

THIRD DIVISION

[G.R. No. 120391, September 24, 1997]

**SIMPLICIO AMPER, PETITIONER, VS. SANDIGANBAYAN AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.
D E C I S I O N**

FRANCISCO, J.:

The petitioner, SIMPLICIO AMPER, was charged with the violation of Section 3(e) of Republic Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act which provides as follows:

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 hereby declared to be unlawful:

x x x

x x x

x x x

"(e) Causing any undue injury to any party, including the Government, or giving 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 against him reads:

That on or about August 7, 1988, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, a public officer, being then the Assistant City Engineer of Davao City, taking advantage of his official position, with manifest partiality and bad faith in the discharge of his official duties, did then and there wilfully-(sic) unlawfully, and criminally, cause undue injury to the Republic of the Philippines by using for his personal benefit and advantage, to treasure hunt, one (1) unit Allis Backhoe, belonging to the City Government of Davao, without the knowledge, consent and authority from the latter, to the damage and prejudice of the City Government of Davao.

CONTRARY TO LAW."^[1]

Upon arraignment the petitioner pleaded not guilty and trial ensued. The prosecution presented its witnesses whose testimonies are succinctly summarized in the Comment filed by the Office of the Solicitor General (OSG), the pertinent portions of which we quote hereunder with approval.

On August 1, 1988, Filemon Cantela was visiting his two "sisters-in-Christ" near the vicinity of the Guzman Estate at Matina District, Davao City when he chanced upon petitioner Simplicio Amper, Assistant City Engineer, Davao City, together with two others, scanning the area with the use of detector. After petitioner had left, he inquired and gathered from the landowner, Emilio Alvarez-Guzman, that petitioner and his companions were looking for hidden treasure and that they were planning to operate in the area with the use of a backhoe which is a heavy equipment used for excavating. Apprehensive that appellant, being the Assistant City Engineer, and as such had at his disposal the use of the city government-owned backhoe, might actually make use of the said equipment, he advised his "sister-in-Christ" to inform him if and when petitioner would actually resume his treasure hunting operation in the area. (TSN, April 11, 1991, pp. 14-19).

"On August 6, 1988, around 6:00 o'clock in the afternoon (sic), Cantela was informed by his "sister-in-Christ" that petitioner and five others were earlier in the area clearing the premises and preparing to resume their treasure hunting operation that night. Together with Mike Lusenara and Marcelo Gervacio, Jr. of the Civil Security Unit, he prepared to conduct a surveillance on petitioner and his companions that evening (Ibid., pp.19-20).

"They went to the area at about 8:30 in the evening and discreetly waited for the arrival of petitioner and his companions. Around 11:30 in (sic) the same evening, petitioner arrived on board a Toyota Land Cruiser, together with two others who were on board another vehicle. Shortly, after the arrival of petitioner and his companions, a backhoe, bearing inscription on its sides that it is owned by the city government of Davao City, arrived (Ibid., pp. 22-26). The backhoe was being operated by Tobias Porta, a heavy equipment operator assigned at the City Engineer's Office, who was with his assistant, Timoteo Borongan. Thereafter, Porta, upon the instruction of petitioner, began to excavate the area with the use of the backhoe. Cantela requested Henry Adriano to go to the house of Davao City Mayor Rodrigo Duterte and inform him of petitioner's illegal activity (Ibid., pp. 27-30).

"Around 2:15 in the morning of August 7, 1988, Mayor Duterte arrived, together with several policemen, and surprised petitioner and his companions who were still in the act of excavating the area. However, before the Mayor could actually order their arrest, some of petitioner's companions scampered, leaving only petitioner, Porta and Borongan (Ibid., p. 31).

"Thereupon, Mayor Duterte ordered Porta to stop the engine of the backhoe and confronted him as to what he was digging in the area. Porta replied that he was ordered by appellant to dig for gold. Mayor Duterte likewise confronted Borongan, who upon being asked the same question, gave the same reply (Ibid.).

"Duterte ordered one of the members of the Civil Security Unit to pick up petitioner, who was then sitting in his vehicle parked nearby. Mayor

Duterte confronted petitioner and shortly thereafter, ordered petitioner, Porta and Borongan to follow him to the Tolomo Police Station (Ibid., p. 32).

"Mayor Duterte declared that there are four (4) backhoes owned by the city government of Davao City including the subject backhoe; that he checked it out with the Office of the City Engineer and he found out that no permission was granted to petitioner to use the subject backhoe for private purposes (TSN, April 29, 1993, p. 12).

"While in the past, the use of the city government-owned backhoe for private purposes was allowed upon payment of the corresponding rental, Mayor Duterte disallowed the same during his administration because the city government which had so many projects to undertake needed those equipment for the aforesaid projects. He allowed the lease of the city-government-owned backhoes to private individuals but not as matter of policy and only in extreme cases upon payment of rental (Ibid.)."[2]

The petitioner denied the allegations against him and asserted that contrary to Mayor Duterte's claim that the use of the subject backhoe was unauthorized, the same was in fact officially leased by the Davao City government to Francisco Chavez of F.T. Chavez Construction, thus, its use on the private property of Segundo Tan was proper.[3] Public respondent Sandiganbayan found the foregoing asseveration to be without merit considering that petitioner was caught en flagrante delicto directing the use and operation of the said backhoe for his own treasure hunting operations. Furthermore, the petitioner failed to present either Francisco Chavez or Segundo Tan to corroborate his testimony that the backhoe subject of the instant case was the same backhoe which Francisco Chavez rented from the city government.[4]

In a decision promulgated on March 6, 1995, the Sandiganbayan convicted the petitioner of violating Section 3(e) of R.A. No. 3019 and sentenced him "to suffer the penalty of imprisonment of SIX (6) YEARS, ONE (1) MONTH and ONE (1) day, to further suffer perpetual special disqualification from public office, and to pay the costs." [5]

We have carefully reviewed the records of this case and find nothing therein to warrant a reversal of the assailed decision of the Sandiganbayan.

The petitioner's conviction was anchored mainly on the prosecution witnesses' uniform testimonies that they saw him in the actual perpetration of the crime charged. Filomeno Cantela attested to the petitioner's presence at the scene of the crime from the inception of the treasure hunting operation at around 11:30 in the evening of August 6, 1988 until his subsequent apprehension by the group of Mayor Duterte at around 2:00 o'clock in the morning of the next day. Petitioner's participation in the commission of the said crime was categorically established also by Filomeno Cantela who further testified that the backhoe began to operate upon the instructions of the petitioner.[6] And no less than the Mayor of Davao City whose group effected the petitioner's arrest corroborated this eyewitness account.[7] Furthermore, even the backhoe operator, Tobias Porta, belied the petitioner's futile denials when he testified that on the night of August 6, 1988, the petitioner asked him to proceed to the vacant lot in front of the A-Mart in Matina District, Davao City