Supreme Court E-Library

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and *Gutierrez, Jr., JJ.*, concur.

EN BANC

[G.R. Nos. 70332-43. November 13, 1986]

GENEROSO TRIESTE, SR., *petitioner, vs.* **SANDIGANBAYAN (SECOND DIVISION),** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT; VIOLATION THEREOF NOT PROVEN; PETITIONER HAS DIVESTED HIS INTEREST WITH IMPUTED BUSINESS.**— The new Solicitor General's Office after adopting the statement of facts recited in the consolidated comment of the former Solicitor General's Office moved for the acquittal of the petitioner, upon acknowledging and concluding that: x x x "*Petitioner has divested his interest with Trigen.* Petitioner sought to establish that before he assumed office as mayor on March 3, 1980, he had already sold his shares with Trigen to his sister Mrs. Rosene Trieste-Tuason. The sale was made by corresponding indorsements to her stock certificate which was duly recorded in the stock and transfer book of the corporation."

2. **ID.; ID.; ID.; EVIDENCE SHOWS NO PUBLIC BIDDING AND AWARD.** — The prosecution's lone witness, Treasurer Aniceto Vega, testified that there never was a public bidding conducted because all the transactions were made by direct purchases from Trigen. x x x In the absence of a public bidding and as emphatically declared by the prosecution's sole witness Vega that all the transactions were on direct purchases from Trigen, how can one ever imagine that petitioner has awarded

Supreme Court E-Library

the supply and delivery of construction materials to Trigen as specifically charged in the twelve (12) information? The charges are of course baseless and even contradict the evidence of the prosecution itself. Even the respondent Court finally found that petitioner did not intervene during the bidding and award, which of course is a false assumption because of Vega's testimony that there was no public bidding at all.

3. **ID.; ID.; ID.; EVIDENCE SHOWS THAT PETITIONER SIGNED VOUCHERS AFTER DELIVERY OF MATERIALS AND PAYMENT.** — Treasurer Vega testified that petitioner signed the twelve (12) municipal vouchers (Exhibits A to L) for the purchase and payment of construction materials. It was sometime *after delivery of the construction materials that he* (Vega) *signed and paid* the twelve (12) municipal vouchers (pages 5 to 7), decision of respondent Sandiganbayan dated November 2, 1984. The prosecution has not presented evidence to show as to when petitioner signed the twelve (12) municipal vouchers. *But it can safely be assumed as a matter of procedure that petitioner had signed the voucher after Treasurer Vega signed and paid them.* x x x *Testimonial and documentary evidence confirms that petitioner signed vouchers* after payment x x x.

4. **ID.; ID.; ID.; "ACTUAL INTERVENTION" UNDER SECTION 3(H), EXPLAINED.**— In as much as Treasurer Vega signed and paid the vouchers after the materials were delivered, petitioner's signature on the vouchers after payment is not , we submit, the kind of intervention contemplated under *Section 3(h) of the Anti-Graft* Law. x x x What is contemplated in Section 3(h) of the anti-graft law is the *actual intervention* in the transaction in which one has financial or pecuniary interest in order that liability may attach. (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice). The official need not dispose his shares in the corporation as long as he does not do anything for the firm in its contract with the office. For the law aims to prevent the dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Congressional Record, Vol. II, page 603)." There is absolutely no evidence that petitioner had, in his capacity as Mayor, used his influence, power, and authority in having the transactions given to Trigen. He didn't ask anyone — neither Treasurer Vega nor Secretary Maravilla for that matter, to get

Supreme Court E-Library

the construction materials from Trigen. Petitioner should not be faulted for Trigen's transaction with the municipality, which by the way, has been dealing with it even before petitioner has assumed the mayorship on March 3, 1980. Personal canvasses conducted found that Trigen's offer was the lowest, most reasonable, and advantageous to the municipality. x x x. It is also an acknowledged fact that there was no complaint for non-delivery, underdelivery or overpricing regarding any of the transactions.

APPEARANCES OF COUNSEL

Arturo M. de Castro for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ALAMPAY, *J.*:

The present case relates to an appeal by way of a Petition for Review of the decision promulgated on November 6, 1984, by the Sandiganbayan convicting the herein petitioner, Generoso Trieste, Sr., of twelve (12) separate violations of Section 3 paragraph (h) of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which petitioner were accused of in Criminal Cases Nos. 6856-6867 of said Court. Petitioner's motion for reconsideration and/or new trial was denied by the respondent Sandiganbayan under its Resolution of March 11, 1985.

The twelve (12) separate Informations filed by the Tanodbayan against the herein petitioner for violation of Section 3 (h) of the Anti-Graft Law are all similarly worded as the Information presented in Criminal Case No. 6856 which is hereunder quoted:

"That on or about the month of July, 1980 and sometime subsequent thereto, in the municipality of Numancia, Aklan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the Municipal Mayor and member of the Committee on Award of the Municipality of Numancia, Aklan and as such, had administrative control of the funds of the municipality

Supreme Court E-Library

and whose approval is required in the disbursements of municipal funds, did then and there wilfully and unlawfully have financial or pecuniary interest in a business, contract or transaction in connection with which said accused intervened or took part in his official capacity and in which he is prohibited by law from having any interest, to wit the purchases of construction materials by the Municipality of Numancia, Aklan from Trigen Agro-Industrial Development Corporation, of which the accused is the president, incorporator, director and major stockholder paid under Municipal Voucher No. 211-90-10-174 in the amount of P558.80 by then and there awarding the supply and delivery of said materials to Trigen Agro-Industrial Development Corporation and approving payment thereof to said corporation in violation of the Anti-Graft and Corrupt Practices Act."

except only as to the dates of the commission of the offense, voucher numbers, and amounts involved.

Criminal Cases Nos. 6856, 6857, 6858, 6859, 6860, 6861, and 6862 were allegedly committed in July, 1980; Criminal Cases Nos. 6863 and 6864, in August, 1980; and Criminal Cases Nos. 6865, 6866 and 6867 in October, 1980. The separate vouchers involved in the twelve (12) cases are said to be the following:

"Crim. Case #6856,	Vchr #211-90-10-174	at	P 558.80
Crim. Case #6857,	Vchr #211-80-10-187	"	943.60
Crim. Case #6858,	Vchr #211-80-10-189	"	144.00
Crim. Case #6859,	Vchr #211-80-10-190	"	071.30
Crim. Case #6860,	Vchr #211-80-10-191	"	270.00
Crim. Case #6861,	Vchr #211-80-10-232	"	1,820.00
Crim. Case #6862,	Vchr #211-80-10-239	"	1,085.80
Crim. Case #6863,	Vchr #211-80-10-407	"	150.00
Crim. Case #6864,	Vchr #211-80-12-494	"	500.00
Crim. Case #6865,	Vchr #211-81-04-61	"	840.00
Crim. Case #6866,	Vchr #211-81-04-62	"	787.00
Crim. Case #6867,	Vchr #211-81-04-63	"	5,60.00
	Total		P7,730.50

(Consolidated Comment, pg. 4; *Rollo*, 325)

Supreme Court E-Library

After trial, the Sandiganbayan rendered the challenged decision dated November 6, 1984, convicting the petitioner in all the twelve (12) criminal cases, (*Rollo*, pp. 324-325) and in each case he was sentenced, "x x x to suffer the indeterminate penalty of imprisonment ranging from THREE (3) YEARS and ONE (1) DAY as the minimum, to SIX (6) YEARS and ONE (1) DAY as the maximum, to further suffer perpetual disqualification from the public office, and to pay the cost of the action." (pp. 37-40, Decision; *Rollo*, 322).

After the petition for review was filed in this case and pending the submission by respondent of its comment to the petition, herein petitioner presented to this Court on June 7, 1985, an urgent petition to lift the order of the Sandiganbayan dated September 12, 1983, suspending him from Office as the elected Municipal Mayor of Numancia, Aklan. His term was to expire in 1986. No objection to the petition for the lifting of the suspension order was interposed by the Solicitor General. Accordingly, and pursuant to the resolution of this Court dated October 1, 1985, petitioner's preventive suspension was lifted and his reinstatement as Municipal Mayor of Numancia, Aklan was ordered to take effect immediately.

A supplemental petition, dated October 10, 1985, was later filed by petitioner's new counsel in collaboration with the original counsel on record of petitioner. In this supplemental pleading, it was vigorously stressed that the petitioner did not, in any way, intervene in making the awards and payment of the purchases in question as he signed the voucher only after all the purchases had already been made, delivered and paid for by the Municipal Treasurer. It was further pointed out that there was no bidding at all as erroneously adverted to in the twelve informations filed against herein petitioner because the transactions involved were emergency direct purchases by personal canvass.

Upon leave of the Court given, the former Solicitor General filed a consolidated comment dated November 4, 1984, to the original petition filed in this case dated April 30, 1985 as well as on the supplemental petition dated October 10, 1985. He

Supreme Court E-Library

urged the dismissal of the petition on the ground that the same raise factual issues which are, therefore, non-reviewable (Consolidated Comment, pg. 20; *Rollo*, 341). The submission made by the Office of the Solicitor General in the Consolidated Comment dated November 4, 1986, are hereunder quoted:

x x x x x x x x x

"The impugned decision convicted petitioner for violation of Section 3 (h), paragraph (h) of the Anti-Graft and Corrupt Practices Act which reads as follows:

"SEC. 3. *Corrupt Practices of Public Officers*." In addition to acts or omissions of public officers already penalized by existing laws, 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

"(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest."

"The elements essential in the commission of the crime are:

"a) The public officer has financial or pecuniary interest in a business, contract or transaction;

"b) In connection with which he intervenes in his official capacity.

"Concurrence of both elements is necessary as the absence of one will not warrant conviction. (*Rollo*, pp. 338-339).

The earlier view taken by the Solicitor General's Office was that petitioner's evidence of divestment of interest in Trigen Corporation, which is said to have been effected on February 25, 1980, before the petitioner assumed the Mayorship, should have been presented at the earliest opportunity before the Tanodbayan and because this was not done by him the resolution of the Tanodbayan finding a *prima facie* case against petitioner should be sustained. Furthermore, petitioner was faulted because the transfer of his interest in the corporate stock of Trigen Corporation should have been recorded in the Securities and

Supreme Court E-Library

Exchange Commission but no evidence of this sort was presented, The consolidated comment also played up the advertisement of Trigen Corporation in the program of the Rotary Club of Kalibo, Aklan, showing the printed name of petitioner as the President-Manager of the said corporation. (Consolidated Comment; *Rollo*, pp. 340-341)

Petitioner filed a Reply controverting the allegations and arguments recited in the aforestated Consolidated Comment of the Solicitor General.

After considering the pleadings filed and deliberating on the issues raised in the petition and supplemental petition for review on *certiorari* of the decision of the Sandiganbayan, as well as the consolidated comment and the reply thereto filed by petitioner's counsel, the Court in its resolution of January 16, 1986, gave due course to the petition and required the parties to file their respective briefs.

Petitioner's exhaustive and well-reasoned out Brief which was filed with the Court on April 14, 1986, raised the following legal questions.

x x x x x x x x x

"From the foregoing recital of facts, the following legal questions arise:

"1. Does the mere signing by a Municipal Mayor of municipal vouchers and other supporting papers covering purchases of materials previously ordered by the Municipal Treasurer without the knowledge and consent of the former, subsequently delivered by the supplier, and, thereafter paid by the same Municipal Treasurer also without the knowledge and consent of the Municipal Mayor, constitute a violation of the provisions of Section 3 (h) of Rep. Act No. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act?

"2. Does the mere signing of the mere documents above constitute the kind of intervention of taking part in (his) official capacity within the context of the above-mentioned law?

"3. Was damage or prejudice, as an element of the offense under Section 3 (h) of the said law, caused to the Government or the Municipality of Numancia as a result of the contracts in question and

Supreme Court E-Library

as a corollary thereto, was undue advantage and gained by the transacting corporation?

"4. Was there divestment on the part of the herein petitioner of his shares in Trigen Agro-Industrial Development Corporation long before the questioned transactions? (Appellant's Brief, page 15)

It was then discussed and argued by the petitioner that the prosecution failed to establish the presence of all the elements of the offense, and more particularly to adduce proof that petitioner has, directly or indirectly, a financial or pecuniary interest in the imputed business contracts or transactions.

Discussion of petitioner's arguments in this regard will not however, be recited anymore as this was obviated when a new Solicitor General, after seeking and obtaining several extensions of time to file its Brief in this case at bar, filed on October 7, 1986, a "Manifestation For Acquittal" (in lieu of the People's Brief). *Rollo*, 293).

