

JUANITO MONIZA, JR., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES RESPONDENT.

G.R. No. 72719. September 18, 1986

Ponente: ALAMPAY, J.

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ALAMPAY, J.:

The records of this case disclose that on March 30, 1984, the herein petitioner Juanito Moniza, Jr., together with Rolando Abella and Juliana Tirol, were accused before the Sandiganbayan of the crime of malversation through falsification of public document. Said case was docketed as Criminal Case No. 9102 of the Third Division of said court. Petitioner was then the Municipal Treasurer of Sagbayan, Bohol, a position he had occupied for seven (7) years.

Petitioner's co-accused Rolando Abella appears to have entered a plea of guilty and was accordingly sentenced. Upon their plea of not guilty, the trial of the case thereafter proceeded against Juanita Tirol and Juanito Moniza, Jr.

In the decision dated August 13, 1985 rendered in the aforesaid criminal case, the Third Division of the Sandiganbayan found Juanito Moniza, Jr., guilty as charged. He was sentenced "to suffer an indeterminate penalty ranging from Two (2) Years, Four (4) Months and One (1) Day of prision correccional, as minimum, to Seven (7) Years, Four (4) Months and One (1) Day of prision mayor, as maximum, to pay a fine of P2,000.00, without subsidiary imprisonment in case of insolvency and to pay the proportionate costs." (Rollo, p. 34). His co-accused Juliana Tirol was acquitted.

From the said judgment, the present appeal by way of certiorari was interposed.

In his appeal, petitioner claims that several glaring errors of law and gratuitous conclusion of facts were committed by the respondent Sandiganbayan, such as the following:

"I.

The Guilt of the Accused-Petitioner has not been established 'beyond reasonable doubt'.

II.

There was no conspiracy between Rolando Abella, the confessed culprit, and Petitioner Juanito Moniza, Jr.

III.

The Retraction of Co-accused JULIANA TIROL was given undue credence by the Respondent SANDIGANBAYAN.

IV.

Petitioner Juanito Moniza, Jr. was actually performing a perfectly lawful act for which no criminal liability should lawfully attach" (Petition, p. 3; Rollo, p. 9).

This Court, in its resolution of February 4, 1986 required the respondent to submit its Comment to the petition. Thus the Solicitor General, representing the People, filed with this Court the corresponding Comment, dated May 2, 1986.

The factual background of this case, as stated by petitioner, is as follows;

"Petitioner Moniza has been the Municipal Treasurer of Sagbayan, Bohol since 1977. At the time of the alleged commission of the crime, he was assisted by a Bookkeeper, JULIANA TIROL, co-accused in the information, and a Market Collector ROLANDO ABELLA, the third co-accused in the Information, who immediately pleaded guilty to the charge and accordingly sentenced by the respondent SANDIGANBAYAN.

"Sometime on August 2, 1982, it is admitted that ROLANDO ABELLA prepared a falsified LABOR PAYROLL by inventing fictitious names of laborers who allegedly worked in the cleaning and ditching of Viva Street, Poblacion, Sagbayan, Bohol, where in fact, no such persons existed and no such work was done.

"This falsified payroll was given by ROLANDO ABELLA to the Bookkeeper JULIANA TIROL, as a procedural necessity, so that the amount of the payroll can be properly recorded by TIROL. Tirol in turn presented the payment to the Municipal Treasurer, the herein accused-petitioner for payment.

"The Petitioner then approved the payroll for payment and the corresponding CASH VOUCHER was prepared. Because it was Market Day in Sagbayan, Petitioner requested JULIANA TIROL to receive the cash from him and take care of the payment of the laborers. Juliana Tirol acknowledged receipt of the cash and she in turn merely gave the money to ROLANDO ABELLA, who upon receipt, naturally appropriated the money for himself. x x x.

"When an investigation was conducted on this incident by the COA based on an anonymous letter, JULIANA TIROL affirmed the foregoing facts before Atty. Toribio Quiwag, the COA Investigator, in a question-and-answer statement dated February 21, 1983, x x x.

"Again, when the case was brought to the Provincial Fiscal in Tagbilaran City for preliminary investigation, Juliana Tirol executed another affidavit dated March 7, 1983, substantially reciting the same facts, x x x.

