



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**DR. ROGER R. POSADAS and
DR. ROLANDO P. DAYCO,**
Petitioners,

G.R. Nos. 168951 & 169000

Present:

- versus -

BERSAMIN, J.,
Acting Chairperson,
ABAD,^{*}
VILLARAMA, JR.,
MENDOZA,^{**} and
REYES, JJ.

**SANDIGANBAYAN and PEOPLE
OF THE PHILIPPINES,**
Respondents.

Promulgated:

NOV 27 2013

X ----- X

RESOLUTION

ABAD, J.:

This resolves the separate Motions for Reconsideration of petitioners, Dr. Roger R. Posadas and Dr. Rolando P. Dayco of the Court's Decision dated July 17, 2013.

The Facts and the Case

To recall the facts culled from the decision of the Sandiganbayan, Dr. Posadas was Chancellor of the University of the Philippines (UP) Diliman when on September 19, 1994 he formed a *Task Force on Science and Technology Assessment, Management and Policy*. The Task Force was to prepare the needed curricula for masteral and doctoral programs in "technology management, innovation studies, science and technology and related areas." On June 6, 1995, acting on the Task Force's proposal, UP established the *UP Technology Management Center* (UP TMC) the members

^{*} Designated additional member, in lieu of Chief Justice Maria Lourdes P. A. Sereno, per Raffle dated July 1, 2013.

^{**} Designated additional member, in lieu of Associate Justice Teresita J. Leonardo-De Castro, per Raffle dated May 27, 2013.

of which nominated Dr. Posadas for the post of Center Director. He declined the nomination, however, resulting in the designation of Professor Jose B. Tabbada as acting UP TMC Director.

Shortly after, Dr. Posadas worked for the funding of the ten new graduate courses of UP TMC. With the help of the Philippine Institute of Development Studies/Policy, Training and Technical Assistance Facility and the National Economic Development Authority, there came into being the *Institutionalization of Management and Technology in the University of the Philippines in Diliman* (the TMC Project), funded at Dr. Posadas' initiative by the Canadian International Development Agency.

Meantime, on October 5, 1995 Malacanang granted Dr. Posadas and fifteen other UP Diliman officials authority to attend the foundation day of the state university in Fujian, China, from October 30 to November 6, 1995. Before he left, Dr. Posadas formally designated Dr. Dayco, then UP Diliman Vice-Chancellor for Administration, as Officer-in-Charge (OIC) in his absence.

On November 7, 1995, his last day as OIC Chancellor, Dr. Dayco appointed Dr. Posadas as "Project Director of the TMC Project from September 18, 1995 to September 17, 1996." In an undated letter, Dr. Dayco also appointed Dr. Posadas consultant to the project. The appointments were to retroact to September 18, 1995 when the project began.

About a year later or on August 22, 1996 the Commission on Audit (COA) Resident Auditor issued a Notice of Suspension of payments made to UP TMC personnel, including the second payment to Dr. Posadas of ₱36,000.00 for his services as TMC Project's Local Consultant. On August 23 the Resident Auditor further suspended payment of ₱30,000.00 honorarium per month to Dr. Posadas as Project Director from September 18 to October 17, 1995.

On September 16, 1996, however, the UP Diliman Legal Office issued a Memorandum to the COA Resident Auditor, pointing out that the amounts paid the TMC Project personnel "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 Javier constituted an *Administrative Disciplinary Tribunal* 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 the Tribunal recommended the dismissal of the two from the service. The UP Board of Regents modified the penalty, however, to “forced resignation” with right to reapply after one year provided they publicly apologize. Still, the UP General-Counsel filed with the Sandiganbayan the present criminal cases.

On June 28, 2005 the Sandiganbayan found both Dr. Posadas and Dr. Dayco guilty of violation of Section 3(e) of Republic Act 3019 and imposed on them an indeterminate penalty of imprisonment for 9 years and one 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 Republic Act 6713 and imposed on them the penalty of imprisonment for 5 years with the same disqualification. They were further ordered to indemnify the government in the sum of ₱336,000.00.¹

In its decision of July 17, 2013, the Court affirmed the decisions of the Sandiganbayan in the two cases.

