

FIRST DIVISION

G.R. Nos. 168951 & 169000 -- DR. ROGER R. POSADAS and DR. ROLANDO p. DAYCO, *Petitioners,*
versus SANDIGANBAYAN and PEOPLE
OF THE PHILIPPINES, *Respondents.*

Promulgated:

JUL 17 2013

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DISSENTING OPINION

ABAD, J.:

I am compelled to dissent from the majority opinion that upheld the Sandiganbayan's conviction of petitioners for violation of Section 3(e) of Republic Act (R.A.) 3019, the Anti-Graft and Corrupt Practices Act, and Section 7(b) of R.A. 6713, the Code of Conduct and Ethical Standards for Public Officials and Employees.

The Facts and the Case

The facts as gathered from the Sandiganbayan decision are as follows:

Dr. Roger R. Posadas served as Chancellor of the University of the Philippines (UP) Diliman from November 1, 1993 to October 31, 1996. This made him chief operating officer or overall administrator of UP Diliman.

On September 19, 1994 Dr. Posadas, as Chancellor, formed a *Task Force on Science and Technology Assessment, Management and Policy* (Task Force) "to prepare curricular proposals for the institution of masteral and doctoral programs in 'technology management, innovation studies, science and technology and related areas.'" On June 6, 1995 the university established, upon the Task Force's recommendation, the *UP Technology Management Center* (UP TMC). The Task Force members nominated Dr. Posadas for the position of Center Director but he declined it, resulting in the designation of Professor Jose B. Tabbada as Acting UP TMC Director.

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Shortly after, Dr. Posadas asked the *Philippine Institute of Development Studies/Policy, Training and Technical Assistance Facility* (PIDS/PTTAF) to fund the UP TMC's 10 new graduate courses. This resulted in the execution on September 18, 1995 of a Memorandum of Agreement (MOA) between UP PIDS/PTTAF and the National Economic Development Authority. The MOA established a project they named *Institutionalization of Management and Technology in the University of the Philippines in Diliman* (the TMC Project). The Canadian International Development Agency agreed to fund the same.

Two weeks later or on October 5, 1995 Malacañang granted Chancellor Posadas and 15 other UP Diliman officials authority to travel to Fujian, China, from October 30 to November 6, 1995 to attend a state university's foundation day. Anticipating his departure, on October 27, 1995 Chancellor Posadas issued Administrative Order 95-170-A, designating petitioner Dr. Rolando P. Dayco, then UP Diliman Vice-Chancellor for Administration, as Officer-in-Charge (OIC) in Dr. Posadas' absence.

On November 7, 1995, his last day as OIC Chancellor, Dr. Dayco designated Dr. Posadas as "Project Director of the PIDS/PTTAF-UP Diliman on the TMC Project effective September 18, 1995 until September 17, 1996." In an undated letter, Dr. Dayco also appointed Dr. Posadas Consultant to the TMC Project. The designation and appointment were to retroact to September 18, 1995 when the project began.

On August 22, 1996 the Commission on Audit (COA) Resident Auditor issued a Notice of Suspension covering payments made to the personnel of UP TMC, including the second payment to Dr. Posadas of ₱36,000 for his services as TMC Project's Local Consultant. On August 23 the Resident Auditor issued another Notice of Suspension covering the payment to Dr. Posadas of a ₱30,000 honorarium per month as Project Director from September 18 to October 17, 1995.

On September 16, 1996 the UP Diliman Legal Office issued a Memorandum to the COA Resident Auditor, explaining to him that the amounts due to the personnel of the TMC Project "were legal, being in the nature of consultancy fees." The legal office also "confirmed the authority of Dr. Dayco, while he was OIC Chancellor, to appoint Dr. Posadas as Project Director and Consultant of the TMC Project." Finding this explanation "acceptable," the COA Resident Auditor lifted his previous notices of suspension.

Notwithstanding the lifting of the suspension, UP President Emil Javier constituted an *Administrative Disciplinary Tribunal* (ADT) to hear

and decide the administrative complaint that he himself filed against Dr. Posadas and Dr. Dayco for grave misconduct and abuse of authority. On August 18, 1998, after hearing, the ADT recommended the dismissal of the two from the service.

