

LEONOR FORMILLEZA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN, FIRST DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 75160, March 18, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a Petition for review of a Decision of the Sandiganbayan.

The records of the case disclose that petitioner Leonor Formilleza has been with the government service for around 20 years. She was the personnel supervisor of the regional office of the National Irrigation Administration (NIA) in Tacloban City, Leyte since October 1, 1982. Her duties include the processing of the appointment papers of employees.

On other hand, a certain Mrs. Estrella Mutia was an employee of the NIA from February, 1978 up to March, 1985. Her appointment was coterminous with a project of the NIA. On December 31, 1983, her appointment was terminated. This notwithstanding, she continued working for the NIA pursuant to the verbal instructions of the regional director of the Administration.

Mrs. Mutia testified that she took steps to obtain either a permanent or at the least a renewed appointment; that when she approached the regional director about the matter she was advised to see the petitioner who was to determine the employees to be appointed or promoted; and that the petitioner refused to attend to her appointment papers unless the latter were given some money.

On February 27, 1984, Mrs. Mutia reported her problem to the Philippine Constabulary (PC) authorities in the province. The PC officials told her that steps were to be taken to entrap the petitioner. The entrapment equipment consisted of marked paper money bills worth P100.00. The PC officials concerned were colleagues of the husband of Mrs. Mutia in the PC.

The first attempt to entrap the petitioner was on February 28, 1984. The plan did not materialize as the petitioner did not show up at the designated rendezvous at the NIA building canteen.

The second attempt was on February 29, 1984, this time with results. That morning, the petitioner and Mrs. Mutia met in their service bus on their way to work. The two women supposedly agreed to meet at the canteen later that morning at 9 o'clock. Thereafter, Mrs. Mutia notified the PC authorities who were to arrange the entrapment. The PC soldiers involved in the arrangement were identified as Sergeants Eddie Bonjoc, Efren Abanes and Ignacio Labong.

Everyone who was to participate in the entrapment was ready. Mrs. Mutia went to see the petitioner in her office after which the two of them proceeded to the canteen. Some of their officemates -- Mrs. Florida Sevilla and a certain Mrs. Dimaano -- joined them in the canteen. They occupied two square-shaped tables joined together. The petitioner sat at the head of the table with Mrs. Mutia seated at her left, Mrs. Dimaano at her (the petitioner's)

right and Mrs. Sevilla at the right of Mrs. Dimaano. Sergeants Bonjoc and Labong sat at another table while Sergeant Abanes was alone in still another table. The latter brought along a camera in order to take photographs of the entrapment. The marked money was folded altogether.

Mrs. Mutia maintains that after they had finished taking their snacks, she handed the marked money bills under the table with her right hand to the petitioner who received the same with her left hand. At that moment, Sergeant Bonjoc approached the petitioner and held her hand holding the money bills. Sergeant Abanes brought out his camera and took photographs of the sequence of events. He was able to take seven photographs.[1]

The petitioner was arrested by the soldiers despite her objections to the entrapment. She was brought to the PC crime laboratory in the locality where she was found positive for ultra-violet powder. In the presence of the corporate counsel of the NIA, the petitioner denied accepting any bribe money from Mrs. Mutia.

The case was brought to the Sandiganbayan where it was docketed as Criminal Case No. 9634. Arraigned on January 10, 1985, the petitioner entered a plea of not guilty and went to trial on May 13, 1985.

In the proceedings before the Sandiganbayan, the prosecution argued that the entrapment arranged by the PC operatives was necessary because the petitioner was asking money from Mrs. Mutia in consideration for having the appointment papers of the latter facilitated. On the other hand, the petitioner maintains her innocence -- that there was no entrapment; the scenario was but a scheme set up by Mrs. Mutia and her husband's colleagues in the PC. The petitioner denies having accepted the supposed bribe money.

The Sandiganbayan relying on the theory of the prosecution observed in a decision promulgated on July 14, 1986,[2] as follows --

"Upon consideration of the evidence. We find the prosecution's version credible.

"Two days before the entrapment, Mrs. Mutia complained to the PC authorities about the inaction of the accused on her appointment papers due to her failure to give grease money. She executed a sworn statement to that effect. xxx. It was the PC who planned the entrapment and supplied the marked money. Sgt. Efren Abanes, who dusted the money bills with fluorescence powder and who was a member of the entrapment team, witnessed the delivery and receipt of the money by the accused and the complainant and he saw how the folded money was handed by Mrs. Mutia with her right hand underneath the table and received by the accused with her left hand. That was also how Mrs. Mutia described the manner she delivered the money to the accused -- the money bills were rolled which she handed to accused with her right hand underneath the table. Although Sgt. Abanes had a camera with him to photograph the entrapment, he could not prematurely expose the camera to allow a shot of the actual giving of the money lest the accused notice his presence and intention and thereby thwart the operation. But after the money had been delivered and received, he immediately took out his camera and snapped pictures, one of them depicting the accused held by Sgts. Bonjoc and Labong on the left hand xxx, and another showing the accused also held on the left hand by one of the PC men, and the complainant, Mrs. Mutia, drinking from a glass xxx.

"The fact that Mrs. Mutia's husband is a PC man himself does not detract from the credibility of Sgt. Abanes who took part in the entrapment, took pictures, and testified about the incident in court. Sgts. Abanes, Bonjoc and Labong were not the only public authorities privy to the operation. Capt. Pedro Pates was the one to whom Mrs. Mutia reported the accused's demand for money; it was he who broached the idea of entrapping the accused; and it was Major Fernando Pace who supplied the money and caused it to be marked with powder. It is inconceivable that all these commissioned and non-commissioned officers had lent themselves to take part in an unholy cabal of falsely incriminating a female government employee on the mere urging of one of their associates.

"Just as unreasonable is the insinuation that Mrs. Mutia had inveigled the accused to the canteen and resorted

to the insidious machination of planting money in her hand in a simulated entrapment simply because she thought the accused was not helping her in her application for appointment to a regular item.

"Mrs. Florida Sevilla's presence on the same table with the complainant and the accused may be conceded. But her testimony that she did not see anything that took place between the complainant and the accused before the PC operative pounced upon the accused, and the latter angrily asked the complainant what she was trying to do to her, does not improve the cause of the defense. As portrayed by the accused, she was at the head of the rectangular table with the complainant at her left: Mrs. Dimaano at her right, and Mrs. Sevilla next to Mrs. Dimaano. Since the money, according to the complainant and Sgt. Abanes, was handed to and received by the accused underneath the table, it is not surprising that Mrs. Sevilla who was two seats away from the accused did not see it." [3]

The respondent court ruled that the crime committed by the petitioner was not Direct Bribery as defined in Article 210 of the Revised Penal Code cited in the Information but Indirect Bribery as defined under Article 211 of the same code. Citing the case of *People v. Abesamis*, [4] the respondent court was of the opinion that she could be convicted for Indirect Bribery under the Information for Direct Bribery to which she pleaded and entered into trial inasmuch as it is the allegation of facts rather than the denomination of the offense by the provincial fiscal that determines the crime charged.

Thus, the respondent court found the petitioner guilty of Indirect Bribery and sentenced her to four months of arresto mayor, suspension from public office, profession or calling, including the right of suffrage, and public censure.

On August 23, 1986, the petitioner elevated the case to this Court by way of the instant Petition for Review. The thrust of the Petition is that the conclusions reached by the Sandiganbayan are not supported by the evidence. Moreover, the petitioner disputes the applicability and/or correctness of the ruling of this Court in *People v. Abesamis* relied upon by the respondent court.

As instructed by this Court, the Office of the Solicitor General submitted its Comment on the Petition. In opposing the Petition, the Solicitor General maintains that only questions of law may be raised in the instant case and the respondent court did not commit any error of law. The Solicitor General also stresses therein that the findings of fact made by the Sandiganbayan are supported by the evidence on record and deserve full faith and credit. The Solicitor General adds that the question of credibility is addressed mainly to the trier of facts, in this case, the Sandiganbayan.

The parties submitted subsequent pleadings in support of their stand. Thereafter, the case was deemed submitted for decision.

We find merit in the Petition.

Presidential Decree No. 1606, as amended, governs the procedure through which cases originating from the Sandiganbayan are elevated to this Court. [5] Under Section 7 thereof, the decisions and final orders of the Sandiganbayan are subject to review on certiorari by the Supreme Court in accordance with Rule 45 of the Rules of court. This Court has ruled that only questions of law may be raised in a petition for certiorari under Rule 45, subject to certain rare exceptions. [6] Simply stated, one way [7] through which a decision or final order of the Sandiganbayan can be elevated to the Supreme Court is a Petition for certiorari under Rule 45 and, as a general rule, only questions of law may be raised therein. The Solicitor General cites the case of *Peñaverde v. Sandiganbayan* [8] in support of this view.

Going now to the question of law raised in the instant Petition, We believe that the ruling in *People v. Abesamis*, contrary to the contention of the petitioner, is authority for the view that the allegation of facts, not the

denomination of the offense by the prosecutor, determines the crime charged. Anent the argument on the correctness of the ruling, the petitioner had not succeeded in showing any cogent basis for reversing or modifying the same.

The remaining argument that the judgment of conviction is not supported by the evidence raises a question of fact inasmuch as the resolution of the issue would require this Court to sort out and re-examine the evidence presented in the trial. Invoking the ruling of this Court in *Peñaverde v. Sandiganbayan*, the Solicitor General moves for the denial of the Petition. The Solicitor General adds that the credibility of witnesses is a matter better left to the appreciation of the trial court, in this case, the Sandiganbayan.

Indeed, the general rule is that only questions of law may be raised in a petition of this character. The general rule admits exceptions, one of which is when the findings of fact made by the trial court overlooked certain facts of substance and value which, if considered, might affect the result of the case. This observation was made by this court in *Peñaverde v. Sandiganbayan*, cited by the Solicitor General, to wit --

"With respect to the allegation that there was error on the part of respondent Sandiganbayan in concluding that petitioners conspired in the commission of the offense, suffice it to say that the basis of its finding was the credibility of witnesses. Pursuant to Section 7 of Presidential Decree No. 1606, in relation to Section 2, Rule 45 of the Rules of Court, the findings of fact of the Sandiganbayan are entitled to great respect and only questions of laws (sic) may be raised to the Supreme Court. Besides, well settled is the rule that the findings of (the) trial court on credibility of witnesses will not be disturbed unless such findings overlook certain facts of substance and value which, if considered, might affect (the) results of (the) case." [9]

We believe that the exception to the general rule calls for application in this case.

The fundamental axiom underlying a criminal prosecution is that before the accused may be convicted of any crime, his guilt must be proved beyond reasonable doubt. Thus, if there are substantial facts which were overlooked by the trial court but which could alter the results of the case in favor of the accused, then such facts should be carefully taken into account by the reviewing tribunal.

In the case before Us, there are substantial facts and circumstances which appear to be favorable to the accused but which were not carefully considered by the Sandiganbayan. The failure to do so is most unfortunate considering that the Sandiganbayan is the first and last recourse of the accused before her case reaches the Supreme Court where findings of fact are generally conclusive and binding.

The essential ingredient of indirect bribery as defined in Article 211 of the Revised Penal Code [10] is that the public officer concerned must have accepted the gift or material consideration. There must be a clear intention on the part of the public officer to take the gift so offered and consider the same as his own property from then on, such as putting away the gift for safekeeping or pocketing the same. Mere physical receipt unaccompanied by any other sign, circumstance or act to show such acceptance is not sufficient to lead the court to conclude that the crime of indirect bribery has been committed. To hold otherwise will encourage unscrupulous individuals to frame up public officers by simply putting within their physical custody some gift, money or other property.

Did the petitioner accept the supposed bribe money?

The Sandiganbayan noted that the photographs of the entrapment show that the petitioner was accosted by the PC soldiers after she accepted the marked money. Against the evidence of the prosecution that the money was handed to petitioner by Mrs. Mutia under the table is the assertion of petitioner that it was when she stood up that Mrs. Mutia suddenly placed something in her hand which she did not know to be money and when she saw that it was money she threw it away. [11] An examination of the seven photographs that were allegedly taken immediately after the passing of the money shows that the petitioner was standing up when the PC agents apprehended her.

This corroborates petitioner's story. There was no picture showing petitioner to be seated which should be her position immediately after the money was handed to her under the table, which should be the case according to the version of the prosecution.[12] None of the photographs show the petitioner in the process of appropriating or keeping the money after it was handed to her. Two of the seven photographs that were taken outside the canteen appear to be of no relevance to the operation.

As the petitioner was admittedly handed the money, this explains why she was positive for ultra-violet powder. It is possible that she intended to keep the supposed bribe money or may have had no intention to accept the same. These possibilities exist but We are not certain.

However, what is revealing is that Mrs. Sevilla and Mrs. Dimaano were present around the table in the canteen with the petitioner and Mrs. Mutia when the latter allegedly handed the money to the petitioner. There were other persons in the premises like the PC agents whose identities petitioner possibly did not know. Under the circumstances and in such a public place it is not probable that petitioner would have the nerve to accept bribe money from Mrs. Mutia even under the table. If the petitioner knew and was prepared to accept the money from Mrs. Mutia at the canteen, the petitioner would not have invited her officemate Mrs. Sevilla to join them. Mrs. Sevilla stated she did not see the alleged passing of the money. She could not have seen the money as it was passed on under the table or when, as petitioner said, it was quickly placed in her hand when she stood up. What Mrs. Sevilla is sure of is that when they were about to leave the canteen, two (2) men approached petitioner, one of whom took pictures, and the petitioner shouted at Mrs. Mutia, "What are you trying to do to me?"[13] The reaction of petitioner is far from one with a guilty conscience.

Moral certainty, not absolute certainty, is needed to support a judgment of conviction. Moral certainty is a certainty that convinces and satisfies the reason and conscience of those who are to act upon a given matter.[14] Without this standard of certainty, it may not be said that the guilt of the accused in a criminal proceeding has been proved beyond reasonable doubt.

With all these circumstances taken into account altogether, We are left at a loss as to the guilt of the accused. Overlooked by the Sandiganbayan, these facts and circumstances make out a good case for the petitioner.

Accordingly, the Court holds that the guilt of the petitioner in Criminal Case No. 9634 has not been proved beyond reasonable doubt. She is, therefore, entitled to an acquittal.

WHEREFORE, in view of the foregoing, the Decision of the Sandiganbayan in Criminal Case No. 9634 is hereby SET ASIDE. The petitioner Leonor Formilleza is hereby ACQUITTED on the basis of reasonable doubt. We make no pronouncement as to costs. This Decision is immediately executory.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Sarmiento, Cortes, and Grino-Aquino, JJ., concur.

[1] Exhibits "M" and "M-1" up to "M-6", Original Record.

[2] Pages 21 to 33, Rollo. The case was assigned to the First Division of the Sandiganbayan composed of Justices Francis Garchitorena, Conrado Molina and Augusto Amores. Justice Molina prepared the Decision.

[3] Pages 29 to 31, Rollo.

[4] 93 Phil. 712 (1953).

[5] The Decree was signed into law on December 10, 1978. The validity of the Decree has been upheld in *Nuñez v. Sandiganbayan*, 111 SCRA 433 (1982).

[6] *Hernandez v. Court of Appeals*, 149 SCRA 67 (1987). See Section 2, Rule 45.

[7] Another available remedy is the special civil action for certiorari under Rule 65 when only jurisdictional issues are raised.

[8] 124 SCRA 345 (1983).

[9] 124 SCRA 345, at 351.

[10] Article 211 of the Revised Penal Code provides as follows -- "Art. 211. Indirect bribery. -- The penalties of *arresto mayor*, suspension in its minimum and medium periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office."

[11] TSN, February 12, 1985, pp. 6-7.

[12] Exhibits M to M-6.

[13] TSN, September 18, 1985, pp. 6-7.

[14] *People v. Lavarias*, 23 SCRA 1301, at 1306 (1968).

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