

THIRD DIVISION

G.R. Nos. 251587-88 — PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, versus* ROGELIO M. PIMENTEL AND HERMINIGILDO Q. REYES, *accused-appellants.*

Promulgated:

June 15, 2022

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CONCURRING OPINION

CAGUIOA, J.:

I fully concur with the *ponencia*. The assailed Decision¹ dated October 4, 2019 and Resolution² dated January 24, 2020 must be reversed and set aside. Accused-appellants Rogelio M. Pimentel (Pimentel) and Herminigildo Q. Reyes (Reyes) (collectively, accused-appellants) should be acquitted of the crimes charged for failure of the prosecution to prove their guilt beyond reasonable doubt.

Accused-appellants are charged for violation of Section 3(e) of Republic Act (R.A.) No. 3019 and violation of Article 217 of the Revised Penal Code (RPC). The two (2) Amended Informations³ both allege that Reyes, in his capacity as Barangay Captain of Unaban, Tago, Surigao del Sur, and in conspiracy with Pimentel, the Municipal Mayor of Tago, Surigao del Sur, allowed the latter to take public property and use it for his own personal benefit, to the damage and prejudice of the government.

I concur with the *ponencia* that their acts did not constitute a violation of the aforementioned laws.

Brief review of the facts

Sometime in August 2013, the Department of Agriculture-Regional Field Unit 13, through the Provincial Government of Surigao, purchased 286 sacks of cement and 280 ten-millimeter steel bars (subject materials) for the construction of post-harvest facilities (*i.e.*, Multi-Purpose Drying Pavement) requested by the *Samahang Magsasaka ng Unaban* Foundation. On December 17, 2013, the construction materials were delivered to Barangay Unaban, Tago, Surigao del Sur and received by Reyes in his capacity as Barangay Captain.

¹ *Rollo*, pp. 5-24. Penned by Chairperson Alex L. Quiroz with Associate Justices Reynaldo P. Cruz and Ronald B. Moreno, concurring while Associate Justice Bayani H. Jacinto with Dissenting Opinion and Associate Justice Maria Theresa V. Mendoza-Arcega, dissenting.

² Sandiganbayan *rollo*, Vol. II, pp. 218-222.

³ *Id.* at 1-6.



The affidavit-complaint⁴ of Edna M. Salamo (Salamo), who served as Barangay Captain of Barangay Unaban before Reyes, alleged that the subject materials were hauled in a truck and taken to Socorro, Surigao del Norte, with the approval of Reyes who was acting under the instructions of Pimentel, and thereafter, used in the construction of the latter's private resort. Salamo claimed that Pimentel even admitted using the materials in a radio interview. The missing materials were later reported to the Sangguniang Bayan — Committee on Agriculture, Marine Life, and Aquatic Resources and Committee on Barangay Affairs (Committee on Agriculture) which issued Committee Report No. 01-14⁵ dated February 13, 2014.

In his defense, Pimentel claimed that, at the request of barangay officials, he transferred the construction materials to higher ground in Barangay Gamut due to flooding in Unaban. Unfortunately, the construction materials were already partially wet when they were moved and were further damaged because Barangay Gamut was also experiencing heavy rainfall. When he checked the sacks of cement, 80% had hardened and some of the steel bars had already partially corroded. In order to save his good name, Pimentel replaced all the bags and steel bars and had them delivered to the area where the Multi-Purpose Drying Pavement was being constructed. He denied using the materials for the construction of his private resort. Reyes interposed the same defense.

During pre-trial, the parties stipulated on the fact that Pimentel and Reyes are public officers and that the subject materials were government property. Notably, the prosecution no longer presented any witnesses during trial considering that accused-appellants had admitted the existence of all documentary evidence.

On October 4, 2019, the Sandiganbayan found Pimentel and Reyes guilty for violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Property under Article 217 of the RPC. In convicting accused-appellants, the Sandiganbayan relied on Salamo's affidavit-complaint and accused-appellants' counter-affidavits⁶ which stated that: (1) they admit paragraphs 1 to 10 of Salamo's affidavit-complaint alleging that the subject materials were shipped and delivered to Socorro, Surigao del Norte with the approval of Reyes and at the instance of Pimentel and that the same were used in the construction of Pimentel's resort; and (2) Pimentel transferred the construction materials to his resort in Socorro, Surigao del Norte upon the request of barangay officials, as expressly stated in paragraphs 14 and 16 of Pimentel and Reyes' counter-affidavits, respectively.

Similar to the *ponencia*, I find that the pieces of evidence relied upon by the Sandiganbayan to convict accused-appellants utterly failed to prove the elements of the crimes charged.

⁴ Sandiganbayan *rollo*, Vol. I, pp. 17-22.

⁵ Id. at 26-27.

⁶ Id. at 74-87 (Counter-Affidavit of Pimentel), id. at 123-129 (Counter-Affidavit of Reyes).



The affidavits fall short of the quantum of proof required to convict Pimentel and Reyes for violating Section 3(e) of R.A. No. 3019 and Malversation of Public Property under Article 217 of the RPC

The elements of the crime of violation of Section 3(e) of R.A. No. 3019 are: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative, or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference.⁷

Meanwhile, the elements of Malversation of Public Property under Article 217 of the RPC are: (1) the offender is a public officer; (2) that he or she had custody or control of funds/property by reason of the duties of his or her office; (3) that those funds/property are public funds/property for which he or she was accountable; and (4) that he or she appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.⁸

It is undisputed that accused-appellants are both public officers and the subject materials are government property. For the other elements of Section 3(e) of R.A. No. 3019, the Sandiganbayan relied solely on the affidavits to conclude that Reyes and Pimentel were in conspiracy with each other and acted with manifest partiality, evident bad faith, and gross inexcusable negligence in giving unwarranted benefit, advantage, and preference to Pimentel who was able to use the subject materials for the construction of his resort, to the damage of the government. Similarly, the Sandiganbayan convicted Reyes and Pimentel for Malversation of Public Property on the basis of the admissions made by accused-appellants in their affidavits.

I agree with the *ponencia* that the affidavits fall short of the quantum of evidence required to convict herein accused-appellants.

For one, the affidavit-complaint of Salamo is worthless as evidence because she did not testify in open court. It is considered hearsay evidence and cannot be accorded any evidentiary weight. Hearsay evidence is defined as "evidence not of what the witness knows himself but of what he has heard from others."⁹ An affidavit is considered hearsay evidence since it is usually

⁷ *Suba v. Sandiganbayan First Division and People*, G.R. No. 235418, March 3, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66943>>.

⁸ *Venezuela v. People*, 826 Phil. 11, 25 (2018).

⁹ *People v. Manhuyod, Jr.*, 352 Phil. 866, 880 (1998).



prepared by someone other than the affiant.¹⁰ For this reason, it is necessary that the affiant is placed on the witness stand to attest to the truths of the contents of his or her affidavit and to give the defense the opportunity to confront and cross-examine him or her.¹¹ Stated otherwise, hearsay evidence is excluded because of the absence of three (3) crucial factors tied to an accused's right to due process, which are: cross-examination, demeanor evidence, and oath.¹²

Moreover, as aptly observed by the *ponencia*, the affidavit-complaint is hearsay evidence in view of the fact that the allegations therein were only based on observations taken by Salamo from Committee Report No. 01-14 of the Committee on Agriculture after it conducted an inquiry and investigation of the whereabouts of the subject materials. This indicates that the allegations stated in Salamo's affidavit-complaint are not based on her own personal knowledge and only derived from another document. As well, the Committee Report No. 01-14 did not expressly state that Pimentel used the subject materials for the construction of his private resort. Salamo claims that Pimentel admitted that he used the subject materials for his resort during a radio interview, but it is not clear if she had heard this herself or if it was just conveyed to her. Thus, there is no concrete evidence where Salamo derived her conclusion that Pimentel used the subject material for his personal benefit. To stress, it is a basic rule that a witness can only testify on matters that he or she knows based on his or her personal knowledge.¹³ Plainly stated, Salamo's affidavit-complaint was not only hearsay for not having been subjected to cross-examination, its very contents were clearly of the nature of hearsay allegations.

Accused-appellants did not admit the commission of the crimes charged in their counter-affidavits

In finding accused-appellants' guilty of the crimes charged, the Sandiganbayan considered the admission made by accused-appellants in their counter-affidavits, particularly of paragraphs 1 to 10 of Salamo's affidavit-complaint. The said paragraphs allege that the construction materials were shipped and delivered to Socorro, Surigao del Norte, under the instructions of Pimentel with the approval of Reyes, and used for the construction of Pimentel's resort.¹⁴

Even if the admissions are considered against Pimentel and Reyes, these fall short of the quantum of proof required to convict the accused of the crimes charged. Certainly, the admissions did not relieve the prosecution of its duty to establish beyond reasonable doubt the elements of Malversation of Public Property under Article 217 of the RPC and Section

¹⁰ *People's Bank & Trust Company v. Judge Leonidas*, 283 Phil. 991, 994 (1992).

¹¹ *Id.*

¹² *Dantis v. Maghinang, Jr.*, 708 Phil. 575, 589 (2013).

¹³ Rule 130, Sec. 22, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

¹⁴ *Ponencia*, p. 14.



3(e) of R.A. No. 3019.¹⁵ After all, an admission, by its nature, is “mere acknowledgment of a fact or of circumstances from which guilt may be inferred.”¹⁶ It is less than a confession and is in itself insufficient to authorize a conviction.¹⁷ In this case, the admissions made by Pimentel and Reyes were extrajudicial in nature as they were only stated in their counter-affidavits. In fact, both accused-appellants vehemently denied the said admissions during trial. Most importantly, a simple reading of the counter-affidavits of Pimentel and Reyes shows that the admission in the first sentence of paragraph 6 is qualified by the specific denial in the second sentence thereof, *viz.*:

6. I ADMIT the allegations of the complainant in paragraphs 1 to 10 of her Affidavit-Complaint as the same are matters of public record. **However, I vehemently and specifically DENY the rest of the allegations thereof, insofar as they impute the commission of the crimes charged, as they are erroneous conclusions of law, false, fabricated and outrageous lies, the truth being those set forth herein below[.]**¹⁸ (Emphasis supplied)

Thus, I agree with the *ponencia*'s conclusion that Pimentel and Reyes made no admissions as to the criminal charges against them.

With the affidavit-complaint deemed inadmissible and the finding that Reyes and Pimentel made no admissions of the crimes charged, the only fact established by the counter-affidavits is that the subject materials were taken to Pimentel's resort. Apart from this, there is no proof that such taking resulted in unwarranted benefits, advantage, or preference to Pimentel. “Unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.¹⁹ Indeed, there is no iota of evidence that Pimentel actually used the subject materials to build his resort as Salamo claimed. To stress anew, it is unclear how Salamo reached her conclusion that the subject materials were used by Pimentel for the construction of his resort. Since Salamo was not presented by the prosecution, this claim could not have been established with moral certainty. As well, there is no clear and positive showing how any injury was caused to the government from the transfer of the subject materials.

All told, the documentary evidence relied upon by the prosecution in the instant case cannot equate to proof beyond reasonable doubt that Reyes and Pimentel committed either of the crimes charged.

¹⁵ Id.

¹⁶ *People v. Castillo*, 382 Phil. 499, 509 (2000).

¹⁷ *People v. Licayan*, 428 Phil. 332, 347 (2002); *People v. Buntag*, 471 Phil. 82, 95 (2004).

¹⁸ Sandiganbayan *rollo*, Vol. I, p. 76 (Counter-Affidavit of Pimentel), p. 125 (Counter-Affidavit of Reyes).

¹⁹ *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019, 910 SCRA 578, 595.



As a final note, it bears emphasis that no less than the 1987 Constitution provides that every accused is presumed innocent unless his or her guilt is proven beyond reasonable doubt.²⁰ It is the prosecution who carries the burden of proving the guilt of the accused and it cannot simply rely on the weakness of the evidence of the defense.²¹ To warrant conviction in criminal cases, the prosecution must provide evidence that will produce moral certainty of the guilt of the accused in the mind of the Court.²² The prosecution failed to do so in the instant case.

Based on the foregoing, I vote to **ACQUIT** accused-appellants Rogelio M. Pimentel and Herminigildo Q. Reyes of the crimes charged against them.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

²⁰ Art. III, Sec. 14(2).

²¹ *People v. Ansano y Calleja*, G.R. No. 232455, December 2, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66861>>.

²² *People v. Lumikid*, G.R. No. 242695, June 23, 2020, 940 SCRA 90, 111.