On appeal to the UP Board of Regents, however, it modified the penalties against them to “forced resignation with the accessory penalties defined in the Omnibus Rules Implementing Book V of Executive Order 292 and other Pertinent Civil Service Laws x x x.” Further, the Board of Regents stated in its decision that Dr. Posadas and Dr. Dayco may reapply after one year provided they render a public apology. Relying on this decision, the UP General-Counsel filed on behalf of UP a complaint that led to the filing of the present cases against the respondents before the Sandiganbayan.

On June 28, 2005, after trial, the Sandiganbayan found petitioners Dr. Posadas and Dr. Dayco guilty of violation of Section 3(e) of R.A. 3019 and imposed on them an indeterminate penalty of imprisonment for 9 years and 1 day as minimum and 12 years as maximum, with the accessory penalty of perpetual disqualification from public office. The court also found them guilty of violation of Section 7(b) of R.A. 6713 and imposed on them the penalty of imprisonment for 5 years and disqualification to hold public office. They were further ordered to indemnify the government in the sum of ₱336,000.¹

The Issues Presented

The issues in this case are:

1. Whether or not, acting in conspiracy with one another, Dr. Dayco, then OIC Chancellor, caused undue injury to the government or gave unwarranted advantage to a private party through manifest partiality, evident bad faith, or gross inexcusable negligence when he appointed Dr. Posadas as Project Director of the TMC Project and further designated him as its consultant in violation of Section 3(e) of R.A. 3019; and

2. Whether or not the same acts of Dr. Dayco and Dr. Posadas constitute a violation of Section 7(b) of R.A. 6713.

The Dissenting View

Since the evidence and the rationalization for the two issues are the same, they shall be jointly discussed.

¹ *Rollo*, pp. 48-70.

Clearly, the prosecution evidence failed to prove the guilt of petitioners beyond reasonable doubt and the Sandiganbayan committed grave abuse of discretion in ruling otherwise.

First. The prosecution did not prove that Dr. Dayco, then OIC Chancellor, was prompted by “manifest partiality or evident bad faith” in appointing Dr. Posadas as Project Director and designating him as Project Consultant of the TMC Project.

No evidence was presented to show that there were others more qualified than Dr. Posadas to serve as its Project Director and Consultant. The idea for the project was essentially his. And it came within his area of expertise—technical management. Further, it was he, applying that expertise, who worked to convince the PIDS/PTTAF to arrange funding for the project. In the world of the academe, that project was the equivalent of his thesis. The choice of Dr. Posadas to head the project was not a case of “manifest partiality” but of simple “manifest fairness.”

The only weakness in petitioners’ case is that, apparently, they took advantage of Dr. Posadas’ official travel to China and his designation of Dr. Dayco as OIC Chancellor, so the latter could use his authority as such OIC to designate Dr. Posadas as Project Director and Consultant of the TMC Project. That looks bad from the point of view of the justices of the Sandiganbayan who just assumed that all public officials know that an OIC does not have such power.

The bottom issue, truly, is whether or not Dr. Dayco and Dr. Posadas acted in bad faith knowing fully well that an OIC Chancellor cannot make the questioned appointment and designation. True, it appears that the two officials expressly or impliedly agreed that Dr. Dayco could officially take those actions, relying on his OIC powers. They probably thought that by doing this, they could get around the fact that Dr. Posadas, as Chancellor of UP Diliman, could not designate himself to head the project even if he was really entitled to it. Still, Dr. Dayco’s subsequent action and Dr. Posadas’ concurrence to it cannot amount to bad faith.

Actually, the test of bad faith in this case is whether or not Dr. Dayco and Dr. Posadas were in fact aware that the law did not empower Dr. Dayco as OIC Chancellor to make the questioned designation and appointment. If they thought that it could be legally done, Dr. Posadas’ travel grant to China presented an opportunity for Dr. Dayco to make the designations in question. After all, to his mind, there is no question that Dr. Posadas was highly qualified for the job. No evidence has been adduced to show that UP academic officials were prohibited from receiving compensation for work

they render outside the scope of their normal duties as administrators or faculty professors.

The prosecution, which carried the burden of proof, did not present evidence that Dr. Dayco or Dr. Posadas knew beforehand that the designations were void for lack of authority of Dr. Dayco to make such designations. The Sandiganbayan merely assumed that they were familiar with the rules and regulations of the Civil Service Commission regarding the matter. But such assumption is unwarranted. The two UP officials were scientists, not lawyers. Familiarity with those rules and regulations does not exist in their world. Indeed, even the UP Diliman Legal Office was unfamiliar with the limitation to the OIC's power. It rendered a legal opinion that "confirmed the authority of Dr. Dayco, while he was OIC Chancellor, to appoint Dr. Posadas as Project Director and Consultant of the TMC Project."

Besides, the COA Resident Auditor, who at first thought that the payments were invalid, expressed satisfaction at the explanation that the head of the UP Diliman Legal Office gave. In fact, the Resident Auditor officially withdrew the Notices of Suspension of payment that he issued. Since the Office of the Ombudsman did not implicate these two officials in the charge of conspiracy that it filed against Dr. Dayco and Dr. Posadas, it may be assumed that the head of that legal office and the COA Resident Auditor acted in good faith in affirming Dr. Dayco's authority.

Parenthetically, had the UP Diliman Legal Office and the COA Resident Auditor rendered opinions or rulings against Dr. Dayco and Dr. Posadas, the next step would have been for the latter to reimburse what he received as payments for his services in the project in view of the disallowance order or appeal such order. But they did not give him that chance.

In other government offices, the case against Dr. Dayco and Dr. Posadas would have been treated as purely partaking of an administrative character. COA's orders of suspension or disallowance are abundant and commonplace and are hardly regarded as cause for filing criminal charges of corruption. But, undoubtedly, other considerations entered the picture.

Dr. Posadas had earlier created a Fact-Finding Committee at UP Diliman that investigated UP Library Administrative Officer Ofelia del Mundo, resulting in her being charged with grave abuse of authority, neglect of duty, and other wrongdoings. This prompted Professor Tabbada, the Acting UP TMC Director, to resign from his post in protest to the recall of Ms. Del Mundo. In turn, the latter instigated the UP President to go after Dr. Posadas and Dr. Dayco in this case. Apparently, the Office of the

Ombudsman and the Sandiganbayan played into these intense mutual hatred and rivalry that enlarged what was a simple administrative misstep.

As the Court said in *Marcelo v. Sandiganbayan (Third Division)*,² bad faith partakes of the nature of fraud.

“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. (*Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self interest or ill will for ulterior purposes. (*Air France v. Carrascoso*, 18 SCRA 155, 166-167). Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.”

Dr. Dayco and Dr. Posadas did not willfully defraud the government. Dr. Posadas was qualified for the job of Project Director and Consultant of the TMC Project more than any other. There is no evidence that he did not adequately discharge the extra responsibilities and labor that were given him. In the future, disallowances of benefits paid to government officials and employees will provide ground for treating the disallowed payment as equivalent to giving “unwarranted advantage to a private party through manifest partiality, evident bad faith, or gross inexcusable negligence,” a mode of corruption.

Second. The fault of these professors-scientists, who have spent the best parts of their lives in the service of UP, does not warrant their going to jail for 9 years, minimum, to 12 years, maximum, for what they did. They did not act with manifest partiality or evident bad faith. Indeed, the UP Board of Regents, the highest governing body of that institution and the most sensitive to any attack upon its revered portals, did not believe that Dr. Dayco and Dr. Posadas committed outright corruption. Indeed, it did not dismiss them from the service; it merely ordered their forced resignation and the accessory penalties that went with it.

The Board did not also believe that the two deserved to be permanently expelled from UP. It meted out to them what in effect amounted to mere suspension for one year since the Board practically invited them to come back and teach again after one year provided they render a public apology for their actions. The Board of Regents did not regard their offense so morally detestable as to take away from them the privilege of again teaching the young.

² 263 Phil. 1060, 1065 (1990), cited in *Sidro v. People*, G.R. No. 149685, April 28, 2004, 428 SCRA 182, 194.

ACCORDINGLY, I vote to grant the petition, reverse and set aside the judgment of conviction of the Sandiganbayan in Criminal Cases 25465-66 dated June 28, 2005, and acquit Dr. Roger R. Posadas and Dr. Rolando P. Dayco for failure of the State to prove their guilt of the two offenses beyond reasonable doubt.



ROBERTO A. ABAD
Associate Justice