

JESUS C. BALMADRID AND MILA C. BALMADRID, PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN, RESPONDENT.

G.R. No. 58327. June 18, 1992

Ponente: PARAS, J.

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PARAS, J.:

The Motion for Reconsideration of the March 22, 1991 Decision of this Court is for resolution.

Spouses Jesus C. Balmadrid and Mila C. Balmadrid, petitioners-movants, together with Maximo Binos and Teodolo Alcantara, Superintendent and Cashier, respectively, of the Catanduanes Agricultural and Industrial College (CAIC, for brevity), a Government-owned institution, were charged with violation of Section 3 (e) of Republic Act No. 3019, as amended. Respondent Sandiganbayan convicted the petitioners on the basis of "conspiracy", on July 2, 1981 for allegedly engaging on "A massive cover-up operation x x x" (Rollo, 33) by falsifying the supporting documents, namely the Request for Obligation of Allotment (ROA), the Requisition and Issue Voucher (RIV), General Voucher (GV) and canvass papers, abstract of bids, purchase order, COA Inspection report, in support of the four (4) checks drawn in favor of the Balmadrids as proprietor of the family business known as ECBAL Enterprises. (Exhibits A-2, A-3, A-4, B-2, B-3, B-4, C-2, C-3, C-4, D-2, D-3 and D-4; *Ibid.*, pp. 8-9) The four checks amounting to P9,200.00 were to cover purchases of school supplies and materials and were payable in the name of petitioner, Mila C. Balmadrid.

Finding the public officers and the above-named petitioners guilty of the crime charged, the respondent Sandiganbayan convicted all the accused including the petitioners-movants sentencing each of them to suffer an indeterminate imprisonment ranging from "FOUR (4) YEARS and ONE (1) DAY, as minimum, to SEVEN (7) YEARS and ONE (1) DAY, as maximum, to suffer perpetual disqualification from public office, to indemnify, jointly and severally, the Government of the Republic of the Philippines, through the Catanduanes Agricultural and Industrial College, in the amount of P9,200.00 and to pay the costs of this action proportionately." (*Ibid.*, p. 62)

In the judgment of affirmance, this Court ruled:

"Petitioners' contention that the information failed to show that they are charged in conspiracy with their co-accused public officers hold no water. The allegations in the information clearly show the commission of a series of acts, ranging from its inception through the issuance by Binos and Alcantara of officially-issued CAIC checks for non-existent, fictitious or ghost purchases of school supplies and construction materials from Ecbal Enterprises up to the irregular and/or improper delivery of supplies and construction materials, to CAIC from Hi-Tone Construction and the illegal and criminal acts of petitioners to give semblance of regularity to the transaction. The crime, therefore, charged and penalized, is not the singular or individual act of issuing CAIC checks in payment of a civil obligation. Rather, it involves the entire spectrum ranging from their issuance up to and including the falsification of public documents to simulate or justify a transaction which was initially intended to give the spouses Balmadrid unwarranted benefits, advantage or preference in Binos' and Alcantara's discharge of their official duties, which were committed with manifest partiality and evident

bad faith, thus causing undue injury to the CAIC. From the very nature and essence of the act penalized under Section 3, paragraph (e), conspiracy necessarily enters into the picture and its commission attributable to two or more persons acting in conspiracy.

"It cannot be disputed or denied that the acts proved by the prosecution's evidence to have been committed by the accused private persons were in furtherance of the aforesaid common objective resulting, at the last stage thereof, in an attempt to deliver to the CAIC supplies and materials which were hurriedly purchased by Binos from Hi-Tone Construction to disprove the allegation in the information of ghost purchases. As indisputably shown by more than adequate evidence, the individual and/or concerted acts of accused spouses Balmadrid were not merely acts of accomplices or accessories, as contemplated by the Revised Penal Code, but were acts showing active participation and indispensable cooperation, which, if they were not discovered or unearthed, would have led to illegal, improper or irregular acts being given a semblance of legality, propriety or regularity.

"Since petitioners have been shown to have participated in the conspiracy, they must be held equally liable with co-accused Binos and Alcantara under section 3(e) of RA 3019. In a conspiracy, the act of one is the act of all (People vs. Sandaydiego, 81 SCRA 120). The fact that petitioners are private persons is of no consequence, considering that the rule of collective criminal responsibility includes even private individuals who participate with public officers in the perpetration of offenses ordinarily particularly applicable only to the latter (United States v. Ponte, 20 Phil. 379).

