

MIGUEL M. MEDIJA, JR., PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 102685. January 29, 1993

Ponente: MELO, J.

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MELO, J.:

Petitioner Miguel Medija was indicted for violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, in an Information quoted in the decision of respondent court and which reads:

"That on or about the 25th day of March, 1985, in Zamboanga City, Philippines and within the jurisdiction of this Honorable Court, accused Engr. Miguel Medija, Jr. y Minoza, a public officer being then employed as Engineer A at the National Irrigation Administration (NIA), Regional Office in Zamboanga City while in the exercise or performance of his official function as such, AMONG WHICH WAS TO CERTIFY TO THE ACTUAL CONDITION OF SUPPLIES AND EQUIPMENT DELIVERED TO AND RECEIVED BY HIM IN BEHALF OF THE NATIONAL IRRIGATION ADMINISTRATION (NIA), and taking advantage of his official position, conspiring and confederating with the accused Rolando Manalo y Salvador, a private individual and businessman/dealer of spare parts for light and heavy equipment, did then and there wilfully and unlawfully cause undue injury to the government through evident bad faith, by then and there certifying that a set (2 pcs.) of chain assembly for Fiat Allis Dozer No. 497232 supplied and delivered by his co-accused Rolando Manalo y Salvador was brand new by certifying that the same was "okay as to quantity and specification" when in truth and in fact said set (2 pcs.) was only a rebuilt one, thus making the government pay the amount of P136,800.00 which is the cost of a brand new set of chain assembly and which amount was actually paid to Rolando Manalo y Salvador, and thereby giving unwarranted benefit and/or advantage to the latter to the prejudice of the government.

Contrary to law." (pp. 28-29, Rollo.)

After trial, following a plea of not guilty, Medija was convicted and sentenced "to suffer the indeterminate penalty of imprisonment for a minimum of nine (9) years and one (1) day to a maximum of twelve (12) years and to suffer perpetual disqualification from public office". He was further ordered to pay the government, by way of reimbursement of actual damage to it, the amount of One Hundred Thirty Six Thousand Eight Hundred (P136,800.00) Pesos, and costs of suit (p. 53, Rollo).

Medija's co-accused, Rolando Manalo, remained at large, the warrant for his arrest having been returned unserved.

Medija has now resorted to the instant petition and seeks reversal of the judgment of conviction upon the following grounds.

"I. The Honorable Sandiganbayan committed grave abuse of discretion tantamount to excess or lack of jurisdiction -

(A) In not finding and concluding that petitioner was in good faith in the performance of his official duties, verbally assigned to him by his superior officers -

(B) In not finding and concluding that some other personnel/official of the Zamboanga City NIA should have been grossly negligent of duties and not the petitioner herein -

(C) In not finding and concluding that Rolando Manalo y Salvador the lone private respondent should be made to answer for his indiscretions and/or offense.

II - The Honorable Sandiganbayan also committed grave abuse of discretion tantamount to lack of or excess of jurisdiction by not having excluded from the information the petitioner and/or by acquitting him of the charges." (p. 10, Rollo)

The facts, as found by the trial court (pp. 16-17, Decision) and adopted by Medija in his petition (p. 10, Rollo) are as follows:

"Accused Engr. Miguel Medija, Jr. was a Mechanical Engineer employed as Engineer "A" of the Equipment Management Division, Region IX of the NIA. Among his duties were to conduct inspection, undertake evaluations and recommend schedules of repairs. His duties were mainly administrative in that he supervised the maintenance of equipment assigned to the NIA Regional Office. His superiors, at times, instructed him to conduct the inspection of certain equipment or spare parts delivered, considering that he was the only Mechanical Engineer in the Office.

On March 25, 1985, Engr. Laranjo instructed him to inspect one set of a chain assembly consisting of two pieces. He complied with the instruction by comparing the assembly to a link given by the Supply Officer, after which he wrote down in a report the result of his inspection which is that the assembly was "O.K. as to quantity and specification."

