



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. Nos. 251587-88

Present:

-versus-

CAGUIOA, *Chairperson,*
INTING,
GAERLAN,
DIMAAMPAO, *and*
SINGH, *JJ.*

ROGELIO M. PIMENTEL and
HERMINIGILDO Q. REYES,
Accused-Appellants.

Promulgated:
June 15, 2022
Mis-DCBAH

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DECISION

GAERLAN, J.:

This is an appeal from the Decision¹ of the Sandiganbayan Fourth Division dated October 4, 2019 and the Resolution² dated January 24, 2020, in SB-16-CRM-0479 and SB-16-CRM-0480, finding accused-appellants Rogelio Maquinano Pimentel (Pimentel) and Herminigildo Quico Reyes (Reyes) guilty beyond reasonable doubt for violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act,” and Malversation of Public Property as defined and penalized under Article 217 of the Revised Penal Code (RPC).

Antecedents

Pimentel and Reyes were charged in two (2) Amended Informations for violation of Section 3(e) of R.A. No. 3019 and Article 217 of the RPC, the accusatory portions of which read:

¹ *Rollo*, pp. 5-28. Penned by Chairperson Alex L. Quiroz, with Associate Justices Reynaldo P. Cruz and Ronald B. Moreno, concurring.

² Sandiganbayan *rollo*, Volume 2, pp. 218-222.

J

In Criminal Case No. SB-16-CRM-0479
For Violation of Section 3(e) of R.A. 3019:

That in January 2014, or prior or subsequent thereto, in Tago, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the accused Herminigildo Quico Reyes, a government employee with salary grade below 27, being the Barangay Captain of Unaban, Tago, Surigao del Sur, who by reason of the duties of his office is accountable for public funds and properties received and kept by him in his capacity as Barangay Captain, committing the offense in relation to office and in the performance of his position, in conspiracy with Rogelio Maquinano Pimentel, a high ranking officer, being the Municipal Mayor of Tago, Surigao del Sur with Salary Grade 27, through evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally given unwarranted benefits, advantage, or preference to Mayor Rogelio Maquinano Pimentel by allowing him to use public properties such as 286 sacks of cement and 280 ten-millimeter steel bars under the custody of accused Herminigildo Reyes of Barangay Unaban for his personal purposes, to the damage and prejudice of the government.

CONTRARY TO LAW.³

In Criminal Case No. SB-16-CRM-0480
For Malversation of Public Property under Article 217 of RPC:

That in January 2014, or prior or subsequent thereto, in Tago, Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the accused Herminigildo Quico Reyes, a government employee with salary grade below 27, being the Barangay Captain of Unaban, Tago, Surigao del Sur, who by reason of the duties of his office is accountable for public funds and properties received and kept by him in his capacity as Barangay Captain, committing the offense in relation to office and in the performance of his position, in conspiracy with Rogelio Maquinano Pimentel, a high ranking officer, being the Municipal Mayor of Tago, Surigao del Sur with salary grade 27, did then and there wilfully, unlawfully, and feloniously take, appropriate or misappropriate properties such as 286 sacks of cement and 280 ten-millimeter steel bars belonging to the government by consenting or permitting accused Rogelio Maquinano Pimentel to take, appropriate or misappropriate the said public properties under the custody of accused Herminigildo Reyes of Barangay Unaban for his personal purposes, to the prejudice and damage of the government.

CONTRARY TO LAW.⁴

Upon arraignment on October 20, 2017, both accused, with the assistance of their counsel *de parte*, pleaded not guilty to the charges against them.⁵

³ Rollo, p. 6, citing Sandiganbayan *rollo*, Vol. 2, pp. 1-3.

⁴ Sandiganbayan *rollo*, Vol. 2, pp. 4-6.

⁵ Rollo, p. 7.

During pre-trial, the parties marked their respective documentary exhibits and agreed that the lone issue to be resolved is whether or not co-accused Reyes allowed the two mentioned construction materials [286 sacks of cement and 280 ten-millimeter steel bars] in his possession to be used personally by co-accused Pimentel.⁶ The parties also stipulated as to the following facts:

28.1 Both accused Pimentel and Reyes are public officers, they being the incumbent Mayor and Barangay Captain, respectively, at the time the alleged act was committed in 2014. x x x

28.2 The subject items consisting of 286 bags of cement and 280 10mm steel bars were government properties, owned by the Provincial Government of Surigao del Sur, and were granted to the Unaban Farmers Association of Barangay Unaban, of the Municipality of Tago for construction of Solar Dryer Pavement. x x x⁷

The Sandiganbayan issued its Pre-Trial Order on November 7, 2017, then declared pre-trial proceedings closed. Trial on the merits thereafter ensued.⁸

During trial, the prosecution decided not to present witnesses in light of the defense's admission as to the existence of all the documentary exhibits.⁹ The prosecution made its Formal Offer of Documentary Exhibits on November 16, 2017, which was admitted by the Sandiganbayan on December 18, 2017.¹⁰

On the other hand, the defense presented Pimentel and Reyes as its witnesses and formally offered as evidence their respective Counter-Affidavits, which the Sandiganbayan admitted on July 30, 2018.¹¹

After filing their respective memoranda, the case was submitted for decision. The evidence for both the prosecution and the defense are set forth, therein:

⁶ Id.

⁷ Id. at 7-8.

⁸ Id. at 8.

⁹ TSN dated November 7, 2017-Pre-trial, p. 16.

¹⁰ *Rollo*, p. 8.

¹¹ Id.

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Evidence for the prosecution

In August 2013, *Samahang Magsasaka ng Unaban* Foundation (Foundation) requested assistance from the Department of Agriculture (DA)-Regional Field Unit 13 for the grant of post-harvest facilities, such as a Multi-Purpose Drying Pavement (MPDP). Foundation President/Chairperson Jesus E. Salamo (Foundation President Salamo) was designated to transact business with the DA regarding the request for the MPDP. A purchase request for 286 bags of cement and 280 ten-millimeter steel bars, with a total amount of ₱121,366.80, was granted by the DA through the Provincial Government of Surigao. The subject materials were to be used for the construction of the MPDP, and all paperwork for the purchase of said materials contained the instruction to deliver the materials to the site of the Foundation. On December 17, 2013, Twinkle Star, sub-contractor of the winning bidder GIBB Marketing, delivered the materials to Barangay Unaban, Tago, Surigao del Sur. Accused Reyes, in his capacity as Barangay Captain of Unaban, received the materials.¹²

During the first week of February 2014, Foundation President Salamo reported to Councilor Wilfredo M. Yu (Councilor Yu) that the subject materials, which were being kept in the multi-purpose hall of Barangay Unaban, were borrowed by Pimentel and transported to Socorro, Surigao del Norte, on January 11, 2014, without the Foundation's knowledge and consent. Accordingly, the Committee on Agriculture of the *Sangguniang Bayan* of Tago scheduled a meeting on February 13, 2014, to conduct an inquiry on the matter.¹³

During the scheduled meeting, the Committee on Agriculture of the *Sangguniang Bayan* found that the materials were received by Reyes on December 17, 2013, and that Reyes entrusted and/or lent the said materials for safekeeping to Pimentel. The Committee, also found out that said construction materials were transported to Socorro, Surigao del Norte, on January 11, 2014; that on February 6, 2014, upon inspection, the Provincial Agriculturist discovered that the materials were missing; that a new set of cement and steel bars were delivered to Barangay Unaban on February 7, 2014 and February 11, 2014, respectively; that according to Reyes, the new materials were paid for by Pimentel; and that there was a "borrowing of materials" needed for the construction of the MPDP.¹⁴

¹² Id. at 8-9.

¹³ Id.

¹⁴ Id. at 9-10, Sandiganbayan *rollo*, Vol. 1, p. 475; Committee Report of the Committee on Agriculture, Maritime Life, and Aquatic Resources and Committee on Barangay Affairs of the *Sangguniang Bayan* of the Municipality of Tago, Surigao del Sur.

On May 30, 2014, former Barangay Captain of Unaban, Edna M. Salamo (former Barangay Captain Salamo) filed a complaint against both accused for the loading and hauling of the subject materials, intended for the MPDP, into a forward truck bound for Socorro, Surigao del Norte. She averred that it was during her term as Barangay Captain that the request for the MPDP was granted in favor of the farmer's association of Barangay Unaban. She stated that the materials were diverted to Socorro, Surigao del Norte, at the instance of Pimentel and with the approval of Reyes, to be used in the building and construction of a private resort owned by Pimentel. She also stated that Pimentel allegedly admitted to having used the materials for personal purposes in a live radio interview, and that the loading and hauling of the materials were reported by Councilor Yu to the *Sangguniang Bayan* and became the subject of a Committee Report.¹⁵

Also on May 30, 2014, Barangay Unaban Councilor Fortunato L. Ortuyo, Jr. and Barangay Tanod Junrey Quico executed a Joint-Affidavit corroborating the complaint of former Barangay Captain Salamo with respect to the delivery of the said construction materials to Barangay Unaban on December 17, 2013, and the loading and hauling of the said materials on January 11, 2014, for transport to Socorro, Surigao del Norte. Foundation President Salamo, at that time an incumbent Barangay Councilor of Unaban, also executed an Affidavit where he narrated the loading and hauling of the materials to be brought to Socorro.¹⁶

While preliminary investigation of former Barangay Captain Salamo's complaint was ongoing, Pimentel and Reyes both filed their respective counter-affidavits before the Ombudsman wherein they admitted the allegations contained in the unnumbered first ten paragraphs of the former Barangay Captain Salamo's complaint.¹⁷

Evidence for the defense

Pimentel, the Municipal Mayor of Tago, Surigao del Sur, at the time of the alleged incident, identified his Counter-Affidavit and affirmed the truthfulness of the allegations therein.¹⁸

While on direct examination, he testified that he did not take the 286 bags of cement and 280 steel bars for his own private use and benefit. He said that the taking and hauling of the materials were made upon request of the

¹⁵ Id.

¹⁶ Id. at 10.

¹⁷ Id.

¹⁸ Id. at 11.

barangay officials as they had yet no budget for labor and for fear that the materials would be damaged by the impending flood. He also stated that he was not impelled by any sinister and criminal intent to take, convert, and misappropriate public property for his personal use, benefit, gain, or aggrandizement. Rather, he was only exercising due diligence in the proper use, utilization, and safekeeping of the materials with the end in view of averting unnecessary loss and damage of public property. He further stated that even in the absence of demand, he complied with his commitment to replenish the materials which were eventually used in the completion of the MPDP. He declared that he did not malverse said public property by *dolo* or *culpa*, and that there can be no legal presumption of malversation, as such legal presumption only arises when a demand for restitution of public property is made, and there was no such demand by any public officer or person in authority.¹⁹

Pimentel further explained that he did not use the subject materials, and only transferred the same to nearby Barangay Gamut which had higher ground, in order to save the materials from the six feet-high flooding brought about by typhoon Agaton. He claimed that the rains went on for about three weeks to a month. Pimentel also narrated that the place to which the materials were transferred was likewise flooded because of the continuous raining, and at the time the materials were being moved, some of the materials were already partially wet. He averred that when the Barangay Council expressed their readiness to use the materials, he checked the same after the floods had receded, and observed that only about twenty percent (20%) of the bags of cement had not hardened. Consequently, he told the Barangay Council to no longer use the subject materials. Instead, he purchased the same number of cement and steel bars, and had them delivered to the area where the MPDP was being constructed, and where Reyes was waiting to receive them. Pimentel also disclosed that it was his former counsel, Atty. Arriba, who prepared his counter-affidavit. Pimentel performed his narration in the Visayan dialect, which narration was translated to English by Atty. Ariba.²⁰

While on cross-examination, Pimentel was asked if his former counsel had explained to him the statements in his counter-affidavit, which Pimentel answered in the affirmative. He also stated that he affixed his signature on the said document because he understood all the statements made therein, and reiterated that he merely brought the materials to higher ground in nearby Barangay Gamut, also located in the municipality of Tago, Surigao del Sur. However, when Pimentel was confronted by the prosecution with his statement in his counter-affidavit stating that the subject materials were brought to his private resort in Socorro, Surigao del Norte, he claimed that the

¹⁹ Id.