Discussion

1. The appointments were in good faith

The bad faith that Section 3(e) of Republic 3019 requires, said this Court, does not simply connote bad judgment or negligence. It imputes a dishonest purpose, some moral obliquity, and a conscious doing of a wrong. Indeed, it partakes of the nature of fraud.²

Here, admittedly, Dr. Dayco appears to have taken advantage of his brief designation as OIC Chancellor to appoint the absent Chancellor, Dr. Posadas, as Director and consultant of the TMC Project. But it cannot be said that Dr. Dayco made those appointments and Dr. Posadas accepted them, fraudulently, knowing fully well that Dr. Dayco did not have that authority as OIC Chancellor.

All indications are that they acted in good faith. They were scientists, not lawyers, hence unfamiliar with Civil Service rules and regulations. The world of the academe is usually preoccupied with studies, researches, and

¹ *Rollo*, pp. 48-70.

² *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670. See also *Marcelo v. Sandiganbayan*, G.R. No. 69983, May 14, 1990, 185 SCRA 346, cited in *Sidro v. People*, G.R. No. 149685, April 28, 2004, 428 SCRA 182, 194.

lectures. Thus, those appointments appear to have been taken for granted at UP. It did not invite any immediate protest from those who could have had an interest in the positions. It was only after about a year that the COA Resident Auditor issued a notice of suspension covering payments out of the Project to all UP personnel involved, including Dr. Posadas.

Still, in response to this notice, the UP Diliman Legal Office itself 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.” Not only this, the COA Resident Auditor, who at first thought that the OIC Chancellor had no power to make the designations, later accepted the Legal Office’s opinion and withdrew the Notices of Suspension of payment that he issued. All these indicate a need for the Court to reexamine its position that Dr. Dayco and Dr. Posadas acted in bad faith in the matter of those appointments.

2. Dr. Dayco chose the most qualified for the project

The next question is whether Dr. Dayco, believing in good faith that he had the authority to make the questioned designations, acted with “manifest partiality” in choosing Dr. Posadas among all possible candidates as TMC Director and Consultant. The answer is no.

There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.³ Here, the prosecution presented no evidence whatsoever that others, more qualified than Dr. Posadas, deserve the two related appointments. The fact is that he was the best qualified for the work:

First, Dr. Posadas originated the idea for the project and so he had every reason to want it to succeed.

Second, he worked hard to convince the relevant government offices to arrange funding for the project, proof that he was familiar with the financial side of it as well.

Third, the members of the *Task Force on Science and Technology Assessment, Management and Policy*—his own peers—nominated Dr. Posadas as Director of the UP Technology Management Center.

Fourth. The work fell within his area of expertise—technical management—ensuring professionalism in the execution of the project.

In the world of the academe, that project was the equivalent of Dr. Posadas’ thesis. Thus, since he was a natural choice to head the same, it

³ *People of the Philippines v. Aristeo E. Atienza*, G.R. No. 171671, June 18, 2012.

beats the mind that such choice could be regarded as one prompted by “manifest partiality.”

3. The misstep was essentially of the administrative kind

The worst that could be said of Dr. Dayco and Dr. Posadas is they showed no sensitivity to the fact that, although Dr. Dayco may have honestly believed that he had the authority to make those appointments, he was actually appointing his own superior, the person who made him OIC Chancellor, however qualified he might be, to those enviable positions. But this should have been treated as a mere administrative offense for:

First. No evidence was 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.

Second. COA disallowances of benefits given to government personnel for extra services rendered are normal occurrences in government offices. They can hardly be regarded as cause for the filing of criminal charges of corruption against the authorities that granted them and those who got paid.

Section 4 of the COA Revised Rules of Procedure merely provides for an order to return what was improperly paid. And, only if the responsible parties refuse to do so, may the auditor then (a) recommend to COA that they be cited for contempt; (b) refer the matter to the Solicitor General for the filing of the appropriate civil action; and (c) refer it to the Ombudsman for the appropriate administrative or criminal action.⁴ Here, Dr. Dayco and Dr. Posadas were not given the chance, before they were administratively charged, to restore what amounts were paid since the Resident Director withdrew his notice of disallowance after considering the view of the UP Diliman Legal Office.

If the Court does not grant petitioners’ motions for reconsideration, the common disallowances of benefits paid to government personnel will heretofore be considered equivalent to criminal giving of “unwarranted advantage to a private party,” an element of graft and corruption. This is too sweeping, unfair, and unwise, making the denial of most benefits that government employees deserve the safer and better option.

Third. In other government offices, the case against Dr. Dayco and Dr. Posadas would have been treated as purely of an administrative

⁴ Id.

character. The problem in their case, however, is that other factors have muddled it. The evidence shows that prior to the incident Dr. Posadas caused the administrative investigation of UP Library Administrative Officer Ofelia del Mundo for grave abuse of authority, neglect of duty, and other wrong-doings. This prompted Professor Tabbada, the Acting UP TMC Director, to resign his post in protest. In turn, Ms. Del Mundo instigated the UP President to go after Dr. Posadas and Dr. Dayco. Apparently, the Office of the Ombudsman played into the intense mutual hatred and rivalry that enlarged what was a simple administrative misstep.

Fourth. The fault of Dr. Dayco and Dr. Posadas, who spent the best parts of their lives serving UP, does not warrant their going to jail for nine to twelve years 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 amounts 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 totally take away from them the privilege of teaching the young.

4. The prosecution did not prove unwarranted benefit or undue injury

Section 3(e) of Republic Act 3019 requires the prosecution to prove that the appointments of Dr. Posadas caused “undue injury” to the government or gave him “unwarranted benefits.”

This Court has always interpreted “undue injury” as “actual damage.” What is more, such “actual damage” must not only be capable of proof; it must be actually proved with a reasonable degree of certainty. A finding of “undue injury” cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture, or guesswork.⁵ The Court held in *Llorente v. Sandiganbayan*⁶ that the element of undue injury cannot be presumed even after the supposed wrong has been established. It must be proved as one of the elements of the crime.

⁵ *Rollo*, p. 406.


⁶ G.R. No. 122166, March 11, 1998.

Here, the majority assumed that the payment to Dr. Posadas of ₱30,000.00 monthly as TMC Project Director caused actual injury to the Government. The record shows, however, that the ₱247,500.00 payment to him that the COA Resident Auditor disallowed was deducted from his terminal leave benefits.⁷

The prosecution also failed to prove that Dr. Dayco gave Dr. Posadas “unwarranted advantage” as a result of the appointments in question. The *honoraria* he received cannot be considered “unwarranted” since there is no evidence that he did not discharge the additional responsibilities that such appointments entailed.

WHEREFORE, the Court resolves to **GRANT** the motions for reconsideration of the petitioners and to vacate their conviction on the ground of failure of the State to prove their guilt beyond reasonable doubt.

SO ORDERED.



ROBERTO A. ABAD
 Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice
 Acting Chairperson

For reasons stated in the July 17, 2013 decision - I dissent. I therefore vote to deny MR with finality.


MARTIN S. VILLARAMA, JR.
 Associate Justice

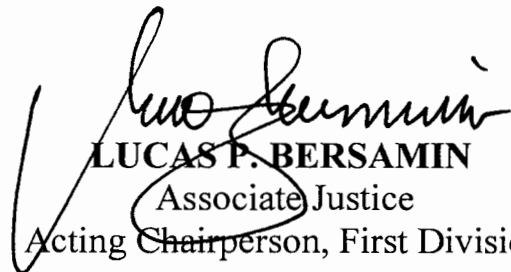
I join the dissent of J. Villarama

JOSE CATRAL MENDOZA
 Associate Justice


BIENVENIDO L. REYES
 Associate Justice

⁷ Rollo, p. 406.

ATTESTATION

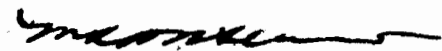
I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice