

VIOLETA BAHILIDAD, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 185195. March 17, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

Before us is a petition for review on certiorari assailing the Decision[1] of the Sandiganbayan in Criminal Case No. 28326, convicting petitioner Violeta Bahilidad and co-accused Amelia Carmela C. Zoleta of the complex crime of Malversation of Public Funds through Falsification of Public Documents.

Acting on a complaint filed by a "Concerned Citizen of Sarangani Province" with the Office of the Ombudsman-Mindanao against Mary Ann Gadian, Amelia Carmela Zoleta, both assigned to the Office of the Vice-Governor, and a certain Sheryll Desiree Tangan, from the Office of the Sangguniang Panlalawigan, for their alleged participation in the scheme of giving fictitious grants and donations using funds of the provincial government, a special audit was conducted in Sarangani province. The Special Audit Team, created for the purpose, conducted its investigation from June 1 to July 31, 2003, and submitted the following findings:

- Release of financial assistance intended to NGOs/POs and LGUs were fraudulently and illegally made thus local development projects do not exist resulting in the loss of P16,106,613.00 on the part of the government.
- Financial Assistance were also granted to Cooperatives whose officials and members were mostly government personnel or relative of the officials of Sarangani Province resulting to wastage and misuse of government fund amounting to P2,246,481.00.[2]

Included in the list of alleged fictitious associations that benefited from the financial assistance given to certain Non-Governmental Organizations (NGOs), People's Organizations (POs), and Local Governmental Units (LGUs) was Women in Progress (WIP), which received a check in the amount of P20,000.00, issued in the name of herein petitioner Bahilidad, as the Treasurer thereof.

Based on its findings, the Special Audit Team recommended the filing of charges of malversation through falsification of public documents against the officials involved. Thus, the following Information was filed:

That on January 24, 2002, or prior or subsequent thereto in Sarangani Province, Philippines, and within the jurisdiction of this Honorable Court, accused Felipe Katu Constantino, a high-ranking public officer, being the Vice-Governor of the Province of Sarangani, Maria D. Camanay, Provincial Accountant, Teodorico F. Diaz, Provincial Board Member, Amelia Carmela C. Zoleta, Executive Assistant III, all accountable public officials of the Provincial Government of Sarangani, by reason of the duties of their office, conspiring and confederating with Violeta Bahilidad, private individual, the public officers, while committing the offense in relation to office, taking advantage of their respective positions, did then and there willfully, unlawfully and feloniously take, convert and misappropriate the amount of TWENTY THOUSAND PESOS (P20,000.00), Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified the corresponding Disbursement Voucher No. 101-2002-01-822 and its supporting documents, making it appear that financial assistance had been sought by Women in Progress, Malungon,

Sarangani, represented by its President Amelia Carmela C. Zoleta, when in truth and in fact, the accused fully knew well that no financial assistance had been requested by the said group and her association, nor did Amelia Carmela C. Zoleta and her association receive the aforementioned amount, thereby facilitating the release of the above-mentioned public funds in the amount of TWENTY THOUSAND PESOS (P20,000.00) through encashment by the accused at the Land Bank of the Philippines (LBP) Check No. 36481 dated January 24, 2002 issued in the name of Violeta Bahilidad, which amount they subsequently misappropriated to their personal use and benefit and despite demand, the said accused failed to return the said amount to the damage and prejudice of the government and the public interest of the aforesaid sum.

Upon arraignment, accused Constantino, Zoleta and Bahilidad pled not guilty to the charges, while Camanay and Diaz did not appear and remain at large to date. Thereafter, during the pendency of the case, Constantino died. Consequently, the Sandiganbayan granted the motion to dismiss the case against him. As regards Zoleta and Bahilidad, they posted bail and the case against them proceeded to trial.

The prosecution presented in evidence the testimonies of the following persons:

1. Helen Cailing, a State Auditor IV at the Commission on Audit (COA) and leader of the Special Audit Team (SAT) of Sarangani Province. Cailing testified that the SAT, composed of herself and three (3) members, in the course of the audit, discovered that the voucher issued by the Office of the Vice-Governor to the WIP violated specific COA Guidelines 3.1, 3.2, 3.4, 3.7, 3.10 and 4.4. The guidelines required the monitoring, inspection and evaluation of the project by the provincial engineer if an infra-project and by the provincial agriculturist if it is a livelihood project. Cailing further testified that, based on their audit, WIP appeared to be headed by Zoleta, who was the daughter of Vice-Governor Constantino, and simultaneously an Executive Assistant III in the latter's office.
2. Luttian Tutoh, Region XII Director of the Cooperative Development Authority (CDA), testified on the certification^[3] she issued that WIP and Women in Development (WID) were not registered cooperatives. Tutoh further testified that (1) the certification was based on the listing prepared by the Assistant Regional Director; (2) the Certification was issued upon the instruction of the CDA Chairman, who received an inquiry from the Office of the Ombudsman on whether WIP and/or WID were cooperatives registered with the CDA; and (3) she had not come across a registered cooperative named WIP.
3. Mary Ann Gadian, Bookbinder II, designated as Computer Operator III at the Office of the Sangguniang Panlalawigan of Sarangani from July 1993 to August 2002, who acted as state witness, admitted in open court that she took part in the preparation and processing of a disbursement voucher and its supporting documents involving a cash advance for WIP sometime in 2002. Gadian, likewise, testified that she saw accused Constantino, Camanay, Diaz, and Zoleta sign the documents, and she merely followed Zoleta's directive and instructions on the preparation of the disbursement voucher. Gadian further admitted antedating and changing the date of a January 24, 2002 letter-request from WIP to January 7, 2002 in order to make the letter appear authentic.
4. Sheryll Desiree Jane Tangan, Local Legislative Staff at the Office of the Vice-Governor in 2002, who also acted as state witness, admitted in open court that, upon orders of Zoleta, she helped prepare and process the request of WIP. Tangan disclosed that she was used to signing for other persons, as instructed by Zoleta, whenever their office had legal transactions; in this instance, she forged the signature of Melanie Remulta, the purported secretary of WIP. Tangan then recounted that she accompanied petitioner Bahilidad to claim and encash the check for WIP. After encashment, Bahilidad gave her a white envelope containing the P20,000.00 cash. She noticed Bahilidad's uneasiness. She was told by Zoleta that Bahilidad was merely a dummy for that disbursement. Tangan gave the money to Zoleta who told her that she would take care of Bahilidad.

The defense presented, as witnesses Bahilidad, Zoleta and Remulta. On the whole, the defense denied the

prosecution's charge of malversation. The witnesses testified that WIP and WID were registered cooperatives. To support her contention that WIP and WID were legitimate cooperatives, Bahilidad presented a Certification from Barangay Captain Jose Mosquera containing a list of the supposed officers of these cooperatives. Bahilidad insisted that the amount of P20,000.00 that she received from the Office of the Vice-Governor was, in turn, properly distributed by WIP as loans to its members. Remulta corroborated Bahilidad's story on this point. As for Zoleta, she completely denied knowing Bahilidad.

After trial, the Sandiganbayan found petitioner Bahilidad and Zoleta guilty beyond reasonable doubt of Malversation of Public Funds through Falsification of Public Documents, and disposed, as follows:

ACCORDINGLY, accused Amelia C. Zoleta ("Zoleta") and Violeta Bahilidad ("Bahilidad"), are found guilty beyond reasonable doubt for Malversation of Public Funds thru Falsification of Public Documents under Article 217 of the Revised Penal Code, in relation to Article 171[,] par[.] 2[,] and Article 48 of the same Code and are sentenced to suffer in prison the penalty of 14 years[,] 8 months and 1 day to 16 years[,] 5 months and 11 days of reclusion temporal. They also have to suffer perpetual disqualification from holding any public office and to pay back the Province of Sarangani the amount of Php 20,000.00 plus interest on it computed from January 2002 until the full amount is paid.

No pronouncement is made for or against Constantino, said accused having died during the pendency of this case, his personal and pecuniary penalties and liabilities were totally extinguished upon his death. This Court has already ordered the dismissal of the case against him.

Since the Court did not acquire jurisdiction over the persons of the other accused, Teodorico Diaz and Maria Camanay, the case as it pertains to them is in the meantime archived. It shall be revived when the Court acquires jurisdiction over their person. Let an alias warrant of arrest be then issued against them.

Costs against accused Zoleta and Bahilidad.[4]

Hence, this appeal by Bahilidad, questioning her conviction by the Sandiganbayan.

We find for petitioner.

Well-settled is the rule that findings of fact of the trial court are given great respect. But when there is a misappreciation of facts as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings of the trial court. In such a case, the scales of justice must tilt in favor of an accused, considering that he stands to lose his liberty by virtue of his conviction. The Court must be satisfied that the factual findings and conclusions of the trial court, leading to an accused's conviction, must satisfy the standard of proof beyond reasonable doubt.

In the instant case, petitioner was found guilty of conspiring with Zoleta and other public officials in the commission of the crime of Malversation of Public Funds through Falsification of Public Documents. The trial court relied on the dictum that the act of one is the act of all. The Sandiganbayan explained petitioner's complicity in the crime, to wit:

The facts taken together would prove the existence of conspiracy. Zoleta, as president of an inexistent association and a co-terminus employee at the office of her father, [accused Constantino,] initiated the request for obligation of allotments and certified and proved the disbursement voucher. There is no doubt that accused Constantino facilitated the illegal release of the funds by signing the questioned voucher. Without the signatures of accused Constantino, Zoleta and Bahilidad, the amount could not have been disbursed on that particular day. When the voucher with its supporting documents was presented to accused Constantino, Diaz and Camanay for approval and signature, they readily signed them without further ado, despite the lack of proper documentation and non-compliance of the rules. Zoleta had contact with the payee of the check,

Bahilidad, and received the amount. Their combined acts, coupled with the falsification of the signature of Remulta, all lead to the conclusion that the accused conspired to defraud the government.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proven by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.

The circumstances that Zoleta placed her initials on the voucher knowing that there was really no WIP, that the other accused likewise signified their approval to the disbursement and allowed payment, and that payee received and encashed the check out of the fund of the provincial government instead of depositing it, shows that there was connivance between the accused. The unavoidable conclusion is that the accused were in cahoots to defraud the provincial government and to camouflage the defraudation by using a dummy organization as a payee.[5]

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." 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 must be strong enough to show the community of criminal design. For conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is the product of intentionality on the part of the cohorts. [6]

It is necessary that a conspirator should have performed some overt act as a direct or indirect contribution to the execution of the crime committed. The overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.[7] Hence, the mere presence of an accused at the discussion of a conspiracy, even approval of it, without any active participation in the same, is not enough for purposes of conviction.[8]

In the instant case, we find petitioner's participation in the crime not adequately proven with moral certainty. Undeniably, petitioner, as a private individual, had no hand in the preparation, processing or disbursement of the check issued in her name. A cursory look at the disbursement voucher (No. 101-2002-01-822) reveals the following signatures: signature of Board Member Teodorico Diaz certifying that the cash advance is necessary, lawful and incurred under his direct supervision; signature of Provincial Accountant Camanay certifying to the completeness and propriety of the supporting documents and to the liquidation of previous cash advances; signature of Moises Magallona, Jr. over the name of Provincial Treasurer Cesar M. Cagang certifying that cash is available; signature of Constantino, with the initials of Zoleta adjacent to his name, certifying that the disbursement is approved for payment, and with petitioner's signature as the payee.[9]

The SAT reported that the check was payable to the alleged Treasurer, Bahalidad, instead of to Women in Progress; that the check was encashed when it should have been for deposit only; and that there was also failure of the provincial agriculturist to monitor and submit an evaluation report on the project.[10] Based on this SAT report, the Sandiganbayan particularly pointed to petitioner's indispensable participation in the crime, being the payee of the check, because without her signature, the check would not have been encashed, and the funds would not have been taken from the coffers of the provincial government. Other than her being named as the payee, however, there were no overt acts attributed to her adequate to hold her equally guilty of the offense proved.

There was no showing that petitioner had a hand in the preparation of the requirements submitted for the disbursement of the check. There was no evidence presented that she was instrumental to the issuance of the check in favor of WIP, nor was there any showing that she interceded for the approval of the check. Why the check was issued in her name and not in the name of WIP is beyond cavil, but this was not incumbent upon her to question.

On being informed by Melanie Remulta that WIP's request for financial assistance was granted, petitioner went to the provincial capitol to claim the check, because the check was issued in her name as the Treasurer of WIP. She later encashed the check and distributed the proceeds to the different members of WIP. There were acknowledgment receipts dated February 7, 2002, signed by the different members of the cooperative, in varying amounts of P3,000.00, P2,000.00 and P500.00, all of which prove that the amount of P20,000.00 was disbursed for the benefit of the members of the cooperative.[11]

The Sandiganbayan faulted petitioner for immediately encashing the check, insisting that she should have deposited the check first. Such insistence is unacceptable. It defies logic. The check was issued in petitioner's name and, as payee, she had the authority to encash it. The Disbursement Voucher (No. 101-2002-01-822) clearly states that she is the WIP treasurer, and the purpose of the voucher is "to cash advance financial assistance from grants and donations for Winds Malugon, Sarangani as per supporting papers hereto attached." Petitioner's action cannot, in itself, be considered as specious. There was no showing that petitioner had foreknowledge of any irregularity committed in the processing and disbursement of the check,[12] or that the COA Rules required that the check had to be deposited in the bank first, or that an evaluation report from the provincial agriculturist had to be submitted. Evil intent must unite with the unlawful act for a crime to exist. *Actus non facit reum, nisi mens sit rea*. There can be no crime when the criminal mind is wanting. As a general rule, ignorance or mistake as to particular facts, honest and real, will exempt the doer from felonious responsibility.[13]

All told, there is reasonable doubt as to petitioner's guilt. Where there is reasonable doubt, an accused must be acquitted even though his innocence may not have been fully established. When guilt is not proven with moral certainty, exoneration must be granted as a matter of right.[14]

Finally, we reiterate what we have long enjoined:

Time and time again, this Court has emphasized the need to stamp out graft and corruption in the government. Indeed, the tentacles of greed must be cut and the offenders punished. However, this objective can be accomplished only if the evidence presented by the prosecution passes the test of moral certainty. Where doubt lingers, as in this case, the Court is mandated to uphold the presumption of innocence guaranteed by our Constitution to the accused.[15]

WHEREFORE, the petition is GRANTED. The assailed Decision is SET ASIDE. Petitioner is ACQUITTED on reasonable doubt.

SO ORDERED.

Corona, (Chairperson), Velasco, Jr., Peralta, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Roland B. Jurado, concurring; rollo, pp. 30-60.

[2] *Id.* at 39-40.

[3] Dated May 9, 2006.

[4] Id. at 59.

[5] Rollo, pp. 56-57.

[6] Magsuci v. Sandiganbayan, G.R. No. 101545, January 3, 1995, 240 SCRA 13, 18.

[7] Pecho v. People I, G.R. No. 111399, September 27, 1996, 262 SCRA 518, 530-531.

[8] Santos v. Sandiganbayan, G.R. Nos. 71523-25, December 8, 2000, 347 SCRA 386, 420.

[9] Magsuci v. Sandiganbayan, *supra*.

[10] Rollo, p. 40.

[11] Rollo, pp. 464-474.

[12] See Magsuci v. Sandiganbayan, *id*.

[13] Lecaroz v. Sandiganbayan, G.R. No. 130872, March 25, 1999, 305 SCRA 396, 408.

[14] Monteverde v. People, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 215.

[15] Id. at 200.

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