The new Solicitor General's Office after adopting the statement of facts recited in the consolidated comment of the former Solicitor General's Office moved for the acquittal of the petitioner, upon acknowledging and concluding that:

x x x x x x x x x

"*Petitioner has divested his interest with Trigen*

"Petitioner sought to establish that before he assumed office as mayor on March 3, 1980, he had already sold his shares with Trigen to his sister Mrs. Rosene Trieste-Tuason. The sale was made by corresponding indorsements to her stock certificate which was duly recorded in the stock and transfer book of the corporation.

"Respondent Sandiganbayan however doubts the sale because the same was not reported to the SEC. SEC records, as the prosecution evidence show, do not reflect the sale and petitioner still appears as the firm's President.

"The prosecution's evidence to establish non-divestment of petitioner's interest with Trigen is weak. Anyway, Trigen has not updated its reports to the SEC since 1976. It have not even submitted its financial annual report ever since. Absence of the sales report in

Supreme Court E-Library

the SEC does not mean that the sale did not take place. Reporting the sale is not a mandatory requirement."

"*Sales of stocks need*
not be reported to SEC

"In any event, the law only requires submission of annual financial reports, not sales or disposal of stocks (Section 141, Corporation Code of the Philippines).

"Upholding the evidence of petitioner's divestment of his interest with Trigen would necessarily allow him to act freely in his official capacity in the municipality's dealings or transactions with Trigen. That in itself is sufficient to acquit him of the crimes charged." (*Rollo*, pp. 299-300).

In the matter of the alleged intervention of petitioner, the Office of the Solicitor General itself subscribes to and on its own volition place on record the following observations:

Prosecution failed to prove
charges; evidence discloses
absence of bidding and award.

"The prosecution's lone witness, Treasurer Aniceto Vega, testified that there never was a public bidding conducted because all the transactions were made by direct purchases from Trigen.

"Q. *In other words, in all these transactions there never really was any public bidding?*

"A. *Yes, Sir. There was no public bidding.*

"Q. And these purchases were made by direct purchases from the establishment of Trigen?

"A. Yes, Sir. (pp. 36-37, Tsn., Oct. 26, 1983)

"In the absence of a public bidding and as emphatically declared by the prosecution's sole witness Vega that all the transactions were on direct purchases from Trigen, how can one ever imagine that petitioner has awarded the supply and delivery of construction materials to Trigen as specifically charged in the twelve (12) informations? The charges are of course baseless and even contradict the evidence of the prosecution itself.

"Even the respondent Court finally found that petitioner did not intervene during the bidding and award, which of course is a false

Supreme Court E-Library

assumption because of Vega's testimony that there was no public bidding at all. Respondent Court said:

> "x x x. In short, accused's intervention *may not be present during the bidding and award*, but his liability may also come in when he took part in said transactions such as signing the vouchers under certifications 1, 2 and 3 thereof, to make it appear that the transactions were regular and proper." (Resolution dated March 11, 1985 denying petitioner's motion for reconsideration/ new trial, page 7).

"No evidence to prove petitioner approved payment

"Now, did petitioner intervene by approving payments to Trigen as also charged in the information? Can there be intervention after payment.

"Vega testified that petitioner signed the twelve (12) municipal vouchers (Exhibits A to L) for the purchase and payment of construction materials. It was sometime *after delivery of the construction materials that he* (Vega) *signed and paid* the twelve (12) municipal vouchers (pages 5 to 7), decision of respondent Sandiganbayan dated November 2, 1984). The prosecution has not presented evidence to show as to when petitioner signed the twelve (12) municipal vouchers, *But it can safely be assumed as a matter of procedure that petitioner had signed the voucher after Treasurer Vega signed and paid them.* (*Rollo*, pp. 301-303)

x x x x x x x x x

Testimonial and documentary evidence confirms that petitioner signed vouchers after payment

"Additional facts which respondent Court failed to consider and which could have altered the outcome of the case in the following uncontroverted testimony of Josue Maravilla:

"Q. When these municipal vouchers were prepared by the municipal treasurer, as you said, and then presented to Mayor Trieste for his signature, were the purchases in question already paid?

"A. *They had already been paid for, sir.*

"Q. *Previously, prior to the signature of Mayor Trieste?*

"A. *Yes, sir.*

Supreme Court E-Library

"A.J. ESCAREAL:

"Q. Under what authority were they paid?

"A. Under official receipt issued by Trigen.

"Q. *Who authorized the payment*?