²⁰ Id. at 11-12.

statement was false. Pimentel claimed that he did not understand how that statement was in his affidavit because Tago, Surigao del Sur, was about 200 kilometers away from Surigao del Norte, and can be reached *via* a rough road, and thereafter, a one-hour boat ride. He then narrated that Unaban was still under the effects of typhoon Agaton when the materials were being transferred. Pimentel also admitted that the brand of cement bought to replace the alleged damaged bags was Holcim because there was no other brand available at that time.²¹

Upon being asked some questions by the Sandiganbayan, Pimentel clarified that while not all the cement was damaged by the flood and rain, he nonetheless replaced all of them and left both the damaged and undamaged bags at the covered court in Barangay Gamut, and that he gave the Barangay Council permission to use the undamaged bags of cement and the steel bars, some of which had been partially corroded. Pimentel maintained that while he had no fault in the loss or damage of the materials, he nonetheless decided to replace everything only to protect his good name. Pimentel also admitted that he had no idea that the damaged cement was Portland cement, all the while insisting that the materials were transferred to Barangay Gamut, and not to the town of Socorro. He narrated that the transfer, made at the request of the Barangay Council, was effected through the use of a rented six-wheeler truck and that his brother, an employee of the motor pool section, issued a receipt to the Barangay Captain when the materials were picked up for transport. Finally, he reiterated that he never, in his lifetime, used the cement and steel bars for his personal consumption, especially in his resort.²²

Reyes, who was the Barangay Captain of Unaban at the time of the alleged incident, identified his counter-affidavit. While on direct examination, he stated that it was his former counsel who prepared such counter-affidavit, and that he spoke in the Visayan dialect when answering his former counsel's questions. He also testified that the subject materials were not brought to Socorro because of the heavy rains and flooding in the area. Rather, the materials were brought to Barangay Gamut as the road to Surigao del Norte was no longer passable. He stated that he made this information known to his previous counsel, despite not being included in their affidavits. He also alleged that he was with the materials as they were being transported to Barangay Gamut, and confirmed that the damaged materials were still there because they had taken pictures of the same. He stated that Pimentel replaced all the materials to protect his good name and comply with his commitment to the barangay.²³

²¹ Id. at 12.

²² Id. at 13.

²³ Id.

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While being cross-examined, Reyes admitted that his former counsel explained the contents of his counter-affidavit to him. He reiterated, however, that the materials were transferred to Barangay Gamut because it was no longer possible to reach farther places due to the flooding. He stated that he had no agreement with Pimentel to bring the materials to Socorro, and that the Barangay Council accepted the replacement materials.²⁴

In response to some questions propounded by the Sandiganbayan, Reyes declared that he was in the truck going to Barangay Gamut, and that Pimentel was not present when the subject materials were extracted from Barangay Unaban. He narrated that he spoke with Pimentel on the 8th, 9th, and 10th of January 2014, and called him on the 11th because there was already flooding in the barangay hall. He stated that there was no acknowledgement receipt issued by Pimentel when the materials were picked up by a 6-wheeler forward truck from Barangay Unaban.²⁵

On October 4, 2019, the Sandiganbayan rendered its assailed Decision²⁶ finding both Reyes and Pimentel guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019 and Article 217 of the RPC, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court hereby renders judgment as follows:

1. In Criminal Case No. SB-16-CRM-0479, accused Rogelio Maquinano Pimentel and Herminigildo Quico Reyes are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019 and are each hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) day, as minimum, to eight (8) years as maximum, with perpetual disqualification from holding public office; and

2. In Criminal Case No. SB-16-CRM-0480, accused Rogelio Maquinano Pimentel and Herminigildo Quico Reyes are found **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Property, defined and penalized under Article 217 of the Revised Penal Code, and are each hereby sentenced to suffer an indeterminate penalty of imprisonment of Two (2) years, Four (4) months, and One (1) day of *prision correccional*, as minimum, to Six (6) years and One (1) day of *prision mayor*, as maximum, with perpetual special disqualification from holding public office, and to each pay a fine of One Hundred Twenty-One Thousand Three Hundred Sixty-Six Pesos and Eighty Centavos (Php121,366.80), the value of the property malversed. No civil liability is awarded in view of the full restitution of the properties involved.

²⁴ Id. at 14.

²⁵ Id.

²⁶ Id. at 5-28.

SO ORDERED.²⁷

The Sandiganbayan ruled that all the elements of the crimes charged against Pimentel and Reyes were present.

Anent the alleged violation of Section 3(e) of R.A. No. 3019, the Sandiganbayan ruled that the judicial admissions made by Pimentel and Reyes in their counter-affidavits, where they admitted that Pimentel caused the subject materials to be brought to the latter's private resort in Socorro, sufficiently showed the guilt of both accused. The Sandiganbayan used the admissions as basis to conclude that Reyes, at the instance of Pimentel, showed manifest partiality and acted in bad faith. Further, it proved that the two accused, in conspiracy with one another, illegally transported the subject materials to Pimentel's private resort in Socorro, where the said materials were in fact utilized in the construction of Pimentel's private resort.

As regards the charge for violation of Article 217 of the RPC, the Sandiganbayan also used as basis the admissions made by Pimentel and Reyes in concluding that the two accused, in conspiracy with one another, intended to convert, and actually converted the subject materials which were public property, for Pimentel's own personal benefit, thereby committing malversation of public property.

Pimentel and Reyes filed a Motion for Reconsideration of the Sandiganbayan Decision, which was denied by the Sandiganbayan in its Resolution²⁸ dated January 24, 2020.

Seeking to appeal their conviction, Pimentel and Reyes filed a Notice of Appeal²⁹ to assail the Sandiganbayan's decision and resolution. They filed their Appellant's Brief³⁰ on September 22, 2020. On the other hand, the People of the Philippines, through the Office of the Ombudsman, filed its Appellee's Brief³¹ on June 17, 2021.

Issue

The issue for the Court's resolution is whether or not the Sandiganbayan erred in finding both accused Pimentel and Reyes guilty

²⁷ Id. at 28.

²⁸ Sandiganbayan *rollo*, Vol. 2, pp. 218-222.

²⁹ Id. at 29-30.

³⁰ Id. at 69.

³¹ Id. at 111-135.

beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019 and Malversation of Property as defined and penalized under Section 217 of the RPC.

Ruling of the Court

The appeal is meritorious.

Pimentel and Reyes are charged, in conspiracy with one another, for violation of Section 3(e) of R.A. No. 3019 and Malversation of Property as defined and penalized under Section 217 of the RPC.

Section 3(e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, reads:

Section 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

(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.

This crime has the following essential elements: 1) The accused must be a public officer discharging administrative, judicial or official functions; 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and 3) His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.³²

On the other hand, Section 217 of the RPC provides that:

Article 217. *Malversation of public funds or property; Presumption of malversation.* - Any public officer who, by reason of the duties of his office,

³² *Albert v. The Sandiganbayan*, 599 Phil. 439, 450 (2009), citing *Uriarte v. People*, 540 Phil. 477, 493 (2006), citing *Santos v. People*, 520 Phil. 58, 68 (2006); *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004); and *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 26 (1989).

is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

x x x x

2. The penalty of *prisión mayor* in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

x x x x

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.

The essential elements common to all acts of malversation under Article 217 of the RPC are the following: (a) That the offender be a public officer; (b) That he had the custody or control of funds or property by reason of the duties of his office; (c) That those funds or property were public funds or property for which he was accountable; and (d) That he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.³³

During pre-trial, the parties stipulated on the fact that both Pimentel and Reyes were public officers, and that the subject materials consisting of 286 bags of cement and 280 ten-millimeter steel bars were government property owned by the Provincial Government of Surigao.³⁴

Meanwhile, in order to arrive at the determination that other elements of the crimes charged were present and that conviction was proper, the Sandiganbayan heavily relied on former Barangay Captain Salamo's Affidavit-Complaint³⁵ and the counter-affidavits of Pimentel and Reyes.³⁶ Specifically, these pieces of evidence were relied upon to reach the conclusion that the accused, in conspiracy with each other, acted with manifest partiality

³³ *People v. Pantaleon, Jr.*, 600 Phil. 186, 208 (2009).

