

ERASMO GABISON AND JULIANA V. DE LOS ANGELES, PETITIONERS, VS. THE HONORABLE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 53001-56. June 18, 1987

Ponente: BIDIN, J.

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BIDIN, J.:

Sometime between March 1 to April 4, 1979, the Tanodbayan filed with the respondent Sandiganbayan one hundred twenty-six (126) cases charging certain public officials/employees of Region VII of the Ministry of Public Highways and the Danao City Highway Engineering District, including four private contractors/suppliers of road constructing materials, with the crime of estafa thru falsification of public and commercial documents. Two of the said private contractors/suppliers charged were Erasmo Gabison and Juliana de los Angeles, petitioners herein. Out of the 126 cases, Gabison was charged in thirty-seven (37) of them, while de los Angeles was charged in nineteen (19).

All the 126 informations were identically worded except as to persons, dates, amounts and materials/supplies involved. The informations alleged that on several occasions, covered by the period from January 1 to July 3, 1978, the accused government officials, namely: Jose Bagasao, Asst. Director, Region VII, Ministry of Public Highways; Angelina Escano, Finance Officer; Rolando Mangubat, Chief Accountant; Delia Preagido, Asst. Chief Accountant, all of the same office; Ernestorio Sabarre, District Engineer of the Danao City Highway Engineering District; Adolfo Sualit, Asst. District Engineer; Rocilo Neis, Asst. District Engineer; Romeo Andrino, Senior Civil Engineer; Rafael Alberio, Civil Engineer; Florencio Masecampo, Administrative Officer; Milagros Pisao, Chief Accountant; Dulcisimo Lucenas, Property Custodian, all of the same office and Gualberto Toledo, District Auditor of the Commission on Audit (COA, for short) assigned to the Danao City Highway Engineering District (HED), taking advantage of their official positions and conniving with the private suppliers who are their co-accused in the informations pertaining to them, namely: Gabison, Jariol, Nunez and de los Angeles, committed estafa thru falsification of public and commercial documents in Danao City, by willfully, unlawfully and feloniously falsifying the following public documents, namely: Letters of Advice of Allotment, Requests for Obligation of Allotment, Abstract of Sealed Quotations, Purchase Orders, Delivery Receipts, Reports of Inspection and General Vouchers, by making it appear that Region VII of the Ministry of Public Highways regularly issued LAAs to the Danao City Highway Engineering District for the purchase of gravel surface course, except Case No. 069 which is for the delivery of 33 pails of reflectorized traffic paint and 24 pieces of bridge approach warning devices for the repair or shoulder repair of the Cebu North Hagnaya Wharf Road, hereinafter referred to as the Wharf Road, that the Requests for Obligation of Allotment were 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 accused knew, the foregoing were false and incorrect, and that because of these falsifications, the accused were able to collect from the Danao City Highway Engineering District the amounts alleged in the informations totalling P6,277,018.00 in payment of the non-existent deliveries and, once in possession of said amounts, the

accused misappropriated, converted and misapplied the said amounts for their own personal needs to the damage and prejudice of the government in the said amount of P6,277,018.00.

Together, with their co-accused, petitioners herein were arraigned and tried jointly in all the cases filed against them. In the course of the trial, two of the accused, namely, Milagros Pisao and Dulcisimo Lucenas were discharged and utilized as state witnesses.

In a single decision* promulgated on November 29, 1979, respondent court acquitted accused Rocilo Neis, Rafael Alberio and Ernestorio Sabarre on grounds of reasonable doubt. All the other accused, including petitioners herein, were convicted in all the cases they were respectively charged and were sentenced in each case to an indeterminate penalty ranging from eight (8) years, eight (8) months and one (1) day of prison mayor as minimum to ten (10) years, eight (8) months and one (1) day of prison mayor as maximum, to pay a fine of P3,500.00 and to indemnify the government of the amounts defrauded.

Petitioner sought reconsideration of the said decision which was denied, hence, the present petition raising both questions of law and of fact.

The questions of law are: (1) whether the Sandigan-bayan was validly created and constituted; (2) whether PD 1606 which amended PD 1486 creating the Sandiganbayan, partakes of the nature of an ex post facto law and violates the rights of the accused to due process and equal protection of the law.

The aforesaid legal issues have been set at rest in the case of Nunez vs. Sandiganbayan, 111 SCRA 433, which was the first case contesting the constitutionality of the decree creating the Sandiganbayan. In said cases, We ruled that PD 1606 as amended, is constitutional and does not violate the equal protection, due process and ex post facto clauses of the Constitution. This ruling was reiterated in the cases of Calubaquib vs. Sandigan-bayan, 117 SCRA 493; De Guzman vs. People, 119 SCRA 337; Rodriquez vs. Sandiganbayan, 120 SCRA 659; Alviar vs. Sandiganbayan, 137 SCRA 63, and recently in Mangubat vs. Sandiganbayan, G.R. Nos. 52872-52997, promulgated on January 30, 1987.

Petitioners also raised the question of the sufficiency of the evidence upon which their convictions were predicated. They argue that the Sandiganbayan misapprehended the facts of these cases in ruling that no deliveries of road materials were made by them; that no public bidding was conducted; and that they acted in conspiracy with their co-accused.

Again, these contentions have no merit.

As regards the non-delivery of construction road materials, the evidence against petitioners is clearly not wanting to prove their guilt. We need only to repeat what the Sandiganbayan found as to the evidence showing that petitioners committed the offenses charged:

"State witness Lucenas, who as property custodian of the Danao City HED, re-quisions materials and supplies and over-sees 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 the 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 constructions 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

asphalt-ing 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 delivery of construction materials noted by her from January to June 1978 (TSN, pp. 119-120; 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 high-way 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 an 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." (pp. 31-34, Decision)

This Court is bound by the facts found by the Sandiganbayan. Our power to review the decisions of that special tribunal is the same as Our jurisdiction to review the decisions of the Court of Appeals (*Calubaquib vs. Sandiganbayan*, *supra*).

On the question of public bidding, three contractors, namely, Olegario Nadela, Feliciano Chavez and one Adlawan, testified that they did not participate in any public bidding nor submitted any bid to the Danao City HED although their names appeared in the Abstract of Sealed Quotation which was attached to the general voucher as one of the supporting documents. Likewise, state witness Dulcissimo Lucenas, property custodian of the Davao City HED, testified on the absence of actual bidding (p. 34, Decision). During the trial, the defense claimed that, except in eight instances, they dispensed with the public bidding and relied merely on previous bids made by contractors because it will favor the government in the light of the continuing increase of prices. We agree with the trial court in not giving weight to this contention because other contractors, if allowed to participate in an actual bidding, could have bidden lower than the said previous bids.

Finally, petitioners stressed that from the evidence presented, it was not proven that they conspired with their co-accused to defraud the government. The records show, however, that individual acts of the accused clearly point to a single criminal intent, one performing one part of the transaction and the others another part of the same transaction, so as to complete it with a view to attaining the object which they were pursuing, to wit: to defraud the government. All their individual acts were so synchronized leaving no room for any doubt that there was

conspiracy and connivance among all the accused. The Sandiganbayan observed that:

"An overall view of the evidence presented compressively projects, the concerted and associated actions of the accused, including Pisao and Lucenas stemming from a common object to defraud government through falsification of public documents which the accused public officers prepared in the discharge of their functions. Everything started from the preparation and issuance of fake Letters of Advice of Allotment by Bagasao and Mangubat, actively assisted by Escano who approved the Journal Vouchers, Exhibits 'T', 'T-1' to 'T-8', and recommended for approval the monthly trial balances from January to August, 1978, Exhibits 'H', 'H-1' to 'H-7', and by Preagido who entered in the General Journals (Exhibits 'V-1' to 'V-22') the entries in Exhibits 'T', 'T-1' to 'T-8' (except Exhibit 'T-2') and certified on the correctness of the trial balances for June, July and August, 1978 (Exhibits 'H', 'H-6' and 'H-7'), thus facilitating the disbursements under the fake letters of Advice of Allotment; and by officials of the district, namely: Socalit, Andrino, Toledo and Masecampo, who shrewdly made it appear on the district that there were valid requisitions and deliveries of materials funded by the fake Letters of Advice of Allotment and finally by Gabison, Nunez, Jariol and De los Angeles, who, using their businesses as a camouflage, stood as the contractors and suppliers who supposedly delivered the materials and finally collected the payment thereof. The previous testimony of Lucenas, originally one of the accused, that he followed the instruction of Masecampo to sign documents in blank because he understands 'that this is a syndicate which includes the regional people' and the testimony of Pisao, also an original accused, that Socalit told her 'Why are you afraid when the Ministry of Public Highways Manila, knows all about this (TSN, p. 92, August 6, 1979 hearing)' eliminate any doubt of the existence of the conspiracy including not only the accused herein but also some officials in the Ministry level.

"Indeed, as the evidence undoubtedly show, had anyone of them only refused to do what he/she did, the whole scheme would have collapsed. Like in a jigsaw puzzle, the act of one is indispensable the absence of which would render the puzzle insolvable. Had not Bagasao and Mangubat issued the Letters of Advice of Allotment, the operation would not have started. x x x So with the contractors, had they not posed as having delivered the materials, the plot would have not been finally materialized. But judging from the testimonies of Pisao and Lucenas, let it be said that those who formed part of the conspiracy might have done it either in their inordinate obsession to be wealthy overnight or for lack of courage to stick to what is moral and upright against the onslaught of an evil design." (pp. 66-68, Decision)

WHEREFORE, the petition is DISMISSED for lack of merit. The appealed decision of respondent Sandigan-bayan with respect to petitioners is herein AFFIRMED.

Costs against petitioners.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Sarmiento, and Cortes, JJ., concur.

* Penned by Presiding Justice Manuel Pamaran with the concurrence of Justices Bernardo Fernandez and Romeo Escareal.

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