating the people of their money.^[5]

The Ombudsman requested the Commission on Audit (COA) to conduct an investigation of the Peace and Order Campaign Funds for 1994. The Auditor directed each of the barangay captains who received the P9,500.00 from petitioner Sarigumba to remit the said amounts to their respective barangay treasurers and to submit the receipts the latter would issue thereon.

When the barangay captains received the letter of the COA, they were surprised. They then secured receipts from their respective barangay treasurers which indicated that they had returned the amount they received from petitioner

Sarigumba although no such amounts had yet been received by the former. The barangay captains were thereafter accorded a chance to re-liquidate the amounts they received from the petitioner-mayor and they did so.

In their Memorandum Report to the Provincial Auditor dated December 3, 1995, the auditors declared that, with the barangay captains' submission of official receipts, there had been, in effect, no loss of government funds.

When the *Sandiganbayan* received a copy of the COA Report, its Committee on Legal Matters and Committee on Finance, Budget and Appropriations, conducted an investigation, which yielded the following findings as per Committee Report No. 96-13:

4. That the amount released to each Barangay Captain was only P9,500.00 and others P9,400.00 per affidavit submitted by Loreta Salinasal, the Private Secretary to the Mayor.
5. That sometime in 1994 Congressman Hilarion J. Ramiro, [Jr.] assured the Barangay Captains of a personal cash gift of P10,000.00 for each Barangay from his own pocket, but it was never meant that the amount would come from Congressman Ramiro's CDF for peace and order campaign in the Municipality of Tudela. All Barangay Captains received the amount as promised by Congressman Ramiro and disbursed it for their personal benefit. But later on re-submitted liquidation papers for Peace and Order Campaigns in their respective barangays.
6. That the barangay captains changed their positions and denied, as shown in their uniform testimonies, that the amount was indeed for Peace and Order Campaign and not a personal cash gift from Congressman Hilarion J. Ramiro, Jr. The illegal act was already consummated.
7. That COA initiated the investigation of the release of said amounts only after the directive of the Ombudsman arrived. Directing all Barangay Captains to return the amount of P10,000.00 and to produce official receipts acknowledging that said amount had been received by the Barangay Treasurers even if no actual cash was turned over. It appears also that the Municipal Treasurer issued official receipts without actual cash involved to make it appear that said amounts were returned by the barangay captains. The barangay then re-submitted liquidations to justify the earlier liquidations where the forged signatures of barangay constituents were first presented to COA as liquidation of said vouchers. The amounts released were already disbursed. The liquidation papers for P220,000.00 and P110,000.00 were already submitted to COA as final liquidation. For all intent and purposes the act was already consummated. The second liquidation would appear to have been fabricated and had been compromised to legalize the unlawful act.

After the requisite preliminary investigation, the Ombudsman issued a resolution finding probable cause for malversation against petitioner Sarigumba; two counts of falsification of public documents under Article 171, paragraph 4 of the Revised Penal Code also against the petitioner-mayor; and one count of falsification of public documents against petitioners Dagondon and Gallego.

Accordingly, the Ombudsman filed an Information for malversation under Article 217 of the Revised Penal Code against petitioner Sarigumba with the Sandiganbayan. The accusatory portion of the Information docketed as Criminal Case No. 24505 reads:

That sometime in November and December 1994 or sometime prior or subsequent thereto in the Municipality of Tudela, Province of Misamis Occidental, and within the jurisdiction of this Honorable Court, above-named accused FELIX L. SARIGUMBA, a high-ranking public officer, being then the Municipal Mayor of Tudela, while in the performance of his official functions, committing the offense in relation to his office, taking advantage of his official positions, did then and there, willfully, unlawfully and feloniously take, embezzle and appropriate unto himself and/or thru abandonment, or gross negligence allowed other parties to misappropriate, embezzle and/or use to some other purpose the total sum of P330,000.00 he had earlier obtained as cash advance from the Municipality intended for the Peace and Order Campaign of the different Barangays of the same municipality, thereby constituting him a special disbursing officer and for which he is accountable, to the damaged (*sic*) and prejudice of the government and of public interest.

