

ANGELINA ESCANO, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 53208-53333. April 15, 1988

Ponente: PARAS, J.

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PARAS, J.:

As the Finance Officer of Region VII, Ministry of Public Highways, herein petitioner Angelina Escano was charged before the Sandiganbayan, in conspiracy with other public officials of the same office and of the Danao Highway Engineering District, as well as some named private contractors/suppliers of road construction materials, in 126 cases of estafa thru falsification of public and commercial documents for alleged irregular disbursements of funds by the Danao City Highway Engineering District resulting in the defraudation of the government in the total amount of more than six million pesos.

By agreement of the parties, all these one hundred twenty six (126) cases, with the exception of only four (4), were jointly heard.

After trial on the merits, a single decision was rendered by respondent court. Except for the two accused Milagros Pisao and Dulcísimo Luceros who were both discharged to become state witnesses and accused Rocilo Neis, Rafael Alberio and Enesterio Sabarre who were acquitted of the charges against them, the rest of the accused including herein petitioner were convicted in all the cases they were respectively charged and were sentenced in each case to an indeterminate prison terms of 8 years, 8 months and 1 day as maximum, to pay a fine of P3,500.00 and to indemnify the government for the amounts defrauded. Petitioner's conviction was based on the following findings of respondent court -

"2. ANGELINA ESCAÑO -

"The criminal liability of Escaño is shown by the journal Vouchers, Exhibits "T", "T-1" to "T-8", which she approved notwithstanding that on their face alone, especially to one like her knowledgeable in figures, they are irregular for the total obligations of the districts per month are very much higher than the breakdown of obligations by district as shown in the previous table. The difference stated in the Difference or Unaccounted Obligation column represents the fake obligations which she could have easily discovered and disapproved had she not been part of the conspiracy. And had she disapproved said Journal Vouchers; there would have been no conversion of the fake 1977 obligations to fake 1978 obligations.

"Again, Mangubat, Chief Accountant I of Region VII, categorically declared that before he issued the fake Letters of Advice of Allotment he consulted Escaño about them and the latter informed him that "it is up to you will do in the disbursement. That is why I signed the LAAs" (t.s.n., p. 163, September 18, 1979 hearing). The denial of Escaño that she was consulted by Mangubat dwindles in the light of her signing of Journal Vouchers, Exhibits "T", "T-8", wherein the amounts of fake obligations in the fake Letters of Advice of Allotment were included in the total obligations per month, hence, the difference, as stated before, represents the fake obligations. Besides, Escaño as Finance Officer of Region VII, is the immediate chief of Mangubat. As such, in the natural course of things, Mangubat must have really consulted her.

"One thing more, Escaño recommended for approval the monthly trial balance from January to August 1978 (Exhibits "H", "H-1" to "H-7") without checking them against the General Ledger, General Journal and Journal Vouchers. Had she done so, which ordinary prudence so requires, she could have discovered the cancellation of checks and the fake obligations in the General Ledgers, Exhibits "I", "J" and "K", and which in turn will lead to the General Journals (Exhibits "V-1" to "V-22") and finally to the Journal Vouchers (Exhibits "N-1" to "N-7"; Exhibits "T", "T-1" to "T-8") where the manipulations of the obligations incurred and the checks issued, as previously discussed, were made.

"The claim of Escaño that she signed Exhibits "T", "T-1" to "T-8" because they were certified correct by the Chief Accountant is without merit, because on their face alone said documents exhibit patent irregularities. Her pretensions that she recommended approval of the monthly trial balance, Exhibits "H", "H-1" to "H-7", because she relied on the certification of the Chief Accountant, that they were in equilibrium and she did not notice any irregularity on their face are puerile for an ordinary exercise of diligence in the discharge of her duties would require her to at least have a glimpse of the basic documents of the trial balance, namely, the General Ledgers, General Journals and the Journal Vouchers.

"Escaño is liable in the one hundred twenty-six cases because all the documents she signed were the bases thereof." (Decision, Annex "A", pp. 47-50).

From this decision, petitioner filed a motion for reconsideration but the same was denied, hence, the instant appeal on the following issues -

- The conviction of the petitioner by a Court not validly constituted offends the constitutional guarantee of due process and equal protection.
- Presidential Decree No. 1606 is an ex-post facto law insofar as it is being applied to the instant case.
- The conviction of petitioner is erroneous as there is no evidence showing conspiracy between her and the other accused.

The constitutionality of the law creating the Sandiganbayan is now a settled matter. As held in the cases of Nunez vs. Sandiganbayan, Nos. L-50581-50617, January 30, 1982, 111 SCRA 433 and Calubaquib vs. Sandiganbayan, Nos. L-54272-73, September 30, 1982, 117 SCRA 493, PD 1486 is constitutional, it does not violate the equal protection, due process and ex post facto clauses of the Constitution.

The cases under review involve irregular disbursements of public funds by the Danao City Highway Engineering District (Danao HED for short) covering a period of six months, from January to June 1978.

During said period, 126 checks were issued by Danao HED to contractors, totalling the amount of P6 million, in payment of non-existent or "ghost" deliveries of materials supposedly used in various highway projects in the district. Thus, a total of 126 informations were filed with the Sandiganbayan against persons believed involved in the transactions in question.

The illegal disbursements were made possible through the falsification of public and commercial documents which, under the standard operating procedures then obtaining at the time, were required to be accomplished before government funds could be obligated and paid out. In particular, these documents consisted of the following:

- Letter of Advise and Allotment (LAA).
- Advice of Cash Disbursement Ceiling (ACDC).
- Request for Obligation of Allotment (ROA).

- Abstract of Sealed Quotations.
- Purchase Order
- Delivery Receipt.
- Report of Inspection.
- General Voucher.

The above-enumerated documents constituted a chain of indispensable papers which had to be accomplished before a check could be issued and released to the supplier in payment of the materials purchased from and delivered by him.

Based on standard operating procedure, the first two (2) documents mentioned above, i.e. the LAA and ACDC, would emanate from the Regional Office of the MPH and bear the signatures of the Regional Director, the Finance Officer and the Chief Accountant of the Regional Office. All the other documents would be accomplished in the District Engineering Office and bear the signatures of officials of the district.

The petitioner Angelina Escano was the Finance Officer of Region VII. Her signature was essential in all the LAAs and ACDCs. However, it was established at the trial that none of the spurious or fake LAAs and ACDCs (in all, numbering 119) bore her signature. It was the Chief Accountant, Rolando Mangubat, who signed all these documents, in the place of Escano, the Finance Officer. All the LAAs and ACDCs bearing her signature were found to be genuine and regular.

What made the issuance of those 119 irregular or fake LAAs possible? This was made possible because of a memorandum (Memorandum Circular No. 111) issued by the Ministry of Public Highways, granting the Chief Accountant of the Region authority "to act as the Finance Officer for and in the absence of the Finance Officer". (Exh. 2-Escano). It was by virtue of this memorandum that Mangubat signed the spurious LAAs.

This authority given to Mangubat was subsequently revoked on May 17, 1978. (Exhibit DDD). Thus, the last batch of the spurious LAAs (numbering 46 in all) bore the date, May 16, 1978. The evidence of the prosecution shows that these 46 LAAs were in fact all antedated in order to make them appear that Chief Accountant Rolando Mangubat signed them before his authority was revoked. (T.S.N., Aug. 6, 1979, pp. 28-30).

No one else but Mangubat signed the spurious LAAs. Even when he was temporarily detailed to the MPH Office in Manila, he still continued to sign the LAAs "in brazen disregard" - according to the court in its decision - of the fact that he was already assigned elsewhere. This led to the revocation by telegram on May 17, 1978 of his authority to sign LAAs and to the explicit instruction that "only Escano was authorized to sign the LAAs". (Exhibit DDD).

The above facts, apparently ignored by the court in its decision, indicate that Escano was not part of the so-called conspiracy. The actuations of Mangubat himself go to show that Escano was not a "co-conspirator" and did not connive with the other accused in their scheme to defraud the government. She was by-passed in all these anomalous transactions.

The conviction of Escano by the court a quo is predicted solely on the theory of conspiracy. Escano was convicted by the court, not for any act of participation in the commission of the offense, but on the finding that she "connived" with the other accused. This finding is based purely on circumstantial evidence.

