

THIRD DIVISION

[G.R. NO. 134493, August 16, 2005]

**BUENCAMINO CRUZ, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

GARCIA, J.:

Thru this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Buencamino Cruz seeks to set aside the Decision dated 30 January 1998^[1] of the Sandiganbayan in its Criminal Case No. 22830, finding him guilty of violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*, and its Resolution dated 14 July 1998,^[2] denying petitioner's motion for reconsideration.

The factual antecedents are not at all disputed:

Following the May 1992 local elections and his proclamation as mayor-elect of the Municipality of Bacoor, Cavite, Victor Miranda sought an audit investigation of the municipality's 1991-1992 financial transactions. Petitioner Buencamino Cruz served as municipal mayor of the town in 1991 until his term ended in the middle of 1992.

Acting on the request, the Commission on Audit (COA) issued COA Order No. 19-1700 constituting a Special Audit Team. In the course of the investigation, the Special Audit Team discovered that certain anomalous and irregular transactions transpired during the covered period, the most serious being the purchase of construction materials evidenced by Sales Invoices No. 131145 and 131137 in the aggregate amount of P54,542.56, for which payment out of municipal funds was effected twice. The double payments were made in favor of *Kelly Lumber and Construction Supply* (*Kelly Lumber*, for short) and were accomplished through the issuance of two (2) disbursement vouchers (DVs), i.e., DV No. 101-92-06-1222 and DV No. 101-92-01-195. Petitioner signed the vouchers and encashed the two (2) corresponding PNB checks, both of which were payable to his order.

The findings of the Audit Team were embodied in a 336-page SAO Report No. 93-28, on the basis of which petitioner was charged with violation of Section 3(e) of R.A. 3019. The provision reads:

Sec. 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 declared to be unlawful:

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.

The Information^[3] against petitioner, filed before the Sandiganbayan and thereat docketed as Criminal Case No. 22830, alleged:

That on June 26, 1992, or sometime prior or subsequent thereto, in the Municipality of Bacoor, Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Buencamino M. Cruz, a public officer being then the Municipal Mayor of Bacoor, Cavite and while in the performance of his official function, acting in evident bad faith, did then and there wilfully, (sic) unlawfully and criminally pay Kelly Lumber and Construction Supply the amount of Fifty Four Thousand Five Hundred Forty-Two Pesos and 56/100 (P54,542.56), Philippine Currency, despite the fact that said account had been previously paid by the Municipality, thus, causing undue injury to the Government in the amount aforestated.

CONTRARY TO LAW.

Upon arraignment, petitioner entered a plea of "Not Guilty". In time, trial ensued.

In a decision^[4] dated 30 January 1998, the respondent court found petitioner guilty beyond reasonable doubt of violation of Section 3(e) of R.A. 3019 and sentenced him *"to serve imprisonment of Seven (7) years, and One (1), month as minimum, to Ten (10) years of prison mayor as maximum, with consequent perpetual disqualification from holding public office, as provided by law."*

The anti-graft court predicated its judgment of conviction on the strength of the following main premises:

The numerous, other alleged anomalies and irregularities fully detailed and outlined in said S.A.O. Report No. 93-28 did not appear to the Special Audit Team, as meriting prosecution of those who might have been guilty thereof. But, the same report strongly recommended prosecution as notwithstanding . . . the subsequent refund of the total amount of P54,542.56 from the supplier, Kelly Lumber . . . for the alleged double payment especially due . . . to the fact that the amount was not directly paid to the supplier but the Municipal Mayor, as shown in Exh. "1" for P150,000.00 and Exh. "H" for P20,000.00 and Exhs. "1-1" and "H-1" showing that the said two checks were actually encashed by the Municipal Mayor, respondent herein (See: p.192 of the S.A.O. Report No. 93-28). A painful examination of Exhs. "B" and "B-1" to "B-11" shows that although there was a total sum due of P31,198.01 and supported by documents under Disbursement Voucher No. 101-9201-194, they are really, only supported by documents showing the statement of the account thereof and yet Sales Invoice No. 131145 was not attached to support the voucher. Besides, said Sales Invoice No. 131145 had already

