

## SECOND DIVISION

[ G.R. No. 138093, February 19, 2003 ]

**PEOPLE OF THE PHILIPPINES AND IGNACIO SALMINGO,  
PETITIONERS, VS. EDWIN D. VELEZ (CITY MAYOR), ELI G.  
ALMINAZA (CITY ACCOUNTANT), ARTURO J. SIASON (ACTING  
CITY TREASURER), ELADIO S. MONDRAGON, JR. (CITY  
ENGINEER), ALL OF SILAY CITY, RESPONDENTS.**

### DECISION

**CALLEJO, SR., J.:**

Before the Court is a petition for review on certiorari of the Resolution<sup>[1]</sup> of the Fourth Division of the Sandiganbayan (SB) dated January 9, 1997 in Criminal Case No. 24307<sup>[2]</sup> granting the Motion to Withdraw Information filed by the Office of the Ombudsman and the Resolution<sup>[3]</sup> of the SB denying the Motion for Reconsideration of petitioner Ignacio J. Salmingo of said resolution.

#### The Antecedent Proceedings

Petitioner Ignacio Salmingo, a former member of the Sangguniang Panlalawigan of Silay City, filed an affidavit-criminal complaint with the Office of the Ombudsman (for Visayas) charging respondents with:

1. Installing and operating a rock crusher without the required Environmental Clearance Certificate (ECC) from the DENR;
2. Incurring an overdraft against appropriation in the amount of P3.991M, in violation of Section 158 of the Government Accounting and Auditing Manual;
3. Entering into a transaction that is grossly or manifestly disadvantageous to Silay City, in violation of Sec. 3 (g) of RA No. 3019;
4. Malversation of P2.528M in violation of Art. 217 of the RPC; and
5. Technical Malversation of at least P11.648M in violation of Sec. 305 (a) of the Local Government Code and Art. 220 of the RPC.<sup>[4]</sup>

Salmingo alleged, *inter alia*, in his affidavit-criminal complaint that:

x x x the respondent City Mayor, Edwin D. Velez, on January 05, 1995, requested the Sangguniang Panlungsod (SP) of Silay City for authority to enter into a loan agreement with the Land Bank of the Philippines (LBP) for the purpose of purchasing a rock crusher (Annex 'B'). The SP of Silay

City then passed Resolution No. 563, giving such authority to Mayor Velez to negotiate for a P10M loan from the LBP and to mortgage the City's patrimonial properties, among others. The complainant pointed out that said SP Resolution No. 563 did not specify that the loan proceeds will be used to procure a rock crusher, or for any other purpose. That the SP of Silay City also did not officially approve any appropriation ordinance authorizing that any proposed LBP loan, or any other fund of the Silay City local government, shall be used to purchase a rock crusher or related equipment. But sometime in February 1995, allegedly even before final approval and release of proceeds of the LBP loan, and without any SP appropriation, Mayor Velez accepted the delivery of rock crusher and related heavy equipments (sic) from the supplier, YY & Company of Mandaue City, and during the same month caused the payment to the same supplier of the following sums:

QTY.	DESCRIPTION	AMOUNT
One (1) unit	Komatsu Payloader	P 1,650,000.00
One (1) unit	Fuso Dump Truck	P 1,438,000.00
One (1) unit	Caterpillar Bulldozer	P 3,445,000.00
One (1) set	Used Rock Crusher	<u>P 5,115,000.00</u>
		P 11,648,000.00
		=====

The releases of the LBP loan allegedly came later, starting sometime in March, 1995 (6.19M), then in April, 1995 (2.56M), and finally in March, 1996 (1.25M), for a total of P10M.

The foregoing disbursements for the rock crusher project allegedly caused the Silay City local government to incur an overdraft of P3.991M under the item of Capital Outlay – Office of the City Mayor, as of June 30, 1995. And as of even date, Mayor Velez allegedly had already received a total of P8.719M from the LBP, but had only used a total of P6.191M thereof in payment of the junk rock crusher and related equipments (sic), and, thus, had been unable to account for the P2.528M balance of the LBP loan proceeds. As a result of said overdraft and embezzled or unaccounted amount, Silay City allegedly experienced extreme fund shortage and had been on deficit spending operation since after May 8, 1995 elections.

Respondent Mayor Velez allegedly caused the installation of the rock crusher without the Environmental Clearance Certificate from the DENR, had not applied for said ECC up to the time of filing of this complaint, and had not caused the conduct of any Environmental Impact Assessment. And during the inauguration of the rock crusher plant on June 12, 1995, it allegedly did not operate because it was not only a used or second hand unit but also actually a junk, and its major components did not match or were not synchronized with each other. That even after it

underwent major repairs and was re-inaugurated on February 29, 1996, it still did not perform as expected and again grounded to a halt even before the inaugural music died down. That while it has yet to operate at a commercially viable level, Silay City has been burdened with interest payment for the LBP loan amounting to at least P250,000.00 per quarter starting in the 3rd quarter of 1995.<sup>[5]</sup>

After preliminary investigation, the Graft Investigator prepared a Resolution dated July 28, 1997 stating that there was probable cause against all respondents except the City Budget Officer for violation of Section 3(g) of Republic Act 3019, and recommending the filing of an Information against the malefactors for said crime and for the dismissal of the other charges against all of them:

WHEREFORE, above premises considered, the undersigned respectfully recommends the FILING of INFORMATION for violation of Section 3, paragraph (g), of Republic Act No. 3019, as amended, against respondents City Mayor EDWIN D. VELEZ, City Engineer ELADIO S. MONDRAGON, JR., Acting City Treasurer ARTURO J. SIASON, and City Accountant ELI G. ALMINAZA before the proper court. Further recommending, however, the DISMISSAL of the other criminal charges against said respondents.

Recommending furthermore the DISMISSAL of the complaint against respondent City Budget Officer SALVADOR G. ASCALON, JR.<sup>[6]</sup>

The Resolution was approved by the Ombudsman on October 17, 1997.<sup>[7]</sup>

On October 22, 1997, the corresponding Information was filed against said respondents with the SB and raffled to the fourth division thereof. The Information reads:

*That on or about the 6th day of February, 1995, and for sometime prior and subsequent thereto, at Silay City, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, having been duly elected, appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to office, taking advantage of their public positions, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent of gain and to defraud, did then and there willfully, unlawfully and feloniously enter into a transaction for and in behalf of the City of Silay, Negros Occidental, with YY and Company, Cebu City relative to the purchase of a rock crusher and related heavy equipment, consisting of the following:*

One (1) unit Payloader (aux-equipt. For Rock Crusher) .....	P1,640,000.00
One (1) unit Bulldozer (Caterpillar) .....	3,445,000.00
One (1) unit Dump Truck, 10 Wheeler Fuso, left	1,438,000.00

hand drive

.....

Component for Rock Crusher  
(80/100 cu.m.)  
(Jaw Crusher, Cone Crusher,  
4-set Belt Conveyor and  
Vibrating Screen)

.....

5,115,000.00  
P11,638,000.00

*and consequently paid or caused the payment of said equipment to YY & Company in the total amount of P11,638,000.00, Philippine Currency, which transaction was manifestly and grossly disadvantageous to the government, particularly the City of Silay, as the prices of said equipment exceeded the prevailing market prices and these suffered from several defects ranging from leaking air compressor, assembly and governor throttle, lack of plow bolts, defective oil seal at bucket cylinder, defective waking light, plate light, front signal light, rear stop light, dented mudguard, rotten cab siding, rotten wood black/spacer of dump body, capacity not in accordance with purchase order, some equipment components installed were second hand or of different brand and no parts and maintenance book were supplied as stipulated in the purchase order, and others, which defects caused the rock crusher plant of Silay City to be not operational for some period of time, to the damage and prejudice of the government, particularly the City of Silay.*

CONTRARY TO LAW.<sup>[8]</sup>

The SB found probable cause for the issuance of warrants for the arrest of respondents and accordingly, on November 7, 1997, arrest warrants were issued against them. Respondents forthwith posted bail. On the same day, respondents filed with the Office of the Ombudsman a Motion for Reconsideration of its resolution dated July 28, 1997.<sup>[9]</sup> Special Prosecutor III Luz L. Quiñones-Marcos prepared an Order dated June 29, 1998 for the approval of the Office of the Ombudsman for the denial of the motion of respondents. On November 27, 1997, the Office of the Ombudsman issued an order denying the motion for reconsideration filed by respondents with the ratiocination that the filing of an Information before the SB precluded said Office from still taking cognizance of said motion.<sup>[10]</sup>

Undaunted, respondents filed with the SB on November 24, 1997 a "Joint Motion for Reconsideration/Reinvestigation" with respect to the findings of the Office of the Ombudsman in its Resolution dated July 28, 1997.<sup>[11]</sup> Salmingo opposed the said motion and contended that it was in effect and for all intents and purposes a second motion for reconsideration of the resolution of the Office of the Ombudsman dated July 28, 1997. He averred that the filing of a second motion for reconsideration was proscribed by Section 27 of Republic Act 6770 and Administrative Order No. 07 issued by the Office of the Ombudsman implementing said law.

On December 1, 1997, the SB issued an order granting the respondents' motion for reconsideration/reinvestigation and directing the Office of the Special Prosecutor to re-evaluate the evidence adduced by the parties and to take the appropriate action in connection therewith. The SB declared in said order that the motion of

respondents was not objected to by the prosecution, and that the parties had even agreed that the said motion be treated as a motion for reconsideration under Section 27 of Republic Act 6770.

On June 29, 1998, Special Prosecutor Officer III Marcos prepared an order for approval of the Office of the Ombudsman denying the motion for reconsideration/reinvestigation of respondents. In his memorandum to the Office of the Ombudsman dated July 30, 1998, Special Prosecutor Leonardo P. Tamayo agreed with the findings of his subordinate that there was a *prima facie* case against respondents; he, however, recommended to the Ombudsman some modifications thereto, namely, that the Information in Criminal Case No. 24307 be withdrawn and another Information for violation of Section 3(e) of R.A. 3019 be filed only against City Engineer Eladio S. Mondragon, Jr. The Special Prosecutor found that there was no sufficient evidence to conclude that the equipment (rock crusher) was overpriced, the price having been determined in a public bidding which appears to have been regularly conducted, and that respondents Edwin D. Velez, Arturo J. Siason, Eli G. Alinaga as Mayor, City Treasurer and Accountant, respectively, of Silay City, had knowledge of the defects of the rock-crusher purchased before or at the time payment was made. The Special Prosecutor stated that City Engineer Eladio S. Mondragon, Jr., by reason of his official function and technical knowledge, had the duty to inspect the rock-crusher components and auxiliary equipment before and after the same was delivered and accepted, in order to avoid any injury or damage to the city; and his failure to exercise that degree of diligence expected of him amounted to gross negligence, for which he must, to the exclusion of the other accused (respondents), be answerable.<sup>[12]</sup> The Office of the Ombudsman concurred with the modifications suggested by the Special Prosecutor and approved the order prepared by the Special Prosecutor Officer with modification on July 31, 1998.<sup>[13]</sup> Consequently, on August 20, 1998, Prosecutor Marcos filed with the SB a Motion to Withdraw Information for violation of Section 3(g) filed against respondents, without prejudice to the filing of an Information for the same crime against City Engineer Eladio S. Mondragon, Jr. only. Salmingo opposed the said motion on two grounds:

- a) The Motion for Reconsideration/Reinvestigation dated November 17, 1997 filed by the accused, through counsel, is not warranted under Administrative Order No. 07 which is the Rules of Procedure of the Office of the Ombudsman; and
- b) The evidence on record sufficiently show the existence of conspiracy of all the accused in the commission of the crime of violation of Section 3 (g) of Republic Act No. 3019.<sup>[14]</sup>

Salmingo contended that the SB did not order the Office of the Ombudsman to reinvestigate the case or to reconsider its July 28, 1997 Resolution but merely to take appropriate action. Hence, he claims, the Office of the Ombudsman abused its discretion when it set aside its July 28, 1998 Resolution. He further alleged that as the party who charged respondent for various offenses, he was the offended party, citing Section 9, Republic Act 3019. The Special Prosecutor and respondents, for their part, argued that Salmingo had no personality to oppose the said motion because the crime charged does not involve civil liability and that the prosecutor had direction and control of the prosecution of the case in the SB.