"Lastly, with regard to the other mentioned alleged errors of the Sandiganbayan, the Court is bound by the facts found by the Sandiganbayan (Gabison vs. Sandiganbayan, 151 SCRA 62). Our power to review the decision of that special tribunal is the same as Our jurisdiction to review the decision of the Court of Appeals (Calubaquib vs. Sandiganbayan, 117 SCRA 493.)" (Ibid., pp. 430-431)

Without much delay, petitioners moved for the reconsideration of the aforementioned Decision, contending that the aforestated conviction is not supported by competent and substantial evidence as it rests on conjectures, surmises, speculations and gratuitous conclusions and that the Decision violated the cardinal rule that conviction must rest on the strength of the prosecution evidence and not on the weakness of the defense evidence.

Considering the seriousness of the penalty meted out to the petitioners-movants, consisting of the deprivation of liberty and their responsibilities to their own family, We have once again given an assiduous study of the instant Motion noting some flaws in the decision subject of the appeal.

In affirming the appealed decision of the public respondent, this Court sustained the alleged finding of conspiracy among the petitioners herein with their co-accused public officials in defrauding the government by means of alleged fictitious purchases of materials and supplies for which the four (4) checks were drawn in payment of the questioned purchases. In countless decided cases, this Court has consistently held that "Conspiracy must be established not by conjectures, but by positive and conclusive evidence. The same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, which is, proof beyond reasonable doubt." (Orodio vs. Court of Appeals, 165 SCRA 315)

There were sufficient proofs established by the petitioners that there were four (4) delivery receipts showing that the goods thus purchased by Binos were delivered to CAIC. These were dated June 12, 1979 (Exh. 7-A), June 18, 1979 (Exh. 6-A), June 21, 1979 (Exh. 5-A) and June 26, 1979 (Exh. 4-A). These delivery receipts constituted deliveries to CAIC, although the goods were actually delivered at later dates, due to the transportation difficulties peculiar to the area where the goods were to be delivered to the purchaser CAIC situated at the Municipality of Panganiban, whereas ECBAL Enterprises is located at Virac, Catanduanes, some 60 kilometers overland of rough road. (Rollo, p. 341) To be able to bring the goods in question to CAIC, they were loaded on a boat as land transportation was unavailable because of the shortage of gasoline, and were off-loaded on to Bagamanoc, about 5

kilometers more to CAIC in the Municipality of Panganiban, Province of Catanduanes. Finally, upon arrival of the goods, they were received and inspected by a police station commander in the same locality, on November 13, 1979. (Ibid., p. 356)

The affirmance of the decision in question, hinges on the conspiracy theory that respondent Sandiganbayan espoused that the act of one is the act of all, however, the existence of conspiracy has to be proved first before it can be made to apply on all the accused named in the information. This requirement was miserably absent here, thus ?

"It is settled that the same degree of proof required for establishing the crime is required to support a finding of conspiracy. In other words, it must be shown to exist as clearly and convincingly as the commission of the offense itself in order to uphold the fundamental principle that no one shall be found guilty of crime except upon proof beyond reasonable doubt. The defendant in a criminal case must always be presumed innocent until the contrary is proven, and in case of reasonable doubt and when his liability shall not have been satisfactorily shown he shall have the right to be acquitted, even though his innocence be doubted (U.S. v. Gutierrez, 4 Phil. 493 cited in People v. Sadie, 149 SCRA 240, 244)". (Enrico Perez y dela Merced v. Sandiganbayan & People of the Philippines, 180 SCRA 9)

Furthermore, the conclusion arrived at that conspiracy characterized the acts complained about was drawn from "(t)he (mere) allegations in the information (which) clearly show the commission of a series of acts, ranging from its inception through the issuance by Binos and Alcantara of officially-issued CAIC checks x x x". This is contrary to the rule enunciated in the case of Misolas v. Panga, wherein this Court (En Banc), held that "The information he lodges in court must have to be supported by the facts brought about by an inquiry made by him." It is within "the power of the court to determine after due hearing whether the prosecution has proved beyond reasonable doubt that the offense x x x has been committed and that the qualifying circumstance attached to it has been established also beyond reasonable doubt as the Constitution and judicial precedents require." (181 SCRA 648)

Moreover, in the case of People vs. Guinto, this Court held that:

"The principle has been dinned into the ears of the bench and the bar that in this jurisdiction, accusation is not synonymous with guilt. The accused is protected by the constitutional presumption of innocence which the prosecution must overcome with contrary proof beyond reasonable doubt. This Court has repeatedly declared that even if the defense is weak, the case against the accused must fail if the prosecution is even weaker, for the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. Indeed, if the prosecution has not sufficiently established the guilt of the accused, he has a right to be acquitted and released even if he presents naught a shred of evidence. x x x The accused-appellants have been condemned x x x based on uncertain evidence clearly insufficient to sustain their conviction. It is their guilt and not their innocence that has been presumed. It is their innocence and not their guilt that should have been pronounced. In these circumstances, only one thing that has to be done if the Constitution is to be observed and justice is to be served." (184 SCRA 287)

Further, the Information did not even allege that the petitioners conspired with their co-accused, as their role was that of a seller/payee in the four (4) checks that were issued in payment of school supplies and materials, as shown in the pertinent portion which is quoted below:

"x x x the accused Maximo S. Binos and Teodulo B. Alcantara being then the Superintendent and Cashier, respectively, of the Catanduanes Agricultural and Industrial College, a Government-owned institution of learning, taking unusual and undue advantage of their respective positions as such for personal benefit and performance of their official duties and functions with manifest partiality, evident bad faith, intent to gain, breach of trust and or with abuse of confidence, falsify documents by conspiring, confederating and mutually

helping one another, with a common purpose and design did then and there, willfully, unlawfully, and feloniously cause the preparation, issuance and encashment of four (4) checks of the CAIC payable to Mila C. Balmadrid. x x x" (Rollo, p. 425)

There is no denying that the checks issued to petitioner Mila C. Balmadrid were encashed by her, but the same were in payment of purchases of supplies and materials for the use of CAIC. These purchases were covered by the standard and regular government documents namely, the Certificate of Emergency Purchase, Request for Quotations, Abstract of Bids and Certificates of Inspection, properly accomplished but suppressed by the prosecution during the trial. These documents were the basis for the issuance of the Request for Obligation of Allotments (ROA), Request for Requisition and Issue Vouchers (RIV) and General Vouchers (GV), corresponding to the issued four (4) checks, which were the only ones introduced by the prosecution, marked as Exhibits A-1 to A-4, B-1 to B-4, C-1 to C-4, and D-1 to D-4. (Ibid., p. 342)

From the foregoing, it is very obvious that respondent Sandiganbayan was overwhelmed by the posture presented by the Tanodbayan even as it utterly failed to prove the elements of the offense charged nor the presence of conspiracy. This situation is aggravated by manifestly interchanging the elements of falsification of documents by allegedly postdating the four (4) checks in question (Ibid., pp. 52-55) and violation of Section 3(e) of RA 3019. The crime charged under the latter law, has a different and distinct set of elements from falsification of public, private or commercial documents under Article 171 of the Revised Penal Code and cannot be used interchangeably with those of the instant charge defined and penalized by a special law. (Aquino, The Revised Penal Code, 1987 Ed. Vol. I, pp. 52-55)

Furthermore, petitioners have shown that the purchases from Hi-Tone were for different school supplies and materials purchased from ECBAL Enterprises, consisting of coupon bond paper, glass jalousies and GI sheets (p. 9, decision) which tally with the specifications found in the invoices and delivery receipts issued by the latter company. The fact of the matter is that the prosecution does not deny the existence of the goods at the bodega in Bagamanoc which delivery was refused by the Officer-in-charge appointed to replace Superintendent Binos by the name Remigio Obeduza. (Ibid., p. 364)

Records likewise show that the goods subject of the controversy, were inventoried no less than four (4) times, the first two inventories were made by Jose Concepcion and Patrolman Icawat, who brought the goods by sea from Virac to Bagamanoc and delivered them to the custody of the Station Police Commander (Exh. J). The inventory conducted by Concepcion on October 13, 1979 on instruction of Col. Geronimo Zaballa, PC Provincial Commander of Catanduanes (Exh. 3-Binos) and the Inventory Listing (Exh. 4-Binos) was submitted to Sgt. Mariano Rodriguez on June 26, 1979 consisted of jalousies, GI sheets (10 ft. long), about 95 reams of coupon bond paper, 5 boxes of stencil and Gestetner Ink.

The third inventory was conducted on November 13, 1979 by Sgt. Pedro Barrameda of the Panganiban Police Station on instruction of Fiscal Arturo Rojas in connection with the preliminary investigation against Binos, which inventory was entered by Barrameda in the police blotter on November 23, 1979. (Exh. L, L-1 to L-5). The fourth and last inventory was conducted by OIC Obeduza himself on instruction of respondent Sandiganbayan, on September 3, 1979. (Ibid., pp. 366-367) Thus, while the inventories taken were done on different dates, it is clear beyond doubt that the goods were physically present otherwise, how could the inventories be made?

From the foregoing, it is crystal-clear that CAIC or the Government did not sustain any damage or that the acts complained of are "manifestly and grossly disadvantageous to the aforesaid college in the amount of NINE THOUSAND TWO HUNDRED (P9,200.00) PESOS, Philippine Currency ", (Ibid., p. 28) that would necessarily warrant petitioners' conviction, because, the checks were plainly in payment of the purchased goods.

