

**TOMAS BAYAN, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.***G.R. No. 77050. February 06, 1990*

Ponente: GANCAYCO, J.

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This is a petition for review of the decision of the Court of Appeals dated August 27, 1982 in CA-G. R. No. 16205-CR affirming with modification the conviction of petitioner Tomas Bayan together with Daniel Tobias and Amado de Vera of the crime of malversation thru falsification of public documents and imposing on them the indeterminate penalty of from eight (8) years and one (1) day of prison mayor in its medium period as minimum to fourteen (14) years of reclusion temporal as maximum, with perpetual special disqualification and a fine of P9,746.00, to indemnify the Municipality of Polomolok in the same amount, without subsidiary imprisonment in case of insolvency and to pay the costs.[1]

The facts as found by the appellate court are as follows:

"In 1967, Leoncio B. Matullano was the Municipal Treasurer of Polomolok, South Cotabato. He was on leave from September 1 to November 30, of that year. In his place, Amado de Vera was designated Acting Municipal Treasurer. Appellant Tomas D. Bayan was then the mayor of Polomolok, while Daniel Tobias was a Chief of Section in the Office of the Provincial Auditor of South Cotabato. (tsn., pp. 186-190, April 8, 1969; Exhibit G; tsn., p. 100, April 7, 1969; Exhibit V).

"In the afternoon of November 6, 1967, Tobias ordered from Engineer Ramon G. Fernandez, one of the proprietors of the Fernandez Hollow Block Factory at Dadiangas, General Santos, South Cotabato, fourteen (14) pieces of culverts, 24" diameter x 1 meter, with a unit price of P33.00, or for the total price of P946.00. Fernandez was instructed by Tobias to deliver the culverts at the back of the Municipal Building of Polomolok. Fernandez was able to deliver the twenty-four (24) pieces of culverts at around 7:00 p.m. on November 7, 1967, at the back of the Municipal Building of Polomolok. No one was around to receive the delivery. Fernandez, however, left the culverts at the back of said Municipal Building, as they were heavy and it would be difficult for him to go back and forth from General Santos to Polomolok to deliver them (tsn., pp. 10-14, 54, April 7, 1969).

"On November 8, 1967, Tobias went to Fernandez' Office at Dadiangas, General Santos. Thereat, Fernandez gave Tobias the original copy of a Cash Invoice No. 1885 (Exhibit A) wherein aforesaid order was reflected. Except for Fernandez' signature, the entries on that cash invoice were made by him with a pencil. His signature thereon was written in ink because, as stated by him:

'A Before that there were occasions when I signed it and my wife will just issue to some other persons. I have my signature already printed in the cash invoice.' (tsn., p. 21, April 7, 1969).

The pencil entries as well as Fernandez' signature were impressed on the carbon duplicate of the cash invoice (Exhibit A-1). Fernandez also gave Tobias a Delivery Receipt No. 402 dated November 8, 1967 (or 492) (Exhibits

O and S) for the subject twenty-four (24) culverts. On the same occasion, Fernandez signed a blank Municipal Voucher (Exhibit D) which Tobias said would be filled up later on (tsn., pp. 18-25, 33-34, April 7, 1969).

"On November 11, 1967, Fernandez received P996.00 from Tobias, representing P946.00 for the twenty-four (24) culverts delivered and P50.00 for trucking expenses (tsn., pp. 15 & 63, April 7, 1969).

"On December 1, 1967, Leoncio B. Matullano returned from his leave and assumed his duties as Municipal Treasurer of Polomolok. Amado de Vera, the Acting Municipal Treasurer, turned over to Matullano the cashbook of the Office of the Municipal Treasurer the cash appearing in the cashbook, and the properties inside the Municipal Building. The turn-over was witnessed by Nicolas Lachica, Chief of the Investigation and the Inspection Division of the Provincial Treasurer of South Cotabato. Lachica had been directed to witness the transfer of office between the outgoing Acting Municipal Treasurer and the returning Municipal Treasurer of Polomolok (tsn., pp. 190-191, April 8, 1969; p. 103, April 7, 1969).

"On December 2, 1967, Matullano came across a Municipal Voucher dated October 31, 1967 (Exhibit H), evidencing payment by the Municipality of Polomolok to the Fernandez Hollow Block Factory the sum of P10,692.00 for reinforced concrete pipes of different sizes allegedly delivered to Polomolok for its use. This Municipal Voucher was approved for payment by appellant Tomas C. Bayan. Therein, he certified that the articles covered by the voucher, conformed to specifications as to quantity, quality and prices actually being paid for. He likewise certified that the amount of P10,692.00 covered by the voucher was correct and just, that the expenses were incurred under his direct supervision and were necessary for the public service, and that the prices stated were the lowest obtainable and were just and reasonable and not in excess of current rates in the locality. On his part, Acting Municipal Treasurer Amado de Vera certified in the same Municipal Voucher that the amount of P10,692.00 was incurred under the authority of the Municipal Council. This voucher was not signed by a representative of the Fernandez Hollow Block Factory (tsn., p. 208, April 8, 1969).

"Another Polomolok Municipal Voucher containing the same entries made on Exhibit H (Exhibit D) was found to be among one of the documents relating to the same transaction. This was the Municipal Voucher (Exhibit D) which was signed by Fernandez in blank. It showed the payment of P10,692.00 to the Fernandez Hollow Block Factory on November 17, 1967, allegedly for reinforced concrete pipes of different diameters (tsn., pp. 33-34, April 7, 1969).

"The documents supporting aforesaid Polomolok Municipal Voucher (Exhibits D and H) were the following:

‘(a) Polomolok Requisition and Issue Voucher dated September 2, 1967, for Ninety-three (93) pieces of 24" diameter x 1.00 meter reinforced concrete pipes and two hundred (200) pieces of 18" diameter x 1.00 reinforced concrete pipes. In this document, Acting Municipal Treasurer de Vera certified that funds were available for the purpose stated therein, viz: maintenance of municipal roads and streets. Appellant Bayan approved this Voucher and certified that the supplies requisitioned were necessary and will be used solely for the purpose stated. He further acknowledged receipt of the supplies requisitioned. Tobias approved the requisition for public bidding, in behalf of the Provincial Auditor (Exhibit I);

‘(b) Polomolok Advertisement dated September 2, 1967 allegedly addressed to Clariza Concrete Product of General Santos, Cotabato, for ninety-three (93) pieces of 24" x 1.00 meter reinforced concrete pipes, no unit cost stated, and two hundred (200) pieces of 18" diameter x 1.00 meter reinforced concrete pipes, no unit cost, and initialed by Tobias on September 13, 1967 (Exhibit N);

‘(c) Advertisement dated September 2, 1967, addressed to the Fernandez Hollow Block Factory of General Santos, Cotabato, for ninety-three (93) pieces of 24" diameter x 1.00 meter reinforced concrete pipes with a unit

cost of P44.00 and two hundred (200) pieces of 18" diameter x 1.00 meter reinforced concrete pipes with a unit cost of P33.00 or for the total cost of P10,692.00, unsigned by Acting Municipal Treasurer de Vera. This document was initialed by Tobias on September 13, 1967 (Exhibit B);

‘(d) An undated Bidder's Tender signed by one Adolfo de los Santos in behalf of the Fernandez Hollow Block Factory, and initialed by Tobias on September 13, 1967. This bidder's Tender did not specify the quantity of supplies bidden for, their description, unit price, and total price (Exhibit C);

‘(e) Another blank and undated Bidder's Tender allegedly submitted by Clariza Concrete Product of General Santos, Cotabato, initialed by Tobias on September 13, 1967. This Bidder's Tender had written across its face the following: ‘occupied and has a government contract for pipes of the 3rd engineering district’ (Exhibit J);

‘(f) Another blank and undated Bidder's Tender initialed by Tobias on September 13, 1967 (Exhibit K);

‘(g) An Abstract of Canvass Or Bid dated September 13, 1967, signed by appellant Bayan as Mayor of Polomolok and requisitioner, de Vera as Acting Municipal Treasurer, and Bonifacio Salazar, Chairman on Award. This document reflected the requisition of (Exhibit I) and advertisement (Exhibit B) for two hundred ninety-three (293) culverts of different dimensions, and awarded contract to Fernandez Hollow Block Factory. Clariza Concrete Products was therein made to appear as not interested due to lack of laborers and the Dadiangas Industrial Products as being occupied with a government contract for pipes of the Third Engineering District (Exhibit L);

‘(h) A Purchase Requisition For Supplies dated September 13, 1967, addressed to Fernandez Hollow Block Factory and signed by appellant Bayan and Acting Municipal Treasurer de Vera. This document requested Fernandez Hollow Block Factory to deliver to the Municipal Treasurer's Office of Polomolok Ninety-Three (93) 24" diameter x 1.00 meter reinforced concrete pipes, unit cost P44.00, and one hundred (100) 18" diameter x 1.00 meter reinforced concrete pipes, unit cost P33.00, for the total price of P10,692.00. A typo-graphical mistake was made in stating the quantity ordered for the 18" diameter x 1.00 meter reinforced concrete pipes. The correct number ordered was two hundred (200) pieces since the total price stated therefore was P6, 600.00 (Exhibits F, F-1 and F-2);

‘(i) A Report of Inspection signed by Acting Municipal Treasurer de Vera and initialed by Tobias on November 11, 1967. This document certified to the alleged delivery by Fernandez Hollow Block Factory at job sites of aforesaid two hundred ninety-three (293) reinforced concrete pipes valued at P10,692.00 (Exhibits M and M-1);

‘(j) A Delivery Receipt No. 402 or 492 of Fernandez Hollow Block Factory, dated October 29, 1967. This document stated the delivery to Polomolok of ninety-three (93) pieces of 24" diameter x 1.00 meter reinforced concrete pipes for P4, 092.00, and two hundred (200) pieces of 18" x 1.00 meter reinforced concrete for P6,600.00. Tobias wrote the following statement across the face of this document: ‘Inspected this 29th day of October, 1967 and verified to have been delivered at different job sites.’ (Exhibit O);

‘(k) An alleged Taxpayer's Certificate dated September 29, 1967, executed by one Adolfo de los Santos for Fernandez Hollow Block Factory, and sworn on September 29, 1967, before appellant Bayan. This document was initialed by Tobias on October 29, 1967 (Exhibit E).’

"The alleged payment of P10,692.00 to Fernandez Hollow Block Factory was entered by Acting Treasurer de Vera on page 58 of the Polomolok Official Cash Book (Exhibit P and P-1; tsn., pp. 198-199, April 8, 1969). The same payment likewise appeared in the ledger of Polomolok as an expenditure for 1967-1968 (Exhibits Q and Q-1), and in the Polomolok Municipal Treasurer's Journal (Exhibits R and R-1; tsn., pp. 201-205, April 8, 1969).

"Matullano was surprised at seeing the voucher (Exhibits D and H) for P10,692.00 as having been paid by Polomolok. One copy of the voucher (Exhibit D) was not even signed by the creditor. There was no appropriation available for his item. Besides, there were concrete culverts of the same size manufactured by Polomolok and these had been used by the Municipality. Finally, expenditures of amounts exceeding P10,000.00 had to be approved by the Provincial Auditor. The voucher in question was not (tsn., pp. 192-193, April 8, 1969).

"On December 4, 1967, Matullano referred the matter to the Assistant Treasurer of Polomolok, Gerardo Barrientos. Barrientos said that he did not know of any delivery by Fernandez Hollow Block Factory for two hundred ninety three (293) culverts. Barrientos knew that Polomolok still had thirty nine (39) culverts manufactured by Polomolok in stock. Besides aforesaid thirty nine (39) culverts, he found only twenty two (22) of the culverts delivered by Fernandez Hollow Block Factory, in the yard behind the Municipal Building (tsn., pp. 281-284, 289, May 5, 1969).

"Together with Nicolas Lachica, Chief of Investigation and Inspection Division of the Office of the Provincial Treasurer of South Cotabato, Barrientos questioned Engineer Ramon Fernandez, Jr. on aforesaid transaction. In the confrontation among the three of them on December 4, 1967, Fernandez stated that he delivered only twenty four (24) culverts behind the Municipal Building of Polomolok on November 7, 1967; that on November 8, 1967, he issued Tobias Cash Invoice No. 185 (Exhibit A), the entries on which were written with a pencil, and Delivery Receipt No. 402 (or 492) /Exhibit O/ the entries on which were likewise written with a pencil; Cash Invoice No. 1885 (Exhibit A) and Delivery Receipt No. 402 (or 492) were altered to show the purchase of two hundred ninety three (293) culverts instead; that the alteration of Cash Invoice No. 1885 (Exhibit A) may be seen by comparing it with its carbon duplicate (Exhibit A-1), which shows the purchase of twenty-four (24) culverts only; that Delivery Receipt No. 402 (or 492) /Exhibit O/ was also altered as it shows the delivery of two hundred ninety-three (293) culverts, while its duplicate (Exhibit S) shows the delivery of twenty-four (24) only; that he had not seen before the Advertisement For Bid (Exhibit B) allegedly sent to Fernandez Hollow Block Factory; that the Tender's Bid (Exhibit C) signed by one Adolfo de los Santos was not submitted by Fernandez Hollow Block Factory; that he signed the Municipal Voucher (Exhibit H) in blank, upon the representation by Tobias that it would be filled up later on; that the Fernandez Hollow Block Factory did not submit the Taxpayer's Certificate (Exhibit E) nor the Tender's Bid (Exhibit B), and the person who signed them as Adolfo de los Santos, was not known to or employed by Fernandez Hollow Block Factory; that he did not receive the Purchase and Requisition for Supplies (Exhibit F) and saw it for the first time when the transaction was later on investigated by the Fiscal's Office; that he received only P946.00 from Tobias, and not P10,692.00 (tsn., pp. 16-70, 104-135, April 7, 1969);

"After December 4, 1967, Barrientos went around the different barrios of Polomolok, but could find no trace of the culverts allegedly delivered by Fernandez Hollow Block Factory other than the twenty-two (22) pieces lying behind the Municipal Building of Polomolok (tsn., pp. 286-290, 297-302, May 5, 1969). In the administrative investigation conducted by Lachica of the transaction, he subpoenaed Adolfo de los Santos, but said Adolfo de los Santos did not appear and was certified by the Chief of Police charged with serving the subpoena to be non-existent (tsn., p. 137, April 7, 1969)."[2]

The herein petition is predicated on the following assigned errors allegedly committed by the appellate court:

## "I

THE RESPONDENT COURT OF APPEALS ERRED IN INTERPRETING THE DOCUMENTARY EVIDENCE AND THE CIRCUMSTANCES ADDUCED IN THE CASE AS CONVINCINGLY SHOWING THE ALLEGED CONSPIRACY BETWEEN HEREIN PETITIONER AND HIS CO-ACCUSED DANIEL TOBIAS AND AMADO DE VERA TO MALVERSE THE PUBLIC FUNDS OF THE MUNICIPALITY OF

POLOMOLOK, SOUTH COTABATO.

## II

THE RESPONDENT COURT OF APPEALS ERRED IN INTERPRETING EXHIBITS 'A' AND 'O' AS HAVING BEEN FALSIFIED BY HEREIN PETITIONER AND HIS CO-ACCUSED ON THE BASIS OF MERE PRESUMPTION AND NOT ON THE EVIDENCE ON THE RECORD.

## III

THE COURT OF APPEALS ERRED IN INTERPRETING THE EVIDENCE, BOTH DOCUMENTARY AND ORAL, ON RECORD TO HOLD THAT PETITIONER HEREIN IS GUILTY OF THE CRIME CHARGED.

## IV

THE COURT OF APPEALS ERRED IN NOT ACQUITTING THE HEREIN PETITIONER DESPITE THE ABSENCE OF THE VERY ESSENTIAL ELEMENTS OF THE CRIME CHARGED."<sup>[3]</sup>

In the information that was filed against petitioner it is alleged:

"That on or before or after October 31, 1967, in the poblacion, Municipality of Polomolok, Province of South Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Tomas D. Bayan, being then the municipal mayor of Polomolok, South Cotabato, and as such responsible for the improvement of the municipality and to that end had to purchase or cause to be purchased the needed materials; accused Amado de Vera who was duly designated Acting Municipal Treasurer of Polomolok, South Cotabato, and as such responsible and accountable for all funds and properties belonging to the municipality by reason of his position; accused Daniel Tobias, clerk of the Provincial Auditor's Office and in charge of passing in audit all vouchers and allied papers presented to him, conspiring confederating and mutually helping each other, and taking advantage of their public positions, did then and there willfully, unlawfully and feloniously falsify a public document, namely: a municipal voucher of the municipality of Polomolok, South Cotabato, by causing it to appear therein that 200 reinforced concrete pipes of the size 18 inches in diameter by 100 meter long, costing P6,000.00 and 93 reinforced concrete pipes of the size of 24 inches in diameter by 1.00 meter long, costing P4,092.00, or a total of P10,692.00, Philippine Currency was delivered by the Fernandez Hollow Block Factory to the municipality of Polomolok, South Cotabato, and received by it, when in truth and in fact, as all of them knew, only 10 reinforced concrete pipes of the size of 18 inches in diameter by 1.00 meter long costing P330.00 and 14 reinforced concrete pipes of the size of 24 inches in diameter by 1.00 meter long costing P946.00, Philippine Currency were delivered by the Fernandez Hollow Block Factory and received by the said municipality, thus attributing to the said Fernandez Hollow Block Factory acts or statements other than those in fact made by it, and the said three accused, knowing the falsity of the voucher aforesaid, conspiring, confederating and mutually helping each other, and taking advantage of their public positions, did then and there willfully, unlawfully and feloniously cause the said false voucher to be certified as true by accused Amado de Vera, in the amount of P10,692.00 Philippine Currency out of the funds of the municipality entrusted to his custody, and once paid all the accused appropriated and converted to their own use and benefit, in pursuance of their conspiracy, the amount of P9,746.00 Philippine Currency, which is the cost of 269 undelivered reinforced concrete pipes, the difference between the 293 concrete reinforced pipes referred in the false municipal voucher, and the 24 concrete reinforced pipes costing P946.00 Philippine Currency, that were actually delivered by the Fernandez Hollow Block Factory and duly paid for to it, to the damage and prejudice of the municipality of Polomolok, South Cotabato and the Government in the amount of P9,746.00, Philippine Currency which amount they failed to return despite repeated demands to that effect.

Contrary to law, specially Arts. 171 and 217 in relation to Articles 14 and 48 of the Revised Penal Code, as amended."[4]

From the foregoing it is clear that petitioner, who was then the municipal mayor of Polomolok, is charged with conspiring with accused Amado de Vera, then Acting Municipal Treasurer of Polomolok and as such an accountable public officer, and Daniel Tobias, Clerk of the Provincial Auditor's Office, in falsifying a municipal voucher of the municipality by causing it to appear that 293 pieces of reinforced concrete pipes costing P10,692.00 had been delivered by the Fernandez Hollow Block Factory (Fernandez for short) to the municipality of Polomolok, when in fact only a total of 24 pieces were delivered and received costing P946.00, and that they appropriated the amount of P9,746.00 which is the cost of the 269 undelivered pieces to the damage and prejudice of the government.

The findings of facts of the appellate court are conclusive in this proceeding, and it is on the basis thereof that this petition must be resolved.

A careful examination of the said findings of facts of the appellate court and of the records of the case shows that the prosecution has not established conspiracy between petitioner and the two other accused as to justify a conclusion that petitioner is guilty of the offense charged. On the contrary, certain circumstances demonstrate not only the absence of such unity of action and purpose which is essential to establish conspiracy but more especially, to establish the innocence of petitioner.

Because of the flashfloods causing damage to life and property in Polomolok in 1967, petitioner who was the municipal mayor, called the municipal council to an emergency session in his residence to remedy the impassable roads and serious problems of erosion. Petitioner summoned the municipal treasurer, Leoncio Matullano, to the meeting, but Amado de Vera who was acting in his place attended the session. Petitioner met him for the first time then. De Vera was asked to discuss the financial condition of the municipality as there was a need to purchase 293 pieces of culverts of different sizes. De Vera informed them that there was a surplus of P27,000.00, thus, the council approved the budget in principle.[5]

A requisition and issue voucher dated September 2, 1967 for 293 culverts of various sizes was prepared by de Vera who certified to the availability of the funds for the purpose while petitioner approved the same and certified to the necessity of the supplies for the purpose stated. Tobias approved the requisition for public bidding.[6]

The corresponding advertisement for bids was issued by de Vera and initialed by Tobias, the bidder's tender appears to have been submitted, and the abstract of canvass or bid was made awarding the contract to Fernandez, signed by petitioner as requisitioner, by de Vera, as Acting Treasurer and Bonifacio Salazar, as Chairman on Awards.[7]

A purchase and requisition for supplies dated September 13, 1967 addressed to Fernandez Hollow Block Factory was signed by petitioner and de Vera for 293 culverts of various sizes.[8]

A report of inspection was signed by de Vera and initialed by Tobias certifying to the delivery of said 293 reinforced concrete pipes valued at P10,692.00 by Fernandez at the jobsites of the municipality.[9] Delivery receipt No. 402 or 492 issued by Fernandez dated October 29, 1967 attests to the delivery of said 293 concrete pipes. Across the same, Tobias wrote that he inspected and verified the deliveries.[10] The taxpayer's certificate dated September 29, 1967 executed by Adolfo de los Santos for Fernandez was sworn before petitioner and was initialed by Tobias on October 29, 1967.[11]

The payment of P10,692.00 to Fernandez was entered by de Vera on page 58 of the Polomolok Official Cash Book.[12] The same payment also appeared in the ledger of Polomolok as an expenditure for 1967-68 and in the

Polomolok Municipal Treasurer's Journal.[13]

It is on the basis of the foregoing circumstances and documents that the municipal voucher for payment duly certified by de Vera was approved for payment by petitioner. The payment appears to have been received by Fernandez.[14]

Although evidence was adduced tending to show that only 24 culverts were delivered to the municipality, there is no showing that petitioner knew of such fact. Indeed, what appears is that what petitioner knew was that the 293 culverts requisitioned were delivered as shown by the supporting documents. During the administrative investigation and the preliminary investigation, petitioner asked that an ocular inspection be conducted to verify the actual quantity of culverts delivered not only at the back of the municipal building but also in the other jobsites, but this was not heeded. Even during the trial, a similar representation of petitioner appears to have fallen on deaf ears.

There is no showing that petitioner had anything to do with the alleged falsification much less that he profited from the effects of the crime. To hold him liable with the accountable public official for malversation through falsification of public documents, clear and convincing evidence of conspiracy must be adduced. Otherwise, his liability if at all shall be individual depending on his participation in the commission of the offense. Unfortunately no such evidence has been adduced to support his conviction even on this account.

What appears in this case is that petitioner as a public official acted in response to a public need. By so doing this prosecution was set in motion by his political adversaries. With the slender evidence on record, his vindication is in order.

WHEREFORE, the judgment appealed from is hereby REVERSED AND SET ASIDE and another judgment is hereby rendered acquitting petitioner Tomas Bayan of the offense charged with costs de oficio.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Page 38, Rollo.

[2] Pages 27 to 35, Rollo.

[3] Pages 13 to 14, Rollo.

[4] Exhibits D and H.

[5] TSN, pages 502 to 508.

[6] Exhibit I.

[7] Exhibits N, B, C, D, J, K and L.

[8] Exhibits F, F-1 and F-2.

[9] Exhibits M and M-1.

[10] Exhibit O.

[11] Exhibit E.

[12] Exhibits P and P-1.

[13] Exhibits Q and Q-1; R and R-1.

[14] Exhibits D and H.

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