

HERMENEGILDO M. MAGSUCI, PETITIONER, VS. THE HON. SANDIGANBAYAN (SECOND DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 101545. January 03, 1995

Ponente: VITUG, J.

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VITUG, J.:

The Court is here confronted with the question of whether or not criminal responsibility may be incurred by a head of office who, in the discharge of his official duties, has relied on an act of his subordinate. There is no inflexible rule.

This petition for review on certiorari assails the 05th September 1991 decision of respondent Sandiganbayan convicting petitioner, Hermenegildo M. Magsuci, of estafa through falsification of public documents.

On 06 June 1988, an information was filed charging petitioner Magsuci, a public officer, and one Jaime B. Ancla, a private person, with the complex crime of estafa through falsification of public documents. The information read:

"That on or about March 11, 1983 and prior sometime thereto, in Cagayan de Oro City and within the jurisdiction of this Honorable Court, the abovenamed accused Hermenegildo M. Magsuci, a public officer, being the Regional Director of the Bureau of Fisheries and Aquatic Resources (BFAR), Department of Natural Resources (formerly Ministry of Natural Resources), Region X, Cagayan de Oro City, and accused Jaime B. Ancla, a private person, and Engineer and General Manager of Dexter Construction, Cagayan de Oro City, conspiring, confederating, and helping one another while the former in the discharge of his public position and committing the offense in relation thereto, taking advantage of his public functions, with grave abuse of confidence, did, then and there, wilfully, unlawfully, and feloniously issue and make it appear in the Certificate of Completion, dated March 10, 1983 and the undated Accomplishment Report, that the latter had satisfactorily completed the Work Order on the forty (40) ton ice plant and cold storage located at Magallanes Street, Surigao City, when in truth and in fact, there were no such installation and construction made thereon, thus, from the aforesaid falsities thereof, enabled the accused to obtain and receive the sum of P412,729.24 through a Disbursement Voucher and various Treasury Checks and once they are in possession of said sum, with intent to defraud, misappropriate, misapply and convert to their own personal use and benefit, to the damage and prejudice of the government in the aforesaid amount.

"Contrary to law." [1]

On 10 August 1988, both accused were ordered arrested. Magsuci voluntarily surrendered and posted a surety bond for his provisional liberty. Ancla appeared to have absconded. On 12 September 1988, Magsuci pleaded "not guilty" to the accusation.

The factual findings of the Sandiganbayan may be narrated thusly:

Some time in January 1980, the Bureau of Fisheries and Aquatic Resources ("BFAR") and Dexter Construction ("DEXTER"), represented by its Manager Jaime B. Ancla, entered into a "Contract of Service" for the construction by the latter of a 40-ton ice making plant, including a 150-ton ice storage and 350-ton cold storage facility, in Surigao City. In October 1982, while the construction was still on-going, BFAR and Ancla executed a supplemental "Memorandum of Agreement," under which Ancla additionally undertook "the purchase and installation of three distribution transformers and construction of circular steel elevated tank" for P910,500.00. On 10 March 1983, BFAR Central Office Engineer David T. Enriquez, [2] charged with the duty to render accomplishment reports on the progress of the construction and to certify on the work accomplishments of DEXTER, prepared and signed an "Accomplishment Report," as well as a "Certification," attesting to the progress and extent of completion of the additional work. The report also bore the signature of Ancla. On the following day, or on 11 March 1983, Hermenegildo M. Magsuci, the newly designated [3] BFAR Regional Director for Region X, Cagayan de Oro City, read the Accomplishment Report and Certification, affixed his signature thereon, and directed the Chief of the Fisheries Extension Division in Cagayan de Oro City, David F. Ernacio, to cause the issuance of the corresponding voucher. Disbursement Voucher No. 3-0061, to which the Accomplishment Report and Certification were attached, was thereupon prepared for the payment of 45.32% (P412,729.24) of the contract price of P910,700.00, or P357,217.16 after deducting the contractor's tax, withholding tax, and the required retention. Magsuci signed the disbursement voucher, carrying the standard printed certification that the expenses were necessary, lawful, and incurred under his supervision. Forthwith, Magsuci likewise signed four checks, payable to the order of DEXTER, in the total amount of P357,217.16. The Disbursement Voucher, along with its attachments, and the corresponding checks were then transmitted from the regional office to the BFAR Central Office in Manila. Director Felix R. Gonzales approved the voucher and co-signed the checks. Later, the checks were released to DEXTER.

As it turned out, however, the additional work so represented to have been accomplished in the field report and certifications had yet to be undertaken. Although somewhat hazy, it would appear that the work was ultimately completed in December, 1983.

After trial, the Sandiganbayan rendered judgment, finding Magsuci guilty of the offense charged, and sentenced him thusly:

"WHEREFORE, the Court finds Hermenegildo M. Magsuci guilty beyond a reasonable doubt as principal of the complex crime of estafa defined in Article 318 of the Revised Penal Code, through falsification of public documents penalized under Article 171 of the same Code.

"Accordingly, the Court imposes on him the indeterminate sentence of SIX (6) MONTHS and ONE (1) DAY of prision correccional as minimum to TEN (10) YEARS and ONE (1) DAY of prision mayor as maximum and a fine of FIVE THOUSAND PESOS (P5,000.00) Philippine Currency.

"He is ordered to pay the government by way of reparation the amount of THREE HUNDRED FIFTY SEVEN THOUSAND TWO HUNDRED SEVENTEEN PESOS and SIXTEEN CENTAVOS (P357,217.16) representing the amount misapplied.

"SO ORDERED." [4]

The Sandiganbayan predicated its conviction of petitioner on its finding of conspiracy among Magsuci, Ancla and now deceased Enriquez.

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." [5] Conspiracy is not presumed. Like the physical acts constituting the crime itself, the

elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence therefor must reasonably be strong enough to show a community of criminal design. [6]

In concluding petitioner's involvement in the conspiracy, the Sandiganbayan could only point to Magsuci's having (1) noted the Accomplishment Report and Certification submitted by Enriquez, (2) signed the disbursement voucher with the usual certification on the lawful incurrence of the expenses to be paid, and (3) co-signed four checks for the payment of P352,217.16 to Ancla. The Sandiganbayan concluded that petitioner would not have thusly acted had he not been a party to the conspiracy.

Fairly evident, however, is the fact that the actions taken by Magsuci involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all that he had foreknowledge of any irregularity committed by either or both Engr. Enriquez and Ancla. Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the part of cohorts.

In *Arias vs. Sandiganbayan*, [7] this Court, aware of the dire consequences that a different rule could bring, has aptly concluded:

"We would be setting a bad precedent if a head of office plagued by all too common problems – dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence – is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

"xxx xxx xxx.

"x x x. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. x x x. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling."

We are not unaware of an observation made by this Court in *People vs. Rodis* [8] to the effect that a person may be so held liable as a co-principal if he, by an act of reckless imprudence, has brought about the commission of estafa through falsification, or malversation through falsification, without which (reckless negligence) the crime could not have been accomplished. [9] When, however, that infraction consists in the reliance in good faith, albeit misplaced, by a head of office on a subordinate upon whom the primary responsibility rests, absent a clear case of conspiracy, the *Arias* doctrine must be held to prevail.

WHEREFORE, the decision of the Sandiganbayan is REVERSED and SET ASIDE, and petitioner Magsuci is ACQUITTED of the charges against him. Costs de oficio.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.
Feliciano, J., on leave.

[1] Rollo, pp. 25-26.

[2] Engineer David T. Enriquez was named respondent during the preliminary investigation, but he died during the pendency thereof.

[3] In January 1983.

[4] Rollo, pp. 50-51.

[5] Art. 8, 2nd par., Revised Penal Code.

[6] See *People vs. Manuel, et al.*, G.R. No. 93926-28, 28 July 1994.

[7] 180 SCRA 309, 315-316.

[8] 105 Phil. 1294.

[9] Citing *Samson vs. Court of Appeals*, 103 Phil. 277.

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