Moreover, this in-depth review was made to give life to the posture of this Court in the case of *Arias vs. Sandiganbayan* which incidentally has great similarity to the instant case, (180 SCRA 311) by holding that:

"The Court feels that the quantum of evidence needed to convict petitioners *Arias* and *Data* beyond reasonable doubt, as co-conspirators in the conspiracy to cause undue injury to the Government through the irregular disbursement and expenditure of public funds, has not been satisfied.

X X X X X X

"There is no question about the need to ferret out and convict public officers whose acts have made the bidding out and construction of public works and highways synonymous with graft or criminal inefficiency in the public eye. However, the remedy is not to indict and jail every person who may have ordered the project, who signed a document incident to its construction, or who had a hand somewhere in its implementation. The careless use of the conspiracy theory may sweep into jail even innocent persons who may have been made unwitting tools by the criminal minds who engineered the defraudation.

X X X X X X

It must be stressed that the petitioners are not charged with conspiracy in the falsification of public documents or preparation of spurious supporting papers. The charge is causing undue injury to the Government and giving a private party unwarranted benefits through manifest partiality, evident bad faith, or inexcusable negligence.

X X X X X X

The *Sandiganbayan*, without any clear factual basis for doing so has assumed that the P5.00 per square meter value fixed by the assessor in the tax declarations was the correct market value of the *Mangahan* property and if the Government purchased the land for P80.00 a square meter, it follows that it must have suffered undue injury. However, the Solicitor General explains that the conclusion is erroneous and maintained that there was 'no undue injury caused to the Government as the P80.00 per square meter acquisition cost is just, fair and reasonable.'

Due to the foregoing, this Court ruled in the aforesaid case, that:

"We 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." (180 SCRA 309)

The instant case is akin to the above-quoted resolution of this Court of the very same issues at hand, such as conspiracy and damage to the CAIC, a government institution of learning, when from all indications manifested in the appealed decision of the respondent court, even the credibility of the immediate accuser, *Rudy Revelar*, an Auditing Aide whose temporary assignment has already expired and was disgruntled when *Binos* filed a complaint against him before the Commission on Audit, the agency under whom *Revelar* is employed. (Rollo, p. 349)

All the other testimonies of the prosecution witnesses, to wit: *dela Rosa*, *Mariano Rodriguez*, *Pedro Barrameda*, *Florencio Pena* and *Delfin Co* did not impute any wrongdoing to the petitioners regarding the preparation of the CAIC checks in question, hence, the conclusion arrived at pertaining to the culpability of the petitioners becomes a serious issue.

In the case of *People vs. Salcedo*, this Court ruled that:

"Credibility is a matter that is peculiarly within the province of the trial judge, but the Supreme Court is not

bound by factual findings of the lower court which are contradicted by evidence. x x x Thus, it does not apply where the lower court overlooked certain facts of substance and value that if considered, would affect the result of the case [(People v. Royera, 130 SCRA 265 (1984); People v. Martinez, 144 SCRA 303 (1986); Arcadio Cortez y Vengzon v. C.A. and People of the Philippines, 163 SCRA 139 (1988)]. In fact, it has been settled that the Supreme Court is not bound by factual findings of the lower court which are contradicted by the evidence (Edward A. Keller & Co., Ltd. v. C.O.B. Group Marketing, Inc., 141 SCRA 86 (1986), [(195 SCRA 345; March 18, 1991)]

In several instances, respondent Sandiganbayan imputed guilt to the petitioners and their co-accused when nothing is shown by certain documents. Exhibit "G" was referred to by the respondent as evidencing a "civil obligation existed between Mila Balmadrid as creditor and Binos and Alcantara, as debtors. This instrument was misleadingly referred to x x x as "joint affidavit" executed by Binos and Alcantara. The truth is that it is NOT a "joint affidavit" because it was not executed under oath. (TSN, pp. 53-60, Dec. 4, 1980) In other words, it was a private writing, a letter-demand to pay CAIC's obligation to the ECBAL Enterprises. (Rollo, p. 331)

After dwelling at length on irrelevant issues, respondent even questioned the signature of the accused Alcantara who was the Treasurer during the period in question, which posture countermands the provision of COA Circular No. 76-26, paragraph 5, which reads:

"5. Countersignature of checks

"Checks covering transactions not subject to pre-audit shall no longer be countersigned by the resident auditors. However, these checks should be countersigned by responsible agency officials except deputized disbursing officer accountable for the checks and personnel of the accounting unit, in accordance with existing regulations or as provided for in corporate charters." (Ibid., p. 354)

As Treasurer of CAIC, under the above set-up Alcantara is authorized to sign checks for disbursements that are exempt from pre-audit.

WHEREFORE, finding the motion for reconsideration filed by petitioners Jesus C. Balmadrid and his wife, Mila C. Balmadrid to be well taken, the same is hereby GRANTED and both of them are hereby ordered ACQUITTED.

SO ORDERED.

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

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