On the same day, Mr. Severino Labio, OIC of NIA, made a written request to the Commission on Audit for the inspection of the subject spare parts. In response, the COA sent Engr. Charles Bulac who made the inspection the next day. The result of his inspection was contained in a report addressed to the Auditor, NIA Region IX, Zamboanga City, dated March 27, 1985, which enumerated his findings and recommendations (Exhibit "F").

In the NIA office, however, the disbursement voucher had been prepared on March 25, 1985, but the check payment was prepared, and accounting entries therefor passed, only on March 29, 1985.

The subject chain assembly was delivered to the Molave Office of the NIA on March 30, 1985 by Mr. Paulino Castillo, a NIA driver. On April 8, 1985, Engr. Herculiano Judilla, Jr., Senior Engineer "B" of the NIA, inspected the assembly, and made a written report thereon which he submitted to Engr. Charlie Sabado (Exhibit "D").

The COA notified Mr. Labio (NIA-OIC) of Engr. Bulac's report. Acting on it, Mr. Labio gave notice to the supplier Aaron Enterprises of the discrepancy found on the chain assembly purchased from it. In response, Aaron Enterprises, through its proprietor, Mr. Manalo, undertook to replace the chain assembly and requested that he be given ninety (90) days within which to do so. The supplier failed to honor his commitment, for which reason the bulldozer, for which the chain assembly was intended, had remained inoperative up to the time of trial (pp. 37-38, t.s.n., January 15, 1990). (pp. 43-44, Rollo)

Medija was charged under Section 3 (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides -

"Sec. 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

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

In *Ponce de Leon v. Sandiganbayan* (186 SCRA 745 [1990]) the Court enumerated the elements of this offense as follows:

- "(1) That the accused are public officers or private persons charged in conspiracy with them;
- (2) That said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions;
- (3) That they cause undue injury to any party, whether the Government or a private party;
- (4) That such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
- (5) That the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence." (at p. 754)

It must be stressed that the information in this case charged that Medija, conspiring and confederating with his co-accused Rolando Manalo, caused undue injury to the government through evident bad faith by certifying that a 2-piece set of chain assembly for Fiat Allis Dozer No. 497232 supplied and delivered by his co-accused "okay as to quantity and specification"; when in truth and in fact said set was only a rebuilt one, thus making the government pay the amount of P136,800.00 which is the cost of a brand new set of chain assembly.

While the information charged "evident bad faith", respondent court found Medija guilty of "gross inexcusable negligence". Thus, respondent court discussed Medija's liability as follows:

"Accused Medija is a licensed Mechanical Engineer (p. 39, t.s.n., Sept. 13, 1990). As such, he is expected to be in a position to know that strict specifications are required for the equipment to suit their intended purpose, and that the checking of whether such specifications are met is part of the overall inspection process which he was particularly tasked to do in connection with the acceptance of the chain assembly.

In addition, the fact was that the spare part he was to examine was of a very high cost (P136,800.00), as indicated in the Inspection Report which he saw during, and which he signed after, his inspection. Equally significant was the fact that the bulldozer, for which the chain assembly was intended to be used, cost even more, and this should have, therefore, caused the accused to assume a much more critical posture in inspecting the chain assembly set in question.

The combination of all these facts required the accused Medija to be very careful and very thorough in the inspection of the chain assembly. However, he not only failed to exert extra effort to this end; he dispensed with even the simple procedural requirements given for ordinary inspection. The accused was, therefore, beyond doubt grossly negligent in his inspection of the chain assembly. "In the case of public officials, there is negligence when there is a breach of duty, or failure to perform an obligation, and there is gross negligence when a breach of duty is flagrant and palpable." (*Juan v. Arias*, 72 SCRA 404, p. 410). The negligence of the accused in the case is unquestionably palpable." (pp. 51-52, Rollo)

Also, the information charged conspiracy. But, significantly, the decision of respondent court is silent on this point.

In *Gomez v. Intermediate Appellate Court* (135 SCRA 620 [1985]) we stated:

“ ‘ ‘ ‘ that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself.”

To establish conspiracy, there must be evidence of intentional participation in the transaction with a view to the furtherance of the common design or purpose. (*People v. Agda*, 111 SCRA 330 [1982]). His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence.

In the case at bar, no evidence was presented by the prosecution to prove that Medija was indeed a part of a conspiracy to defraud the government.

Apparently, the main and only reason for the judgment of conviction is the "certification" of Medija. On the basis of this "certification", respondent court concluded that the government paid the amount of P136,800.00 to the supplier. In other words, it was the finding of respondent court that without the "certification" of Medija, the government would not have paid this amount or should not have paid the supplier at all.

We are constrained to reverse respondent court's finding and to rule that this kind of evidence is too conjectural and presumptive to establish personal culpability.

On the contrary, the evidence on record shows that the "certification" was not the reason for the payment. It was established that on March 25, 1985 Medija actually saw and inspected the subject chain assembly, but it was Orlando Villanueva, the Supply Officer, who prepared the report and accepted the delivery of the parts. Under the heading "Findings/Recommendations", Medija wrote the words "O.K. as to quantity and specification" which meant, according to him, that the spare parts were intended for a Fiat-Allis bulldozer as far as the specifications were concerned, and that they were of the correct number of pieces ("quantity"), but he told his superior officer that the chain assembly was not "brand new". Aside from his signature on the inspection report, there was no other paper upon which accused had affixed his signature.

It was likewise established that on March 26, 1985, OIC Severino Labio of NIA, Zamboanga City requested Civil Engineer Charles Bulac, of the COA, Zamboanga City, Region 9 to conduct a post-audit examination of the subject chain assembly. As the instruction was written and required Engr. Bulac to make a report and recommendation thereon, Engr. Bulac complied and in his written report dated March 26, 1985, he found that the delivered chain assembly is not brand new and not yet complete. OIC Labio communicated with the supplier, accused Rolando Manalo who promised to replace the chain assembly. Despite the findings of Engr. Bulac and the failure of Rolando Manalo to replace the chain assembly, the check for its payment was prepared on March 29, 1985, and the rebuilt chain assembly was delivered to Molave, Zamboanga del Sur on March 30, 1985. There is nothing in the record to show that Medija had any participation in the preparation of the check and in the delivery of the chain assembly. Respondent court, without any clear factual basis for doing so has assumed that Medija was part of an illegal scheme. It could not also be said, in the light of the evidence on record, that had Medija not made the "certification" the government would not have been defrauded. In the first place, why did NIA pay the supplier, when it already knew beforehand that the chain assembly delivered was not brand new? True, in making the inspection, Medija should have been more careful. His lack of care, however may be a ground for administrative action, but it does not give rise to criminal culpability absent more evidence against him. There should be other grounds than the mere "certification" to sustain a conspiracy charge and conviction thereunder. Was Medija part of the planning, preparation and perpetration of the alleged conspiracy to defraud the government. Did Medija profit from this illegal scheme? The evidence on record is certainly very much wanting

on these points. Besides, who were Medija's co-conspirators? Why were not the more responsible officers who had a hand in the preparation of the purchase order and the requisition voucher, the preparation of the check and its subsequent payment, the delivery and acceptance of the chain assembly, not indicted?

Considering all the foregoing, we feel that Medija cannot in fairness be held liable under the indictment. The evidence on record cannot sustain a verdict of guilt beyond reasonable doubt.

WHEREFORE, the assailed decision of the Sandiganbayan is hereby SET ASIDE and Miguel M. Medija, Jr. is acquitted on grounds of reasonable doubt. No costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Campos, Jr., JJ., concur.

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