CONTRARY TO LAW.^[6]

Another Information for falsification of public document under Article 171 of the Revised Penal Code against petitioners Sarigumba and Gallego was filed with the Sandiganbayan. The accusatory portion of the Information, docketed as Criminal Case No. 24506 reads:

That sometime in December 1994, or sometime prior or subsequent thereto in the Municipality of Tudela, Province of Misamis Occidental, and within the jurisdiction of this Honorable Court, above-named accused FELIX L. SARIGUMBA, a high-ranking public officer, being then the Municipal Mayor of Tudela, and SHERLITA R. GALLEGO, a low-ranking public officer, being then the Municipal Accountant, both accused, while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official positions, in order to cover up the misuse of public funds advanced by respondent FELIX L. SARIGUMBA intended for the Peace and Order Campaign of the 33 Barangays of the same Municipality, did then and there, willfully, unlawfully and feloniously falsify Liquidation Voucher No. 9412-488 amounting to P110,000.00 by making it appear it was for expenses during the peace and order meeting when, in truth and in fact, both accused knew well that there were no such peace and order meetings being held; furthermore, fabricated attendance sheets and list of signatures were used as supporting documents causing it to appear that persons attended such peace and order meetings when, [in] truth and in fact, they did not for there was no such meetings being held, to the damaged (*sic*) and prejudice of the government and of public interest.

CONTRARY TO LAW.^[7]

A third Information was filed with the graft court against petitioners Sarigumba and Dagondon for falsification of a public document under Article 171 of the Revised

Penal Code. The inculpatory portion of the Information, docketed as Criminal Case No. 24507, reads:

That sometime in December 1994 or sometime prior or subsequent thereto in the Municipality of Tudela, Province of Misamis Occidental, and within the jurisdiction of this Honorable Court, above-named accused FELIX L. SARIGUMBA, a high-ranking public officer, being then the Municipal Mayor of Tudela, and EMMA C. DAGONDON, a low-ranking public officer, being then the Municipal Accountant-Designate, both accused, while in the performance of their official functions committing the offense in relation to their office, were taking advantage of their official positions, in order to cover up the misuse of public funds advanced by respondent FELIX L. SARIGUMBA intended for the Peace and Order Campaign of the 33 Barangays of the same Municipality, did then and there, willfully, unlawfully and feloniously falsify Liquidation Voucher No. 9412-478 amounting to P220,000.00 by making it appear it was for meal and snacks during the peace and order meeting when, in truth and in fact, both accused knew well there were no such peace and order meetings being held and much more on the serving of meals and snacks; furthermore, fabricated attendance sheets and list of signatures were used as support documents causing it to appear that persons attended such peace and order meetings when, [in] truth and in fact, they did not for there was no such meetings being held, to the damaged (*sic*) and prejudice of the government and of public interest.

CONTRARY TO LAW.^[8]

During the hearing of March 30, 1998, the Sandiganbayan expressed anxiety over the number of crimes committed, and issued a Resolution worded as follows:

This morning, this court expressed its anxieties over the correctness of the accusation herein against the Mayor and separately against the municipal accountant for the alleged malversation of sum of money and acts of falsification involving the conversion of portions of the total amount by the accused. It would appear that, considering that there are two amounts, two (2) offenses may have been committed; furthermore, the prosecution can clarify whether or not the alleged falsification took place after the completion of the malversation or was part of the total plan in order to effect the malversation without the same coming to the attention of the examining authorities. Answers to these questions might result in the re-arrangement of the statement of accusation against the accused charged for separate offenses.^[9]

This prompted the Special Prosecutor to ask for a period of fifteen (15) days within which to respond to the misgivings of the graft court. In the meantime, the trial court deferred the issuance of any warrants of arrest against the petitioners.

During the hearing of April 29, 1998, the trial court issued an Order, quoted *infra*:

This morning, the Court expressed its uncertainty over the propriety of proceeding with these cases as they stand at this time considering that, on the basis of the very records of the prosecution at preliminary investigation, it would appear that there is a need to determine whether