

FIRST DIVISION

[G.R. No. 156685, July 27, 2004]

**NAZARIO N. MARIFOSQUE, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

YNARES-SATIAGO, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure which assails the decision dated September 23, 2002 and the Resolution dated January 3, 2003 of the Sandiganbayan in Criminal Case No. 17030 finding petitioner Nazario Marifosque guilty beyond reasonable doubt of the crime of direct bribery, defined and penalized under the second paragraph of Article 210 of the Revised Penal Code, as amended.

Petitioner was charged with direct bribery in an Information which reads:

That on or about October 13, 1990 in Legazpi City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused a public officer being a qualified member of the Police Force of Legazpi City, now under the Philippine National Police, taking advantage of his official/public position and committing the crime herein charged in relation to his office, did then and there willfully, unlawfully, and feloniously demand, obtain and/or receive directly from Yu Su Pong^[1] and Hian Hian Sy^[2] the total amount of FIVE THOUSAND EIGHT HUNDRED PESOS (P5,800.00) Philippine Currency in consideration for his recovery from alleged robbers, eighteen Shellane gas filled cylinder/s tanks, to the damage and prejudice of the aforementioned victims in the aforesaid amount.

CONTRARY TO LAW.^[3]

The antecedent facts as culled from the records are as follows:

On October 13, 1990 at around 5:00 in the afternoon, Hian Hian Yu Sy and her husband, Arsenio Sy, went to the office of Captain Alberto Salvo, Chief of the Intelligence and Operating Division stationed at the Criminal Investigation Service (CIS) in Region 5, to report the robbery of Shellane tanks at the gasoline station of her father, Yu So Pong, and the alleged extortion attempt by petitioner, Police Sergeant Narciso Marifosque, in exchange for the recovery of the lost items.

Captain Salvo and his men set up a plan to entrap the petitioner. Hian Hian Yu Sy prepared the pay-off money in the amount of P4,800.00 and listed down the serial numbers of the bills. The pay-off was scheduled at 7:00 in the evening of that day in Golden Grace Department Store which was owned by Yu So Pong. At around 6:15 p.m., Captain Calvo and his men arrived at the target area and strategically

positioned themselves outside the Golden Grace Department Store to await the arrival of the suspect. Shortly thereafter, petitioner Marifosque arrived on board a tricycle. He went inside the store and demanded the money from Hian Hian Yu Sy and Yu So Pong. The latter handed to him the marked money, which was wrapped in a newspaper. When petitioner stepped out of the store, Arsenio Sy gave the pre-arranged signal, whereupon the arresting operatives swooped down upon the suspect and arrested him.

Hian Hian Yu Sy testified that petitioner demanded the amount of P7,200.00 but she bargained for P4,800.00 only because that was all she had at the time. She proposed that petitioner return the following morning to pick up the balance.

By way of defense, petitioner Marifosque testified that in the morning of October 13, 1990, a police asset came to his house and reported that he witnessed a robbery at the gasoline station of Yu So Pong. Petitioner went to the gasoline station of Yu So Pong and relayed to him the information. Thereafter, petitioner and Yu So Pong proceeded to the police station to report the robbery to the desk officer, PFC Jesus Fernandez, who then dispatched petitioner and a certain Pat. Garcia to conduct an investigation. As they were leaving the police station, the asset approached petitioner asking if he could get P350.00 per cylinder tank as his reward. Petitioner relayed the message to Yu So Pong, who said he was amenable "if that [was] the only way to recover the cylinders and to apprehend the robbers."^[4] Based on information furnished by the asset, the police investigators proceeded to the house of Edgardo Arnaldo in San Roque Legazpi City, where they found the stolen gas tanks. The group loaded the gas tanks into the vehicle. Meanwhile, Arnaldo arrived. Petitioner did not arrest him at that time because he promised to lead them to the other stolen cylinder tanks.^[5] The group returned to the police station where petitioner made a written report of the recovery of the gas tanks.

Elmer Arnaldo testified that he worked as an asset of the Legazpi City police force and occasionally received rewards from the police for any information of the criminal activities. On October 13, 1990 at around 4:00 in the morning, he went out to buy bread and saw three individuals stealing gas cylinder tanks in the nearby gasoline station. He later visited petitioner and reported to him the robbery. He went back to his house to feed the chickens. Sometime thereafter, he dropped by the police station to discuss with petitioner the reward of P350.00 per cylinder tank recovered. Petitioner gave him 1,000.00 and told him to return at 6:00 p.m. for the remainder. At 7:00 p.m., he and petitioner went to the store of Yu So Pong to collect the balance of the reward money. Petitioner went inside the store and Arnaldo, who was left outside, saw a woman giving him a folded newspaper. Suddenly, armed men apprehended the petitioner, so he ran away.