been paid previously as shown by a photocopy of PNB Check No. 214785, dated January 30, 1992 (see. Exh. "B-2-A") which proves that payment was made upon the prior request of the accused Buencamino M. Cruz, and that the said amount of P21,041.56 had already been paid under the same Voucher No. 101-9201-194. Also Exhs. "E", ""E-1" to "E-7" show that under Disbursement Voucher No. 1163, dated June 26, 1992, payment had been made together with other invoices, per PNB Check No. 197813 in the total sum of P150,000.00; whereas, the same account of P33,501.00 had already been paid on January 30, 1992, thereby, showing that there is double payment and the two checks issued in payment of these two invoices to the accused: Buencamino Mallari-Cruz as payee, shows indubitably, that there was a willful act, with malice aforethought, in having a second payment made, in order that the accused may be able to pocket the money, as he in fact did by encashing the said two checks. For it is likewise evident under the principle RES IPSA LOQUITUR (The thing speaks for itself), namely: that if the money of P54,542.56 were indeed payment for the goods delivered by the supplier-Kelly Lumber and Construction Supply, simple reason and well accepted commercial practice demand for the checks in the first place, to made payable to the suppliers of goods sold in payment thereof. But, why should payment be made to Mayor Buencamino M. Cruz, when he ought not to derive any material benefits, whatsoever, or any pecuniary interest from the transactions entered into by him, for and on behalf of the Municipality,

The only excuse given by the accused when he finally testified in his own defense, in very lame. For the excuse he gave, in explaining the anomaly or irregularity is that he was not aware of the double payment and that, he just signed the voucher for payment, as the last officer to sign the voucher, in order to effect payment thereon, to the supplier . . . , and that it was the duty of the Municipal Treasurer to verify the actual deliveries of the goods sold and their payment afterwards. This may be true, if the ensuing checks issued in payment of the goods covered by the voucher for payment, were made payable, indeed, to the real suppliers of the goods, and not made payable to the Mayor, . . . , and who in fact encashed the checks. The only real defense put up here by the accused is that: The supplier-Kelly Lumber and Construction Supply had subsequently reimbursed the Municipality of the amount of P54,542.56 thereby precluding denial of the double payment as shown in Exh. "1" of the accused, (Underscoring in the original).

With his motion for reconsideration having been denied, per the graft court's resolution of 17 July 1998,^[5] petitioner is now with us *via* the instant recourse.

Petitioner acknowledges signing the DVs which paved the way for the double payment situation. He also admits encashing the checks corresponding to the DVs in question. He nonetheless urges the setting aside of the assailed decision, anchoring his virtual plea for acquittal on four (4) basic issues, to wit: (1) the fatally flawed Information filed against him; (2) the applicability in his favor of what he tagged as the *Arias Doctrine*; (3) the absence of bad faith on his part; and (4) the refund of the amount representing overpayment.

We have carefully reviewed the records of this case and found nothing therein to warrant a reversal of the challenged decision of the respondent court.

Petitioner maintains, anent the first issue, that the Information filed against him was fatally defective in that it did not allege that he is an officer "*charged with the grant of licenses or permits or other concessions*."

Petitioner's contention is flawed by the very premises holding it together. For, it presupposes that Section 3(e) of R.A. 3019 covers only public officers vested with the power of granting licenses, permits or similar privileges. Petitioner has obviously lost sight, if not altogether unaware, of our ruling in *Mejorada vs. Sandiganbayan*,^[6] where we held that a prosecution for violation of Section 3(e) of the Anti-Graft Law will lie regardless of whether or not the accused public officer is "*charged with the grant of licenses or permits or other concessions*". Following is an excerpt of what we said in *Mejorada*:

Section 3 cited above enumerates in eleven subsections the corrupt practices of any public officers (sic) declared unlawful. Its reference to "any public officer" is without distinction or qualification and it specifies the acts declared unlawful. We agree with the view adopted by the Solicitor General that the last sentence of paragraph [Section 3] (e) is intended to make clear the inclusion of officers and employees of officers (sic) or government corporations which, under the ordinary concept of "'public officers' may not come within the term. *It is a strained construction of the provision to read it as applying exclusively to public officers charged with the duty of granting licenses or permits or other concessions.* (Emphasis and words in bracket supplied)

At any rate, the Local Government Code, particularly Section 444 (b)(3)(iv and v), Chapter 3, Title II, Book III thereof,^[7] empowers municipal mayors to issue licenses and permits. Any suggestion that a reference to such power in the information is a condition *sine qua non* for a successful prosecution for violation of Section 3(e) of RA 3019 has to be rejected. As the Solicitor General aptly observed, matters of law are deemed incorporated or read into the information.

Still, with respect to the first issue, petitioner submits that a conviction could arise only for an inculpatory act alleged in the information and duly established in the trial, arguing in this regards that the information alleged that *Kelly Lumber* was paid twice for the same materials but what was found during the trial was that the said payment was given to petitioner. Pressing the point, petitioner states in fine that a variance obtains between what was alleged in the Information filed in this case and what was proven during trial.

We are not persuaded.

As held in *Socrates vs. Sandiganbayan and People of the Philippines*^[8]:

xxx Evidentiary facts need not be alleged in the information because these are matters of defense. Informations need only state the ultimate facts; the reasons therefor could be proved during the trial. x x x (Underscoring supplied)

And what petitioner took to be a variance between the allegation in the information, *i.e.*, the excess payment was given to *Kelly Lumber*, and the acts proven, *i.e.*, the payment in excess was given to petitioner, is more apparent than real. The perceived variance cannot plausibly be taken as invalidating the information and necessarily petitioner's conviction. As may be noted, the information in question states that "*x x x accused Buencamino M. Cruz, a public officer being then the Municipal Mayor of Bacoor, Cavite and while in the performance of his official function, acting in evident bad faith, did then and there willfully, unlawfully and criminally pay Kelly Lumber and Construction Supply the amount of Fifty Four Thousand Five Hundred Forty-Two Pesos and 56/100 (P54,542.56), Philippine Currency x x x*". What was found during the trial, however, was that, albeit double payment was eventually made, or appeared to have been made, to *Kelly Lumber*, the covering checks initially were made payable to petitioner. As a matter of fact, *Kelly Lumber* was even made to appear to have refunded and returned the second or double payment, as demonstrated by a *Certification* to this effect issued on the 19th day of March 1997 and signed by Bacoor Municipal Treasurer Salome U. Esagunde, which *Certification* reads in its material part, as follows:

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that as per records of this office, Kelly Hardware & Construction Supply paid this office the following:

1. Refund to double payment on Voucher No. 101-92-06-1222, paid under OR#4251401 dated September 30, 1993.....P33,500.00
2. Refund to double payment on Voucher No. 101-92-01-195, paid under OR No. 4251402 dated September 30, 1993.....21,041.56

Total - (posted at CBV# 101-9309-2273).....P54,542.56

Issued this 19th day of March, 1997 upon request of _____ for whatsoever legal purpose this may serve.

(Signed)
SALOME U. ESAGUNDE
Municipal Treasurer

Moreover, petitioner even admitted in his memorandum^[9] that "*the refund by Kelly Lumber and Construction Supply is the best proof that he did not pay himself for the costs of the supply x x x.*"

It bears stressing that an information needs only allege the acts or omissions complained of as constituting the offense^[10], in this case, the fact that petitioner made payment to *Kelly Lumber* twice, without need of going into specifics of how such payment was made. The accompanying details of the process of payment can be established during trial through evidentiary offer.