³⁴ *Rollo*, pp. 7-8.

³⁵ Sandiganbayan *rollo*, Vol. 1, pp. 17-22; former Barangay Captain Edna Salamo's Affidavit-Complaint dated May 30, 2014.

³⁶ *Id.* at 74-87 and 123-129. Counter-Affidavits of Rogelio Pimentel and Herminigldo Reyes, respectively.

and evident bad faith, and succeeded in giving unwarranted benefit, advantage, or preference to Pimentel when the latter actually used the subject materials for construction in his private resort, thus making them liable under Section 3(e) of R.A. No. 3019. They were also used to prove that Reyes consented to the transferring of materials from Unaban to Socorro for Pimentel's personal use and benefit, in violation of Section 217 of the RPC.

The Court notes, however, that during trial, former Barangay Captain Salamo was not presented by the prosecution as a witness to prove the allegations in her affidavit-complaint. Moreover, the allegations in former Barangay Captain Salamo's affidavit-complaint do not appear to be based on her personal knowledge. Rather, they were based on the "observation and investigation" of the *Sangguniang Bayan* Committee on Agriculture, Marine Life, and Aquatic Affairs in its Committee Report No. 01-14 dated February 13, 2014.³⁷ Since the prosecution did not present any witness during trial, the defense did not have the opportunity to cross-examine former Barangay Captain Salamo or any member of the *Sangguniang Bayan* to test their credibility and observe their demeanor as witnesses. Thus, this Court agrees with Sandiganbayan Justice Jacinto in his dissent³⁸ when he stated that former Barangay Captain Salamo's affidavit-complaint, citing *Sangguniang Bayan* Committee Report No. 01-14, falls under the category of hearsay evidence, and is bereft of substantial evidentiary value.

Basic is the rule in this jurisdiction that an affidavit is treated merely as hearsay evidence when its maker did not take the witness stand.³⁹ In *Rep. of the Phils. v. Manotoc, et al.*,⁴⁰ we explained that:

Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.⁴¹

³⁷ Sandiganbayan *rollo*, Vol. 1, p. 18; former Barangay Captain Edna Salamo's Affidavit-Complaint citing Committee Report No. 01-14 dated February 13, 2014 of the Committee on Agriculture, Maritime Life, and Aquatic Resources and Committee on Barangay Affairs of the *Sangguniang Bayan* of the Municipality of Tago, Surigao del Sur.

³⁸ *Rollo*, pp. 25-28. Dissent of Sandiganbayan Associate Justice Bayani H. Jacinto.

³⁹ *Unchuan v. Lozada*, 603 Phil. 410, 424-425 (2009).

⁴⁰ 681 Phil. 380 (2012).

⁴¹ *Id.* at 404-405.

Interestingly, case records reveal that only the existence of the documentary exhibits submitted by the prosecution was admitted by the defense. No similar admission was made as to the truthfulness of the statements made in the said documentary exhibits.⁴² Thus, for being hearsay evidence, former Barangay Captain Salamo's complaint-affidavit alone could not provide the evidentiary weight needed to convict both accused.

The other pieces of evidence heavily relied upon by the prosecution are the Counter-Affidavits of Pimentel and Reyes submitted before the Ombudsman during the preliminary investigation stage, and formally offered as part of the defense's evidence. There, both accused stated that:

Counter-Affidavit of accused Pimentel:

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;

x x x x

14. Accordingly, I caused the loading of said materials to a forward truck at 9:00 o'clock in the morning of the same day, in the presence of the barangay [sic] officials and some residents of Barangay Unaban, and instructed the driver/*pahinante* thereof to bring and deliver the same to our private resort in Socorro, Surigao del Norte.⁴³

Counter-Affidavit of accused Reyes:

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 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;

x x x x

16. Mayor Pimentel acceded to our request. Accordingly, Mayor Pimentel has caused the loading of said materials to a forward truck at 9:00 o'clock in the morning of the same day, in the presence of the barangay [sic] officials and some residents of Barangay Unaban, and instructed the driver/*pahinante* thereof to bring and deliver the same to our private resort in Socorro, Surigao del Norte.⁴⁴

⁴² TSN dated November 7, 2017-Pre-trial, p. 16; records, pp. 537-540.

