

ROSALIA M. DUGAYON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 147333. August 12, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Petitioner Rosalia Dugayon seeks the review of the Decision[1] dated November 24, 2000 of the Sandiganbayan in Criminal Case No. 20344, convicting her and her co-accused, Jessie[2] Callangan, of violating Section 3(e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.

The following facts, as summarized by the Sandiganbayan, are undisputed:[3]

Sometime in July 1989, the Department of Social Welfare and Development (DSWD), Region 2, Tuguegarao, Cagayan, embarked on a P239,460[4] project involving the procurement of 19 typewriters. A Procurement Board was formed, composed of Assistant Regional Director Rosalia Dugayon as Chairman, Supply Officer Rogelio Hipolito and Carlito Catabay as authorized canvasser.

The Board prepared the Requisition for Equipment and Supplies (RES) for the 19 typewriters indicating their specifications. The RES was submitted to Regional Director Consolacion Arafiles for signature and approval. Upon approval of the RES, petitioner Dugayon released letters of canvass (similar to an invitation to bid) addressed to dealers in Tuguegarao and Manila. From four proposals, San Sebastian Marketing, represented by Jessie Callangan, won the bid. When State Auditor Judy Singson, resident auditor of DSWD, Region 2, Tuguegarao, Cagayan, learned about the opening of the bids, she sent a letter dated July 21, 1989 to Regional Director Consolacion Arafiles about the deficiencies in the bidding. In her letter, Auditor Singson observed that the Auditor's Office was not informed of the opening of the bids, in violation of Section 391[5] of the Government Accounting and Auditing Manual; that the Auditor was not furnished with copies of bid invitations at least two weeks ahead of the opening date; that bidder's bonds were not imposed; and that the bidders were not required to submit or present their License/Accreditation before the opening of the bid proposals. She recommended that the bidding be cancelled and another one be conducted.

In a letter dated July 25, 1989, Director Arafiles responded that the opening of the bids was done in good faith.

Auditor Singson[6] sent another letter dated July 28, 1989 advising Director Arafiles to require the winning bidder to post a performance bond instead, to ensure the delivery of the equipment since it was already late to impose a bidder's bond.

Thereafter, the Procurement Board prepared the Purchase Order specifying the brands and specifications of the 19 typewriters to be delivered and addressed to San Sebastian Marketing c/o Jessie Callangan.

San Sebastian made three partial deliveries on August 14, 16 and 21, 1989. Upon delivery, the Inspection and Acceptance Committee headed by Supply Officer Rogelio Hipolito, inspected and tested the typewriters and certified in the Reports of Inspection[7] that the deliveries were in accordance with the specifications in the

Purchase Order.

Subsequently, Supply Officer Hipolito prepared the voucher for payment attaching therein the supporting documents including the Reports of Inspection dated August 14, 16 and 21, 1989. San Sebastian Marketing was paid with three checks in the amounts of P92,880, P88,560 and P58,050, as evidenced by three official receipts, all dated August 24, 1989.

Upon post-audit, acting on the Inspection Report dated November 15, 1989 by Agapito Malaki, Technical Audit Specialist of the COA, Regional Office No. 2, Tuguegarao, Cagayan, the Commission on Audit (COA) disallowed the vouchers/checks. The Inspection Report stated, among others, that all the 19 typewriters were not brand new, but merely rebuilt and reconditioned.

In notices dated November 29, 1989, the COA informed petitioner Dugayon, Director Arafiles, Supply Officer Hipolito and San Sebastian Marketing of the report.

The petitioner, Arafiles, Hipolito and Callangan were indicted for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan. Quoted below is the Amended Information dated June 17, 1994:

That for the period July 25 to August 24, 1989 or immediately prior and subsequent thereto, in Tuguegarao, Cagayan and within the jurisdiction of this Honorable Court, the accused, CONSOLACION ARAFILES, ROSALIA DUGAYON, ROGELIO D. HIPOLITO and JESSEE CALLANGAN, Regional Director, Asst. Regional Director, Supply Officer III, all of DECS[8] and Supplier, respectively, the said public officers in the discharge of their duties as such, conspiring and confederating with one another and with JESSEE CALLANGAN as supplier, did then and there wilfully, unlawfully, with evident bad faith, purchase, pay and accept nineteen (19) second-hand rebuilt and reconditioned typewriters from Jessee Callangan of San Sebastian Marketing, contrary to the intention to purchase brand new units of typewriters only, for a total cost of P239,490.00, when in truth and in fact, the total and actual cost of the said nineteen (19) units of second-hand, rebuilt and reconditioned typewriters at the time of purchase was only P141,800.00 or a difference of P97,690.00 to the damage and prejudice of the government.

CONTRARY TO LAW.[9]

On July 6, 1994, the Sandiganbayan ordered the immediate arrest of the accused. Except for Hipolito, who remains at-large, all of the accused were arrested and later released on bail.

After the trial, the Sandiganbayan rendered its assailed Decision on November 24, 2000, convicting petitioner and Callangan, acquitting Arafiles and ordering the archiving of the case against Hipolito. The decretal portion of said decision reads:

WHEREFORE, under the premises, this Court finds accused ROSALIA M. DUGAYON and JESSEE G. CALLANGAN "GUILTY" beyond reasonable doubt of Violation of Section 3, paragraph (e) of R.A. No. 3019, as amended, and are hereby sentenced to suffer each an indeterminate prison term of Six (6) years and One (1) day, as minimum, to Nine (9) years and One (1) day, as maximum; to indemnify the government jointly and severally, in the amount of Ninety-Seven Thousand Six Hundred and Ninety Pesos (P97,690.00), with costs; and accused Dugayon to further suffer perpetual disqualification from public office.

On the other hand, in view of the above findings, accused CONSOLACION D. ARAFILES, is hereby ACQUITTED of the charge. Accordingly, the Clerk of Court of the Fifth Division of this Court is ordered to release Original Receipt No. 4193001 dated July 18, 1994, in the amount of P15,000.00 covering her cash bond, upon proper receipt therefor, subject to the usual auditing and accounting procedures.

As far as accused ROGELIO D. HIPOLITO is concerned, who is still at-large up to this time, the case against him is hereby ordered archived until the Court shall have obtained jurisdiction over his person.

Correspondingly, let an alias warrant of arrest be issued against him.

SO ORDERED.[10]

The Sandiganbayan denied the respective motions for reconsideration of the petitioner and Callangan in its Resolution[11] dated February 26, 2001. Callangan's petition for review on certiorari was denied by the Supreme Court in a resolution dated August 8, 2001 for his failure to file the same within the reglementary period.

Here, before us, petitioner Dugayon assigns to the Sandiganbayan the following errors:

(1) THE HONORABLE SANDIGANBAYAN (FIFTH DIVISION) GRAVELY ERRED IN HOLDING AND DECLARING ON THE EXISTENCE OF A CONSPIRACY AMONG PETITIONER-APPELLANT ROSALIA M. DUGAYON, ACCUSED (AT-LARGE) ROGELIO D. HIPOLITO, AND JESSEE CALLANGAN.

(2) THE HONORABLE SANDIGANBAYAN (FIFTH DIVISION) IN CONVICTING PETITIONER-APPELLANT ROSALIA M. DUGAYON, FOR THE OFFENSE CHARGED FAILED TO APPRECIATE THE FACT THAT THE EVIDENCE ADDUCED BY THE PROSECUTION ARE NOT SUFFICIENT AND ADEQUATE TO ESTABLISH HER GUILT BEYOND REASONABLE DOUBT.[12]

In our view, the following issues must be resolved: (1) Was there a conspiracy to defraud the government? and (2) Is the evidence sufficient to prove the crime beyond reasonable doubt?

On the first issue, petitioner avers that conspiracy is not presumed and that the elements of conspiracy, like the physical acts constituting the crime itself, must be proven beyond reasonable doubt. She notes that the Sandiganbayan could only point to her having signed the certification portion of the disbursement vouchers that states,

3. CERTIFIED: Expenses necessary, lawful and incurred under my direct supervision. Additional in case of contracts, or purchases of goods or services prices reasonable and not in excess of the current rates in the locality.

(Sgd.) ROSALIA M. DUGAYON

ARD FOR Admin.[13]

While she admits being the Chairman of the Procurement Board, she denies being a member of the Inspection and Acceptance Committee. She argues that, as Assistant Regional Director of the DSWD, she relies entirely on the recommendations of her subordinates, on the recommendation of the accountant with respect to the Purchase Order, and on the signatures and recommendations of four subordinates who process the documents with respect to the disbursement vouchers. She likewise denies she conspired with her co-accused. Petitioner submits that the elements of conspiracy were not established beyond reasonable doubt and she should be acquitted.[14]

On the issue of conspiracy, petitioner relies on *Magsuci v. Sandiganbayan*,[15] which cited *Arias v. Sandiganbayan*,[16] as precedent to prove the high improbability of her conspiring with her co-accused. She quotes,

“ [the Court] 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. (Underscoring ours.)

...

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.”

...

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.

Respondent, on the other hand, insists that petitioner was evidently part of the conspiracy considering that she certified the disbursement vouchers when she very well knew that the typewriters were not brand new. Respondent offers as basis *People v. Geronimo*[17] which cited *People v. Carbonel*,[18] and quotes,

when the defendants by their acts aimed at the same object, one performing one part and another performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy. . . .

Respondent notes that the Sandiganbayan pointed out that petitioner certified the disbursement vouchers; she chaired the Procurement Board, and she signed the report of the Inspection and Acceptance Committee. On the whole, she had an extensive and active participation in this transaction for which she cannot disclaim responsibility and liability. She could not have been unaware that the 19 typewriters were secondhand, rebuilt and reconditioned.

In the recent case of *Alvizo v. Sandiganbayan*,[19] we said,

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.

It is not correct for the petitioner to say that the Sandiganbayan could only point to her having signed and certified the disbursement vouchers for her involvement in the conspiracy. Other circumstances point to a finding of conspiracy. Among them, she was the Chairman of the Procurement Board and member/signatory of the Inspection and Acceptance Committee. Moreover, despite patent and glaring defects in the typewriters which could be determined by a reasonable inspection of the units, petitioner signed the Reports of Inspection that mentioned only that the delivered typewriters met the quantity ordered. The report was silent on the quality of the typewriters. Yet, she hastily signed it, conveniently overlooking the deficiencies in the transaction.

Petitioner cannot seek refuge in the cases of *Magsuci* and *Arias* when she relied on the recommendations of her subordinates. Petitioner is an Assistant Regional Director, not the head of office or the final approving authority on whom the Arias doctrine is applicable. That is the reason why the Sandiganbayan acquitted Regional Director Arafiles, who was the head of office.

Moreover, petitioner's denial of her membership in the Inspection and Acceptance Committee is belied by the records of this case. The records show she signed the Reports of Inspection as a member/signatory of the Acceptance Committee. In her testimony, she also admitted inspecting the three deliveries[20] and supervising three subordinates.[21]

On the sufficiency of the evidence to prove petitioner was guilty beyond reasonable doubt of graft and corruption, Section 3(e) of Rep. Act No. 3019 (Anti-Graft and Corrupt Practices Act) is pertinent. It 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:

...

(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.

The essential elements of this crime are: (1) the accused are public officers or private persons charged in conspiracy with them; (2) said public officers commit the prohibited acts during the performance of their official duties or in relation to their public position; (3) they caused undue injury to any party, whether the government or a private party; (4) such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[22]

Recall that at the time of purchase of the typewriters, the petitioner was then the Assistant Regional Director of DSWD Region 2, Tuguegarao, Cagayan. She was Chairman of the Procurement Board and member/signatory of the Inspection and Acceptance Committee. She accepted the secondhand typewriters, contrary to the requirement to buy brand new units, and allowed payment for them at the price of brand new units. She admitted that the specification for the typewriters should be brand new.[23] The Sandiganbayan found the typewriters that were paid for were secondhand, rebuilt and reconditioned. These findings of fact are binding on us.[24] We find no reason to reject these findings as these were based on the Inspection Report of the COA.

Without hesitation we find that this transaction defrauded and caused injury to the government. The Sandiganbayan reported that based on the Prices Comparison of Agency Purchase Price Against Re-canvassed Prices on Re-conditioned Items, the government paid P239,490 for the deliveries or P97,690 more than the actual cost of P141,800 of the rebuilt/reconditioned typewriters, giving unwarranted benefits to San Sebastian Marketing and Jessie Callangan. The amount of P97,690 represents the actual damage suffered by the government in this anomalous transaction.

In our view, petitioner not only failed in her duty as Chairman of the Procurement Board and member/signatory of the Inspection and Acceptance Committee, she also clearly acted with evident bad faith. Bad faith does not simply connote bad judgment or negligence. It imputes a dishonest purpose or some moral obliquity and conscious wrongdoing. It partakes the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or with some motive, self-interest or ill will, or for ulterior purposes.[25] Verily, petitioner must answer for her acts and omissions.

WHEREFORE, the petition is DISMISSED. The assailed Decision dated November 24, 2000 of the Sandiganbayan is hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[*] Also referred to as “Rosalinda” in other parts of the records.

[1] Rollo, pp. 25-53.

[2] Also spelled as Jesie or Jessee in other parts of the records.

[3] Rollo, pp. 42-44.

[4] As cited by the Sandiganbayan in its Decision. Based on Exhibit “F,” the amount should be P239,490.

[5] As cited in the letter (Exhibit C). Proper reference should have been to Section 436 which provides,

Sec. 436. Examination of bids.-A representative of the COA Chairman shall be present at the opening of all bids and quotations in all cases of competitive public bidding conducted by the national, provincial, city or municipal governments. His duties shall be confined strictly to: (a) secure and identify such papers and samples of the materials submitted by the bidders to ensure the proper safeguard of the interests of the government; and (b) obtain an authenticated copy of the abstract of bids and quotations (COA Cir. 78-87, Sept. 6, 1978).

Employees of the Commission on Audit shall not participate in any of the following functions:

- Canvassing the market for quotations
- Issuing invitations to bid
- Examining bids before making the award
- Awarding the contract
- Any functions relating to the securing of bids or awarding of contracts, except only as provided in Sections 46 and 47 of Book V, Title I-B, of the 1987 Administrative Code.

However, the Commission on Audit shall examine an agency’s files of bids and awards of contracts and orders, either in full or on a selective basis, as circumstances require. These examinations shall be made to determine that the agency’s procedures are fundamentally sound, properly implemented, and the acquisition of supplies, materials, equipment and services is at the most advantageous prices and in a regular and businesslike manner.

The agency head shall arrange for the conduct of reviews with similar objectives. A report shall be required for each review made, and the original signed report shall be held available for inspection by the Commission on Audit on demand (Gen. Cir. 45 and 83, Memo Cir. 322 & 324).

[6] Referred to as “Pagulayan” in the decision of the Sandiganbayan but based on Exhibits D and D-1, Auditor Singson signed this letter. For clarity, instead of referring to “Pagulayan” the same is changed to “Auditor Singson.”

[7] Also referred to as “Inspection Report” in some parts of the records. Rephrased “Reports of Inspection” (based on the titles of Exhibits K, K-4, K-8) and to distinguish the same from the Inspection Report of the COA.

[8] The Sandiganbayan observed that the amended information inadvertently alleged that the accused public officers were all from “DECS”; that such allegation is inaccurate considering that all of them were from “DSWD” as contained in the original information and from the testimonies of witnesses; and that such inaccuracy

is clearly a typographical error. See Rollo, p. 51.

[9] Records, Vol. 1, pp. 21-22.

[10] Rollo, p. 52.

[11] Id. at 54-55.

[12] Id. at 14.

[13] Exhibit "F," Folder of Exhibits for the Plaintiff.

[14] Rollo, pp. 15-21.

[15] G.R. No. 101545, 3 January 1995, 240 SCRA 13, 18-19.

[16] G.R. No. 81563, 19 December 1989, 180 SCRA 309, 315-316.

[17] No. L-35700, 15 October 1973, 53 SCRA 246, 254.

[18] No. 24177, 15 March 1926, 48 Phil. 868, 876.

[19] G.R. Nos. 98494-98692, 17 July 2003, 406 SCRA 311, 374-375.

[20] TSN, 13 August 1998, p. 25.

[21] Id. at 25-27; Rollo, p. 49.

[22] Supra, note 19 at 343-344.

[23] TSN, 13 August 1998, pp. 21-22.

[24] Supra, note 19 at 353.

[25] Id. at 344.

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