



Republic of the Philippines  
**Supreme Court**  
 Manila

**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
 Petitioner,

**G.R. Nos. 185729-32**

Present:

- versus -

VELASCO, JR., *J.*, *Chairperson*,  
 ABAD,  
 PEREZ,\*  
 MENDOZA, and  
 LEONEN, *JJ.*

**THE HONORABLE SANDIGANBAYAN  
 (FOURTH DIVISION), ANTONIO P.  
 BELICENA, ULDARICO P. ANDUTAN,  
 JR., RAUL C. DE VERA, ROSANNA P.  
 DIALA and JOSEPH A. CABOTAJE,**  
 Respondents.

Promulgated:

JUN 26 2013

*Alcaron*

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***DECISION***

**ABAD, J.:**

This case arose from the issuance of two Tax Credit Certificates in favor of JAM Liner, Inc. which were investigated and found fraudulent by the Presidential Task Force 156, created by then President Joseph E. Estrada.

**The Facts and the Case**

The principal respondent in this case, Homero A. Mercado, was the President of JAM Liner, Inc. The other respondents, Antonio A. Belicena, Uldarico P. Andutan Jr., Raul C. De Vera, and Rosanna P. Diala, were Department of Finance (DOF) officials formerly assigned at its One-Stop Shop Inter-Agency Tax Credit and Drawback Center (DOF One-Stop Shop).

Sometime in 2000, showing willingness to testify against the criminal

\* Designated additional member, in lieu of Associate Justice Diosdado M. Peralta, per Raffle dated February 14, 2011.

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syndicate that allegedly ran the tax credit scam at the DOF One-Stop Shop, Mercado applied with the Department of Justice (DOJ) for immunity as state witness under its witness protection program. On June 5, 2000 the DOJ favorably acted on the application and granted immunity to Mercado. Still, since the investigation of the case fell within the authority of the Office of the Ombudsman (Ombudsman), the latter charged him and the other respondents before the Sandiganbayan's Fourth Division with violations of Section 3(j) of Republic Act (R.A.) 3019 and two counts of falsification under Article 171, paragraph 4, of the Revised Penal Code in Criminal Cases 27511-14.

The first information alleged that respondent DOF officials approved and issued in 1996 Tax Credit Certificate 7711 for ₱7,350,444.00 in favor of JAM Liner, Inc. for domestic capital equipment although it did not qualify for such tax credit. The second Information alleged that they further illegally issued in 1996 Tax Credit Certificate 7708 for ₱4,410,265.50 in favor of the same company covering its purchase of six Mitsubishi buses.

Mercado filed a motion for reconsideration or reinvestigation before the Ombudsman, citing the DOJ's grant of immunity to him. Acting favorably on the motion, on September 4, 2003 the Ombudsman executed an Immunity Agreement<sup>1</sup> with Mercado. The agreement provided that, in consideration for granting him immunity from suit, Mercado would produce all relevant documents in his possession and testify against the accused in all the cases, criminal or otherwise, that may be filed against them. Accordingly, on the same date, the Ombudsman filed a motion to discharge Mercado<sup>2</sup> from the information involving him.

But on April 30, 2008 the Sandiganbayan issued a Resolution,<sup>3</sup> denying the Ombudsman's motion. That court held that the pieces of evidence adduced during the hearing of the Ombudsman's motion failed to establish the conditions required under Section 17, Rule 119 of the Rules of Court for the discharge of an accused as a state witness. The Ombudsman filed a motion for reconsideration but the court denied it on November 6, 2008,<sup>4</sup> hence, this petition of the People of the Philippines.

### **Issue Presented**

The central issue that this case presents is whether or not the Sandiganbayan gravely abused its discretion in refusing to recognize the

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<sup>1</sup> Exhibit "UUU," signed by the Office of the Ombudsman, represented by Dennis M. Villa-Ignacio, Special Prosecutor, and Homero A. Mercado.

<sup>2</sup> *Rollo*, pp. 56-58.

<sup>3</sup> *Id.* at 37-41, penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong and Samuel R. Martires.

<sup>4</sup> *Id.* at 42-45.

immunity from criminal prosecution that the Ombudsman granted respondent Mercado and, as a result, in declining to discharge him from the information as a state witness.

### **Ruling of the Court**

In denying the Ombudsman's motion to drop Mercado from the information, the Sandiganbayan largely dwelt on the question of whether or not the prosecution complied with the requirements of Section 17, Rule 119 of the Rules of Criminal Procedure.

Respondents De Vera and Diala, Mercado's co-accused who opposed the grant of immunity to him, contend that the immunity that the Ombudsman gave Mercado does not bind the court, which in the meantime already acquired jurisdiction over the case against him. That immunity merely relieves Mercado from any further proceedings, including preliminary investigation, which the state might still attempt to initiate against him.<sup>5</sup>

This in a way is true. But the filing of the criminal action against an accused in court does not prevent the Ombudsman from exercising the power that the Congress has granted him. Section 17 of R.A. 6770 provides:

Section 17. *Immunities.* – x x x Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

His above authority enables the Ombudsman to carry out his constitutional mandate to ensure accountability in the public service.<sup>6</sup> It gives the Ombudsman wide latitude in using an accused discharged from the information to increase the chances of conviction of the other accused and attain a higher prosecutorial goal.<sup>7</sup> Immunity statutes seek to provide a balance between the state's interests and the individual's right against self-incrimination. To secure his testimony without exposing him to the risk of prosecution, the law recognizes that the witness can be given immunity from

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<sup>5</sup> See Entry of Appearance with Comment/Opposition, id. at 260-267.

<sup>6</sup> *Quarto v. Marcelo*, G.R. No. 169042, October 5, 2011, 658 SCRA 580, 600.

<sup>7</sup> *Mapa, Jr. v. Sandiganbayan*, G.R. No. 100295, April 26, 1994, 231 SCRA 783.

prosecution.<sup>8</sup> In such a case, both interests and rights are satisfied.

As it happened in this case, the Ombudsman had already filed with the Sandiganbayan the criminal action against Mercado and the other respondents in Criminal Cases 27511-14 prior to the Ombudsman's grant of immunity to Mercado. Having already acquired jurisdiction over Mercado's case, it remained within the Sandiganbayan's power to determine whether or not he may be discharged as a state witness in accordance with Section 17, Rule 119 of the Rules of Criminal Procedure.

The Ombudsman premised its grant of immunity to Mercado on his undertaking to produce all the documents in his possession relative to the DOF tax credit scam and to testify in all pending criminal, civil, and administrative cases against those involved. Indeed, he had consistently cooperated even prior to immunity agreement in the investigation and prosecution of the case. His testimony gave the prosecution a clearer picture of the transactions that led to the issuance of the subject certificates.

In any event, the question before the Sandiganbayan was whether or not Mercado met, from its point of view, the following requirements of Section 17, Rule 119 for the discharge of an accused to be a state witness: (a) there is absolute necessity for the testimony of the accused whose discharge is requested; (b) there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused; (c) the testimony of said accused can be substantially corroborated in its material points; (d) said accused does not appear to be the most guilty; and (e) said accused has not at any time been convicted of any offense involving moral turpitude.

The authority to grant immunity is not an inherent judicial function.<sup>9</sup> Indeed, Congress has vested such power in the Ombudsman as well as in the Secretary of Justice. Besides, the decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the several accused before the courts. The latter do not as a rule have a vision of the true strength of the prosecution's evidence until after the trial is over. Consequently, courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119.

Here, the Sandiganbayan held that Mercado's testimony is not absolutely necessary because the state has other direct evidence that may prove the offenses charged. It held that Mercado's testimony, in large part,

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<sup>8</sup> *Supra* note 6, at 597.

<sup>9</sup> *Sec. Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 430 (1998).

would only help (1) identify numerous documents and (2) disclose matters that are essentially already contained in such documents.

But the records, particularly Mercado's consolidated affidavit, show that his testimony if true could be indispensable in establishing the circumstances that led to the preparation and issuance of fraudulent tax credit certificates. Indeed, nobody appears to be in a better position to testify on this than he, as president of JAM Liner, Inc., the company to which those certificates were issued. This is what he said in that affidavit:

Sometime in June 1997, Joseph Cabotaje went to Jam Compound office, approached Jerry Mapalo, the liaison officer of Jam Liner and claimed that as a former salesman of Diamond Motor Corporation, he could facilitate the release of the tax credit. He was brought to my office and impressed upon me that he could do the work as he personally knows the top brass in the Center, like Raul De Vera, Assistant Executive Director; Uldarico Andutan, Jr., Deputy Director and Undersecretary Antonio Belicena.

x x x x

x x x He asked for a fee of 20% of the amount of the tax credit and explained that this amount he would still share with his "connections" in the Center.

As Jam Liner[']s application with the Center for the 16 Mitsubishi bus units was pending, and having nobody to turn to, my liaison officer recommended that I accept the offer of services of Cabotaje. There was nothing written about the arrangement and it was with the understanding of "no cure no pay," meaning Cabotaje would only be paid after the tax credit certificates were released.

Sometime in July 1997, Cabotaje handed to me tax credit certificates for ₱4.4 million and ₱7.3 million in favor of Jam Liner. I believed that these certificates were approved upon the intercession and through the efforts of Cabotaje. The tax credit certificates were issued on June 30, 1997.

The 2 TCCs were received and handed to me by Mr. Cabotaje. When he presented the TCCs to me, I noticed that the amount was bigger than what we were supposed to get. In my estimate, there was an over evaluation of about 20% equivalent to ₱100,000.00 per unit, more or less.<sup>10</sup>

During direct examination by the Sandiganbayan, Mercado also testified that:

AJ Ponferrada: The question is, what is unusual about that document?  
Answer.

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<sup>10</sup> Consolidated Affidavit, p. 13.

Mr. Mercado: It says here, date complied, when we haven't given anything to the Department of Finance except for those we filed originally on April 11, sir. We have not submitted any document related in this application other than those we originally filed on April 11, sir. But it says here, dated (sic) complied, June 26, so, it means, for us, that we have complied with their requirements while we did not give any additional documents to them, Your Honors (sic).

x x x x

Q: What else did you notice aside from the date of suspension?

A: The date of suspension, sir, was April 13, a few days after we filed the application and on the third page of Exhibit "KKK-2". If I may repeat my testimony before, this amount is much bigger than those we filed with the Department of Finance. But the engine and chassis number are the same except for the amount, which was noted to ₱4,094,000.00, sir.<sup>11</sup> x x x

The decision to move for the discharge of Mercado was part of prosecutorial discretion in the determination of who should be used as a state witness to bolster the successful prosecution of criminal offenses. Unless made in clear violation of the Rules, this determination should be given great weight by our courts. As this Court held in *People v. Court of Appeals*:<sup>12</sup>

The Rules do not require absolute certainty in determining those conditions. Perforce, the Judge has to rely in a large part upon the suggestions and the considerations presented by the prosecuting officer.

"A trial judge cannot be expected or required to inform himself with absolute certainty at the very outset of the trial as to everything which may be developed in the course of the trial in regard to the guilty participation of the accused in the commission of the crime charged in the complaint. If that were practicable or possible, there would be little need for the formality of a trial. *In coming to his conclusions as to the necessity for the testimony of the accused whose discharge is requested, as to the availability or non-availability of other direct or corroborative evidence; as to which of the accused is the 'most guilty' one; and the like, the judge must rely in a large part upon the suggestions and the information furnished by the prosecuting officer.* x x x."<sup>13</sup> (Emphasis supplied)

What is more, the criminal informations in these cases charge respondents with having conspired in approving and issuing the fraudulent tax credit certificates. One rule of wisdom is that where a crime is contrived in secret, the discharge of one of the conspirators is essential so he can

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<sup>11</sup> TSN, March 21, 2006, pp. 13-17.

<sup>12</sup> 209 Phil. 277 (1983).

<sup>13</sup> Id. at 281-282.

testify against the others.<sup>14</sup> Who else outside the conspiracy can testify about the goings-on that took place among the accused involved in the conspiracy to defraud the government in this case?<sup>15</sup> No one can underestimate Mercado's testimony since he alone can provide a detailed picture of the fraudulent scheme that went into the approval and issuance of the tax credit certificates. The documents can show the irregularities but not the detailed events that led to their issuance. As correctly pointed out by the prosecution, Mercado's testimony can fill in the gaps in the evidence.

Respondents further contend that Mercado should not be granted immunity because he also benefited from the unlawful transactions. But the immunity granted to Mercado does not blot out the fact that he committed the offense. While he is liable, the State saw a higher social value in eliciting information from him rather than in engaging in his prosecution.<sup>16</sup>

**WHEREFORE**, the Court **GRANTS** the petition, **SETS ASIDE** the Sandiganbayan's Resolutions of April 30 and November 6, 2008 in Criminal Cases 27511-14, and **ORDERS** the discharge of accused Homero A. Mercado from the criminal information to be used as state witness.

**SO ORDERED.**



**ROBERTO A. ABAD**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson

<sup>14</sup> *Chua v. Court of Appeals*, 329 Phil. 841, 847 (1996).

<sup>15</sup> *Id.* at 854.

<sup>16</sup> *Tanchanco v. Sandiganbayan (Second Division)*, 512 Phil. 590, 616 (2005).

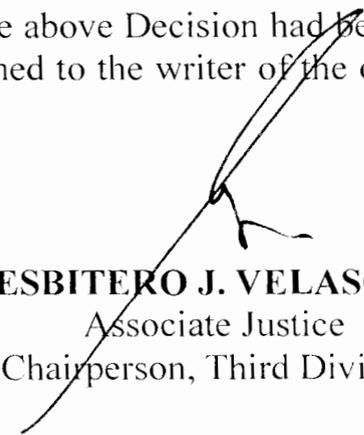
  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**MARVIC MARIO VICTOR F. LEONEN**  
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.

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

***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.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice