

REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

— versus — CRIM. CASE NO. SB-23-AR-0004

FRANCIS V. MERCADO,
Accused-Appellant,

Present:

DE LA CRUZ, J., Chairperson
ECONG, J.
SAN GASPAR, J.

Promulgated on:

7 NOVEMBER 2023

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DECISION

DE LA CRUZ, J.:

On appeal before this Court is the *Amended Decision*, dated October 6, 2022,¹ of the Regional Trial Court, Branch 17, of Cebu City, convicting accused-appellant Francis V. Mercado in Criminal Case No. CBU-81641, for violation of Sec. 3(b) of RA 3019. The RTC sentenced Mercado to suffer the indeterminate penalty of imprisonment from six (6) years and (1) one month as minimum to eight (8) years as maximum, with perpetual absolute disqualification from holding public office and other accessory penalties as provided by law.

ANTECEDENT FACTS

On January 18, 2006, the Office of the Deputy Ombudsman for Visayas filed an Information² before the RTC, charging the

¹ Records, pp. 32-41.

² Id., pp. 13-18.

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accused-appellant with the crime of violation of Sec. 3(b) of RA 3019, as amended, the accusatory portion of which reads:

That on or about the 2nd day of August 2005, and for sometime prior thereto, at the City of Cebu, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, FRANCIS V. MERCADO, a public officer, being an Intelligence Officer III of the Special Investigation Division of the Bureau of Internal Revenue (BIR), Revenue Region No. 13, Cebu City, in such capacity and committing the offense in relation to office, taking advantage of his public position, conspiring, conniving and confederating together and mutually helping with BONIFACIO D. YBAÑEZ and EDGAR D. PALGAN, both public officers, being the Chief of the Special Investigation Division, and Revenue Officer, respectively, also of the BIR, Revenue Region No. 13, Cebu City, and who are already charged before the Regional Trial Court in a separate Information being under detention at the time of the filing of the complaint, hence proceeded in accordance with Section 7, Rule 112 of the Revised Rules on Criminal Procedure, with deliberate intent, with intent to gain, did then and there willfully, unlawfully, feloniously directly or indirectly request, solicit or demand, and/or receive the amount of SIXTY THOUSAND PESOS (P60,000.00), from LEONILA P. MONTERO, owner of Alona Tropical Beach Resort located at Panglao Island, Bohol, with the assurance that she will be spared from any investigation and/or surveillance assessment by the BIR if she would give the said amount, to which said Leonila P. Montero acceded by giving the amount of THIRTY THOUSAND PESOS (P30,000.00), in genuine P1,000 and P500 bills and some bogus P1,000 and P500 bills, to Bonifacio D. Ybañez, Edgar D. Palgan and accused herein which money was received by them in connection with the transaction between the government and Leonila P. Montero, wherein accused Francis V. Mercado and Bonifacio D. Ybañez and Edgar D. Palgan, have to intervene therein under the law in their official capacity as such public officers, to the detriment of public interest.

CONTRARY TO LAW.

Records show that this case was initially raffled to RTC Branch 20 of Cebu City. Mercado filed a Motion to Quash Information but was denied in an Order, dated September 22, 2009,³ by then Presiding Judge Hon. Bienvenido Saniel, Jr. Mercado filed a Motion for Reconsideration but was likewise denied in an Order, dated July 1, 2010.⁴

On March 8, 2011, Mercado filed a Motion for Voluntary Inhibition.⁵ During the arraignment on March 10, 2011, Mercado

³ RTC Records, pp. 205-207.

⁴ Id., pp. 245-247.

⁵ Id., pp. 254-256.

pleaded not guilty to the crime charged. On the same date, Judge Saniel, Jr. granted Mercado's motion for voluntary inhibition.⁶ The case was then re-raffled to RTC Branch 17. Pre-trial commenced. After the termination of pre-trial conference on October 19, 2011, trial ensued.⁷

EVIDENCE FOR THE PROSECUTION

The prosecution presented six (6) witnesses, namely: Eva Gulosino, Abdul Amer, Leonila Montero, Jaime B. Santiago, Remegia Lauron and Belen Dabasol, whose testimonies are set forth below.

Eva Gulosino, Head of Human Resources Unit, Bureau of Internal Revenue, Cebu City.

Witness Gulosino testified that Mercado was employed with the BIR on November 3, 1989, and retired on December 31, 2006. During that period, Mercado held the positions of Intelligence Officer I, Intelligence Officer II, and Intelligence Officer III.⁸

Abdul Amer, Head of Criminal Unit, Court of Appeals.

Witness Amer brought the entire record of *People v. Bonifacio Ybañez and Edgar Palgan* (Crim Case No. CBU-74168 for violation of Sec. 3[b] of RA 3019). He presented the VAT computation, the certified true copy of the calling card of the accused, and the certified true copy of the Decision rendered by Judge Saniel, Jr. in the said case.⁹

Leonila Montero, private complainant, owner of Alona Tropical Beach Resort.

Witness Montero testified¹⁰ that sometime on March 2005, her staff informed her that there were people from the Bureau of Internal Revenue (BIR) who frequently visited her resort. On May 9, 2005, she received a call and several text messages from a certain Edgar Palgan who told her that he was a revenue officer of BIR. Palgan wanted to talk to her personally with regard to the surveillance tax assessment of her beach resort.

She was instructed by Palgan to bring all her receipts for 2004 and the receipts from January to March 2005 to the BIR Regional Office 7 in Cebu City. She went to the BIR Office on May 16, 2005

⁶ Id., p. 259.

⁷ Id., p. 276.

⁸ TSN, dated January 24, 2012.

⁹ TSN, dated February 7, 2012.

¹⁰ TSN, dated March 13, 2012, September 24, 2012, December 03, 2012.

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where she was met by Palgan and was brought to the office of Atty. Bonifacio Ybañez. Atty. Francis Mercado was also inside the office.

She gave the receipts of 2004 and from January to March 2005, and they discussed the policies and rules with regard to the payment of taxes at the BIR. On that particular day, however, they did not talk anything about her tax liability.

After she got home, she received several text messages from Palgan and asked her to meet them at Bo's Coffee, Ayala Center, Cebu City. On May 24, 2005, she went to Bo's Coffee, to meet with Palgan and Mercado. The purpose of the meeting was to discuss her surveillance tax assessments in her beach resort.

During the meeting, Palgan and Mercado presented an assessment of her taxes which was written on yellow paper. In her own understanding, it was not the official demand from the BIR because it was handwritten. She ignored the figures in the yellow paper.

Thereafter, she received a fax at her beach resort and there was already a computation of the alleged surveillance assessment, which she likewise ignored because it was not an official demand from the BIR. The demand of tax assessment was more or less ₱200,000.00.

She then received a text message from Palgan who wanted to set a meeting with her at Metro Center Hotel, Tagbilaran City on July 20, 2005, at 7:00 pm. She went to the said venue and Palgan and Mercado were there.

In the said meeting, Palgan and Mercado told her that instead of paying the amount in the surveillance assessment to the BIR, they will collect it themselves because they will use the money for their field operation. Palgan and Mercado were offering Montero some sort of immunity from the books of that particular year (examination of the books). In response, Montero asked what will be her assurance that the resort's books will not be subjected by the examination. Mercado asked in return what was his assurance that Montero will give the money to them and not to the government. Mercado assured Montero that she can trust them because they are working at the Intelligence Office Division and they will spare her from any surveillance assessment. Montero told them that she will consult her husband about the offer.

The following day, July 21, 2005, Mercado called her up and said that instead of paying the whole amount, he offered her to pay only 50% or ₱100,000.00 more or less. Before she could answer,

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the call was dropped because she and her husband were on their way to the operating room.

Thereafter, Palgan called her up and made a follow up as to what her decision would be about Mercado's offer. Palgan called her up again to set up another meeting on July 26, 2005 at SM Bo's Café, in Cebu City. She went to the location and there she saw Mercado, Palgan, Ybañez and the daughter of Ybañez. They discussed the offer again and Montero told Mercado, Palgan and Ybañez that she could not afford the ₱100,000.00 demand so she bargained to a lesser amount. They agreed that she would pay the amount of ₱60,000.00, but she still bargained that she will only pay half at first since her husband was in the hospital. She asked how she will pay and Mercado wrote his bank account number on his calling card and gave it to her. Mercado instructed her to deposit the ₱30,000.00 to the account written at the back of his calling card. She took the calling card and headed home to Bohol.

She promised to deposit the amount of ₱30,000.00 at the bank account number written on the back of the calling card on July 29, 2005. However, she did not do so. Palgan then called her up to ask why she did not make the deposit, to which she replied that she lost the calling card.

She confided the problem to her friend Police Inspector Tecson, former Chief of Police of Panglao. She consulted with him because she was disturbed and Tecson told her that if she would agree, they will do the entrapment. She told him she will have to talk to her husband. After being reassured, they agreed to have the entrapment on August 2, 2005.

Palgan then called her asking for them to meet. He proposed that they meet at Max's Chicken at Ayala Center in Cebu City to which she agreed. Montero was then prepared by the CIIB together with Police Inspector Tecson for the entrapment.

She proceeded to Max's Chicken at Ayala Center on August 2, 2005. Palgan was there and was alone when she arrived. She asked where the others were because they agreed that the three of them will be there. Palgan called Ybañez who subsequently went there. Mercado could not come because he was in Manila at the (US) Embassy. She then handed the bust money prepared by CIIB to Ybañez and then to Palgan. Upon receiving the money, the police apprehended Ybañez and Palgan.

Thereafter, Palgan died and Ybañez was convicted in the case filed at RTC, Branch 20.¹¹

Jaime B. Santiago, former Regional Director of BIR Revenue Region No. 13, Cebu City.

Witness Santiago testified that in compliance with the subpoena of the trial court, he produced Mission Order No. MSO 2001 00032753, dated March 7, 2005, issued to Palgan and Mercado to conduct surveillance operation on the Alona Palm Beach Resort and Restaurant, Panglao Island, Bohol; Mission Order No. MSO 2001 00032754, dated March 7, 2005, issued to Palgan and Mercado, to conduct surveillance operation on the Palm Island Beach Resort, Panglao Island, Bohol. He also produced a certification, dated November 8, 2005, to prove that the records of the BIR does not show that there was a Mission Order issued to conduct surveillance operation on the Alona Tropical Beach Resort, Panglao Island, Bohol.¹²

Remegia Lauron, Chief of Finance Division, Bureau of Internal Revenue, Cebu City.

Witness Lauron presented a certification she prepared which states that accused Mercado, former employee of Bureau of Internal Revenue, Revenue Region No. 13, Cebu City, was assigned Land Bank savings account number 0147018657 for payroll salary.¹³

Belen Dabasol, Assistant Chief of Finance Division, Bureau of Internal Revenue, Cebu City.

Witness Dabasol presented several payroll documents of the BIR, Cebu City, to prove that Land Bank savings account number 0147018657 belongs to accused Mercado.¹⁴

On September 8, 2017, the court *a quo*, over the objections of the defense, resolved to admit prosecution's Exhibits A to Y and their respective sub-markings. The prosecution subsequently rested its case.¹⁵

EVIDENCE FOR THE DEFENSE

The defense presented accused-appellant Francis Mercado, whose testimony is set forth below.

¹¹ TSN, dated June 27, 2012.

¹² TSN, dated August 08, 2014.

¹³ TSN, dated February 17, 2016.

¹⁴ TSN, dated February 14, 2017.

¹⁵ RTC Records, p. 427.

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Francis Mercado, accused-appellant, Supervising Officer of the Revenue Intelligence Division of the BIR, Region 13, Cebu City.

In his Judicial Affidavit,¹⁶ accused-appellant Mercado denied the accusation lodged against him by private complainant Leonila Montero. He insisted that the charge is malicious and fabricated designed to harass, intimidate, and stop the BIR from investigating her and prosecuting her for tax evasion.

The Chief of Special Investigation, Nieto A. Racho, gave him two mission orders: one was to investigate Alona Palm Beach Resort and Restaurant¹⁷ (registered under Francisco Montero but operated by Leonila Montero), and the other one was to investigate Palm Island Beach Resort.¹⁸ This was prompted by a letter from a certain Benjamin Udtohan, an alleged taxpayer from Tagbilaran City, Bohol, regarding the businesses in Panglao, Bohol who failed to pay their correct taxes.¹⁹

Under the mission orders, he was instructed to (1) monitor sales and/or place of business establishment mentioned above under observation or surveillance for violation of bookkeeping rules and regulations, particularly on non-issuance of sales invoices or receipts; (2) take an inventory on the number of active units of cash register/point-of-sale machines authorized to issue receipts in lieu of the regular sales invoices or receipts and check taxpayer's compliance with the provisions of Revenue Regulations (RR) No. 4-80, as amended by RR No. 10-99, governing the use of cash register and point-of-sale machines in lieu of registered sales invoices or receipts; (3) apprehend violators of revenue laws and regulations governing the activities mentioned in the preceding paragraphs.

Pursuant to the mission orders, Mercado, Palgan and Ybañez went to the foregoing establishments. They asked Leonila Montero and the Palm Island Beach Resort to produce their documents showing their compliance to the registration and payment by way of official receipts evidencing the revenue of their resort and restaurant/establishments specifically with respect to their compliance with the value added tax law.

He claimed that Leonila Montero told him that her establishment was not covered by the VAT law and so she refused and failed to show them the official receipts requested. Furthermore,

¹⁶ Exhibit 6.

¹⁷ Exhibit 1.

¹⁸ Exhibit 2.

¹⁹ Exhibit 3.

she gave them her BIR Registration System which shows that her establishment was only registered with the BIR in the year 1996 although they heard information that her establishment was already operating long before 1996.²⁰

They submitted a Memorandum letter, dated March 27, 2005, containing their findings.²¹ They stated in the Memorandum that the electric consumption of the same as evidenced by their receipts submitted to them was in the amount of ₱568,338.82 for the year 2004 but her gross sales receipts only ₱52,020.00, which meant that she was operating at a loss, but she never claimed the same.

He insisted that the only incident that he met with Montero was when she went to Metro Center Hotel in Tagbilaran where Montero invited them to a refreshment snack in the restaurant. Montero allegedly asked how much was her VAT liability and he told her the estimated amount of ₱200,000.00. She asked for a reduction and he told her that he had no authority. In the presence of Palgan and Ybañez, he advised her that she could discuss the same with the Regional Director who was the only one who can reduce her liability. Since that incident, he never met her again. He was not privy to any conversation Montero had with Palgan and Ybañez.

During the entrapment operation at Max's Restaurant at Ayala Center, he was in Manila with his two children for an interview relative to his US visa application. As regards the calling card, he wrote his bank account for his brother to deposit whatever money he will give him since he may need financial assistance for his planned trip to the US. The calling card was intended for his brother and was mistakenly given to Leonila Montero during their meeting at Metro Center Hotel.

On redirect, he testified that he believes that there is only one owner of Alona Palm Beach Resort and Alona Tropical Beach Resort.²²

The prosecution and the defense stipulated that the testimony of **Richard Mercado**, was mainly corroborative to the testimony of the accused-appellant. In view of the foregoing, the defense dispensed with the presentation of Richard Mercado on the witness stand.²³

²⁰ Exhibit 4.

²¹ Exhibit 5.

²² TSN, dated March 24, 2022.

²³ Order, RTC Records, p. 492.

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There being no objection to accused-appellant's Exhibits 1, 2, 6, and 7, the Court admitted the same in evidence. Over the objection of the prosecution, the Court likewise admitted Exhibits 3, 4, and 5. The defense rested its case.²⁴

On October 7, 2022, the court *a quo* promulgated its Decision, dated October 6, 2022. On the same day, due to a clerical error, the Court, *motu proprio*, issued an Amended Decision, convicting the accused-appellant. The dispositive portion of the Amended Decision reads, thus:

IN VIEW OF ALL THE FOREGOING, the Court finds the accused, Francis V. Mercado, GUILTY beyond reasonable doubt of the crime of violation of paragraph b, Section 3 of R.A. 3019, as amended, and hereby sentences him to suffer the indeterminate penalty of imprisonment from SIX (6) YEARS AND ONE (1) MONTH as minimum to EIGHT (8) YEARS as maximum. He should also suffer perpetual absolute disqualification to hold public office and other accessory penalties consequent thereto as provided by law.

SO ORDERED.²⁵

On October 25, 2022, the accused-appellant filed a Motion for Reconsideration,²⁶ of the said Decision, raising the following grounds: (1) accused-appellant was never a party to the incident that happened on August 2, 2005, which was the subject of the Information; (2) there was no evidence that accused-appellant made a demand; (3) prosecution witness Leonila Montero was a perjured witness and therefore, her testimony suffers from incredibility; and (4) the court committed error in ruling that denial is a "flimsy defense".

The prosecution filed its comment, effectively asserting that the court did not commit any reversible error of facts or law that would justify the reversal or modification of its Decision.²⁷

The accused-appellant likewise filed a motion for leave to file and admit supplemental to the motion for reconsideration, praying that the court admit annexes A, B, and C therein as part of his motion for reconsideration.²⁸

On December 5, 2022, the court *a quo* issued a Joint-Order denying Mercado's Motion for Reconsideration for lack of merit,

²⁴ Order, RTC Records, p. 511.

²⁵ RTC Records, p. 528-537.

²⁶ Id., pp. 539-550.

²⁷ Id., pp. 568-571.

²⁸ Id., pp. 553-565

opining that it finds no compelling reason to modify, much less reverse the questioned Amended Decision. All the arguments raised by the accused in his motion were already taken into consideration and discussed by the Court. It also denied accused's motion for leave to file and admit supplemental to the motion for reconsideration for lack of merit.²⁹

Hence, this appeal.

THE APPEAL

The accused-appellant filed his Notice of Appeal on December 16, 2022.³⁰ After finding that the same was filed within the reglementary period, the court *a quo* gave it due course.³¹

On March 13, 2023, the Sandiganbayan issued a Resolution,³² directing the parties to submit their respective briefs.

In his appellant's brief, Mercado assigned the following errors: that the trial court seriously erred in (1) finding Montero to be a wholly credible witness when in fact she lied to the trial court during her testimony in this case and even confessed to having lied to the accused; (2) disregarding as flimsy the explanation of the accused-appellant that he inadvertently gave to the private complainant his calling card which has his bank account number written on it since he intended to give it to his brother so that the latter will deposit to that account whatever money he would need for his planned trip to the United States; (3) finding that the accused-appellant made a demand or extorted money from the private complainant; (4) finding conspiracy existed between the accused-appellant on the one hand and his fellow BIR officers, Bonifacio D. Ybañez and Edgar D. Palgan, on the other; and (5) finding the accused-appellant guilty beyond reasonable doubt of the crime charged.³³

The plaintiff, in its appellee's brief, mainly argues that the RTC correctly convicted appellant of violation of Section 3(b) of RA 2019, considering that all the elements of the said crime were duly established by the prosecution with moral certainty. The arguments raised by appellant against the amended decision of the court *a quo* are without merit.³⁴

²⁹ Id., pp. 572-573.

³⁰ Id., pp. 613-614.

³¹ Order, RTC Records, p. 615.

³² Records, p. 57.

³³ Appellant's Brief, dated July 8, 2023, Records, pp. 71-127

³⁴ Appellee's Brief, dated October 2, 2023, Id., pp. 150-173

ISSUE

The issue for this Court's resolution is whether or not the court *a quo* erred in convicting the accused-appellant of violation of Section 3(b) of RA 3019, as amended.

DISCUSSION

The appeal has no merit. This Court finds that the court *a quo* did not commit a reversible error in convicting the accused-appellant.

Section 3(b) of RA 3019 provides:

Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

b. Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

x x x

The elements of violation of Section 3(b) of RA 3019 are as follows: (1) the offender is a public officer; (2) who requested or received a gift, present, a share, a percentage, or benefit; (3) on behalf of the offender or any other person; (4) in connection with a contract or transaction with the government; (5) in which the public officer, in an official capacity under the law, has the right to intervene.³⁵

Section 3(b) of RA 3019 penalizes three distinct acts – (1) demanding or requesting; (2) receiving; or (3) demanding, requesting and receiving – any gift, present, share, percentage, or benefit for oneself or for any other person, in connection with any contract or transaction between the government and any other party, wherein a public officer in an official capacity has to intervene under the law. These modes of committing the offense are distinct and different from each other. Proof of the existence of any of them suffices to warrant conviction.³⁶

³⁵ *Collao v. People of the Philippines and the Honorable Sandiganbayan (Fourth Division)*, G.R. No. 242539, February 1, 2021.

³⁶ *Id.*, citing *Peligrino v. People of the Philippines*, G.R. No. 136266, August 13, 2001.

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The Court hereby affirms the finding of the court *a quo* that all the elements of the crime charged against accused-appellant Mercado had been sufficiently established.

Mercado is a public officer.

It is undisputed that at the time material to this case, Mercado was employed with the Bureau of Internal Revenue Region No. 13, Cebu City, as Intelligence Officer III.³⁷

Mercado requested or received a gift, present, a share, a percentage, or benefit, for himself and for Ybañez and Palgan.

The court *a quo* mainly based its findings from the testimony of private complainant Leonila Montero. The said court ruled that –

x x x

It is apparent from the foregoing testimony of Leonila that the herein accused was in conspiracy with his co-employees of BIR, Palgan and Atty. Ybañez, in demanding or requesting money or gift from Leonila, in the amount of Php100,000.00 or 50% of her alleged tax deficiencies but it was later on lowered to Php30,000.00. Initially, it was Palgan who contacted Leonila, but the herein accused was present in the several meetings arranged by Palgan with Leonila. In fact, it was the herein accused himself who called up Leonila informing her that they had lowered the amount of her alleged tax deficiencies from Php200,000.00 to P100,000.00 (TSN, June 27, 2012, pp.11 to 12). He was also present during the meeting with Leonila at Bo's Coffee, SM City, Cebu City on July 26, 2005 when the amount was further lowered to Php30,000.00 after she pleaded with them as her husband had just been hospitalized. Moreover, it was the herein accused who instructed Leonila to deposit the amount of Php30,000.00 in his own Land Bank ATM payroll account number 0147-018657. He then gave his own calling card (Exhibit "C") to Leonila with the aforementioned ATM account number handwritten on the back thereof (TSN, June 27, 2012, p.15). The said ATM of the accused is mute, but it speaks eloquently about his active participation in his conspiracy with Palgan and Atty. Ybañez in demanding bribe from Leonila for themselves and on their behalf. Hence, the second and third elements of the offense charged have been proved.

x x x³⁸

³⁷ Exhibit L.

³⁸ Records, pp. 39-40

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The accused-appellant argues that the lower court erred in giving full faith and credence to Montero's testimony because, among others, she "can lie through her teeth whenever it would suit or benefit her" when the latter testified that she told Palgan that she lost Mercado's calling card as an alibi for not being able to deposit the amount they agreed upon.³⁹

A perusal of the records reveals that witness Montero has been consistent and straight forward in the course of her testimony during trial. The Court sees no cogent reason to overturn the findings of the court *a quo*.

The assessment of the credibility of a witness is primarily the function of a trial court, which had the benefit of observing firsthand the demeanor or deportment of the witness. It is within the discretion of the trial court to weigh the evidence presented by the parties, as well as to accord full faith to those it regards as credible and reject those it considers perjurious or fabricated.⁴⁰

Moreover, the Court finds that the prosecution's evidence sufficiently established the second and third elements of the crime charged. This is very clear from Montero's testimony,⁴¹ thus:

ATTY. KANGLEON:

May I request the witness to continue your Honor.

Q What happened after you consulted your husband about the offer of the accused that your establishment will be spared from assessment?

A The following day July 21, 2005 at around 8:00 o'clock in the morning, I cannot forgot (*sic*) this time in this particular date and time because my husband was on his way to the operating room because he was admitted at Ramiro Community Hospital, Tagbilaran City, **Atty. Francis Mercado called me up and he said instead of paying the whole amount more or less P200,000, he offered me to pay only 50% I stand corrected sir instead of P200,000 more or less**

x x x

Q Now, what was your reaction when accused Mercado told you to pay only ½ of the surveillance assessment?

A He put off his phone. I was not able to said (*sic*) yes or no because we were on our way at that time to the operating

³⁹ Appellant's Brief, Records, pp. 82-83.

⁴⁰ *Cadiao-Palacios v. People of the Philippines*, G.R. No 168544, March 31, 2009.

⁴¹ TSN, June 27, 2012, pp. 9-16. Emphasis supplied.

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room. He told me in the phone instead of paying P200,000.00 again 50% of the total amount.

X X X

Q What happened after July 21 if any after that call of accused Mercado?

A Edgar Palgan called me up and made a follow up what is our decision about the offer of Atty. Francis Mercado

Q When was this?

A Within that day sir if I would say an hour after.

Q What happened after the follow up?

A He is always calling me because on that day I told Edgar sorry we were not able to talk on this matter.

Q After Edgar Palgan told you what happened after that?

A Days after Edgar Palgan called me up again and as far as I could remember he sets another meeting that was last July 26, 2005. First he sets a meeting at Boss (*sic*) Café Ayala and I told them I can meet them if they will set the meeting at Boss (*sic*) Café SM because I will not be staying long in Cebu. I have to go back to Bohol.

Q What happened to your agreement about that meeting?

A We agreed that we will meet at SM Boss (*sic*) Café on July 26. They agreed to my demand because they wanted to meet me again. We met at SM Boss (*sic*) café and there I saw Atty. Francis Mercado, Mr. Ybañez and Edgar Palgan and the daughter of Mr. Ybañez.

Q What transpired during that meeting with accused Mercado, Edgar Palgan and Atty. Ybañez?

A **We talked directly about the offer of Atty. Francis Mercado to pay 50% of their alleged surveillance assessment that is more or less P100,000.00 and there I made bargain.**

Q What was your reaction with regards to their demand about payment of P100,000.00 by way of surveillance assessment?

A I told them that I cannot pay and cannot afford the P100,000.00 and we agreed which was I bargain them to a lesser amount and we arrived to a point I have to pay them P60,000.00 and that was the agreement.

Q And then what was the reply when you bargain to them that you would only pay P60,000.00 instead of P100,000.00?

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A We fixed the amount of P60,000.00 and with the P60,000.00 I still bargain them that I have to pay them ½ because at that time my husband was in the hospital and they confront and agreed again that I have to pay P30,000.00. That is why I asked them how shall I pay because I did not have anything on that day.

Q When you asked to whom are you referring how shall I pay?

A I was always at the table of Edgar Palgan and Atty. Francis Mercado and Atty. Ybanez is on the other table nearby with his daughter and this was agreed and **Atty. Francis Mercado when I asked how shall I pay he get his calling card and wrote his bank account number on it and instructed me to deposit the P30,000.00 to the account written at the back of his calling card.**

x x x

Q At the back of this calling card you testified that accused Mercado wrote an account number?

A Yes, sir.

Q What bank?

A Is it at Land Bank. I saw Atty. Francis Mercado writing we were sitting in the same table he made and I looked up how he wrote it is in the Land Bank. I cannot memorize the bank account number.

x x x

A I took the calling card sir and I went home to Bohol.

Q And then what happened about their demand that you will be required to pay P60,000.00?

A As promised that I will deposit the amount of P30,000.00 at the bank account number written at the back of the calling card I did not make a deposit sir which I promised to be deposited on the 29th of July 2005.

x x x

This excerpt leaves no room for doubt that accused-appellant indeed requested from Montero that she deposit the requested amount in his Land Bank payroll account. The Court is not convinced with Mercado's contention that there was no evidence that he made a demand or requested or received money from the private complainant. It is clear from the foregoing testimony that the accused-appellant initially requested for ₱100,000.00 which was then lowered to ₱60,000.00 after the negotiations at the Bo's Café meeting on July 26, 2005.

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The Court further notes that in his testimony, Mercado confirmed meeting with Montero on July 20, 2005 and he claimed that it was the only instance that he met with her. While he acknowledged ownership of the calling card and the bank details inscribed at the back thereof, he alleged that it was only given to her inadvertently as it was supposed to be given to his brother who will help him out financially for his US trip.

To the Court's mind, if the accused-appellant was able to testify on this matter, why did he not offer an explanation or his "alibi" against Montero's allegation of his presence in the July 26, 2005 meeting? Because of this, Montero's version remained uncontroverted.

The Court likewise concurs with the observation of the court *a quo* that Mercado's explanation was too flimsy in that he had to write down his account number in a calling card if it was meant for his brother. Indeed, he could have communicated the same via text message. Contradistinguished with the narration of the private complainant, it is more plausible that he wrote down the account number at the back of his calling card which he had on him at the time of their meeting in response to where the money will be deposited as Montero did not have cash on her at that time.

In addition, the money requested by Mercado was clearly for himself, Palgan, and Ybañez. He gave Montero instructions for the money to be deposited to his savings account. It can also be concluded that Palgan and Ybañez will also benefit from the money as they were always present in the meetings with Montero and were even authorized to receive Montero's payment on August 2, 2005.

The Court also finds unavailing Mercado's contention that he is not a conspirator. Mercado insists that because he was not present at the entrapment incident subject of the Information filed against him, he could not have actively participated in the actual commission of the crime or have lent moral assistance to his alleged co-conspirators.

This argument is bereft of merit.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.⁴² The essence of conspiracy is the unity of action and

⁴² Article 8, Revised Penal Code.

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purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.⁴³

The Court affirms the ruling of the court *a quo* that Mercado conspired with Ybañez and Palgan. It is clear from the evidence presented that it was Mercado who called Montero and quoted the amount of ₱100,000.00. Mercado also approved the amount of ₱60,000.00 after bargaining with Montero. He also gave his calling card with his bank account number written on the back, instructing Montero to deposit half of the amount. These acts of Montero are more than sufficient to show his participation in the crime charged, even though it was only Palgan and Ybañez who were present during the entrapment on August 2, 2005.

This notwithstanding, it is important to note that Sec. 3(b) of RA 3019 punishes three distinct acts: (1) demanding or requesting; (2) receiving; or (3) demanding, requesting and receiving. Mercado's mere act of demanding or requesting money from Montero is enough for him to become liable under the Sec. 3(b) of RA 3019.

The money requested was in connection with a transaction with the government in which Mercado, in an official capacity under the law, has the right to intervene.

Lastly, the Court affirms the ruling of the court *a quo* that the fourth and fifth elements are present in this case. The prosecution satisfactorily established that the money that Mercado requested, was in connection with a transaction with the government, *i.e.*, Montero's payment of tax liabilities on behalf of Alona Tropical Beach Resort.

Mercado occupied the position of Intelligence Officer III. By virtue of mission orders issued to him by his superior, he conducted surveillance on certain taxpayers for possible violations of the tax laws. Montero further testified that Mercado and Palgan assured her that once she pays the amount they requested, she will be spared from any surveillance because they work at the Intelligence Office Division, thus:

⁴³ People of the Philippines v. Roberto Jesalva, G.R. No. 227306, June 19, 2017.



Q Since you testified that you met Edgar Palgan and Atty. Francis Mercado at Metro Center Hotel on July 20, 2005, what happened during that meeting?

A They talked to me about their surveillance assessment of my beach resort. They told me that instead of paying the money to the BIR they will collect themselves because they will use the money for their field operation.

X x x

Q What was your response after you were being told those statements?

A I asked them what will be my assurance because as far as I know when BIR offers immunity suit because there are some offering of the BIR that we will be immune from the books of that particular year that is what they call examination of the books not by random it depends on the BIR what particular date they are going to examine your books. They told me because I asked them what will be my assurance if I will give the money to them not the government and they said just trust us because we are working at the Intelligence Office Division and we will spare you from any surveillance assessment that is what they promised me.⁴⁴

It is evident from the foregoing testimony that money is in exchange for not conducting further surveillance in the business of Montero, and that Mercado, Palgan, and Ybañez had the right to intervene with such assessments under the law because they were working at the Intelligence Office Division. Clearly, the fourth and fifth elements are proven in this case.

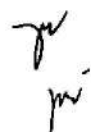
From the foregoing discussion, the Court finds and so holds that accused-appellant Mercado is guilty of violating Sec. 3(b) of RA 3019. The Court affirms the court *a quo*'s Amended Decision.

WHEREFORE, in light of all the foregoing, the appeal is hereby **DENIED**. The Amended Decision of the Regional Trial Court of Cebu City, Branch 17, dated October 6, 2022, convicting accused-appellant Francis V. Mercado of violation of Section 3(b) of RA 3019, as amended, is hereby **AFFIRMED in toto**.

SO ORDERED.


EFREN N. DE LA CRUZ
Chairperson/Associate Justice

⁴⁴ TSN, June 27, 2012, p. 8.



WE CONCUR:

Geraldine Faith Army
GERALDINE FAITH A. ECONG
Associate Justice

Juliet M. Manalo-San Gaspar
JULIET M. MANALO-SAN GASPAR
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

EFREN N. DE LA CRUZ
EFREN N. DE LA CRUZ
Chairperson/First 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
AMPARO M. CABOTAJE-TANG
Presiding Justice