

LINDA CADIAO-PALACIOS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 168544. March 31, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For review is the Decision[1] of the Sandiganbayan dated January 28, 2005 in Criminal Case No. 27434, finding Victor S. Venturanza (Venturanza) and petitioner Linda Cadio-Palacios guilty beyond reasonable doubt of violation of Section 3(b), Republic Act (R.A.) No. 3019.[2]

Petitioner was the mayor of the Municipality of Culasi, Province of Antique from July 1998 to June 2001.[3] During her administration, there were infrastructure projects that were initiated during the incumbency of her predecessor, then Mayor Aida Alpas, which remained partially unpaid. These included the Janlagasi Diversion Dam, San Luis Diversion Dam, Caridad-Bagacay Road, and San Juan-Tumao Road which were contracted by L.S. Gamotin Construction (L.S. Gamotin) with a total project cost of P2 million. For the said projects, the municipality owed the contractor P791,047.00.[4]

Relative to the aforesaid projects, petitioner, together with Venturanza, then the Municipal Security Officer, was indicted in an Information for violation of Section 3(b), R.A. No. 3019, the accusatory portion of which reads:

That in or about the month of January, 1999, and for sometime prior and subsequent thereto, at the Municipality of Culasi, Province of Antique, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, LINDA CADIAO PALACIOS and VIC VENTURANZA, public officers, being the Municipal Mayor and Security Officer to the Mayor, respectively, of the Municipality of Culasi, Antique, and as such, accused Mayor is the approving authority of contracts involving the Municipality, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent of (sic) gain, did then and there willfully, unlawfully and feloniously demand money from Grace Superficial of L.S. Gamotin Construction, which undertook the construction of the following government projects, for the Municipality of Culasi, Province of Antique, to wit:

- a) Rehabilitation of Tumao-San Juan Road;
- b) Rehabilitation of Centro Norte-Buenavista Road; and
- c) Rehabilitation of Bagacay-Buenavista Road

which projects amounted to TWO MILLION PESOS (P2,000,000.00), Philippine Currency, which was sourced from the National Disaster Coordinating Council and channeled to the Municipality of Culasi, under condition that the final payments for said projects would not be released, if said amounts would not be given, and consequently received the amounts of FIFTEEN THOUSAND PESOS (P15,000.00) in cash and ONE HUNDRED SIXTY-TWO THOUSAND FOUR HUNDRED PESOS (P162,400.00) in LBP Check No. 3395274, thus accused Mayor Linda Cadio Palacios, directly or indirectly through her co-accused Vic Venturanza, demanded or received money from a person, in connection with contracts or transactions between the government, wherein the public officer in her official capacity has to intervene under the law.

CONTRARY TO LAW.[5]

On April 16, 2002, both accused voluntarily surrendered and, upon motion, posted a reduced bail bond of P15,000.00 each.[6] They were subsequently arraigned wherein they both pleaded "Not Guilty." [7] Trial thereafter ensued.

During trial, the prosecution presented its sole witness--the private complainant herself, Grace M. Superficial (Superficial). Her testimony may be summarized as follows:

For and on behalf of L.S. Gamotin, she (Superficial) took charge of the collection of the unpaid billings of the municipality.[8] Prior to the full payment of the municipality's obligation, petitioner demanded money from her, under threat that the final payment would not be released unless she complied. Acceding to petitioner's demand, she gave the former's husband P15,000.00.[9] Sometime in January 1999, petitioner demanded from Superficial the full payment of her total "kickback" which should be 10% of the project cost. Superficial thus proposed that she would deliver a check in lieu of cash, to which petitioner agreed.[10]

On January 25, 1999, petitioner gave to Neil Superficial, then an incumbent councilor and the husband of private complainant, three checks[11] representing the final payment for the construction projects. The following day, Venturanza picked up the check promised by Superficial as payment for the 10% "kickback." In accordance with petitioner's instruction, the check was made payable to Venturanza in the amount of P162,400.00. The check was encashed by Venturanza at the Land Bank of the Philippines (LBP), San Jose, Antique Branch, which is about 90-100 kilometers away from Culasi; and the amount was received by Venturanza.[12] It was Venturanza also who deposited the three checks, representing the full payment of the project, to the account of Superficial.[13]

The prosecution likewise offered the following documentary evidence: 1) Minutes of the Meeting of Pre-Qualification, [Bid] and Award Committee (PBAC) held at the Municipality of Antique;[14] 2) Land Bank Check No. 3395274P dated January 26, 1999 in the amount of P162,400.00;[15] 3) Complainant's Consolidated Sur-Reply;[16] and 4) Deposit Slip of the three LBP Checks representing full payment of the project.[17]

The defense, on the other hand, presented the following witnesses: 1) petitioner herself, 2) Venturanza, 3) Engr. Armand Cadigal, 4) petitioner's husband Emmanuel Palacios, 5) petitioner's Executive Assistant Eugene de Los Reyes, and 6) Atty. Rex Suiza Castillon. Their testimonies may be summarized as follows:

Petitioner denied Superficial's allegations. She insisted that she only dealt with the owner of L.S. Gamotin, Engr. Leobardo S. Gamotin (Engr. Gamotin), relative to the infrastructure projects; thus, she could have made the demand directly from him and not from Superficial. Contrary to Superficial's contention, it was Engr. Gamotin himself who claimed payment through a demand letter addressed to petitioner.[18] She added that she only met Superficial when the latter received the checks representing the final payment. She further testified that she never entrusted any highly sensitive matter to Venturanza since her trusted employee was her chief of staff. She also averred that she was not the only person responsible for the release of the checks since the vouchers also required the signatures of the municipal treasurer, the municipal budget officer, and the municipal accountant.[19] As far as Venturanza was concerned, she denied knowledge of such transaction as he did not ask permission from her when he used the vehicle of the municipality to go to San Jose.[20] Lastly, she claimed that the filing of the case against her was politically motivated.[21]

Emmanuel Palacios likewise denied having received P15,000.00 from Superficial. He claimed that he was financially stable, being a Forester; the manager of a 200-hectare agricultural land and of a medium piggery establishment; and the owner of a residential house valued at no less than P6 million, a parcel of land and other properties.[22] He also claimed that the institution of the criminal case was ill-motivated as Neil Superficial, in

fact, initiated a complaint against him for frustrated murder.[23]

Venturanza, for his part, admitted that he indeed received the check from Superficial but denied that it was "grease money." He claimed that the said amount (P162,400.00) was received by him in the form of a loan. He explained that he borrowed from Superficial P150,000.00 to finance his trip to Australia so that he could attend the wedding of his nephew; and asked for an additional amount for his expenses in processing his visa.[24] Venturanza, however, failed to leave for Australia. Of the total amount of his loan, he allegedly spent P15,000.00 in processing his visa. Venturanza stated that he was able to repay the entire amount immediately because he obtained a loan from the Rural Bank of Aklan, Pandan Branch, to pay the amount he used in applying for his visa. He further testified that he was persuaded by the Superficials to campaign against petitioner.[25]

On January 28, 2005, the Sandiganbayan rendered a decision convicting both accused of the crime charged, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused LINDA CADIAO-PALACIOS and VICTOR S. VENTURANZA GUILTY beyond reasonable doubt of violation of Section 3 (b) of Republic Act No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act. Accordingly, in view of the attendant mitigating circumstance of voluntary surrender of both accused, each of them are hereby sentenced to (i) suffer an indeterminate sentence of imprisonment for a period of six (6) years and one (1) month, as minimum, to nine (9) years, as maximum; (ii) suffer all accessory penalties consequent thereto; and (iii) pay the costs.

SO ORDERED.[26]

The Sandiganbayan concluded that the following circumstances established the guilt of both petitioner and Venturanza: 1) that the municipality had outstanding obligations with L.S. Gamotin for the construction of several public works that were completed in 1998; 2) that petitioner was the person authorized to effect the payment of said obligations which, in fact, she did; 3) that Venturanza was a trusted employee of petitioner as he was in charge of the security of the municipal buildings and personnel as well as the adjoining offices; 4) that Venturanza received the three LBP checks representing the full payment to L.S. Gamotin and the LBP check bearing the amount of P162,400.00; 5) that Venturanza went to San Jose, Antique on January 26, 1999 to deposit the three checks and encashed the P162,400.00 check; 6) that Venturanza did not receive the above amount by virtue of a loan agreement with Superficial because there was no evidence to prove it; 7) that Venturanza used the vehicle of the municipality to encash the check in San Jose, Antique; and 8) that the amount of P15,000.00 initially given to Emmanuel Palacios and the P162,400.00 appearing on the check corresponded to the 10% of the total project cost after deducting the 10% VAT and P10,000.00 Engineering Supervision Fee.[27]

In arriving at this conclusion, the Sandiganbayan gave credence to the testimony of the lone witness for the prosecution. It added that contrary to the claim of the defense, no ill motive could be attributed to her in testifying against petitioner and Venturanza. This is especially true in the case of the latter, as she was related to him. In finding both accused guilty, the Sandiganbayan concluded that, together, they conspired in committing the offense charged.

Aggrieved, petitioner and Venturanza separately appealed their conviction. The latter petition was docketed as G.R. No. 168548 which was denied by this Court in a Resolution dated September 26, 2005. The former, on the other hand, is now before us, mainly challenging the legal and factual bases of the Sandiganbayan decision.

The petition lacks merit.

Section 3 (b) of the Anti-Graft and Corrupt Practices Act 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 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 party, wherein the public officer in his official capacity has to intervene under the law.

To be convicted of violation of Section 3(b) of R.A. No. 3019, the prosecution has the burden of proving the following elements: 1) the offender is a public officer; 2) who requested or received a gift, a 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.[28]

At the time material to the case, petitioner was the mayor of the Municipality of Culasi, Antique. As mayor, her signature, both in the vouchers and in the checks issued by the municipality, was necessary to effect payment to contractors (for government projects).[29] Since the case involved the collection by L.S. Gamotin of the municipality's outstanding obligation to the former, the right of petitioner to intervene in her official capacity is undisputed. Therefore, elements 1, 4 and 5 of the offense are present.[30]

Petitioner's refutation of her conviction focuses on the evidence appreciated by the Sandiganbayan establishing that she demanded and received "grease money" in connection with the transaction/contract.

Section 3(b) 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. Each of these modes of committing the offense is distinct and different from one another. Proof of existence of any of them suffices to warrant conviction.[31]

The Sandiganbayan viewed the case as one, the resolution of which hinged primarily on the matter of credibility. It found Superficial and her testimony worthy of credence, that petitioner demanded "grease money" as a condition for the release of the final payment to L.S. Gamotin. Aside from the demand made by petitioner, the Sandiganbayan likewise concluded that, indeed, she received the "grease money" through Venturanza. Therefore, petitioner was convicted both for demanding and receiving "grease money."

We find no cogent reason to disturb the aforesaid conclusions.

Well-settled is the rule that factual findings of the Sandiganbayan are conclusive upon this Court[32] save in the following cases: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; 2) the inference made is manifestly an error or founded on a mistake; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record;[33] and 6) said findings of fact are conclusions without citation of specific evidence on which they are based.[34] The instant case does not fall under any of the foregoing exceptions.

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.[35] It is within the discretion of the Sandiganbayan 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.[36] Between the Sandiganbayan and this Court, the former was concededly in a better position to determine whether or not a witness was telling the truth.[37]

Petitioner contends that it was improbable for her to have demanded the "grease money" from Superficial, when she could have talked directly to the contractor himself. She insists that Superficial was never a party to the transaction and that Engr. Gamotin was the one who personally facilitated the full payment of the municipality's unpaid obligation.

This contention does not persuade. As held in *Preclaro v. Sandiganbayan*,^[38] it is irrelevant from whom petitioner demanded her percentage share of the project cost - whether from the contractor himself or from the latter's representative. That petitioner made such a demand is all that is required by Section 3(b) of R.A. No. 3019, and this element has been sufficiently established by the testimony of Superficial.^[39]

Notwithstanding her claim that the prosecution failed to present a special power of attorney to show Superficial's authority to represent L.S. Gamotin, petitioner admitted that it was Superficial (or her husband) who received the three checks representing full payment of the municipality's obligation. Moreover, although the checks were issued to L.S. Gamotin, the deposit slip showed that they were deposited by Venturanza to the account of Superficial. Thus, contrary to petitioner's contention, the evidence clearly shows that Superficial was not a stranger to the transaction between the municipality and L.S. Gamotin, for she, in fact, played an important role in the receipt of the final payment of the government's obligation. It was not, therefore, impossible for petitioner to have demanded the "grease money" from Superficial, for after all, it was the latter who received the proceeds of the final payment. This was bolstered by the fact that the P162,400.00 check in the name of Venturanza was encashed by him on the same day that he deposited the three checks. If indeed the amount given to Venturanza was in the form of a loan to finance his trip to Australia, why was the grant of the loan dependent on the receipt of the final payment to L.S. Gamotin?^[40] We cannot fathom how Superficial could lend money out of the proceeds of the checks which admittedly were received by her not in her own capacity but for and on behalf of another person (L.S. Gamotin). The only plausible explanation is that the amount given to Venturanza was "grease money" taken from the proceeds of the checks issued by the municipality.

In holding that petitioner and Venturanza conspired in committing the offense, we agree with the Sandiganbayan that the circumstances enumerated above point to the culpability of the accused. Admittedly, there was no direct evidence showing that petitioner demanded and received the money but the testimony of Superficial, corroborated by the documentary evidence and the admissions of the witnesses for the defense, sufficiently establishes that Venturanza received the money upon orders of petitioner.

The sad reality in cases of this nature is that no witness can be called to testify since no third party is ordinarily involved to witness the same. Normally, the only persons present are the ones who made the demand and on whom the demand was made.^[41] In short, like bribery, the giver or briber is usually the only one who can provide direct evidence of the commission of this crime.^[42] While it is true that entrapment has been a tried and tested method of trapping and capturing felons in the act of committing clandestine crimes^[43] like the instant case, we cannot fault Superficial in not resorting to this method because of the position occupied by petitioner during that time, as well as the power attached to her office. This is especially true in the instant case as the person who made the demand assigned another person to receive the "grease money"; and ordered that the check be issued in the name of another person.

One final note. Proof beyond reasonable doubt does not mean evidence that which produces absolute certainty; only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.^[44] We find that such requirement has been met in the instant case.

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit. The Decision of the Sandiganbayan dated January 28, 2005 in Criminal Case No. 27434 is AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Tinga,[*] and Peralta, JJ., Concur.

[*] Additional member in lieu of Associate Justice Minita V. Chico-Nazario per Special Order No. 590 dated March 17, 2009.

[1] Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Raoul V. Victorino and Norberto Y. Geraldez, concurring; rollo, pp. 76-111.

[2] Otherwise known as the "Anti-Graft and Corrupt Practices Act."

[3] Records, p. 67.

[4] Rollo, p. 87.

[5] Records, pp. 1-2.

[6] Id. at 26.

[7] Id. at 44-45.

[8] Rollo, p. 80.

[9] Id. at 81.

[10] Id. at 81-82.

[11] Land Bank Check No. 0033150 - P212,246.59 as final payment for the Janlagasi Diversion Dam project;

Land Bank Check No. 3396376 - P523,800.00 as final payment for the Caridad-Bagacay Road project;

Land Bank Check No. 033149 - P55,000.00 as final payment for the San Luis Diversion Dam project.

[12] Rollo, p. 82.

[13] Records, p. 98.

[14] Id. at 86-87.

[15] Id. at 88.

[16] Id. at 89-97.

[17] Id. at 98.

[18] Rollo, p. 90.

[19] Id. at 88-89.

[20] Id. at 89.

[21] She allegedly declined Neil Superficial's proposal to merge forces with him to run as his wife's Vice-Mayor.

[22] Rollo, p. 91.

[23] Id. at 91-92.

[24] Id. at 85.

[25] Id. at 85-87.

[26] Id. at 110.

[27] Id. at 105-106.

[28] *Garcia v. Sandiganbayan*, G.R. No. 155574, November 20, 2006, 507 SCRA 258, 277-278; *Chang v. People*, G.R. No. 165111, July 21, 2006, 496 SCRA 321, 331-332.

[29] Rollo, p. 89.

[30] See *Peligrino v. People*, 415 Phil. 94, 117 (2001).

[31] Id. at 118.

[32] *Garcia v. Sandiganbayan*, supra note 28, at 282.

[33] Id.

[34] *Balderama v. People*, G.R. Nos. 147578-85 and 147598-605, January 28, 2008, 542 SCRA 423, 432.

[35] *Peligrino v. People*, supra note 30, at 121.

[36] Id.

[37] *Merencillo v. People*, G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 42.

[38] 317 Phil. 542 (1995).

[39] *Preclaro v. Sandiganbayan*, id. at 554.

[40] Venturanza testified that Superficial told him that if she will be able to collect from her contract with the municipality of Culasi, she would be able to give the amount he wanted to borrow. (Rollo, p. 86.)

[41] But see *Sps. Boyboy v. Atty. Yabut, Jr.*, 449 Phil. 664 (2003).

[42] See *Peligrino v. People*, supra note 30, at 118.

[43] *Spouses Boyboy v. Atty. Yabut, Jr.*, supra note 41, at 675.

[44] *Preclaro v. Sandiganbayan*, supra note 38, at 554.

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