

**MACARIOLA S. BARTOLO AND VIOLEND A. SUCRO, PETITIONERS,
VS. THE HONORABLE SANDIGANBAYAN, SECOND DIVISION, THE
HONORABLE SECRETARY HERMOGENES EBDANE OF THE
DEPARTMENT OF PUBLIC W...**

G.R. NO. 172123. April 16, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The petition for certiorari assails the Resolution[1] dated October 12, 2005 of the Sandiganbayan, granting the motion of the Office of the Special Prosecutor (OSP) to suspend pendente lite the petitioners and their co-accused in Criminal Case No. 27911, and its Resolution[2] dated March 2, 2006 denying the petitioners' motion for reconsideration.

The antecedent facts are as follows:

On November 13, 2003, an Information[3] was filed against the petitioners and their co-accused for falsification of public documents, defined and penalized under Article 171(4)[4] of the Revised Penal Code. The Information alleged:

That during the year 1998, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused NONITO FANO y FAMARIN, a high ranking public officer, being the Project Director with Salary Grade 29 of the Project Management Office (PMO) of the Department of Public Works and Highways (DPWH); MACARIOLA BARTOLO y SUBARDIAGA, being the Project Manager II of PMO; VIOLEND A. SUCRO, being the Engineer V of PMO; NORBERTO GALVE y SONEJA, being the Engineer IV of [the] Bureau of Research and Standard (BRS); CRISPIN REAL y REDOQUE, being the Engineer III of BRS; ROMEO LACORTE y LIAC, being the Engineer III of [the] Bureau of Construction; LEONARDO LINGAN y LLENTADA, being the Engineer III of [the] Bureau of Design; ROEL BLANCAS y BAUTISTA, being the Engineer III of [the] Bureau of Maintenance, LOURDES ANINIPOT y FLORANDA, being the Engineer III, Bureau of Maintenance, all-low ranking public officers and all of whom are employed with the Department of Public Works and Highways (DPWH), committing the offense in relation to their office and taking advantage of the same, conspiring, confederating and mutually helping one another, together with accused SHUICHI MORITA, a private individual, did then and there wilfully, unlawfully and feloniously falsify the following public documents which they prepared, checked, verified certified correct and accepted in discharge of their respective duties and official functions, namely: Statement of Time Elapsed and Work Accomplished, Inspection Report for Final Acceptance and Certificate of Acceptance relative to the Metro Manila Flood Control Project II, Package A in the amount of One Billion Four Hundred Ninety-Nine Million One Hundred Eleven Thousand Eight Hundred Five Pesos and [S]ixty [T]hree [C]entavos (P1,499,111,805.63) intended for the construction of [the] Vitas Pumping Station and Balut Pumping Station and Improvement of Estero de Vitas, Pampanga-Earnshaw Drainage Main, Estero de Sunog Apog, Estero de Maypajo and Buendia Drainage Main, by making it appear in the said documents that the project is one hundred percent (100%) complete when, in truth and in fact, and as the above-named accused

knew well, the project was not fully completed considering that there is an unaccomplished construction of the parapet wall with a length of 320 lineal meters on the right bank of Estero de Sunog Apog from Pastor Street to Paulino Street, Balut, Tondo, Manila, which they failed to disclose despite legal obligation to do so, thereby perverting the truth to the damage and prejudice of the public interest.

CONTRARY TO LAW.[5] (Emphasis supplied.)

During their arraignment, the petitioners and their co-accused pleaded not guilty to the offense charged.[6] Thereafter, pre-trial and trial of the case ensued.

During the trial of the case, the OSP moved for the suspension pendente lite of the petitioners and their co-accused in accordance with Section 13 of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.[7]

In its Resolution dated October 12, 2005, the Sandiganbayan granted the motion and accordingly ordered the suspension pendente lite of the petitioners and their co-accused for 90 days.

The petitioners moved for reconsideration, but it was denied by the Sandiganbayan in its Resolution dated March 2, 2006.

Hence, this petition based on this lone assigned error:

THE SANDIGANBAYAN, SECOND DIVISION, ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE RESOLUTION DATED [OCTOBER 12, 2005] DIRECTING THE SUSPENSION PENDENTE LITE OF THE PETITIONERS FOR NINETY (90) DAYS AND THE RESOLUTION DATED MARCH 2, 2006 WHICH DENIED PETITIONERS' URGENT MOTION FOR RECONSIDERATION.[8]

Simply stated, the issue is, did the Sandiganbayan commit grave abuse of discretion in ordering the suspension pendente lite of petitioners?

Petitioners primarily argue that the assailed resolutions were erroneously issued because the offense of falsification of public documents does not fall within the purview of Section 13 of Rep. Act No. 3019, which reads:

SEC. 13. Suspension and loss of benefits.— Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government. (Emphasis supplied.)

To support their aforesaid submission, the petitioners point out that the offense of falsification of public documents falls under Title Four,[9] Book II of the Revised Penal Code and not under Title Seven,[10] Book II thereof. They also argue that the offense of falsification of public documents does not amount to fraud upon government or public funds.[11]

The OSP counter that Section 13 of Rep. Act No. 3019 extends to any offense involving fraud upon the

government or public funds or property, and is not merely limited to the offenses under Title Seven, Book II of the Revised Penal Code. Moreover, it insisted that falsification falls within the general definition of fraud, considering that it involved a false representation of a fact, and hence within the ambit of Section 13, Rep. Act No. 3019.[12]

After a careful study of the matter at hand, we find that the Sandiganbayan did not commit grave abuse of discretion in ordering the suspension pendente lite of the petitioners and their co-accused.

The contentions raised by the petitioners are nothing new, considering that the same had already been resolved in the case of *Bustillo v. Sandiganbayan*.^[13] In that case, we held that "the term fraud as used in Section 13 of Rep. Act No. 3019 is understood in its generic sense, which is, referring to an instance or an act of trickery or deceit especially when involving misrepresentation."^[14] In *Merriam Webster's Dictionary of Law*, fraud had been defined "as any act, expression, omission, or concealment calculated to deceive another to his or her disadvantage; or specifically, a misrepresentation or concealment with reference to some fact material to a transaction that is made with knowledge of its falsity or in reckless disregard of its truth or falsity and with the intent to deceive another and that is reasonably relied on by the other who is injured thereby."^[15] We thus ruled in the afore-cited case that falsification of municipal vouchers, although penalized under Title Four and not Title Seven, Book II of the Revised Penal Code, constitutes fraud upon public funds, and accordingly upheld the suspension pendente lite of the petitioner therein pursuant to Section 13 of Rep. Act No. 3019.^[16]

In the present petition, it is undeniable that the allegation of falsification of the three public documents by making it appear that the flood control project was 100% complete constitutes fraud upon public funds. This is in light of the uncontroverted allegation of the OSP that it was on the basis of such false representation that the government was defrauded or suffered loss because it paid Toyo-Ebara Joint Venture P1,499,111,805.63, the full amount corresponding to the project despite the non-construction of the 320-m parapet wall on the right bank of Estero De Sunog Apog.^[17]

Petitioners' argument that their certification in the Statement of Time Elapsed and Work Accomplished^[18] does not constitute a narration of facts as contemplated under Article 171(4) of the Revised Penal Code since the said statement merely consisted of a table of figures and numbers^[19] is also without merit. This is because a narration of facts is merely an account or description of the particulars of an event or occurrence. Hence, the use of words or figures or numbers or any combination of two or three of said things, as long as it describes an event or occurrence is sufficient to make a "narration of facts" as defined under Article 171(4) of the Revised Penal Code. In this case, it is evident that the questioned statement qualifies as a "narration of facts" as defined under Article 171(4) of the Revised Penal Code because a reading thereof reveals that not only figures and numbers, as asserted by the petitioners, but also words^[20] were used therein giving an account of the status of the flood control project.

Finally, petitioners' argument that they have not falsified any public document because the 320-m parapet wall was deleted from the project by Change Order No. 1^[21] is not a proper question for us to resolve in this petition, considering that it would require us to make a crucial finding of fact, and to pass upon the merits of the pending criminal case against the petitioners and their co-accused before the Sandiganbayan.

WHEREFORE, the petition is DISMISSED. The Resolutions of the Sandiganbayan dated October 12, 2005 and March 2, 2006 are hereby AFFIRMED. Costs against petitioners.

SO ORDERED.

Carpio Morales, Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 23-26. Penned by Associate Justice Edilberto G. Sandoval, with Associate Justices Francisco H. Villaruz, Jr. and Rodolfo A. Ponferrada (sitting as Special Member as per Administrative Order No. 19-2005 dated February 23, 2005) concurring.

[2] Id. at 31. Approved by Associate Justice Edilberto G. Sandoval, with Associate Justices Francisco H. Villaruz, Jr. and Alexander G. Gesmundo (sitting as Special Member as per Administrative Order No. 14-2006 dated February 1, 2006) concurring.

[3] Records, Vol. I, pp. 1-4.

[4] ART. 171. Falsification by public officer, employee, or notary or ecclesiastical minister. –The penalty of prison mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x

4. Making untruthful statements in a narration of facts;

x x x x

[5] Records, Vol. I, pp. 2-3.

[6] Rollo, pp. 230-231; Records, Vol. I, pp. 460-470.

[7] Approved on August 17, 1960.

[8] Rollo, p. 11.

[9] Crimes Against Public Interest.

[10] Crimes Committed by Public Officers.

[11] Rollo, pp. 12-14.

[12] Id. at 259-260.

[13] G.R. No. 146217, April 7, 2006, 486 SCRA 545.

[14] Id. at 553.

[15] Merriam Webster's Dictionary of Law, p. 203 (1996).

[16] Bustillo v. Sandiganbayan, supra note 13, at 553-554.

[17] Rollo, pp. 261-262.

[18] Id. at 43.

[19] Id. at 12.

[20] Id. at 139.

[21] Id.

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