

ENRICO PEREZ Y DE LA MERCED, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 76203-04. December 06, 1989

Ponente: PARAS, J.

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PARAS, J.:

For resolution is petitioner's Motion for Reconsideration of the Decision of this Court of April 15, 1988.

Petitioner-movant Enrico Perez y de la Merced, together with several others, (4 in Criminal Case No. 8286 and 8 in Criminal Case No. 8287) was charged with and prosecuted before the Sandiganbayan in two (2) criminal cases: (1) for Estafa thru Falsification of Public Documents under Criminal Case No. 8286; and (2) for Violation of Section 3(e) of the Anti-Graft Law (RA 3019) under Criminal Case No. 8287. He was acquitted in Criminal Case No. 8286 but was convicted in Criminal Case No. 8287 and accordingly sentenced to three (3) years and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum, to indemnify, jointly and severally with the other convicted co-accused of his (supplier Leticia Baltazar, PNR Officials/employees Arlie Cruz, Cipriano Dizon, Anacleto Bernabe, Lorenzo Culang, Marcos Espejo and Sotero Escandor) the Philippine National Railways in the amount of P43,376.00 and to pay proportionate costs. On appeal, the Court affirmed the conviction of Leticia Baltazar, Arlie Cruz and herein accused-movant Enrico Perez but acquitted, on ground of reasonable doubt, Cipriano Dizon, Anacleto Bernabe, Lorenzo Culang, Marcos Espejo and Sotero Escandor.

In the judgment of affirmance, the Court ruled:

"The evidence on record shows, that such a conspiracy existed, considering that the anomalous or irregular award, and short or under delivery of the requisitioned items in question could not have been made possible without the connivance of the supplier and the PNR officials/employees involved in the transaction.

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"But were all the petitioners part of the conspiracy so as to, make them liable for the crime charged?

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"So with petitioners Arlie Cruz and Enrico Perez, officers of the Receiving and Shipping Section of the PNR Caloocan Branch and the COA Technical Property Inspector, respectively. As such, they were charged with the duty to see to it that the delivery made by the supplier conformed to the Purchase Order and Sales Invoice. Yet they allowed the irregularities to be committed by signing the said forms. In fact, petitioner Perez even made it appear in the Inspection Report he prepared that welding rods worth P43,776.00 had been delivered. And it was on the basis of the foregoing, that Disbursement Voucher No. 05102 was prepared allowing Baltazar to collect and receive from the PNR the amount of P43,776.00 when what was actually delivered were only 100 pieces of welding rods worth P100.00." (pp. 221, 222-223, Rollo)

Enrico Perez came back with a motion for reconsideration. He contends that the foregoing findings and conclusions are without any factual and/or legal basis because there is no competent evidence to prove the existence of conspiracy and assuming arguendo that there was, petitioner-movant was never a part but in fact only a victim of that conspiracy. In support thereof, movant argues that the Sandiganbayan stated that the individual acts of the accused constituted vital links in the conspirational chain leading to the consummation of the transaction; that there were several acts and omissions which made possible the irregular processing, pre-audit and payment of the transaction and that without one or some of the accused having contributed their specific participation in the onward progress of the documents evidencing and supporting the transaction, the crime alleged to have been committed could not have prospered or been consummated (Decision p. 104, Rollo). But the persons who, granting there was conspiracy, may have been involved - Santos, who prepared the Purchase request which was deemed to be the cause of the irregular purchase; Prospero Guevarra, Chief of the Bidding and Canvassing Section who prepared the Price Quotation and Virgilio Tortuna, Chief of the Procurement Division who counterchecked the entries therein were not even charged and/or included among the accused, so with Cunanan, the main storekeeper at PNR Caloocan. Then also Cipriano Dizon, the Processing Agent in charge of the processing of the purchase request and who had material part leading to the purchase of the subject welding rods, was acquitted. The other accused, Bernabe, Culang, Espejo and Escandor, the COA/PNR auditors who were responsible for the pre-audit examination of the Disbursement Voucher in question were also acquitted. The vital links in the "conspiratorial chain" were either not prosecuted or were found to be guiltless. Thus, movant concludes, there being no conspirators and no concerted acts which show community of purpose, a fortiori, there is no conspiracy.

We have once again reviewed the evidence on record and We find movant's arguments well-taken. We are, therefore, constrained to reconsider our previous judgment of conviction finding movant guilty by means of conspiracy.

Movant's criminal liability appeared confined and/or merely limited to the preparation of the Inspection Report where it was allegedly made to appear that welding rods worth P43,776.00 had been delivered on the basis of which Disbursement Voucher No. 05102 was prepared thus allowing the supplier to collect the aforesaid amount. The record however shows that there is no available competent and admissible evidence, documentary or testimonial that proves that movant did not receive the "360 kilograms of welding rods worth P43,776.00" at the receiving office of PNR Caloocan. On the contrary, it has been established by the defense that the 360 kilograms of welding rods contained in 100 tubes at 3.6 kilograms each were inspected by movant upon their receipt by the receiving clerk, Cruz, in Caloocan. All were found to be in order as specified in the purchase order. Cruz's testimony on the point is as follows:

"A - (Perez and I) went out and looked. We went to the tamaraw, took a tube brought it inside and verified it and we found out that the tube weighed 3.7 kgs., Your Honor.

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"Q - ... what did you do next?

"A - We went out bringing with us the tube and . . . we allowed the driver to carry it and had (them) counted one by one.

"Q - Who made the counting of that OK Esab welding rods?

"A - The two of us, the TPI Enrico Perez and I." (TSN, p. 21, August 15, 1985)

Based on the inspection thus conducted, movant prepares the Inspection Report which merely attests that he

inspected the delivery of welding rods at PNR Caloocan and that the items inspected were those written therein. The inspection report did not attempt to show that Santos, whose office was in Tutuban, Paco, Manila, received the items described therein. Whatever happened to the welding rods from Caloocan to Manila (where Santos allegedly received only 100 pieces) is no longer the concern of movant nor may he be made accountable therefor. The single circumstance of preparing the Inspection report which, as the evidence on record shows, was regular in itself, is insufficient for conviction in a conspiracy. Assuming that the amount or number of welding rods were bloated or forged such that the same were more than the actual numbers needed, this was not the fault of movant who had no participation in their requisition and purchase, he being merely the COA - Technical Property Inspector whose only function in this transaction is to audit in the form of actual physical inspection the deliveries to the PNR Stores Department at Caloocan. The responsibility, if any, rests upon the officials/employees of the PNR, who were either not prosecuted or who were acquitted. As the required proof beyond reasonable doubt has not been surmounted by the evidence on hand to prove the existence of conspiracy and movant's participation therein, the Court will not hesitate to reconsider its previous decision. It is settled that the same degree of proof required for establishing the crime is required to support a finding of conspiracy. In other words, it must be shown to exist as clearly and convincingly as the commission of the offense itself in order to uphold the fundamental principle that no one shall be found guilty of crime except upon proof beyond reasonable doubt.

"The defendant in a criminal case must always be presumed innocent until the contrary is proven, and in case of reasonable doubt and when his liability shall not have been satisfactorily shown he shall have the right to be acquitted, even though his innocence be doubted (U.S. v. Gutierrez, 4 Phil. 493 cited in People v. Sadie, 149 SCRA 240, 244).

WHEREFORE, finding the motion for reconsideration filed by petitioner Enrico Perez y de la Merced to be well taken, the same is hereby granted and he is hereby ordered ACQUITTED.

SO ORDERED.

Fernan, C.J., Narvasa, Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, J., on leave.

Gutierrez, Jr., J., on official leave.

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