

JOSE SAYSON Y DELARMENTE, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 110547-50 and G.R. Nos. 114526-667. June 26, 2001

Ponente: PARDO, J.

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PARDO, J.:

The two consolidated cases[1] are here decided jointly. Both cases seek review of the decision[2] of the Sandiganbayan finding petitioner guilty of violation of Republic Act No. 3019, Section 3 (e), as amended, in each of the cases, and sentencing him to suffer:

(A) G. R. Nos. 110547-50 (Lapu-Lapu City Highway Engineering District Cases, First Petition)

“C. In Criminal Cases Nos. 2562 to 2611 and 2613 to 2624, accused JOSE SAYSON is found GUILTY beyond reasonable doubt in the violation of Section 3 (e) of Republic Act 3019, as amended, for which he is hereby sentenced IN EACH OF THE SAID CASES: to suffer the indeterminate penalty of four (4) years, as minimum, to eight (8) years as maximum; to pay a fine of P1,500.00; to suffer perpetual special disqualification from public office; to indemnify jointly and severally with the accused who were convicted in Criminal Cases Nos. 790 to 819 and 821 to 832, the Government of the Republic of the Philippines in the amount stated in each of the said related cases; and, to pay the costs.”[3]

(B) G. R. Nos. 114526-667 (Danao City Highway Engineering Office Cases, Second Petition)

“C. In Criminal Cases Nos. 4277 to 4413 and 4415 to 4420 accused JOSE SAYSON is found GUILTY beyond reasonable doubt in the violation of Section 3 (e) of Republic Act 103019, as amended, for which he is hereby sentenced IN EACH OF THE SAID CASES: to suffer imprisonment for the indeterminate period of Four (4) Years and One (1) Day as maximum, to Eight (8) Years and One (1) Day as minimum; to suffer perpetual disqualification from public office; to indemnify the Government of the Republic of the Philippines in the amount stated in the judgment in Criminal Cases Nos. 1646 to 1782 and 1784 to 1789, jointly and severally with the accused who were convicted in said related cases; and, to pay his proportionate share of the costs.”[4]

In 1977, petitioner Jose Sayson y Delarmente was a budget examiner, Ministry of Public Highways, Region VII, Cebu City. In a set of 64 related cases (Criminal Cases Nos. 2562-2624 and 2990) and 143 related cases (Criminal Cases Nos. 4277-4413; 4415-4420), the prosecutor (Tanodbayan) charged petitioner acting in conspiracy with several other public officers of the Ministry of Public Highways, assigned at MPH, Region VII and MPH, Central Office, Manila with causing undue injury to the Philippine government by causing, allowing, approving and receiving the illegal, irregular and unauthorized disbursement and expenditure of public funds, out of the National Treasury, from the period April 1, 1977 to May 31, 1977, in the amount of P 47,583.31 through the issuance of General Voucher No. 0105 and Treasury Check No. SN-3 2402412,[5] and the period August to November 30, 1977, in the amount of P49,725.00 through the issuance of General Voucher No. 2517 and Treasury Check No. 7933671.[6]

When arraigned on June 18, 1980[7] and on December 14, 1981,[8] petitioner Sayson pleaded not guilty to all

charges.

On June 21, 1978, Ruth Paredes y Inting, supervising auditor of the Commission on Audit (COA) received an office memorandum from COA Region VII Director Sofronio Flores, Jr. directing her and Victoria Quejada to conduct an investigation on the fake letter of advice allotments (LAA) in the four highway engineering districts of Cebu (Cebu City, Cebu 1st, Cebu 2nd and Mandaue City Highway Engineering Districts) and to submit their report thereon.

Ms. Paredes' team studied the flow of funds from the Ministry of the Budget down to the district level. They learned that on the basis of the appropriation laws and upon request made by heads of agencies, the Ministry of the Budget (hereafter referred to as the Ministry) released funds to various government agencies by means of an Advice of Allotment (AA)[9] and a Cash Disbursement Ceiling (CDC),[10] which were issued together. Upon receipt of the AA and CDC from the Ministry of the Budget, the central office of the Ministry, through its budget office, prepared the Sub-Advice of Allotment (SAA)[11] and the Advice of Cash Disbursement Ceilings (ACDC)[12] for each region in accordance with the disbursement allotment. The SAAs were issued on request for allotment submitted by the District Engineer to the Regional Director in accordance with a program of work. Upon receipt of the SAA, the chief accountant of the central office would draw a journal voucher for each region, a copy of which is sent to the region concerned.[13]

The LAA, which was addressed to the engineer, was prepared by the Regional Office, and transmitted to the district office together with the ACDC. The LAA authorized the Highway Engineering District to incur obligations, such as purchases of supplies and materials for maintenance of national roads and bridges. The district prepared a Requisition for Supplies and Equipment (RSE), which bore the approval of the District Engineer and the Regional Director and certified by the chief accountant as to the availability of funds. A request for obligation allotment was then prepared so that a certain amount of the funds available to the district was set aside for the particular expenditures stated in the RSE. After that, advertisements were made and the bids opened. Once the winning bidder was determined, the purchase order was prepared and served on the winning bidder. Thereafter, deliveries were made, the corresponding delivery receipts and tally sheets were submitted, the inspection conducted and the voucher for the payment of the deliveries prepared. Once the general voucher was approved, a TCAA check was prepared by the disbursing officer and released to the contractor concerned. The Report of Checks Issued by Deputized Disbursing Officer (RCIDDO) was then prepared, listing all the checks issued during the period.

In the course of the investigation, the team of COA auditors led by Ms. Paredes uncovered the issuance of fake allotments. They identified the vouchers, which were charged against fake allotments for the years 1977 and 1978. They examined the SAAs and ACDCs coming from the Ministry of Public Highways Central office, the LAAs released to the different offices in Region VII, the logbook or subsidiary ledgers, the report of checks issued by the deputy disbursing officer, the vouchers and other documents relative to the transactions of the Ministry.[14]

On November 7, 1987, the President of the Philippines created a special cabinet committee to investigate alleged irregularities in the disbursement of funds of the public highways. The committee confirmed that the released SACDCs were bogus because they do not appear in the logbook of the Ministry and were not covered by any sub advice of allotment coming from the Ministry. They did not bear the releasing stamp mark on the top portion; the numbers were not in sequence; they did not contain the sub advice of allotment number from which they could have been taken nor the legal basis for taking them from the appropriations. Most of the fake LAAs were signed by accused Rolando Mangubat, chief accountant, MPH, Region VII.[15]

In 1977, in Lapu-Lapu Highway Engineering District, no vouchers were sent to the regional office for counter-signature because all the vouchers were split into amounts of less than P50,000.00.[16] In the Danao City Highway Engineering Office, no voucher exceeded P50,000.00.[17]

Accused Delia Preagido y Comahig, an accountant assigned to the Ministry's Region VII office, was discharged from the information to be utilized as a State witness. She handled the journal of collections and deposits, as well as the general journal. In the last week of January 1977, accused Mangubat told her to stay after office hours and handed her the sum of P500.00, saying that her salary was too small and that he would need her someday. Sometime February 1977, accused Mangubat again told her to stay after office hours because they would go to a conference at the Town and Country Restaurant in Cebu City.

It was agreed upon that on Saturdays accused Preagido, Cruz and Sayson would prepare and sell the simulated LAAs at 26% of the gross amount. Accused Cruz and Sayson would be responsible for negotiating the fake LAAs to contractors, district engineers and accountants of different cities. Out of the 26% proceeds, 6% would go to the signatories of the fake LAAs, $\frac{3}{4}$ of 20% to the regional office and $\frac{1}{4}$ of 20% to the central office people. The signatories on the fake LAAs were accused Rolando Mangubat, Adventor Fernandez and Heracleo Faelnar.[18] They started selling fake LAAs in February 1977 until June 1978.[19]

In the simulated LAAs, accused Mangubat certified the availability of funds but the SACDs were irregular because they did not bear the stamp mark of the releasing and budget section and they did not coincide with the regular CDCs. Accused Preagido identified the signatures on the fake LAAs as those of accused Rolando Mangubat, Adventor Fernandez[20] and Heracleo Faelnar.[21]

In his defense, accused Rolando Mangubat y de la Riarte[22] testified that the LAAs he signed were properly funded by the savings[23] of the region, to wit: 42% of the equipment rental; 5% for the discretionary fund of the director and 2% for administrative expenses. The region saved and retained between 65% to 70% of the allotted fund because 25 to 30% of this was paid out for equipment rental and their projects were undertaken through contracts with private individuals. He insisted that the LAAs were genuine because they were properly funded and he was authorized to sign them. The LAAs were spent for the intended projects. He said that the performance audit team did not find any misuse or misappropriation of funds allotted to the region or any irregularity in the LAAs and CDCs he issued. He denied meeting accused Cruz, Sayson and Preagido in the restaurant to discuss the issuance of fake LAAs and the distribution of the proceeds thereof to different persons.[24]

Accused Mangubat did not deny his signatures on the LAAs. He admitted that the LAAs were issued on the basis of savings realized by the region.[25] He pleaded guilty to all the informations filed against him, for which the Sandiganbayan convicted him on October 20, 1989[26] and on November 17, 1989.[27]

Accused Jose Sayson y Delarmente was with the Ministry of Public Highways, Region VII, as Budget Examiner III. As such, he pre-audited disbursement of salaries and supplies of the Regional Office in amounts not exceeding P6,000.00. Disbursements in excess of P6,000.00 were forwarded to the COA resident auditor for pre-audit. His duty did not include allocation of amounts to different districts but only to disbursements within the regional office. He had no hand in the preparation of LAAs and CDCs, a task relegated to the accounting and budget section of the ministry where he was not connected. His immediate superior was Angelina Escaño, head of the Accounting and Finance Division. He denied meeting accused Mangubat, Preagido and Cruz at the Town and Country Restaurant or receiving any money in connection with the anomalies. He said that accused Preagido had been convicted in the other highway cases and simply wanted to implicate him and his co-accused to the anomalies.

On February 15, 1993, the Sandiganbayan promulgated a decision in the Lapu-Lapu City Highway Engineering

District cases finding petitioner guilty of the crime charged. The dispositive portion of the decision reads:

“WHEREFORE, judgement is hereby rendered as follows:

“x x x;

“In Criminal Cases Nos. 2562 to 2611 and 2613 to 2624, accused JOSE SAYSON is found GUILTY beyond reasonable doubt in the violation of Section 3 (e) of Republic Act 3019, as amended, for which he is hereby sentenced IN EACH OF THE SAID CASES: to suffer the indeterminate penalty of FOUR (4) years, as minimum, to EIGHT (8) years, as maximum; to pay a fine of P1,500.00; to suffer perpetual special disqualification from public office; to indemnify jointly and severally with the accused who were convicted in Criminal Cases Nos. 790 to 819 and 821 to 832,[28] the government in the amount stated in each of the said related cases; and to pay the costs.”[29]

The Sandiganbayan found that since October 1977 chief accountant Rolando Mangubat no longer had authority to approve the LAAs because he was assigned on detail to the MPH central office.[30] In 1977 and 1978, the fake allotments released to MPH Regional Office VII reached the total amount of P60,354,728.21.[31] The Sandiganbayan was convinced to the point of moral certainty that petitioner Jose Sayson y Delarmente took part in the conspiracy due to the positive testimony of accused Delia Preagido[32] and the admission of guilt made by accused Mangubat.[33]

On December 13, 1993, the Sandiganbayan promulgated a decision in the Danao City Highway Engineering Office cases finding petitioner guilty of the crime charged, to wit:

“WHEREFORE, judgement is hereby rendered as follows:

“x x x;

“In Criminal Cases Nos. 4277 to 4413 and 4415 to 4420 accused JOSE SAYSON is found GUILTY beyond reasonable doubt in the violation of Section 3 (e) of Republic Act 3019, as amended, for which he is hereby sentenced IN EACH OF THE SAID CASES: to suffer imprisonment for the indeterminate period of Four (4) Years and One (1) Day as minimum, to Eight (8) Years and One (1) Day as Maximum; to suffer perpetual disqualification from public office; to indemnify the Government of the Republic of the Philippines in the amount stated in the judgment in Criminal Cases Nos. 1646 to 1782 and 1784 to 1789,[34] jointly and severally with the accused who were convicted in said related cases; and, to pay his proportionate share of the costs.”[35]

Hence, these petitions.[36]

The issue raised is whether petitioner’s guilt of the charges against him has been established on the basis of the lone testimony of Delia Preagido, an accused turned State witness.

After carefully reviewing the facts of the cases herein involved, the Court is convinced that petitioner had no part in the simulation and negotiation of fake LAAs. The only evidence linking him to a conspiracy to defraud the government was the testimony of Delia Preagido, a previously convicted co-accused, who was discharged from the informations and utilized as State witness.

Does the fact that she has been convicted of cases involving moral turpitude and violation of the Anti-Graft and Corrupt Practices Act, similar to the instant cases, affect her credibility as a witness?

We find Delia Preagido not a credible witness. She was convicted of several cases of estafa through falsification of public documents and of violation of the Anti-Graft and Corrupt Practices Act. Her discharge as an accused to be utilized as State witness was improper. She was one of the most guilty. In fact, she was given conditional

pardon to induce her to testify against her co-accused. The Sandiganbayan itself found her testimony against the other accused to be incredible. How come that she was credible as against the petitioner? The Sandiganbayan erred in giving credence to her testimony against petitioner.

Indeed, the Sandiganbayan grievously erred in discharging her as an accused and allowing the prosecution to utilize her as a State witness. Rule 119, Section 9 of the 1985 Rules on Criminal Procedure,[37] as amended, requires that in allowing an accused to be discharged to be a witness for the State, the court must be satisfied that the accused does not appear to be the most guilty and that he has not at any time been convicted of an offense involving moral turpitude.[38]

As a general rule, the discharge or exclusion of a co-accused from the information in order to utilize him as a prosecution witness rests on the sound discretion of the trial court.[39] This discretion shall be exercised strictly on the basis of the conditions set forth in Rule 119, Section 9 of the 1985 Rules on Criminal Procedure. The court's discretion is not absolute or arbitrary. Sound judicial discretion must be exercised with due regard to the proper administration of justice.[40] We consider it unthinkable that the Sandiganbayan can so grossly violate the strict conditions set out in this Rule.

In the discharge of a co-accused, the trial court may be reasonably expected to err. Where such error is committed, however, the error in discharging such accused cannot affect the legal consequences of his discharge.[41] Neither may such error affect the quality of his testimony, if otherwise credible.[42]

However, as heretofore stated, we find Delia Preagido not a credible witness. She implicated petitioner to give a semblance of truth to her testimony. The Sandiganbayan found her testimony incredible as against the other accused. There is no rhyme or reason to consider the same incredible testimony credible against petitioner Sayson.

Accused Mangubat, the mastermind of the fraudulent scheme pleaded guilty to all the charges against him. The Sandiganbayan convicted him on October 20, 1989[43] and November 17, 1989.[44] His admission is binding only on him.[45]

In light of the foregoing, the Sandiganbayan erred in finding petitioner Sayson guilty of violation of Republic Act 3019, Section 3(e). The elements of the offense are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[46] The last two elements were not established in the cases at bar.

WHEREFORE, the Court REVERSES the decision of the Sandiganbayan in Criminal Cases Nos. 2562 to 2564 and 2990 and in Criminal Cases Nos. 4277 to 4413 and 4415 to 4420. The Court ACQUITS petitioner Jose Sayson y Delarmente of the charges against him in said cases.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Resolution dated July 6, 1994, G. R. Nos. 114526-667, Rollo, p. 265, G. R. Nos. 110547-50, Rollo, p. 293.

[2] In Criminal Cases Nos. 2562-2611 and 2613-2624 (Lapu-Lapu City Highway Engineering District Cases) and

Criminal Cases Nos. 4277-4413 and 4415-4420 (Danao City Highway Engineering Office Cases).

Criminal Cases Nos. 2562-2564 & 2990, Sandiganbayan Decision, G.R. Nos. 110547-50, Rollo, p. 208.[3]

[4] Criminal Cases Nos. 4277-4413 & 4415-4420, Sandiganbayan Decision, G.R. Nos. 114526-667, Rollo, p. 236.

[5] Criminal Cases Nos. 2562-2564 & 2990.

[6] Criminal Cases Nos. 4277-4413 & 4415-4420.

[7] Criminal Cases Nos. 2562-2564 & 2990, Sandiganbayan Decision, G.R. Nos. 110547-50, Rollo, p. 83.

[8] Criminal Cases Nos. 4277-4413 & 4415-4420, Sandiganbayan Decision, G.R. Nos. 114526-667, Rollo, p. 96.

[9] This gives the government agency authority to incur obligations within a specific amount in accordance with approved programs and projects, released for one fiscal year and broken down into quarters; G.R. Nos. 110547-50, Rollo, p. 89.

[10] This represents the maximum amount that can be disbursed by check under the "Treasury Check Amount for Agency" (TCAA) within a specified period in payment of valid obligations.; G. R. Nos. 110547-50, Rollo, p. 90.

[11] This gives the regional office the authority given to incur obligations; G. R. Nos. 110547-50, Rollo, p. 123.

[12] This is the authority to withdraw cash from the National Treasury through the issuance of checks; G. R. Nos. 110547-50, Rollo, p. 123.

[13] G. R. Nos. 110547-50, Rollo, p. 91.

[14] G. R. Nos. 114526-667, Rollo, p. 103.

[15] Criminal Cases Nos. 4277-4413 & 4415-4420, G. R. Nos. 114526-667, Rollo, pp. 104-105.

[16] Criminal Cases Nos. 2562-2564 & 2990, G. R. Nos. 110547-50, Rollo, p. 99.

[17] Criminal Cases Nos. 4277-4413 & 4415-4420, G. R. Nos. 114526-667, Rollo, p. 105.

[18] Sandiganbayan Decision, Criminal Cases Nos. 2562-2564 & 2990, G.R. No. 110547-50, Rollo, pp. 114, 118; Sandiganbayan Decision, Criminal Cases Nos. 4277-4413 & 4415-4420, G.R. No. 114526-667, Rollo, pp. 113-114.

[19] G.R. No. 110547-50, Rollo, p. 118.

[20] Now deceased.

[21] Died on June 23, 1988; G. R. No. 110547-50, Rollo, p. 180.

[22] He is now confined at the National Penitentiary, Camp Sampaguita, Muntinlupa City.

[23] The savings referred to are the funds which were obligated and retained in the region and not released to the district because it is in the form of rental which will be liquidated the moment the equipment engineer submits the corresponding vouchers.

[24] Sandiganbayan Decision, Criminal Cases Nos. 4277-4413 & 4415-4420, G.R. No. 114526-667, Rollo, pp. 116-117.

[25] Sandiganbayan Decision, Criminal Cases Nos. 4277-4413 & 4415-4420, G.R. No. 114526-667, Rollo, p. 118.

[26] In Criminal Cases Nos. 1782 and 1784 to 1789; G.R. Nos. 114526-667, Rollo, p. 187.

[27] In Criminal Cases Nos. 770-832 and 851; G.R. Nos. 110547-50, Rollo, p. 179.

[28] Sandiganbayan Decision, G.R. Nos. 110547-50, Rollo, pp. 52-217, at pp. 190-207.

[29] Ibid., p. 208. The Sandiganbayan Decision was split, three justices voting for conviction and two for acquittal.

[30] Ibid., p. 131.

[31] Discharged as co-accused and utilized as a State witness after she was given conditional pardon in other cases where she was convicted. Ibid., p. 138.

[32] Sandiganbayan Decision, G.R. Nos. 114526-667, Rollo, p. 174.

[33] Ibid., p. 187.

[34] Sandiganbayan Decision, G.R. Nos. 114526-667, Rollo, pp. 189-235.

[35] Ibid., Rollo, pp. 235-236.

[36] Filed on July 16, 1993, G.R. Nos. 110547-50, Rollo, pp. 11-51; Filed on May 5, 1994, G.R. Nos. 114525-667, Rollo, pp. 10-48. On June 30, 1997, the Court gave due course to the petition (in G. R. Nos. 110547-50).

[37] In force at the time of the trial. Rule 119, Section 9, provides: “Sec. 9. Discharge of accused to be state witness.- When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty;

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. [Now Rule 119, Section 17, Revised Rules of Criminal Procedure, as amended, effective December 1, 2000].

[38] People v. Peralta, G.R. No. 121971, October 16, 2000; People v. Bariquit, G.R. No. 122733, October 2, 2000; People v. de Guzman, 326 SCRA 131 [2000]; People v. Espanola, 271 SCRA 689 [1997].

[39] People v. Bariquit, G. R. No. 122733, October 2, 2000, citing Ramos v. Sandiganbayan, 191 SCRA 671 [1990].

[40] Chua v. Court of Appeals, 329 Phil. 841 [1996].

[41] *People v. Torrefranca*, 151 SCRA 143, 148 [1987].

[42] Pamaran, *The 1985 Rules on Criminal Procedure Annotated*, 1998 Edition, p. 417, citing *People v. Bautista*, 106 Phil. 39 [1959]; *People v. De Leon*, 108 Phil. 800 [1960]; *Mangubat v. Sandiganbayan*, 220 Phil. 392 [1985]; *People v. Torrefranca*, 151 SCRA 143 [1987]; *Bogo-Medellin Milling Co., Inc. v. Son*, 209 SCRA 329 [1992].

[43] G.R. Nos. 114526-667, Rollo, p. 187.

[44] G.R. Nos. 110547-50, Rollo, p. 179.

[45] *Tan v. People*, 313 SCRA 220, 230 [1999].

[46] *Domingo v. Sandiganbayan*, 322 SCRA 655, 666 [2000]; *Llorente, Jr. v. Sandiganbayan*, 287 SCRA 382 [1998]; *Salamera v. Sandiganbayan*, 303 SCRA 217 [1999].

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