"On June 3, 1983, Juliana Tirol executed an absolute turnabout in her statement, when she executed a Supplemental Affidavit before the Provincial Fiscal, x x x. Coincidentally, that was also the time when Vice-Governor Davit Tirol (now Assemblyman) entered his appearance as counsel for Juliana Tirol during the preliminary investigation by Fiscal ANGEL UCAT, JR., who recommended the EXCLUSION of Juliana Tirol in the formal charges*.

"When the charges were finally lodged with the respondent SANDIGANBAYAN, Rolando Abella, the falsifier of the payroll, immediately entered a plea of guilty and was accordingly sentenced. The trial of the case proceeded with only Juliana Tirol and Juanito Moniza, Jr., as the accused.

"Parenthetically, Rolando Abella resigned from his position as Market Collector when the COA started to investigate the anomaly, and REFUNDED THE FULL AMOUNT of the labor Payroll, subject of this Malversation case, in the sum of P2,124.00.

"During the trial of the case before the SANDIGANBAYAN, Rolando Abella was never presented as a witness, although his statement made in question-and-answer before Atty. Toribio Quiwag of the COA found its way into the records as Exhibit "2" Moniza and Exhibit "I" Tirol, xxxxx. The salient point in the statement

is as follows:

"(Atty. Quiwag)

Q.

When you did the paying of fake payrolls, was there anybody aware of what you did?

"(R. Abella)

A.

None.

Q.

So the Bookkeeper was not aware of what you did?

A.

She was not aware.

Q.

How about the Municipal Treasurer?

A.

No, he did not know."

The Decision of the respondent SANDIGANBAYAN acquitted JULIANA TIROL and convicted instead JUANITO MONIZA, Jr., the herein petitioner." (Rollo, pp. 9-12)

These submitted recitals of herein petitioner were not controverted by the respondent. Here, the Solicitor General, in his Comment to the petition, even adds the following:

"Pursuant to a letter-complaint dated January 10, 1983 from a concerned citizen who exposed some illegal activities of certain municipal employees in the municipality of Sagbayan, Bohol, consisting of falsification of payrolls, the Regional Director of the Commission on Audit (COA) in Cebu City issued a memorandum in February 1983 to Atty. Toribio Quiwag, Legal Officer of Region 7, COA, to conduct a fact finding investigation of the alleged anomalies. Acting on said memorandum, Atty. Quiwag conducted an investigation in Sagbayan, Bohol, during the course of which he investigated Municipal Treasurer Juanito Moniza, Jr., Municipal Bookkeeper Juliana Tirol, Assistant Market Collector Rolando Abella and Mayor Eugene V. Amores.

"Upon clarificatory questions, Abella admitted to Quiwag that the two payrolls for the cleaning and ditching of Bonifacio and Viva Streets in Sagbayan, Bohol, covering the periods from June 1 to 15, 1982 (Exhibit C) and June 16 to 30, 1982 (Exhibit D), were falsified. The former also confessed that he was the one who prepared the payrolls, and that the names of the persons listed therein were fictitious. Abella further revealed that he only forged the signatures of the alleged laborers, timekeeper and the mayor as there was actually no work done. Explaining why he committed the act, Abella declared in his sworn statement that "I did these because I paid the obligations of the municipality to different stores out of my collections upon verbal order of the Municipal Treasurer. I paid the total amount of P2,124.00 to the different stores in Sagbayan, Bohol, for various expenses like gasoline, nails, bamboos, bond papers and many others which I could no longer remember. These materials were used during the last Barangay Brigades training. So, when I learned that there was an audit in Clarin, I was expecting that Sagbayan will be the next. So, knowing that I would be short at that time and believing that the making of payrolls were more convenient and easy to cover my shortage I did

it. xxx" Nevertheless, Abella added that nobody was aware of what he did, not even the Bookkeeper nor the Municipal Treasurer (Exhibit 2, Moniza).

"On the other hand, Tirol admitted to Quiwag that upon receipt of the payrolls from Rolando Abella, she found them to be in order and so she presented the same to Municipal Treasurer Moniza. The latter gave Tirol cash advance in the amount of P2,124.00 to pay the laborers listed in the payrolls. Tirol then paid the laborers through Abella who guaranteed to her that he knew the persons listed in the payrolls.

