



**REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY**

SPECIAL THIRD DIVISION

**PEOPLE OF THE PHILIPPINES,
Petitioner,**

Case No. SB-17-SCA-0023

- versus -

**HON. MA. LYNNA P.
ADVIENTO, in her capacity
as Presiding Judge of the
Regional Trial Court, Branch
58 of Cebu City, and
CONRADO A. RIVERA,
Respondents.**

Present:

**CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, B., J. and
PAHIMNA,¹ J.**

Promulgated on:

X-----X

JUNE 7, 2018 

X-----X

DECISION

CABOTAJE-TANG, P.J.:

This is a petition for certiorari under Rule 65 of the Rules of Court which seeks to annul and set aside the following issuances of public respondent Hon. Ma. Lynna P. Adviento in Criminal Case No. CBU-103219 entitled "People vs. Rivera:"





¹ Sitting as a special member per Administrative Order No. 136-2018 dated March 6, 2018

Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-2-

x-----x

1. Order dated July 27, 2016 which granted private respondent Conrado A. Rivera's demurrer to evidence;² and
2. Order dated July 13, 2017 denying the petitioner's motion for reconsideration of the above order.³

THE PROCEEDINGS A QUO

Private respondent Conrado A. Rivera was charged with violation of Section 3(e) of Republic Act (R. A.) No. 3019 before the Regional Trial Court of Cebu City, Branch 58. The Information reads:⁴

That on or about April 27, 2006, or sometime prior or subsequent thereto, in the City of Cebu, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused CONRADO A. RIVERA, public officer being a Wharfinger for the Bureau of Customs – Port of Cebu, as such while in the performance of his official functions, committing the offense in relation to his (*sic*) with evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally intervene in the release of three 40-foot container trucks from the Cebu International Port with Withdrawal Receipts Numbers 172074, 172075, 172076 without the signature of the Courtyard Checker, thereby causing undue injury to the government in the amount of P980,722.85 and giving unwarranted benefit, advantage or preference to the importer to the damage and prejudice of the government.

CONTRARY TO LAW.

² Annex A, Petition; pp. 26-29, Record

³ Annex B, Petition; pp. 30-32, *ibid.*

⁴ p. 5, Petition; p. 5, *ibid.*



Decision

Case No. SB-17-SCA-0023

People vs. Hon. Adviento, *et al.*

-3-

x-----x

Upon arraignment on August 26, 2014, respondent Rivera entered a plea of not guilty.⁵

During the pre-trial, respondent Rivera admitted that he was the wharfinger for the Bureau of Customs (BOC) at the Port of Cebu in 2006; and, that he was on duty at the time of the release of the container trucks subject of the case.⁶ Thereafter, trial ensued.

The petitioner presented three (3) witnesses, namely: [1] Edmund Leopoldo, then Acting Manager of the Safety and Environmental Division of Cebu Ports Authority (CPA); [2] Letty Sabarquez Sericon, former Collection Representative of the CPA; and [3] Nemesio Luardo, Jr., then Security Guard assigned at the Exit of Gate 4 of the Cebu International Port (CIP) who was on duty at the time of the release of the subject container trucks.⁷

Edmund Leopoldo testified that on May 5, 2006, he received a verbal instruction from PP/Capt. Glenn Sarador, Acting Manager-Port Police Division, to conduct a fact-finding investigation on the alleged unauthorized withdrawal and release of three (3) forty-foot container vans on April 27, 2006 at the CIP without payment of the corresponding port charges in the amount of P980,722.55. The instruction was based on the report of Demetrio Seno, Senior Terminal Operations Manager of Port Management Division, CPA.⁸

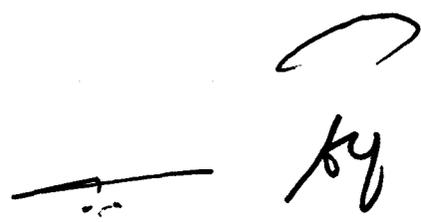
His fact-finding investigation reveals that the three (3) forty-foot container trucks bearing numbers CLHU 8065720, ZCSU 8027060 and TGHU 7504124 were withdrawn on April 27, 2006 from the CIP premises per OPASCOR Withdrawal Receipt No. 172074, 172075 and 172076; that the said withdrawal receipts were not signed by the Court Yard (CY) Checker; and, that the original copy of the CPA Foreign Cargo Withdrawal Permit No. 414942 signed by Letty Abarquez indicating port charges amounting to P980,722.55 for the

⁵ *ibid.*

⁶ *ibid.*

⁷ *ibid.*

⁸ p. 2, Order dated July 27, 2016; p. 27, Record

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Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-4-

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three (3) container trucks shows that the charges were not paid by the consignee.⁹

He also testified that Nemesio Luardo, Jr., who was the guard on duty at Gate 4 of the CIP on April 27, 2006, submitted to him an affidavit. The said affidavit states that on April 27, 2006, a certain Conrado Rivera, wharfinger of the Bureau of Customs, intervened and influenced him to release the three (3) forty-foot containers despite absence of the signature of the CY checker in the withdrawal receipts; that Rivera talked to him to release the said container trucks; and, that Rivera assured him that he will talk to the CY supervisor regarding the release of the said containers and to settle the matter with respect to the signature of the CY checker. When asked, respondent Rivera denied the allegations.¹⁰

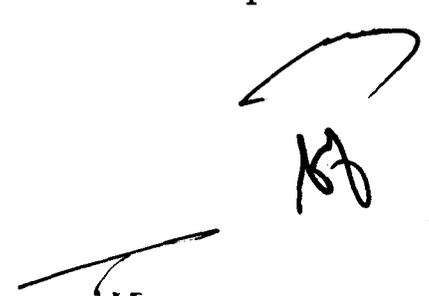
Letty Abarquez Sericon testified that on April 27, 2006, somebody requested her to compute the port charges for the withdrawal of three (3) forty-foot container vans but she could no longer remember that particular person. According to her, it could be her manager, Mr. Benjamin Cartilla, or the Senior Terminal Operations Officer, Mr. Demetrio Seno, Jr. or respondent Rivera. Thus, she prepared a Foreign Cargo Withdrawal Permit as a requisite before foreign cargoes can be withdrawn from the premises of the CPA. The total assessment fee amounted to P980,722.85, which amount includes the arrastre share, wharfage and storage dues and VAT. Sericon did not forward the original copy of the Foreign Cargo Withdrawal Permit to the cashier because no payment was made for the assessment; there was no paid stamp issued by the cashier as proof of payment. She also testified that based on their records, the owner of the cargoes subject of the Foreign Cargo Withdrawal Permit is Best Buy Warehouse.¹¹

Sericon declared that she knew respondent Rivera because the latter used to transact in their office particularly in the computation of port charges. She, however, admitted that she had no idea whether Rivera was the one responsible

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ pp. 2-3, Order dated July 27, 2016; pp. 27-28, Record



Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-5-

x-----x

for the unauthorized release of the three (3) 40-foot container vans.¹²

Nemesio Luardo, Jr., testified that on April 27, 2006, he was at the exit of Gate 4 when three (3) forty-foot container vans were about to exit. When he verified the documents, he found out that the withdrawal receipts for the said container trucks did not contain the signatures of the Court Yard checker. He told the driver to have the withdrawal receipts completely signed. After about thirty to forty (30-40) minutes, the driver came back accompanied by respondent Rivera. Respondent Rivera requested him to release the said containers and assured him that he will take charge of the signature of the CY checker; hence, he acceded to respondent Rivera's request.¹³

After the petitioner rested its case, respondent Rivera filed a Demurrer to Evidence dated July 19, 2015,¹⁴ with prior leave of Court, which was granted by public respondent in her Order dated July 27, 2016.¹⁵ The petitioner filed a motion for reconsideration¹⁶ thereof which was denied by public respondent in her Order dated July 13, 2017.¹⁷

Hence, this petition alleging that public respondent acted with grave abuse of discretion amounting to lack of excess of jurisdiction when she granted respondent Rivera's demurrer to evidence.

In its Resolution dated October 9, 2017, the Court required the respondents to file their comment on the petition within ten (10) days from receipt thereof.¹⁸

The record shows that respondents did not file the required comment within the prescribed period. Neither did they file a motion to extend the period to file the same. Thus,

¹² p. 3, Order dated July 27, 2016; *ibid.*

¹³ *ibid.*

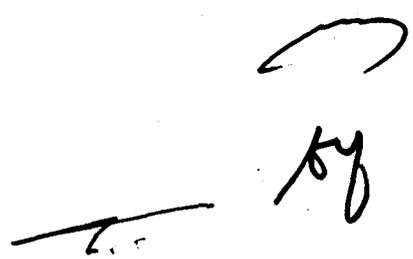
¹⁴ p. 6, Petition; p. 6, Record

¹⁵ Annex A, Petition; p. 26, *ibid.*

¹⁶ Annex C, Petition; pp. 33-36, *ibid.*

¹⁷ Annex B, Petition; pp. 30-32, *ibid.*

¹⁸ p. 40, *ibid.*

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Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-6-

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in its Resolution dated March 6, 2017, the Court submitted the case for decision.¹⁹

THE RULING OF THE COURT

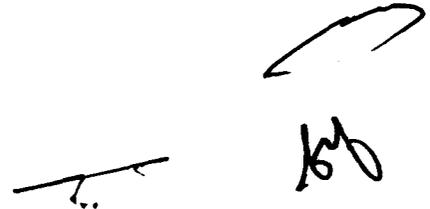
The petitioner has availed of the extraordinary remedy of *certiorari* in assailing public respondent's order granting respondent Rivera's demurrer to evidence on the ground that the petitioner failed to prove the presence of the element of evident bad faith and manifest partiality. According to the petitioner, public respondent has made a finding of the existence of facts sufficient to establish acts constitutive of manifest partiality and evident bad faith when she declared in the assailed order that respondent Rivera has committed a prohibited act by intervening for the release of three (3) forty-foot container vans from the CIP without first paying the port charges.

It also argues that public respondent acted with grave abuse of discretion when she ruled that respondent Rivera neither threatened nor induced nor influenced the port security guard in releasing the container trucks thereby requiring that the element of evident bad faith and manifest partiality be accompanied by threat, inducement or influence before a conviction of Section 3(e) of R.A. No. 3019 will lie.²⁰

The prosecution further claims that in resolving its motion for reconsideration, public respondent side-stepped the legal question it raised, *i.e.*, whether the attendance of threat, intimidation or influence is a pre-condition to a finding of the existence of the element of manifest partiality, evident bad faith or gross inexcusable negligence. The petitioner submits that public respondent's act constitutes capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; that public respondent effectively evaded the performance of a duty enjoined by law, in a manner so patent

¹⁹ p. 44, *ibid.*

²⁰ at pp. 10-14, Petition



Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-7-

x-----x

or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty of ruling on the said legal question presented in its motion for reconsideration. The petitioner concludes that the assailed orders are void; hence, the writ of *certiorari* lies to set aside these questioned orders.²¹

The Court finds the petition meritorious.

The Supreme Court teaches that the grant or denial of a demurrer to evidence is left to the sound discretion of the trial court, and its ruling on the matter shall not be disturbed in the absence of a grave abuse of such discretion. As to effect, the grant of a demurrer to evidence amounts to an acquittal and cannot be appealed because it would place the accused in double jeopardy. The order is reviewable only by *certiorari* if it was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. When grave abuse of discretion is present, an order granting a demurrer becomes null and void.²²

"Grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as having been issued with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void."²³

From the aforesaid definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if

²¹ at pp. 16-17, Petition

²² *People vs. Go*, 732 SCRA 216 (2014)

²³ *Chua vs. People*, G.R. No. 195248, November 22, 2017, citing *Yu vs. Judge Reyes-Carpio*, 652 SCRA 341 (2011)

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Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

x-----x

the petitioner could manifestly show that such act was patent and gross.²⁴

After a careful evaluation of the record of this case, the Court finds that public respondent acted with grave abuse of discretion in granting respondent Rivera's demurrer to evidence.

The prosecution charged respondent Rivera with violation of Section 3(e) of R. A. No. 3019. In order to be liable for violating the said provision, the following elements must concur:²⁵

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 inexcusable negligence; and
3. that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

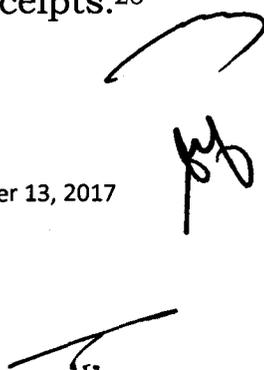
In this case, the Court finds that unless rebutted by the defense, the prosecution had presented more than adequate evidence to establish respondent Rivera's culpability for the crime charged.

First. It is undisputed that respondent Rivera is a public officer. He was the wharfinger for the Bureau of Customs, Port of Cebu and was on duty and present during the actual release of the three (3) forty-foot container vans subject of the withdrawal receipts.²⁶

²⁴ *Chua vs. People, ibid.*

²⁵ *Saunar vs. Ermita*, G.R. No. 186502, December 13, 2017

²⁶ Order dated July 27, 2016; Annex A, Petition



Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-9-

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Second. In determining whether an act was attended by “partiality” or “evident bad faith,” the Supreme Court made the following elucidation:

“Partiality” is synonymous with “bias” which excites a disposition to see and report matters as they are wished for rather than as they are.²⁷ To be actionable under Section 3 (e) of the Anti-Graft and Corrupt Practices Act, partiality must be manifest. There must be a clear, notorious and plain inclination or predilection to favor one side rather than the other. Simply put, the public officer or employee's predisposition towards a particular person should be intentional and evident.²⁸

On the other hand, bad faith does not simply connote bad judgment or negligence. It imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self interest or ill will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.²⁹

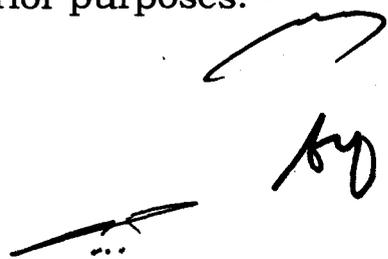
In other words, there is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, “evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.³⁰

²⁷ *Giangan vs. People*, 768 SCRA 221 (2015)

²⁸ *Enrile vs. People*, 766 SCRA 1 (2015)

²⁹ *Posadas vs. Sandiganbayan*, 701 SCRA 403 (2013)

³⁰ *Fuentes vs. People*, G.R. No. 186421, April 17, 2017

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Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-10-

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Here, the evidence shows that on April 27, 2006, three (3) forty-foot container trucks were withdrawn from the CIP premises. The cargoes on the said container trucks are owned by the Best Buy Warehouse. Letty Sericon, the Internal Control Officer and former Collection Representative of the CPA, computed the port charges for the withdrawal of the said three (3) trucks which amounted to P980,722.85. These charges include the arrastre share, wharfage and storage dues and Value Added Tax (VAT). Sericon prepared a Foreign Cargo Withdrawal Permit as a requisite before foreign cargoes can be withdrawn from the premises of the CPA. The records show that the said port charges or assessment fee was not paid. There was no paid stamp issued by the cashier as proof of payment. The withdrawal receipts were not signed by the courtyard checker. The said three (3) trucks, however, were released from the premises of the CIP because respondent Rivera personally assured the security guard on duty, Luardo, Jr., that he will talk to the courtyard supervisor regarding the release of the said trucks.

Unmistakably, the act of respondent Rivera in actively intervening in the release of the foreign cargoes from the premises of the CIP without the port charges being paid evinces evident bad faith. Indeed, if, respondent Rivera had the intention of obtaining the signature of the courtyard checker, then the documents of the CPA would show that the consignee had paid the port charges. The fact that the said port charges were not paid by the consignee only shows respondent Rivera's evident dishonest purpose.

Notably, public respondent granted the demurrer to evidence on the ground that the element of evident bad faith and manifest partiality is purportedly absent. According to the public respondent, the testimony of Security Guard Luardo, Jr. negates evident bad faith or gross inexcusable because he was not threatened or induced or influenced by respondent Rivera in releasing the three (3) trucks:

However, the court is not convinced that the accused acted with manifest partiality, evident bad faith



Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-11-

x-----x

or gross inexcusable negligence. The fifth element of the offense, is, therefore, absent.

Security guard Nemesio Luardo, Jr., the person whom the accused allegedly influenced into releasing the container vans, testified that he allowed the release of the three 40-foot container vans even with incomplete withdrawal receipts because accused requested him to and because of accused's assurance that he would take charge of obtaining the signature of the OPASCOR CY checker. Luardo was neither threatened nor induced nor influenced by the accused into releasing the container vans without the duly signed withdrawal receipts.

Luardo's testimony negates evident bad faith and manifest partiality in attending the accused's request for the release of the container vans. This casts a cloud of doubt upon the accused's culpability.

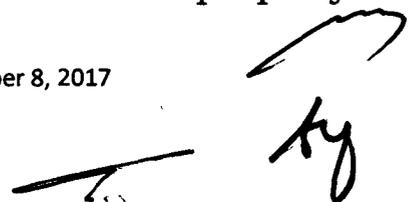
It must be stressed that respondent Rivera, a wharfinger, obviously has authority and influence over Security Guard Luardo, Jr. Thus, he need not threaten Luardo, Jr. to release the three (3) container trucks without the requisite documents.

More importantly, the law does not require that for evident bad faith or manifest partiality to be present, the same must be accompanied by threat, influence or inducement.

Third. The word 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; benefit from some course of action.³¹

Undue has been defined as "more than necessary, not proper, [or] illegal;" and injury as "any wrong or damage done to another, either in his person, rights, reputation or property

³¹ *Cedeño vs. People*, G.R. Nos. 193020, 193040-42 & 193349-54, November 8, 2017



Decision

Case No. SB-17-SCA-0023
People vs. Hon. Adviento, *et al.*

-12-

x-----x

[that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.³²

In the case at bar, the prosecution's evidence clearly shows that the port charges in the amount of P980,722.55 for the three (3) container trucks were not paid by the consignee through the active intervention of respondent Rivera. His act gave Best Buy Warehouse unwarranted benefit and caused undue injury to the government in the said amount of P980,722.55.

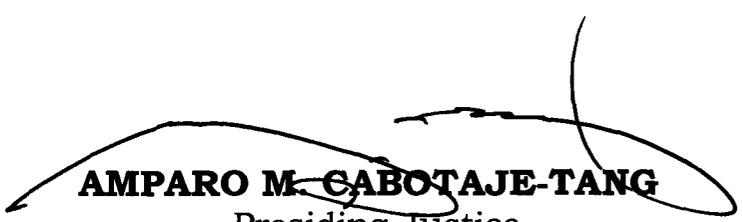
This element is, in fact, also undisputed.³³

In sum, the Court finds that the petitioner was able to clearly establish that public respondent gravely abused her discretion when she declared that the element of evident bad faith and manifest partiality is absent because respondent Rivera did not threaten or influence or induce the security guard on duty to release the container trucks. Indeed, in granting the demurrer, public respondent completely disregarded the law and evidence on record.

WHEREFORE, the petition is **GRANTED**. The assailed Orders dated July 27, 2016 and July 13, 2017 of Branch 58, Regional Trial Court of Cebu City are **REVERSED AND SET ASIDE**. Public respondent is directed to reinstate Criminal Case No. CBU-103219 and resume trial with dispatch.

SO ORDERED.

Quezon City, Metro Manila


AMPARO M. CABOTAJE-TANG

Presiding Justice
Chairperson

³² *Asilo, Jr. vs. People, et. al.*, 645 SCRA 4 (2011)

³³ p. 4, Order dated July 27, 2016; Annex A, Petition; p. 29, Record





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WE CONCUR:


BERNELITO R. FERNANDEZ
Associate Justice


LORIFEL L. PAHIMNA
Associate Justice

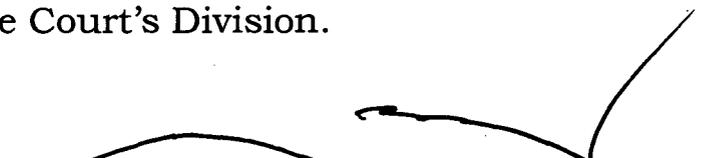
ATTESTATION

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


AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice