

ANTOLIN JARIOL, JR., PETITIONER, VS. HON. SANDIGANBAYAN AND THE PEOPLE OF THE PHI-LIPPINES, RESPONDENTS.

G.R. Nos. 52095-52116. August 13, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Review by certiorari, petitioner Antolin Jariol, Jr. assails the Decision of the Sandigan-bayan dated 29 November 1979 finding him, along with several others, guilty on twenty-two (22) counts of estafa through falsification of public and commercial documents and sentencing him to the penalties specified in that Decision.

The background facts which are uncontested are set out in the Decision of the Sandiganbayan in the following terms:

"The Ministry of Public Highways is divided into thirteen (13) regions and each region is in turn sub-divided into districts. One of these regions is Region VII based in Cebu City and covers the Provinces of Cebu, Negros Oriental, Bohol, and Sub-province of Siquijor and the cities in said provinces, namely: the Cities of Cebu, Danao, Mandawe, Lapu-lapu and Toledo in the Province of Cebu, the Cities of Bais, Kanlaon and Dumaguete in the Province of Negros Oriental and Tagbilaran City in the Province of Bohol, Region VII is subdivided into fifteen (15) Highway Engineering Districts, namely: Cebu First, Cebu 2nd, Danao City, Mandawe City, Lapu-lapu City, Toledo City, Cebu City, Bohol 1st, Bohol 2nd, Tagbilaran City, Bais City, Kanlaon City, Dumaguete City, Negros Oriental and Siquijor.

[B]ased on the standard operating procedure of the funding of the different offices of the national government, the said regions are funded in the following manner:

The Ministry of the Budget at the beginning of each quarter releases to the Ministry of Public Highways the corresponding Advices of Allotment (AAs), which is the authority to obligate, and the Cash Disbursement Ceiling (CDC), which is the authority to disburse. The Ministry or Central Office will now release Sub-Advices of Allotment (SAAs) to the various regional offices, with the Central Office retaining a portion of the allot-ment for its own use. The Sub-Allotment Advice (SAA) released to the various regional offices is addressed to the regional director and is accompanied by an Advice of Cash Disbursement Ceiling (ACDC). Upon receipt thereof, the Chief Accountant of the region debits the receivable accounts and credits the allotments in the Journal Voucher. Thereafter, Letters of Advice of Allot-ment (LAAs) based on the program of work submitted by the district and Advices of Cash Disbursement Ceiling (ACDCs) are prepared by the region for release to the different districts composing the region. The LAAs and the ACDCs are signed by the Regional Director addressed to the District Engineer but are usually received by an authorized liaison officer of the district. With the receipt of the LAAs and the ACDCs, the district is now equipped with authority to incur obligations and authority to disburse. As a matter of procedure, however, upon receipt of the LAA, a Requisition for Supplies or Equipment (RSE) is prepared by the Property Custodian wherein the District Accountant certifies as to the availability of funds. The Project Engineer prepares a Request for Obligation of Allotment (ROA) which is likewise certified as to availability of funds by the District Account-ant. The Requisition for Supplies or Equipment, together with a copy of the program of work, is transmitted to the

Regional Director for approval and returned to the district. If approved, canvass bid forms are sent to different contractors or suppliers for them to quote prices for the materials or supplies called for in the approved Requisition for Supplies or Equipment. After all the bid forms are submitted, they are opened on specified dates and the determination of the lowest quoted price is made. This is reflected in the Abstract of Sealed Quotations. A Purchase Order is now prepared in favor of the winning bidder or contractor. Deliveries then are made by the contractor and, thereafter, General Vouchers, supported by delivery receipts and tally sheets which are consolidated in the Inspection Report and other supporting documents, are processed for the payment of the deliveries. Finally, the corresponding check is prepared and released to the contractor.

At the end of the month, the District Accountant prepares several reports including the Report of Obligations Incurred (ROI) and the Report of Checks Issued by Deputized Disbursing Officer (RCIDDO) which are submitted to the region. These reports form the bases of the trial balance prepared by the regions for submission to the Central Office. The different regional trial balances are then consolidated in a single trial balance prepared by the Central Office for the entire Ministry of Public Highways which is then submitted to the Commission on Audit.

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It also appears undisputed that with the exception of Neis, who claimed that he was then on leave from December 19, 1977 to May 31, 1978, after he was re-assigned to the 2nd Highway Engineering District of Bohol, all the accused government officials actually discharged the functions pertaining to their office as alleged in the informations during the period that the supposed crimes were committed; that the Letters of Advice of Allotment under which the disbursements in question were made are Exhibits 'R', 'R-1' to 'R-118' with a total amount of P6,530,000.00 all addressed to the Danao City HED and signed and sent by Assistant Regional Director Bagasao, acting for and in the absence of the Regional Director, that the General Vouchers in support of the disbursements are Exhibits 'LL', 'LL-1' to 'LL-125', all charged against Project No. NC-0782, for the repair of the Cebu North Hagnaya Wharf Road and/or its shoulders which is about ten (10) kilometers long running from Km. 27.7 to Km. 38.6; and that the checks, Exhibits 'W-1' to 'W-124', were actually issued and cashed for the payment of the aforesaid vouchers."^[1]

From 1 January 1978 to 25 August 1978, a team from the Commission on Audit led by Maria Athena C. Flores, Manager, Performance Audit Office, audited the operations of Regional Office No. 7 of the Ministry of Public Highways and the Danao City Highways Engineering District ("HED") and found many irregularities. These irregularities consisted, among other things, of: (a) fake allotments for payment of fake obligations, and fake Cash Disbursement Ceilings (CDCs) for fake authorities to disburse; (b) conversion of the fake allotments and fake CDCs to actual payments for fake payrolls, overpaid payrolls, fictitious deliveries, double payments, overpricing and underdeliveries; and (c) manipulations of the actual payments, manipulations by Journal Vouchers, manipulations of accounting records to conceal payments, fake allotment obligations under fake Cash Disbursement Ceilings as represented by Journal Vouchers.

As a result of such auditing and investigation, one hundred twenty-six (126) uniformly worded informations -- uniformly worded, that is, except with respect to the amounts involved, the names of the persons charged and the dates of the commission -- were filed with the respondent Sandiganbayan, against certain named government officials of Regional Office No. 7, Ministry of Public Highways and the Danao City HED and certain named private persons, including petitioner herein Antolin Jariol, Jr., who had been private suppliers of materials in respect of the questioned transactions. The total amount involved in these one hundred twenty-six (126) cases was P6,237,018.00. Petitioner was charged in twenty-two (22) of the one hundred twenty-six (126) informations. The twenty-two (22) informations were docketed as Criminal Cases Nos. 118, 122, 123, 127, 129, 132, 133, 134, 135, 136, 137, 140, 143, 144, 146, 148, 149, 150, 152, 156, 170 and 172. The informations were typically set forth in the following terms:

"That in, about and during the period from May 2, 1978 up to and including June 11, 1978 in Danao City and within the jurisdiction of this Honorable Court, the accused Jose Bagasao and Rolando Mangubat, Assistant Director and Chief Accountant of Region VII, Ministry of Public Highways, respectively conniving with each other with the deliberate intent of defrauding the Philippine Government, and with the indispensable cooperation, assistance and connivance of the accused Angelina Escano, Finance Officer of the same office; Delia Preagido, Assistant Chief Accountant of the same office; Gualberto Toledo, District Auditor of the Commission on Audit (COA) assigned to Danao City HED; Milagros Pisao, Chief Accountant of the same office; Romeo Andrino, Senior Civil Engineer of the Danao City HED; Adolfo Sualit, Assistant District Engineer of the same HED; Antolin Jariol, Jr. a supplier; Florencio Masecampo, Administrative Officer of the Danao City HED; Juan Doe, Pedro Doe, Jesus Joe, Juana Doe, whose identities are still unknown all taking advantage of their official positions committed in relation to their respective offices, with the exception of Antolin Jariol, Jr., and mutually helping one another did then and there willfully and feloniously falsify the following documents, to wit:

- '1. Letter of advice and allotment (LAA #107-0782-193A-78 dated May 16, 1978
2. Request for obligation of allotment (ROA) #101-4-202-77
3. Abstract of Sealed Quotations dated May 2, 1978
4. Purchase Orders dated May 29, 1978
5. Delivery Receipts (15)
6. Report of Inspection undated
7. General Voucher No. 780618'

by making it appear that Region No. VII of the Ministry of Public Highways regularly issued a letter of advice of allotment to the Danao City HED to purchase 147 m.t. of the bituminous concrete surface course for use in the repair of Cebu North Hagnaya Wharf road by making it appear further: That the proper request for obligation of allotment was prepared and approved; that the proper bidding among the suppliers was conducted; that the corresponding purchase order was prepared in favor of the lowest bidder; and that the ordered construction materials were duly delivered and inspected when, in truth and in fact, as all the respondents knew, the foregoing were false and incorrect and that because of these falsifications, the said accused were able to collect from the Danao City HED the amount of FORTY-NINE THOUSAND NINE HUNDRED EIGHTY PESOS (P49,980.00) Philippine Currency in payment of the non-existent deliveries and, once in possession of the same amount, the accused misappropriated, converted and misapplied the said amount for their own personal needs to the damage and prejudice of the Philippine Government in the total amount of FORTY-NINE THOUSAND NINE HUNDRED EIGHTY PESOS (P49,980.00) Philippine Currency." [2]

All one hundred twenty-six (126) cases were tried jointly by agreement of the parties. On 29 November 1979, the Sandiganbayan rendered a Decision [3] acquitting accused Rosilo Neis, Rafael Alberio and Ernesterio Sabare on grounds of reasonable doubt. All the other accused, including petitioner, were found guilty. Thus, petitioner was sentenced, in each of the twenty-two (22) cases in which he was included as an accused, to suffer an indeterminate penalty ranging from eight (8) years, eight (8) months and one (1) day of prision mayor as minimum to ten (10) years, eight (8) months and one (1) day of prision mayor as maximum, to pay a fine of P3,500.00 and jointly and severally to indemnify the Republic of the Philippines the amount of P49,980.00 representing the amount of which it was defrauded.

Petitioner filed with the Sandiganbayan a separate motion for reconsideration. Without waiting, however, for resolution of his motion, petitioner filed the present Petition. The issues raised by petitioner were summarized by

him in the following terms:

I. Did the prosecution prove the essential elements of the complex crime of estafa through the falsification of public and commercial documents as charged in the 22 informations against herein petitioner?

II. Did not respondent court fail to consider the laws on contract of sale and contract of agency which are the applicable laws in the twenty two (22) transactions subject of these criminal cases, and therefore, should have acquitted the accused?

III. Did not respondent court commit grave abuse of discretion in not complying with Rule 119, Section 9 of the Rules of Court in discharging two (2) co-accused, Milagros Pisao and Dulcissimo Lucenas and who were utilized as state witnesses? and

IV. Has not the respondent Sandiganbayan committed grave abuse of discretion in continuing with the hearings of the above entitled cases knowing fully well that a petition for certiorari in the case of Rufino V. Nuñez vs. Sandiganbayan and the People of the Philippines, G.R. Nos. 50581-617 is still pending decision with this Honorable Court seeking relief under the 'equal protection' ex post facto law and 'due process' clauses of the Constitution?"[4]

In his issues 1 and 2, petitioner basically disputes the sufficiency of the evidence adduced by the prosecution during the trial and upon which the Sandiganbayan relied in rendering its Decision. He insists that he did not participate, connive or assist and conspire in the preparation of the fake public and commercial documents utilized in the defrauding of the Republic of the Philippines. Petitioner claims that he made actual deliveries of the ready-mixed asphalt and cites affidavits and testimonies of witnesses, both of the prosecution and of the defense, in his Petition.

Presidential Decree No. 1486, as amended by P.D. No. 1606, which created the Sandiganbayan, specified that decisions and final orders of the Sandiganbayan shall be subject to review on certiorari by this Court in accordance with Rule 45 of the Rules of Court. And Rule 45 of the Revised Rules of Court provides, in Section 2, that only questions of law may be raised in the Petition for Review and these must be distinctly set forth. Thus, in principle, findings of fact of the Sandiganbayan are not to be reviewed by this Court in a petition for review on certiorari. There are, of course, certain exceptions to this general principle.[5] Here, reading petitioner's Petition for Review and Memorandum in the most favorable possible light, petitioner may be seen to be in effect asserting that the Sandiganbayan misapprehended certain facts in arriving at its factual conclusions.

We have examined the assertions of petitioner on this score and found, first of all, that the arguments he makes before this Court and the allegedly favorable testimony pointed to by him were already made and adduced by him before the Sandiganbayan and considered and rejected by that court. Referring in particular to the question of whether deliveries of asphalt and other materials had been made by petitioner and his co-accused suppliers, the Sandiganbayan held:

"On the second issue, whether or not there were deliveries of materials made and for which General Vouchers, Exhibits 'LL', 'LL-1' to 'LL-125', were approved and checks, Exhibits 'W-1' to 'W-124', were drawn in payment thereof and actually cashed, this Court is of the firm belief that except for negligible deliveries to show semblance of deliveries, there were no deliveries made to justify payments as stated in the different vouchers and checks in question.

State witness Lucenas, who, as Property Custodian of the Danao City HED, requisitions materials and supplies and oversees the properties of the government entrusted to him, recommends approval of all the Requisitions for Supplies or Equipment and signs the Report of Inspection of materials delivered as having received the same, spontaneously and categorically declared with marked fluency and ease, that in all the one hundred twenty six (126) General Vouchers and Reports of Inspection signed by him, he has not received any material

in the Wharf Road, and that it was only upon instruction of Masecampo that he signed the General Vouchers and supporting documents, some in their office already filled up and the rest in the house of Masecampo in blank (TSN, pp. 215 to 234, August 7, 1979 hearing). Lucenas became more convincing in the thorough cross examination to which he was subjected wherein he remained firm and unshaken in his claim of non-delivery of construction materials in the Wharf Road. The aforesaid testimony of Lucenas was corroborated by Salengua, Danao City Public Works Supervisor, who testified that he did not notice asphaltting in the Wharf Road (TSN, p. 30, May 30, 1979 hearing); by Abdulia Rondina, Secretary-Treasurer of Barangay Maslog, one of the barangays traversed by the Wharf Road, that there was no repair or deliver of construction materials noted by her from January to June 1978 (TSN, p. 199-200, May 30, 1979 hearing); and finally by NBI Agent Nereo Joaquin that in November 1978, in the course of his investigation of these anomalies, he inspected the items of deliveries stated in the General Vouchers and 'found out that there were no deliveries made as alleged in the vouchers' and that although 'in the voucher it was made to appear that materials were needed in those places, we found out that there is no need to put those materials in this portion of the highway because that highway is in a very good condition' made of 'concrete and asphalt and that the shoulders of the highway were also in good condition' (TSN, pp. 65 to 68, July 25, 1979 hearing). The testimony of Joaquin becomes more convincing by his detailed report (Exhibits 'CCC', 'CCC-1' to 'CCC-9') showing the date of the supposed deliveries, the vouchers covering them, the kilometer posts where the supposed deliveries were made, the quantity of the supposed deliveries and the contractors who supposedly made them.

The ocular inspection likewise indubitably demonstrated that there was no need to deliver to the Wharf Road 123,683 cubic meters of gravel surface for the highway is partly asphalted and concreted and in good condition and if said volume of materials had been applied on the shoulders of the road, then in the words of Engr. Abesamis, the shoulders of the road, both sides, will be about two meters higher than the surface of the road (TSN, p. 294, July 25, 1979 hearing). The truth, however, as the ocular inspection showed, the shoulder of the Wharf Road, except a few meters which seem to have just been repaired, is in good condition for a long time judging from the age of vegetation which may have been in existence long before 1978; that some portions of the Wharf Road have no shoulder, either the road immediately adjoins the private lot like in the city proper of Danao or no shoulder at all because it is already the sea. And with respect to the 8,232 metric tons of bituminous concrete surface course, that no delivery at all was made is shown by the lack of necessity for such volume of materials for more than five (5) km. of the Wharf Road is concreted and in good condition; and the fact that during the ocular inspection there was no overlaying of premix of the Wharf Road including the concrete portion which started last April 1979 shows that actually there was no application of bituminous concrete surface course, for had it been so, there would have been no need of the overlaying again of asphalt. Said overlaying of premix in April 1979 is even quite intriguing as it tends to conceal the true condition of the Wharf Road in 1978." [6] (Underscoring supplied)

Petitioner next claims that "simple contracts of sale" were entered into by supplier Jariol Enterprises with the government, after having won the bid therefor, to deliver one hundred forty-seven (147) tons of ready-mixed asphalt at the Cebu North Hagnaya Wharf Road at the price P340.00 per metric ton. Petitioner then contends that the ready-mixed asphalt was in fact delivered and spread at "several places within the jurisdiction of Danao City" and "not at the Cebu North Hagnaya Wharf Road at the instance and on the orders of the officials and/or employees of the Danao City Highways Engineering District". [7] Petitioner claims those officials or employees instructed Jariol Enterprises to deliver the asphalt instead to certain barangay roads and selected spots such as a basketball court, and pleads that petitioner cannot be held liable as he simply complied with the instructions of the vendee.

The above argument of petitioner was met squarely by the Sandiganbayan in its Decision, by pointing out, among other things, that no public bidding had in fact taken place, and that had actual deliveries of asphalt and other materials been in fact made, there would have been absolutely no reason to engage in and fabricate the series of irregularities and forgeries which had been independently shown. [8] The Sandiganbayan said:

"x x x. If there was really an honest-to-goodness requisition of supplies and their eventual deliveries there would have been no need to commit the string of irregularities consisting of:

(1) The issuance of fake Letters of Advice of Allotment as previously discussed from which the disbursements were taken.

(2) The issuance of Requests for Obligation of Allotments in support of the General Vouchers when the Letters of Advice of Allotment to which they refer are fake, hence, they must necessarily be also fake.

(3) The Inspection Reports supporting the vouchers and signed by Lucenas as having received the materials supposedly delivered therein were signed by Lucenas in the office already filled up or in the house of Masecampo in blanks, as stated before, when actually there were no such deliveries.

(4) The absence or lack of actual bidding as testified to by Lucenas (TSN, p. 239, August 7, 1979 hearing; TSN, p. 23, August 8, 1979 hearing) when according to COA Regional Director, Region VII, Sofronio Flores, the mode of procurement adopted was by public bidding (TSN, p. 54, July 23, 1979 hearing). The Abstract of Sealed Quotations attached to the General Voucher was one of the supporting documents of the voucher that Masecampo told him to sign in the office or in his (Masecampo's) house. Contractors who appeared in the Abstract of Sealed Quotations to have bidden like Adlawan, Nadela and Chavez testified that they did not participate or submit any bid to the Danao City HED (TSN, p. 33, July 25, 1979 hearing; TSN, pp. 273, 286, July 17, 1979 hearing). The claim of the defense that they dispensed with the bidding, except in eight instances, as it will favor the government in the light of the continuing increase of prices is without merit, for the other contractors may submit bids lower than the existing lowest bid as they may be satisfied with a profit lower than that realized by the winning bidder.

(5) The signing in one day by Pisao of several General Vouchers and the Requisition for Supplies or Equipment, the Requests for Obligation of Allotments and the Purchase Orders in support thereof wherein she certified to the availability of funds with all the other signatures appearing therein already there and the duplicate of the corresponding checks already cashed attached pursuant to the instructions of Masecampo. And when Pisao called the attention of Masecampo to the irregularity, the latter replied 'No, no do not be afraid because this is kept in secret, nobody knows what is going on' (TSN, pp. 52 to 55, August 7, 1979 hearing).

(6) The giving of money on different occasions by Masecampo to Lucenas in the total amount of from P90,000.00 to P100,000.00 (TSN, p. 157, August 8, 1979 hearing) and P100,000.00 plus to Pisao (TSN, p. 80, August 6, 1979 hearing) for having signed the vouchers and supporting documents, and to the other accused like Andrino and other personnel of the district like Carmen Mata, Adereta Labrador, Magdalena Landero, Teofilo Cencio and Arturo Pepito at P1,800.00 per voucher (TSN, pp. 82 & 83, August 6, 1979 hearing). This giving of money is unusual in ordinary transactions for it would indeed be contrary to human nature for a businessman dealing with the government to throw away his hard earned profits like in these cases to the government officials or employees who helped him as if they were his partners in the transaction. For obvious reasons, it is but natural for the persons so implicated to deny having received the amount claimed to have been given them. But the fact remains that Pisao appears not to be a very disreputable person to make baseless accusations."[9] (Underscoring supplied)

In addressing the claim that the asphalt and other materials had been delivered and used for barangay roads instead of the specified project, i.e., the Cebu North Hagnaya Wharf Road, the Sandiganbayan held:

"We credit, however, the accused with 20 truckload deliveries of gravel and sand for prosecution witnesses Barangay Captain Lauro claimed that he saw 10 truckloads of gravel and sand along the highway in Barangay Sabang and Barangay Captain Olimpio Nuñez of Looc, testified that he saw the same quantity in Barangay Looc. Other than that, the accused cannot be credited for any delivery. The deliveries claimed to have been made by them in the different barangays or near the City Hall of Danao cannot be favorably considered as

deliveries covered by the transactions in question, for had they really been so, then why should they be brought to the said barangays when it is crystal-clear in all of the Requisitions Supplies or Equipment that they are for the use in the repair of the Wharf Road with its very kilometer numbers where to be used clearly indicated. The claim of the accused, therefore, that the phrase Cebu North Hagnaya Wharf Road includes even barangay and city road as long as they are within the territorial limits of Danao City has no leg to stand on. A typical example is requisition Exhibit 'LL-1' where it is there stated: 'For use in the repair of road shoulders along Cebu North Hagnaya Wharf Road, Km. 29.0 to Km. 33.0 with exceptions. This is in accordance with the approved program of work.' The claim, like that of Nuñez that deliveries to the barangays were made despite the contract to deliver only in the Wharf Road because of the directive of Engr. Socalit (TSN, p. 92, September 18, 1979 hearing) is flimsy for there was no modification of the contract to deliver to that effect before or subsequent to the delivery. The testimony of Socalit that he ordered deliveries of the materials to several barangay roads because of persistent demands of the barangay residents through resolution, personal request from the City Mayor, resolution of the City Council and the Memorandum of the Director of the Bureau of Construction and Maintenance, MPH (TSN, p. 378, Sept. 17, 1979 hearing) is devoid of merit for there were then funds for these barangay roads as testified to by accused Alberio (TSN, pp. 19-21, Sept. 3, 1979 hearing) and NBI Agent Nereo Joaquin (TSN, p. 76, July 25, 1979 hearing). And in the valid Letters of Advice of Allotment issues for the Danao City HED, there was actually P30,000.00 allotted for repair, reconstruction, restoration of Barangay roads and bridges (Exhibit 'KK'). Their testimonies are also supported by Section 6 of P.D. No. 702, which clearly states as follows:

'SECTION 5. Appropriations -- All national funds appropriated and programmed by the Department of Public Highways for the construction, rehabilitation, betterment, improvement and maintenance of barangay roads and bridges including the shares of provinces, cities, municipalities and the allocation for the maintenance of farm-to-market or feeder roads and bridges within a barangay area, from the Highway Special Fund, shall be released to the Department of Public Highways which shall then sub-allot them to the barangay but construction and maintenance shall be under the supervision of the Department of Public Highways through the Bureau of Barangay Road.'

Moreover, the various requests of the different barangay councils to improve or repair their barangay roads (Exhibits '121-A-Socalit', '122-A-Socalit', '123-A-Socalit', '124-A-Socalit') and the request of Mayor Ramon D. Durano, Jr. for the repair of the barangay road of Tuburan Sur were all made in 1977. If Socalit, therefore, desires to favorably respond to those requests then he should have made the documents pertaining thereto like the Requisition for Supplies or Equipment, Report of Inspection and the General Voucher reflect such fact, if there is nothing wrong about it. Why will he resort to falsification of public documents by making it appear that the materials are for the Wharf Road when his intention was for the repair or improvement of the barangay roads? Queer, indeed! Besides, the telegram-memorandum relied upon by Socalit (Exhibit '49-Socalit') was clearly only for 1977. The truth of the matter, however, is that said telegram-memorandum is immaterial as there is no appropriation or funds allotted to consider in these cases because the Letters of Advice of Allotment are all fake.

The delivery receipts and tally sheets presented by De los Angeles (Exhibits '3-A-De los Angeles' to '21-A-De los Angeles'), Gabison (Exhibits '5-A-Gabison' to '4-A-Gabison'), Nuñez (Exhibits '3-Nuñez', '3-A-Nuñez' to '3-Q-Nuñez', '3-A-1-Nuñez' to '3-A-17-Nuñez' thru '40-Nuñez', '40-A-Nuñez' to '40-P-Nuñez' to '40-A-1-Nuñez' to '40-A-16-Nuñez') and Jariol (Exhibits '12', '12-A', to '12-Z', '12-AA' to '12-ZZ', '12-AAA' to '12-ZZZ', '12-AAAA' to '12-DDDD') are feeble to prove the deliveries in question for said receipts do not reflect that they were actually delivered in the Wharf Road. The integrity of said receipts is even destroyed by the foregoing discussion especially the testimony of Lucenas, Salengua and NBI Agent Joaquin that there was actually no delivery in the Wharf Road. They may be last attempts to make regular what was apparently irregular, to make existing, what has not existed at all considering that there was no showing that they were produced during the preliminary investigation of these cases." [10] (Underscoring supplied)

Thus, it appears to the Court that petitioner has failed to show any misapprehension of facts on the part of the Sandiganbayan.

Petitioner, in his effort to clear himself of criminal liability, contends that the criminal charges should have been brought against Jariol Enterprises rather than against himself since he had merely acted as agent of Jariol Enterprises. It is not disputed that Jariol Enterprises is a sole proprietorship owned by petitioner's father and of which petitioner was the manager. A sole proprietorship does not, of course, possess any juridical personality separate and apart from the personality of the owner of the enterprise and the personality of the persons acting in the name of such proprietorship. It follows that Jariol Enterprises was not a principal that petitioner Antolin Jariol, Jr. merely represented as an agent. Petitioner must be held directly liable for his acts and involvement in the fraudulent and simulated transactions which are the subject of the one hundred twenty-six (126) cases before the Sandiganbayan. Moreover, if it be assumed (though *arguendo* only) that Jariol Enterprises possessed separate juridical personality, criminal responsibility must still be borne by the officers actually managing or operating the enterprise, in this case petitioner Antolin Jariol, Jr.[11] An artificial and juristic person can neither act with the *mens rea* which is essential for criminal liability nor be confined in a jail.

We turn to petitioner's contention that the Sandiganbayan committed grave abuse of discretion in discharging the two (2) co-accused Milagros Pisao and Dulcísimo Lucenas, who were utilized as state witnesses. It appears to the Court that the requirements set out in Section 9 of Rule 119 of the Revised Rules of Court for the discharge of an accused for utilization as a state witness, were sufficiently complied with.[12] The existence of the five (5) requirements there listed is for the trial court to determine and if that court is satisfied that the discharge of one or more co-accused so that they could testify for the prosecution is proper, that court may issue the order of discharge. Once a co-accused is discharged and the released witness actually testifies, any legal deficiency that might have attended the discharge of the witness from the information does not impact upon the admissibility and credibility of the testimony given, provided such testimony is otherwise admissible and credible.[13]

Finally, petitioner ascribes grave abuse of discretion to the Sandiganbayan in continuing with the hearing of the cases before it despite pendency of a petition for certiorari filed before the Supreme Court by co-accused Rufino Nuñez. Although the Court originally issued a temporary restraining order preventing the Sandiganbayan from continuing with the proceedings against Rufino Nuñez, by reason of which trial of the co-accused including petitioner was suspended, that restraining order was lifted on 11 July 1979. Upon the lifting of that restraining order, the Sandiganbayan proceeded with the trial of the one hundred twenty-six (126) cases before it. This final claim of petitioner was made in the hope that he could benefit from the constitutional law issues which had been raised by Rufino Nuñez before the Supreme Court: that the statute creating the Sandiganbayan had violated the equal protection and due process clauses of the Constitution as well as the constitutional prohibition of *ex post facto* legislation. This Court settled those issues in 1982 when it promulgated its decision in *Nuñez v. Sandiganbayan*,[14] sustaining that statute as valid and constitutional.

WHEREFORE, for all the foregoing, the Petition for Review is hereby DENIED for lack of merit and the Decision of the Sandiganbayan appealed from is hereby AFFIRMED with respect to petitioner Antolin Jariol, Jr. Costs against petitioner.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[1] Rollo, pp. 68-71.

[2] Petition for Certiorari, Rollo, pp. 7-8.

[3] Rollo, pp. 50-148.

[4] Petition, Rollo, pp. 3-4.

[5] *Palma Gil v. People*, G.R. No. 73642, 1 September 1989; *Sacay v. Sandiganbayan*, 142 SCRA 593 (1986); *Cesar v. Sandiganbayan*, 134 SCRA 105 (1985).

[6] Rollo, pp. 80-83.

[7] Memorandum for Petitioner, Rollo, p. 358.

[8] In *Mangubat v. Sandiganbayan*, 147 SCRA 478 (1987) and *Gabison, et al. v. Sandiganbayan*, 151 SCRA 61 (1987), the Court in effect affirmed the finding of the Sandigan-bayan concerning the existence of these irregularities.

[9] Rollo, pp. 83-86.

[10] Rollo, pp. 86-89.

[11] *West Coast Life Insurance, Co. v. Hurd*, 27 Phil. 401 (1914).

[12] Section 9, Rule 119 of the Revised Rules of Court provides:

"Sec. 9. Discharge of one of several defendants to be witnesses for the prosecution. - -When two or more persons are charged with the commission of a certain offense, the competent court, at any time before they have entered upon their defense, may direct one or more of them to be discharged with the latter's consent that he or they may be witnesses for the government when in the judgment of the court:

'(a) There is absolute necessity for the testimony of the defendant 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 defendant;

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

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

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

[13] *People v. de Leon*, 108 Phil. 800 (1960); *People v. Bautista, etc., et al.*, 106 Phil. 39 (1959); *United States v. Alabat*, 38 Phil. 698 (1918).

[14] 111 SCRA 433. This ruling was reiterated in *Calubaquib v. Sandiganbayan*, 117 SCRA 493 (1982); *De Guzman v. People*, 119 SCRA 337 (1982); *Rodriguez v. Sandiganbayan*, 120 SCRA 659 (1983); *Alviar v. Sandiganbayan*, 137 SCRA 63 (1985); and *Mangubat v. Sandiganbayan*, *supra*.

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