"Municipal Treasurer Moniza admitted during the investigation that he gave bookkeeper Tirol cash advance to pay the laborers listed in the payrolls, after he had examined them and found the same to be in order.

"The Municipal Mayor denied to Quiwag that he signed the subject payrolls.

"Quiwag made an ocular inspection of the sites supposed to have been cleaned or ditched but found that small trees and shrubs still grew abundantly along the sides of the road. He submitted his investigation report to the Regional Director of the COA. Quiwag recommended the investigation of Abella, Tirol and Moniza by the Tanodbayan. He included Tirol and Moniza even if they were not aware of Abella's scheme to defraud the government because being accountable officers, they should have exercised diligence and circumspection in the discharge of their duties.

"In the meantime, on June 3, 1983, Tirol executed a Supplemental Affidavit before the Provincial Fiscal, recanting her earlier sworn statements given to Atty. Quiwag of the COA (Exh. 11, Moniza) and to the Provincial Fiscal of Tagbilaran City (Exh. 12, Moniza). x x x.

"xxx xxx xxx

"In an information dated March 30, 1984, the Tanodbayan accused Juanito Moniza, Juliana Tirol and Rolando Abella of the crime of Malversation Thru Falsification of Official/Public Documents.

"xxx xxx xxx

"Upon arraignment on September 5, 1984, Tirol and Moniza entered a plea of "not guilty". For his part, Abella entered a plea of "guilty" and accordingly, a judgment of conviction was rendered against him by the Sandiganbayan.

"In a decision dated August 13, 1985 and promulgated the following day, the Sandiganbayan found accused Moniza guilty beyond reasonable doubt, as co-principal with Abella, of the complex crime of Malversation thru Falsification of Official/Public Documents, while it acquitted accused Tirol on reasonable doubt.

On August 30, 1985, Moniza filed a Motion for Reconsideration of the decision of the Sandiganbayan. By way of supplement, Moniza also filed, on September 5, 1985, a Motion to Re-Open Case to Receive the Testimony of Rolanda Abella, on equitable grounds. Both motions were denied by the Sandiganbayan on November 6, 1985.

"Hence, this appeal by certiorari." (Comment, Supplemental Rollo, pp. 1-9)

Evidently, because of the recantation made by Juliana Tirol on June 3, 1983 of her initial statements, this led to the filing and inclusion by the Tanodbayan of Juanito Moniza, Jr., in the criminal Information for malversation. This recantation of Juliana Tirol also served as the basis of the conviction of herein petitioner by the Sandiganbayan.

In its discussion of this case, the Solicitor General took note of the pertinent portions of the decision of the Sandiganbayan more particularly the following:

"In exculpation, accused Moniza declared that he has been connected with the government for the past twenty years or more. Except for the instant case, he has never been charged administratively or criminally with any

offense in relation to his duties. On August 2, 1982, he reported for work. It was a Monday, the first day of the month and allegedly, a busy day for him. He had to submit the financial report of the previous months which was due on August 7, 1982. It was also the payday for the regular officials and employees of the said municipality. The treasurer's office personnel were then busy remitting their market collections of August 1, 1982, the market day of Sagbayan. It was against this back-drop that accused Juliana Tirol allegedly approached him for the payment of fictitious laborers listed in the payrolls. He told Tirol that he was busy but Tirol replied she would be the one to pay the laborers. He then examined the payrolls and found them to be in order. The signatures approving the vouchers were very similar to the usual signature of the mayor. He then authorized Tirol to prepare the cash advance for payment. Tirol then liquidated the cash advance pertaining to the two payrolls on August 5, 1982. Subsequently, Tirol returned to him the payrolls marked as Exhibits C and D. He explained that it was Tirol who paid the laborers listed in the payrolls for and his behalf.. After liquidating the cash advance and returning to him the payrolls, he then marked them as cash advance and gave a copy to Tirol and closed the account.