"A. *The municipal treasurer who paid the materials.*

"ATTY. CONSULTA:

"Q. You said they had already been paid for. Do you know of any receipts issued by Trigen to indicate that at the time these municipal vouchers were signed by Mayor Trieste, the materials had already been delivered and paid by the municipality to Trigen?

x x x x x x x x x

"A. Yes, sir.

"Q. Now, what exhibits particularly do you know were issued by Trigen to indicate that payments were made prior to the signing of the municipal vouchers by Mayor Trieste?

"A. Exhibits A, G, B, F, C, D, Exhibit I and Exhibit H.

x x x x x x x x x

"Q. Now, Mr. Maravilla, aside from these prosecution's exhibits which are Trigen receipts showing payments long before the municipal vouchers were prepared, what can you say about the other municipal vouchers in this case in reference to payments made by Trigen to the municipality?.

"A.J. ESCAREAL:

"Payment made by Trigen?

"ATTY. CONSULTA:

"I am sorry, Your Honor, made to Trigen by the municipality?

"A. Official receipts issued by Trigen also indicate that when municipal vouchers marked Exhibits E, B, C, D, F, G, H, I were prepared, they had already been delivered and the amounts indicated therein were already prepared by the municipal treasurer.

"Q. Did you say already made by the municipal treasurer — *the amounts were already paid by the municipal treasurer?*

"A. Already paid.

Supreme Court E-Library

"Q. Who disbursed the funds evidenced by the Trigen official receipts?

"A. The municipal treasurer, then Mr. Vega.

"Q. Now, do you know why Mr. Vega asked that those municipal vouchers be nevertheless signed in spite of the fact that he knew that the amounts had already been disbursed and paid by him to Trigen?

"A. He said that the municipal vouchers for record purposes is necessary to be signed by the mayor." (Tsn, Mar. 5, 1984, pp. 19-49).

"Inasmuch as Treasurer Vega signed and paid the vouchers after the materials were delivered, petitioner's signature on the vouchers after payment is not, we submit the kind of intervention contemplated under *Section 3 (h) of the Anti-Graft Law.*

x x x x x x x x x

"What is contemplated in Section 3(h) of the anti-graft law is the *actual intervention* in the transaction in which one has financial or pecuniary interest in order that liability may attach. (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice). The official need not dispose his shares in the corporation as long as he does not do anything for the firm in its contract with the office. For the law aims to prevent the dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Congressional Record, Vol. II, page 603).

"There is absolutely no evidence that petitioner had, in his capacity as Mayor, used his influence, power, and authority in having the transactions given to Trigen. He didn't ask anyone — neither Treasurer Vega nor Secretary Maravilla for that matter, to get the construction materials from Trigen.

"*Trigen did not gain*
any undue advantage
in the transaction.

"Petitioner should not be faulted for Trigen's transaction with the municipality, which by the way, has been dealing with it even before petitioner had assumed the mayorship on March 3, 1980. Personal canvasses conducted found that Trigen's offer was the lowest, most reasonable, and advantageous to the municipality. x x x. (*Rollo*, pp. 307-308; Italics supplied).

Supreme Court E-Library

It is also an acknowledged fact that there was no complaint for non-delivery, underdelivery or overpricing regarding any of the transactions.

Considering the correct facts now brought to the attention of this Court by the Solicitor General and in view of the reassessment made by that Office of the issues and the evidence and the law involved, the Court takes a similar view that the affirmance of the decision appealed from cannot be rightfully sustained. The conscientious study and thorough analysis made by the Office of the Solicitor General in this case truly reflects its consciousness of its role as the People's Advocate in the administration of justice to the end that the innocent be equally defended and set free just as it has the task of having the guilty punished. This Court will do no less and, therefore, accepts the submitted recommendation that the decision and resolution in question of the respondent Sandiganbayan be reversed and that as a matter of justice, the herein petitioner be entitled to a judgment of acquittal.

WHEREFORE, the decision rendered by the Sandiganbayan, dated November 2, 1984, in Criminal Cases Nos. 6856 to 6867, finding the herein petitioner, Generoso Trieste, Sr. guilty of the violations of Section 3 paragraph (h) of Republic Act 3019, as amended, is hereby set aside and reversing the appealed judgment, a new judgment is now rendered ACQUITTING Generoso Trieste, Sr., of said offenses charged against him with costs *de oficio*.

SO ORDERED.

Teehankee, C.J, Feria, Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, and *Paras, JJ.*, concur.

Melencio-Herrera J., took no part.

Feliciano, J., is on leave.