⁴³ Sandiganbayan *rollo*, Vol. 1, pp. 74-87.

⁴⁴ Id. at 123-129.

The unnumbered first to tenth paragraphs of former Barangay Captain Salamo's affidavit-complaint contain allegations that the construction materials were shipped and delivered to Socorro, Surigao del Norte, at the instance of Pimentel with the approval of Reyes, and that the same were used for the building and construction of Pimentel's private resort.

The Sandiganbayan accepted the admissions in the Counter-Affidavits of both accused on the basis of Section 27, Rule 130 of the Rules of Court,⁴⁵ which provides that "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her."

Evidently, paragraph 6 of Pimentel's and Reyes' respective Counter-Affidavits indeed contain a statement admitting the first ten paragraphs of former Barangay Captain Salamo's Affidavit-Complaint, for being matters of public record. However, in the same paragraph 6 of the said Counter-Affidavits, they also clearly, vehemently, and specifically denied the imputation against them of the crimes that they allegedly committed.

More importantly, a reading of paragraphs 14 and 16 of Reyes's and Pimentel's respective counter-affidavits, which was cited specifically by the Sandiganbayan in its assailed decision, at most, only admit to having brought the subject materials to Socorro, and nothing more. In fact, nowhere in both accused's Counter-Affidavits do they admit to doing anything more than bringing the subject materials to Pimentel's private resort.

Consequently, even if the Court considers and accepts the admissions in Pimentel's and Reyes's counter-affidavits, the facts proven by these admissions still fall short of reaching the conclusion that Pimentel and Reyes committed violations of Section 3(e) of R.A. No. 3019 and Section 217 of the RPC, beyond reasonable doubt. Surely, in the absence of other compelling evidence, the taking of the subject materials to Socorro alone can hardly equate to proof beyond reasonable doubt that Reyes and Pimentel committed the crimes charged against them. As well, the Sandiganbayan's conclusion that the accused did in fact use the materials in the construction of Pimentel's private resort, when based only on the hearsay evidence submitted by the prosecution and the earlier cited admissions of both accused, is without strong evidentiary foundation. Parenthetically, Committee Report No. 01-14 of the Committee on Agriculture Maritime Life, and Aquatic Resources of the *Sangguniang Bayan* did not contain any explicit statement that the bags of cement and steel bars were actually used in Pimentel's resort.⁴⁶

⁴⁵ **Section 27. Admission of a party.** — The act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her.

⁴⁶ Sandiganbayan *rollo*, Vol. 1, p. 475.

To be sure, the Court is not unmindful of the inconsistency of Pimentel's and Reyes's testimonies *vis-à-vis* their respective counter-affidavits. On cross-examination, they state, albeit with suspicion, that they had no idea why their respective counter-affidavits admit to having the subject materials being brought to Socorro at the instance of Pimentel. Instead, they insist that the materials were brought not to Socorro, but to nearby Barangay Gamut.

Nonetheless, after examining all the pieces of evidence, it is apparent that the success of the prosecution is hinged largely, if not solely, on the suspicion raised by the aforementioned inconsistency.