"Moniza further testified that on February 23, 1983, accused Tirol informed him that accused Rolando Abella had been investigated by Atty. Quiwag on February 21, or two days before, in connection with the payrolls containing fictitious laborers. Moniza then asked Tirol whether he (Abella) had refunded the same. Tirol replied that Abella had already refunded the amount as evidenced by Official Receipt No. 266-1364-B dated February 23, 1982.

"Continuing, Moniza disclosed that Tirol was an accountable officer as she collected taxes. He authorized Tirol to pay the laborers under Section 189 of the Revised Manual of Instructs to Treasurers issued by the Ministry of Finance. The signatures appearing in the summary of payrolls were his and without the summary of payrolls, the payrolls would not be paid. He was not able to observe whether there was work done on Viva and Bonifacio Streets as the streets were located far from his usual route in going to his office. Finally, Moniza averred that he had no knowledge where Abella secured the amount of P2,124.00 which the latter had refunded.

"xxx xxx xxx

"At first blush, Moniza's version appears credible. We are, however, intrigued by the testimony of his co-accused Tirol who offered a version different from that of Moniza's. Tirol claimed that she was forced to tell a lie in the investigation conducted by Atty. Quiwag because she was threatened by Moniza, such that if she would tell the truth, both of them would end up in jail. It was Moniza who instructed her to sign the payrolls. Significantly, this claim is in conflict with Moniza's version that it was Tirol who approached and told him (Moniza) about the payrolls and that it was Tirol who volunteered to pay the laborers." (Supplemental Rollo, pp. 10-13, *ibid*)

It may be gleaned from the findings of the Sandiganbayan above-quoted, that it would have found petitioner's defense credible were it not for the subsequent retraction made by his co-accused Juliana Tirol whose subsequent declarations differed from and contradicted her original statements. It was the turnabout made by Juliana Tirol which the Sandiganbayan apparently relied heavily upon when it convicted Juanito Moniza, Jr.

In his assessment of this case, the Office of the Solicitor General, representing the people, submits that the guilt of herein petitioner Juanito Moniza, Jr. has not been proved beyond reasonable doubt as the element of his alleged conspiracy with his co-accused Rolando Abella who pleaded guilty at the start of the trial, has not been established at all with any degree of moral certainty. In this regard, the Solicitor General has this to say:

"With due respect to the decision of public respondent, we submit that the guilt of petitioner has not been proved beyond reasonable doubt because conspiracy has not been established.

"1. a) It will be noted that Tirol's testimony, on the basis of which public respondent convicted petitioner as co-principal with Rolando Abella, is a completely different version from what she declared in two previous

statements corroborating the testimony of petitioner. x x x" (Supplemental Rollo, p. 15, *ibid*).

The Solicitor General found quite unconvincing Juliana Tirol's explanation regarding the contradictions in her initial declarations with those given by her in court. Juliana Tirol claimed that she recanted because she was threatened by the petitioner who was her superior. In addition, Juliana Tirol alleged that she signed the time books and payrolls allegedly upon orders of herein petitioner who she obeyed because she owned her promotion to him. In Respondent's Comment to the petition, the Solicitor General stated:

"Explaining the contradiction between the above statements and her testimony in court, Tirol claimed that she made the declarations which she later recanted because she was threatened by petitioner who was her superior. In addition, Tirol alleged that she signed the timebooks and payrolls upon orders of petitioner who she obeyed because she owed her promotion to him.

"The explanation is not convincing. In the first place, Tirol has not presented any proof to show that petitioner has in fact been instrumental in her getting a promotion such that she would be beholden to him. While petitioner may have then occupied a position higher in rank than Tirol, it is doubtful if petitioner as municipal treasurer could have the power to promote a municipal employee, considering that the highest municipal officer is the mayor. Nor has Tirol succeeded in demonstrating that the threats employed upon her by petitioner were so overpowering, such that she could not but agree to give untruthful statements twice to the authorities.

"Considering that Tirol was also an accused, her retraction should have been received with caution and weighed carefully, especially since her new testimony suddenly pointed to petitioner, her co-accused, as culpable. Could it be that she was impelled by the motive to exempt herself from liability? Indeed, the possibility for Tirol to change her version from that of her earlier statements is very great, because if we analyze the circumstances surrounding the commission of the offense charged (as per version of petitioner and Tirol's original statements), it is evident that Tirol was the one who was grossly negligent because she agreed to deliver the amount of P2,124.00 to Abella on the latter's pretext that he would just be the one to pay the wages of the alleged laborers. If Tirol had only required these persons who were listed on the payrolls to appear before her to claim their respective wages, she would have right then and there discovered that they were fictitious.

"Surely, Tirol's retraction is not entitled to credit because it was obviously but a result of afterthought, designed to exculpate herself even at the expense of another. Further, one who can so easily deny her sworn statement given to the authorities not only once but twice, based on grounds that are hardly plausible, does not deserve belief and faith. (Supplemental Rollo, pp. 18-20)

"xxx xxx xxx

The Solicitor General noted that the Sandiganbayan rejected the petitioner's testimony that it was Juanita Tirol who approached him for payment of the laborers listed in the payroll because the Sandiganbayan considered Juliana Tirol only as bookkeeper and it was not her duty to prepare payrolls or pay the salaries of laborers. In this regard, the Solicitor General, however, concluded after its analysis of the evidence –

"Unfortunately, public respondent found the existence of conspiracy on the basis of an assumption that there was an increased possibility that Abella gave the payrolls directly to Moniza and not to Tirol. We submit that this is not sufficient because conspiracy must be established, not by conjecture, but by positive and convincing evidence. (People vs. Palon, 127 SCRA 529) [Supplemental Rollo, p. 22, *ibid*].

This Court agrees that the presumption of regularity in the performance of official duty rests in favor of the petitioner herein and accepts as correct the following observations:

"xxx xxx xxx

"3. Public respondent found petitioner guilty in conspiracy with Abella, the confessed falsifier of the payrolls. Yet, in Abella's sworn statement given to Atty. Quiwag of the COA, Abella categorically declared: that he was the only one who prepared the falsified payrolls, that no one was aware of what he did, not the Bookkeeper (Tirol) nor the Municipal Treasurer (Moniza) (Exhibit 2-Moniza). This fact was also reflected in the sworn affidavit submitted by Atty. Quiwag. Abella later claimed the responsibility for the offense and immediately pleaded guilty when arraigned. x x x" (Supplemental Rollo, p. 23).

This presumption of innocence to which petitioner is entitled, is further fortified and must not be arbitrarily ignored, especially as the Solicitor General acknowledges that:

"Petitioner herein is no habitual criminal. He has served the government for more than twenty (20) years without having been charged with any criminal or administrative case. The case at bar involves an amount of only a little more than P2,000.00. And there was a sworn statement of the falsifier himself who admitted that he did not act in conspiracy with anyone. Finally, Abella pleaded guilty and was sentenced accordingly. Certainly, petitioner, whose conviction was based primarily, if not solely, on the testimony of a recanting witness, should have been entitled to a more just consideration.

"II. The ingredients of conspiracy must be proven as clearly as the offense itself (People vs. Aniel, 96 SCRA 199), because conspiracy requires conclusive proof for conviction of the accused (People vs. Marcos, 83 SCRA 338).

"We submit that the charge of conspiracy in the case at bar is belied by the facts shown in the record. Considered in its entirety, the evidence fail to satisfy the requirement of moral certainty - a certainty that convinces and satisfies reason needed to hold petitioner guilty of the offense charged (People vs. Lavarias, 28 SCRA 618). Petitioner's guilt for conspiracy has not been proved beyond reasonable doubt." (Supplemental Rollo, pp. 24-25, *ibid*).

The Court fully agrees that the foregoing considerations pointed out by the Solicitor General's Office strongly indicate the absence of evidence sufficient to establish the guilt of the herein petitioner and that he is rightfully entitled to a verdict of acquittal.

WHEREFORE, the decision rendered by the Sandiganbayan in its Criminal Case No. 9102, dated August 13, 1985 is SET ASIDE and a new judgment is hereby rendered acquitting petitioner Juanito Moniza, Jr., of the crime charged against him.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, and Feliciano, JJ., concur.

* According to the petitioner, there was, however, a modification imposed by the Tanodbayan that Juliana Tirol be included in the charge.

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