The appealed decision relies on the following circumstances to sustain the finding that Escano was a co-conspirator:

1)

The circumstance that no less than her co-accused Rolando Mangubat "consulted her on how to go about getting the release of the fake LAAs";

2)

The testimony of Milagros Pisao (an accused-turned-state witness) that when she brought the irregular disbursements to the attention of Escano, the latter allegedly told her that she (Escano) was afraid "we" might be discovered, thereby implying that Escano was part of the scheme;

3)

The alleged manipulation by Escano of the journal vouchers in order to keep the trial balances in equilibrium so as to cover up the illegal disbursements.

The above findings cannot stand close scrutiny. The evidence do not bear them out. Let us take them up seriatim.

I. The finding that her co-accused Rolando Mangubat "consulted her on how to go about getting the fake LAAs released."

This finding of the Sandiganbayan, is not supported by the evidence. The finding is supposed to be based on the following testimony of Mangubat quoted by the court:

"ATTY. SENO:

Q:

Mr. Mangubat, I will now show to you Exhibit "R to R-118." Now, I noticed that in these 119 LAAs same do not bear the signature of Mrs. Angelina Escano, Will you explain why this is so? These only bear the signature of the Chief Accountant for the Finance Officer?

WITNESS:

A:

As I said before sir, the 49% which was retention left to the region accumulated if it is not released and if this remains to the region will be reverted to the General Fund. I questioned Mrs. Escano regarding this retention. I informed her that if this retention will not be expended it will be reverted to the genuine (sic) fund. So what are we going to do about this and Mrs. Escano informed me, it is up to you what to do in the disbursement. That is why I signed the LAAs." (TSN, Sept. 18, 1979, p. 162).

It is clear from the above-quoted testimony of Mangubat that what he supposedly did was to tell Escano about the alleged 49% retention, i.e., "savings", in the region which would be reverted to the General Fund if not expended, and to ask her what they should do about it, and Escano allegedly replied, "It is up to you what you will do in the disbursement."

Nothing in the above conversation, even if taken at face value, would support the finding that Mangubat consulted Escano "on how to go about getting the release of said fake LAAs."

All that Mangubat did in the alleged conversation was to ask Escano what was to be done regarding the 49%

retention or savings which might be reverted to the General Fund if not spent. He never consulted Escano on how to get the fake LAAs released.

The supposed conversation - which was categorically denied by Escano - is a clear fabrication. The supposed 49% retention or "savings" is purely imaginary. The Sandiganbayan itself, in its decision, said: "x x x the trial balance as of December 1977 (Exhibit "G") showed that the region had an overdraft in appropriation of P406,883.02. How could there be any savings then!"

Moreover, it should be borne in mind that the alleged consultation occurred supposedly at the beginning of the year, because Mangubat started issuing the fake LAAs in January 1978. Can anyone believe that at the start of the year, Mangubat would already be consulting Escano on what should be done with the supposed "savings" which would be reverted to the General Fund if they remained unexpended until the end of the year? The prevarication of Mangubat is too transparent to need elaboration.

Mangubat's story stretches one's credulity if we consider that he had no authority to sign LAAs, except in the absence of the Finance Officer, Angelina Escano. And yet, according to him, he signed the LAAs because Escano told him that it was up to him what to do in the disbursement of the alleged retention or savings.

The error of the court is two-fold - in believing the concocted story of Mangubat in the first place, and then in making a finding that is not supported even by the fabricated tale.

II. The alleged conversation between Milagros Pisao and Escano.

The testimony of Pisao on the supposed conversation was elicited from her during her re-direct examination by the prosecuting attorney who propounded the following leading question:

"Q: Did you have occasion to talk with Preagido or Mrs. Escano regarding these excessive disbursements?

WITNESS:

A:

One time, sir, when I received an LAA and cash disbursement ceiling in the early part of 1978, I told Mrs. Escano about it, and she said, "I do not know about that." "You know I am afraid we might be discovered." (T.S.N., Aug. 7, 1974, p. 187).

One may be tempted to state that the foregoing remarks of Escano are eloquent proof that she was part of the conspiracy to defraud the government.

The above conclusion takes for granted the truth of Pisao's story, without examining her entire testimony. Pisao was on the witness stand for two days, morning and afternoon, on direct examination and on cross-examination (t.s.n., Aug. 6 and 7, 1979). During all this time, she never mentioned that she reported the irregular disbursements to anyone in the Regional Office in 1978; in fact, she categorically stated on cross-examination, "I did not bring this matter up to the higher authorities because of that P1,800.00[1] they already got a hold on me." (T.S.N., August 7, 1979, p. 176).

Then all of a sudden, on the third day when she was on re-direct examination, she changed her posture. In answer to the leading question propounded to her by the prosecution, Pisao mentioned her alleged conversation with Escano.

The testimony of an accused-turned-state witness, coming as it does from a polluted source, must always be received with caution and subjected to close scrutiny. And when the witness has given inconsistent testimonies on a material point, his word should not be accepted and given credence.

In the instant case, not only has the witness Pisao contradicted herself, but her attempt to falsely implicate Escano was so transparent and so crudely done to escape detection. According to her, when she told Escano, "one time" in the early part of January 1978, about the "excessive disbursement", Escano reportedly said "I do not know, about that", and then added "You know I am afraid we might be discovered." If indeed Escano said that she did not know about the irregular disbursement, how could she have added "I am afraid we might be discovered"? The statement is non sequitur, and clearly designed to implicate Escano by innuendo.

An accused should not be convicted on such kind of evidence.

III. The alleged manipulation by Escano of the journal vouchers in order to keep the trial balances in equilibrium so as to cover up the illegal disbursements.

Again one may be inclined to say that to cover up the illegal disbursements, petitioner manipulated the journal vouchers so as to keep the trial balances in equilibrium.

There is here a mistaken apprehension of the facts. The Sandiganbayan never made a finding that Escano manipulated the journal vouchers. According to the Sandiganbayan, it was Mangubat who manipulated the journal vouchers without Escano's knowledge. It was Mangubat who prepared these vouchers (Exhs. N-1 to N-7) which negated the transactions covered by the LAAs. By negating or reversing these transactions through the said vouchers, they were no longer entered in the trial balances; hence, the trial balances were in equilibrium, since they did not reflect these transactions.

The manipulation of the journal vouchers was done by Mangubat, not by Escano. Escano was faulted by the Sandiganbayan for recommending approval of the trial balances without checking them against the General Ledger, General Journal and General Voucher, for according to the court, if she had done so, as ordinary prudence would require, she could have discovered the omission of the irregular expenditures in the General Ledger, and which in turn would lead to the General Journals (Exhs. V-1 to V-22), and finally, to the Journal Vouchers (Exhs. N-1 to N-7) where the manipulation of the obligations were made by Mangubat. Said the court: "An ordinary exercise of her duties would require her to at least have a glimpse of the basic documents of the trial balance, namely, the General ledgers, General Journals and the Journal Vouchers."

In other words, while Escano had no part in the manipulation of the vouchers, she was negligent in failing to examine the said vouchers before recommending approval of the trial balances.

Thus, at most, Escano could be faulted for negligence in the performance of her duties. Negligence and connivance are two different things. "Connivance" is a deliberate act, and cannot arise from negligence.

It should be noted that the monthly trial balance is prepared as a summary of past transactions during the month. It is therefore an act posterior to and not indispensable or necessary in the perpetration of the alleged defraudation. When the trial balance was prepared, the fraudulent act had already been consummated. Hence, it cannot be used as proof, by implication, of Escano's participation as a co-conspirator in the commission of the offense charged. In fact, that is why the trial balances and the journal vouchers are not among the documents included in the informations filed against the accused as having been falsified by them.

PREMISES CONSIDERED, the appealed decision of the Sandiganbayan is hereby **REVERSED** and **SET ASIDE**, and the accused-appellant is hereby **ACQUITTED**.

SO ORDERED.

Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

Teehankee, C.J., did not take part in deliberations.

Yap, J., no part, former counsel of petitioner.

[1] Pisao was referring to her "share" per transaction processed and signed by her as Chief Accountant of the district.

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