In this regard, it should be recalled that the presumption of innocence in favor of an accused in a criminal case is a basic Constitutional guarantee. It demands that the State must establish his guilt beyond reasonable doubt. To do so, the Prosecution must rely on the strength of its evidence, not on the weakness of his defense. Every reasonable doubt of his guilt entitles him to an acquittal.⁴⁷

Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him.⁴⁸

In *Catubao v. Sandiganbayan*⁴⁹ we stated that [t]he burden of proving beyond reasonable doubt each element of the crime is upon the prosecution, as its case will rise or fall on the strength of its own evidence. Any doubt shall be resolved in favor of the accused.⁵⁰

Meanwhile, in *Patula v. People*,⁵¹ we discussed the prosecution's duty when proving the guilt of an accused:

In all criminal prosecutions, the Prosecution bears the burden to establish the guilt of the accused beyond reasonable doubt. In discharging this burden, the **Prosecution's duty is to prove each and every element of the crime charged in the information to warrant a finding of guilt for that crime or for any other crime necessarily included therein.** The Prosecution must further prove the participation of the accused in the commission of the offense. In doing all these, the Prosecution must rely on the strength of its own evidence, and not anchor its success upon the

⁴⁷ *People v. Sangcajo, Jr.*, G.R. No. 229204, September 5, 2018.

⁴⁸ *People v. Claro*, 808 Phil. 455, 468 (2017).

⁴⁹ G.R. No. 227371, October 2, 2019.

⁵⁰ *Id.*


⁵¹ 685 Phil. 376 (2012).

weakness of the evidence of the accused. The burden of proof placed on the Prosecution arises from the presumption of innocence in favor of the accused that no less than the Constitution has guaranteed. Conversely, as to his innocence, the accused has no burden of proof, that he must then be acquitted and set free should the Prosecution not overcome the presumption of innocence in his favor. **In other words, the weakness of the defense put up by the accused is inconsequential in the proceedings for as long as the Prosecution has not discharged its burden of proof in establishing the commission of the crime** charged and in identifying the accused as the malefactor responsible for it.⁵² (Emphasis supplied)

All told, the prosecution failed to discharge its burden of proving the guilt of accused Pimentel and Reyes beyond reasonable doubt. To repeat, mere suspicion of the guilt of the accused, no matter how strong, should not sway judgment against him. Additionally, the prosecution anchored its case heavily on hearsay evidence and an admission which, even if accepted, would not amount to a finding of guilt beyond reasonable doubt. These factors, when taken together as a whole, indicate the presence of reasonable doubt, which would entitle both accused to a reversal of judgment. Of course, the acquittal of both accused from the crimes herein charged is without prejudice to whatever liabilities that may be imposed upon them under other laws, such as the Local Government Code.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 4, 2019, and the Resolution dated January 24, 2020, issued by the Sandiganbayan in SB-16-CRM-0479 and SB-16-CRM-0480, are hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Rogelio Maquinano Pimentel and Herminigildo Quico Reyes are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt.

SO ORDERED.”

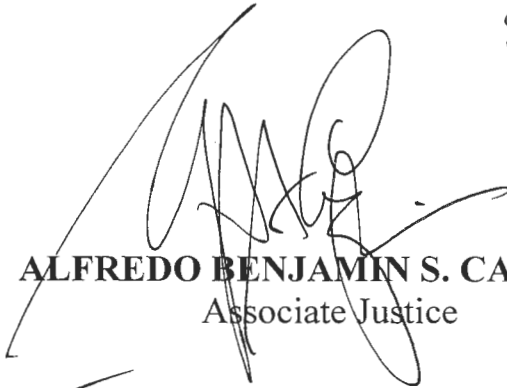

SAMUEL H. GAERLAN
Associate Justice

⁵² Id. at 391-392.

Q

WE CONCUR:

*Please see concurring
opinion*



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



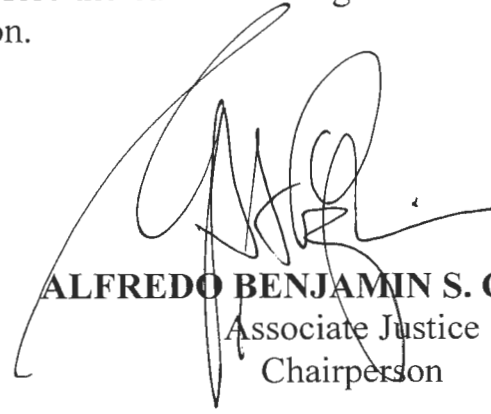
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice