

JESUS P. PERLAS, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 84637-39. August 02, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioner, Jesus P. Perlas, Jr., was convicted by the Sandiganbayan of three (3) estafas, two of them through false pretenses [Art. 315(2)(a), Revised Penal Code] and one through unfaithfulness or abuse of confidence [Art. 315(1)(b), Revised Penal Code].

Jesus P. Perlas, Jr., Crisostomo Q. Veneracion, and Natividad de Leon, were charged in Criminal Cases Nos. 9002 and 9003 of the Sandiganbayan with the complex crime of estafa through falsification of public documents involving the amounts of P90,000 and P900,000, respectively.

Upon arraignment, the petitioner and Natividad de Leon entered separate pleas of not guilty. Crisostomo Veneracion has remained at-large.

In Criminal Case No. 9004, the petitioner and Crisostomo Q. Veneracion were charged with malversation of P54,550.76 in public funds as defined and penalized under Article 217 of the Revised Penal Code. Only Perlas was arraigned and pleaded "not guilty."

The National Parks Development Committee was created originally as an Executive Committee on January 14, 1963, for the development of the Quezon Memorial, Luneta and other National Parks (Executive Order No. 30). It was later designated as the National Parks Development Committee (NPDC) on February 7, 1974 (EO No. 69). On January 9, 1966, Mrs. Imelda R. Marcos and Teodoro F. Valencia were designated Chairman and Vice-Chairman, respectively (EO No. 3). Despite an attempt to transfer it to the Bureau of Forest Development, Department of Natural Resources, on December 1, 1975 (Letter of Implementation No. 39, issued pursuant to PD No. 830 dated Nov. 27, 1975), the NPDC has remained under the Office of the President (EO No. 709 dated July 27, 1981).

Since 1977 to 1981, the annual appropriations decrees listed NPDC as a regular government agency under the Office of the President and allotments for its maintenance and operating expenses were issued direct to NPDC (Exh. 10-A, Perlas, Item No. 2.3).

In Office Order No. 75 dated January 23, 1981, the late Teodoro F. Valencia designated Perlas as Acting Director of NPDC, Inc., a private corporation in charge of collecting fees from concessionaires in the parks (Exh 19). However, in Executive Order No. 76 which was released on the same date, he designated Perlas as Director of NPDC (Exh. A-1; p. 57, Rollo).

Both agencies (NPDC and NPDC, Inc.) are in charge of administering the same park areas, namely, Luneta, Quezon Memorial, Fort Santiago, and Mt. Makiling in Los Baños, Laguna, and have the same set of personnel whose salaries are paid out of government funds (p. 59, Rollo).

On October 12, 1981, Raymundo Villegas, Liaison Officer of the National Parks Development Committee (NPDC), upon instruction of the late Teodoro F. Valencia, then Vice-Chairman of NPDC, picked up from the Philippine Tourism Authority (PTA) a check for One Million Pesos (P1,000,000) representing the PTA's donation to the NPDC. Perlas took the check from Villegas saying he would give it to Elisa Malig, the Chief Cashier of NPDC.

The next day, Mrs. Malig asked Perlas about the check. The latter replied that he would time-deposit it. One week later, Perlas delivered to Mrs. Malig a receipt of the Philippine Veterans Bank for the deposit of the One-Million Peso Check at 13% interest. Mrs. Malig reported the transaction to Celia del Socorro, Chief of the Finance Section of NPDC.

When the time deposit matured in October, 1982, Mrs. Del Socorro and Evelyn Marquez, the COA auditor of NPDC, went to the Philippine Veterans Bank to withdraw the deposit but they were informed that it had already been withdrawn by Perlas on March 22, 1982.

What happened was: that on March 22, 1982, Perlas went to the Philtrust Bank (Philtrust) on Aurora Boulevard, Quezon City, and gave to the Bank's Branch Manager, Crisostomo Veneracion, a Metrobank Cashier's Check No. CC000137 dated March 22, 1982 for P1,011,533.22 payable to the National Parks Development Committee (Exh. C). Besides the check, he delivered to Veneracion an affidavit subscribed by himself and the secretary's (Natividad De Leon) certification (which was in fact a forgery). Veneracion handed the check (Exh. C) and papers to Jose Bustos, the Time Certificate Deposit Clerk. The affidavit of Perlas dated December 11, 1981 (Exh. C-2), stated:

"x x x x x x x x x x

"1. That, I am the Director of the National Parks Development Committee;

"2. That, as the Director of the National Parks Development Committee, I am empowered and entrusted to handle all accounts and money matters of the National Parks Development Committee, including the receipt, to deposit and withdraw such money and other instruments for and in behalf of the National Parks Development Committee with the banks and/or other entities, private and government as well;

"3. That, I executed this affidavit to inform any and all concern that I have the authority and the power to handle all money matters and the accounts of the National Parks Development Committee." (p. 61-62, Rollo.)

On Veneracion's instructions, Bustos prepared a Certificate of Time Deposit No. 18113 for P1,011,533.22 dated March 22, 1982 in the name of NPDC (Exh. C-7).

On the same day, March 22, 1982, Perlas applied for a loan of P900,000 from Philtrust, and, on March 29, 1982 for another loan of P90,000 in the name of NPDC (Exhs. D & E). The words "NATIONAL PARKS DEVELOPMENT COMMITTEE" (p. 62, Rollo) were typewritten on the right lower portion of the promissory notes with the name of Perlas below which he signed.

To guarantee the loans, Perlas separately signed in behalf of NPDC, two deeds of assignment of the NPDC time deposit in favor of Philtrust (Exhs. D-1 and E-1). As in the promissory notes, the words "National Parks Development Committee" and the name "Jesus P. Perlas, Jr." were already typewritten on the deeds of assignment when Perlas signed them. The Secretary's Certification (Exh. C-3) was submitted after the two loans were released.

Although the loans were applied for in the name of, and granted to, NPDC, the proceeds were credited to the personal checking account of Perlas upon instruction of Manager Veneracion on the basis of Perlas' affidavit

stating that he had authority to deposit and withdraw the funds of NPDC. The P900,000 loan netted P855,694.02 after deducting the sum of P44,305.98 representing the interest for the 90-day period from March 22, 1982 to June 20, 1982 (Exh. K). The P90,000 loan netted P85,569.40, as P4,430.60 was deducted as interest for the 90-day period from March 29, 1982 to June 27, 1982 (Exh. K-1). The proceeds of the two loans, P855,694.02 and P85,569.40, were credited to Perlas' Current Account No. 1518 (Exhs. K and K-1, D-2, D-4 and E-2). Perlas, thereafter, issued checks against said account (Exh. D-4).

On December 15, 1982, Valencia directed Philtrust to pre-terminate the time-deposit of NPDC in the amount of P1,011,533.22.

Although Philtrust initially resisted the pre-termination of the deposit (which Perlas had assigned to the bank as security for his loans), it eventually complied and refunded the amount of P1,070,274.18 through a Manager's Check No. 001319 dated March 22, 1983 in the name of NPDC (Exh. H-2).

Thereafter, Philtrust's Senior Vice-President wrote a letter to Perlas on January 12, 1983 demanding that he pay the loans which were credited to his personal checking account (Exh. I). Perlas offered to settle the account (Exhs. I-1 and I-2) but never did.

The P1,011,533.22 time deposit of NPDC earned interest of P54,550.76 from March 22, 1982 to August 31, 1982. Of this amount, P5,500 was transferred to Perlas' personal current account (Exhs. F-2 and F-5) while P47,500 was withdrawn by him on different dates (Exhs. G, G-1 to G-4) or the total sum of P53,000. For these withdrawals, he was charged with malversation of public funds in Criminal Case No. 9004.

After the prosecution had presented its evidence, Natividad de Leon filed a demurrer which the Sandiganbayan granted in its assailed decision, as it was convinced that her signature "Natividad G. De Leon" in the false sworn certification (Exh. C-3, Exh. 2-De Leon) was a forgery.

After the trial, the Sandiganbayan sentenced the petitioner, as follows:

"IN VIEW of all the foregoing, judgment is hereby rendered:

"1) The Demurrer to Evidence of accused Natividad G. De Leon is granted, and she is hereby acquitted in Criminal Cases Nos. 9002 and 9003;

"2) The Motion to Dismiss of accused Jesus P. Perlas, Jr. is DENIED;

"3) In Criminal Cases Nos. 9002--9003, accused Jesus P. Perlas, Jr. is declared guilty beyond reasonable doubt as principal of the crime of estafa defined and penalized under Article 315 (2) (a) and Article 214 of the Revised Penal Code; absent any modifying circumstances and applying the Indeterminate Sentence Law, he is hereby sentenced as follows:

"(a) In Criminal Case No. 9002, to an indeterminate penalty ranging from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional AS MINIMUM to FOURTEEN (14) YEARS of reclusion temporal as maximum, temporary special disqualification from ELEVEN (11) YEARS and ONE (1) DAY to TWELVE (12) YEARS and FOUR (4) MONTHS and TO INDEMNIFY Philtrust Bank in the sum of P90,000;

"(b) In Criminal Case No. 9003, to an indeterminate penalty ranging from FOUR (4) YEARS and TWO (2) MONTHS of prision correccional as minimum to TWENTY (20) YEARS of reclusion temporal as maximum, temporary special disqualification from ELEVEN (11) YEARS and ONE (1) DAY to TWELVE (12) YEARS and FOUR (4) MONTHS and to indemnify Philtrust Bank in the sum of P900,000.00;

"4) In Criminal Case No. 9004, accused Jesus P. Perlas, Jr. is declared GUILTY beyond reasonable doubt as

Principal of the crime of estafa defined and penalized under Article 315 (1) (b) and Article 214 of the Revised Penal Code; absent any modifying circumstances and applying the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate penalty ranging from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of prision correccional as minimum to ELEVEN (11) YEARS of prision mayor as maximum, temporary special disqualification from ELEVEN (11) YEARS and ONE (1) DAY to TWELVE (12) YEARS and FOUR (4) MONTHS, and to indemnify the National Parks Development Committee in the sum of P53,000.00.

"He shall pay the costs of these proceedings.

"The above-numbered cases are hereby archived as regards the accused Crisostomo Q. Veneracion without prejudice to their prosecution when the said accused shall have been apprehended and brought to the jurisdiction of this Court." (pp. 77-79, Rollo.)

In this petition for review, the petitioner assigned eight (8) errors which may be compressed into three (3) propositions, that the Sandiganbayan erred in finding:

1. that Perlas was a director of NPDC, hence a public official within its jurisdiction for his designation by Valencia as director of NPDC, Inc. was invalid;
2. that the money covered by the certificate of time deposit was government funds; and
3. that he employed deceit in executing an affidavit falsely alleging that he had authority to dispose of NPDC funds when in fact he did not have such authority.

All these issues are factual, hence, not reviewable in a petition for review under Rule 45 of the Rules of Court where only legal issues may be raised. In any event, the Sandiganbayan's findings appear to be fully supported by the evidence. Confirmatory of that fact are the issuances made by Perlas from February 2, 1981 to December 2, 1982 which were all made on official stationery of NPDC (not NPDC, Inc.). The promissory notes which he executed (Exhs. D and E) in obtaining loans from Philtrust and the deeds of assignment (of the certificate of deposit) which he made in favor of Philtrust were signed by him as "Director of NPDC." His affidavit stated that he was "the Director of the National Parks Development Committee." Since NPDC is a government agency under the Office of the President, Perlas, as director of that agency, was a government official. The Sandiganbayan had jurisdiction over him. (Sec. 4, PD No. 1606.)

1. The designation of Perlas as Acting Director of NPDC, Inc., was found by the Sandiganbayan to be an error resulting from Vice-Chairman Teodoro Valencia's apparent inability to distinguish between the NPDC and NPDC, Inc. and his using both names interchangeably. No mere designation by Valencia could make Perlas a director of NPDC, Inc. for the directors of the corporation had to be elected. His "designation" was therefore invalid. Presumably, it was the realization of the invalidity of the first designation that prompted Valencia to issue his subsequent Order No. 76 designating Perlas as director of NPDC. This later designation superseded the first.
2. The check of the Philippine Tourism Authority, a government agency, was issued to NPDC, also a government agency. Consequently, the funds were public funds subject to audit by COA. Their conversion by Perlas to his own use through unfaithfulness and false pretenses constituted estafa.
3. Witness Elisa Malig (NPDC Chief Cashier) testified that Perlas, as director, had no authority to borrow or withdraw NPDC funds except upon voucher of NPDC duly approved by COA. Not even the Vice-Chairman Teodoro Valencia could borrow or withdraw said funds (tsn, Sept. 26, 1986, pp. 12, 19-20). Perlas' use of a forged Secretary's Certificate and a self-serving affidavit, falsely alleging that he was authorized to dispose of NPDC funds constituted deceit which enabled him to use the NPDC's time deposit certificate for his private advantage.

Finding no reversible error in the lower court's conclusions, We affirm the same. However, We perceive an error

in the court's computation of the additional penalty of temporary special disqualification [eleven (11) years and one (1) day to twelve (12) years and four (4) months] imposed by it on Perlas. The medium period of said additional penalty under Article 214 of the Revised Penal Code should be a straight term within the period of eleven (11) years and one (1) day to twelve (12) years.

WHEREFORE, the petition for review is denied. The decision of the Sandiganbayan is affirmed except the penalty of temporary special disqualification imposed on the accused which should be for a period of twelve (12) years in each of the three cases of estafa. Costs against the petitioner

SO ORDERED.

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

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