On September 23, 2002, the Sandiganbayan rendered a decision convicting petitioner of direct bribery, the dispositive portion of which reads:^[6]

WHEREFORE, in view of the foregoing and considering that the agreed act, which did not constitute a crime, was executed, judgment is hereby rendered finding the accused NAZARIO MARIFOSQUE Y NUÑEZ GUILTY beyond reasonable doubt of the crime of Direct Bribery, defined and penalized under the second paragraph of Art. 210 of the Revised Penal Code as amended. The accused is sentenced to an indeterminate penalty

of imprisonment of 3 years 6 months and 5 days of *Prision Correccional* medium and maximum periods as the Minimum and 7 years, 8 months and 9 days of *Prision Mayor* minimum and medium periods as the Maximum considering that there is no mitigating nor aggravating circumstance and a fine in the amount of THREE THOUSAND PESOS (P3,000.00). The accused shall also suffer the penalty of special temporary disqualification.

SO ORDERED. ^[7]

His motion for reconsideration having been denied, petitioner interposes the present appeal raising the following issues:

I

THE ACT OF PETITIONER – RECEIPT OF THE SUMS OF MONEY FOR DELIVERY TO HIS ASSET – DOES NOT CONSTITUTE AN OFFENSE DEFINED AND PENALIZED UNDER SECOND PARAGRAPH OF ARTICLE 210 OF THE REVISED PENAL CODE, AS AMENDED.

II

THE HONORABLE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN FINDING THE PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF DIRECT BRIBERY. ^[8]

In the first assigned error, petitioner contends that the testimonies of the prosecution witnesses do not demonstrate with certainty that the receipt of the alleged “bribe money” constitutes the act punishable by the offense as defined by the Revised Penal Code. He draws attention to the following findings of fact by the appellate court, namely: (1) that he was not the one who asked for reward from private complainant Yu So Pong but the asset; and (2) that Hian Hian Yu Sy had no direct knowledge of the alleged transaction, *i.e.*, the demand for money in consideration of the return/recovery of twenty-one Shellane gas tanks, between private complainant Yu So Pong and the accused.

In the second assigned error, petitioner argues that the prosecution failed to establish his guilt beyond reasonable doubt because there was no competent evidence to prove that the amount was really intended for him and not for his asset. He anchors his defense on the fact that: (1) he merely relayed to Yu So Pong the asset’s request for a reward money; and (2) Yu So Pong was agreeable to the request. He further contends that the act of receiving money for the asset is not one of those punishable under the law as direct bribery.

Petitioner cannot feign innocence and profess good faith since all the indicia point to his guilt and malicious intent.

First, petitioner did not introduce his asset or mention his name to Yu So Pong or his daughter at the time of the illegal transaction. His claim that he previously gave P1,000.00 to his asset, which purportedly represented a partial payment of the reward money, was not corroborated by his asset. When he was arrested and

interrogated at Camp Ibalon, he made no attempt to present his asset to explain and justify his receipt of the reward money. Instead, he accepted his arrest and investigation with an air of resignation, which is characteristic of a culprit who is caught red-handed. Captain Calvo, one of the arresting CIS officers, testified that petitioner attempted to give back the money to Yu So Pong when they were about to arrest him.^[9] This was a clear showing that he was well aware of the illegality of his transaction. Had he been engaged in a legitimate deal, he would have faced courageously the arresting officers and indignantly protested the violation of his person, which is the normal reaction of an innocent man. Instead, he meekly submitted to the indignity of arrest and went along the eventual investigation with the docility of a man at a loss for a satisfactory explanation.

Second, petitioner's solicitous and overly eager conduct in pursuing the robbery incident betrays an intention not altogether altruistic. On the contrary, it denotes a corrupt desire on his part to obtain pecuniary benefits from an illegal transaction. At the time petitioner was notified by his asset of the robbery incident, he was no longer on duty, having been assigned to the night shift the day before. He was too overzealous to meet with Yu So Pong although the case was already assigned to another police investigator. His justification that he wanted to encourage the victim to pursue the case against the robbers rings hollow and untrue. It is clearly an afterthought. As shown in the testimony of prosecution witness Hian Hian Yu Sy, petitioner met with Yu So Pong for no apparent reason than to demand money. There was no mention of any attempt by him to investigate, much less encourage the victims to file charges against the malefactors. More telling is petitioner's persistence in obtaining the monetary reward for the asset although the latter was no longer complaining about the P1,000.00 he supposedly received earlier, thus:

Pros. Agcaoili:

Since the asset was not complaining at the time, you should not have gone back anymore to Yu So Pong?

Accused Marifosque:

Why would I not go back? My purpose was to encourage him to pursue the matter. If he would not pursue this matter, then we would be the laughing stock of the thieves we arrested and then we cannot charge them.

Q. So Mr. Witness, you went to Yu So Pong after you received the P1,000.00 without any intention to receive additional amount for the asset, am I right?

A: No, ma'am. That was not the purpose. In fact, Yu So Pong had told me earlier to see him again in order to prepare for the cash and to see if an additional amount would be needed for my asset.^[10]

While petitioner supposedly supports the "reward system," yet he denied that he previously gave incentives to the assets for the recovery of stolen items, to wit:

PJ: