

CRESENCIA L. TAN, PETITIONER, THE SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 88475-96. August 05, 1993

Ponente: MELO, J.

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MELO, J.:

Petitioner Cresencia L. Tan assails the joint decision of the Sandiganbayan dated May 30, 1989 (pp. 16-117, Rollo), finding her guilty of 22 counts of Estafa Through Falsification of Public Documents and sentencing her to suffer 22 separate jail terms, ranging from 4 years, 2 months, and 1 day of prision correccional in the minimum, to 10 years of prision mayor, maximum.

Forty-six cases were filed by the then Tanodbayan charging certain officials and employees of the then Ministry of Public Highways of Region VII and of the Siquijor Highway Engineering District (SHED) Office and certain private contractors/suppliers, with having committed the crime of Estafa Through Falsification of Public Documents.

The Informations in all the cases are identically worded, except as to persons, dates, amounts, and supplies/materials involved, thus :

That during the period from [period specified], or thereabout, in the City of Cebu and in the Province of Siquijor (both in Region VII), Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and with intent to defraud the Republic of the Philippines, conspiring and confederating together with their co-accused [name], a contractor, and mutually helping one another, and taking advantage of their public positions, did, then and there wilfully, unlawfully and feloniously commit the following acts of falsification and/or fraudulent acts executed prior to or simultaneously with the commission of the fraud, to wit: (a) [names of Regional Highway Officials and their respective positions], prepared, caused to be prepared, signed, countersigned and released Letter of Advice of Allotment (LAA), No. [xxx], dated [xxx] in the amount of [xxx] of the District Engineer of Siquijor Engineering District, allegedly for maintenance of National Roads and Bridges when, as a matter of fact and as accused well knew, the same was not covered by a Sub-Allotment Advice (SAA) from the Ministry of Public Highways, Manila, thus making untruthful statements in the narration of facts; (b), accused [names of some SHED officials and employees] in connivance with the above-named accused [name of contractor/supplier], prepared and approved Requisition & Issue Voucher [date of voucher] for [quantity in cu. m.] Aggregate Base Course (Item 200) charged to said fake LAA; (c) above-named accused Trinidad T. Manlolyo, Chairman, Aurelio M. de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan members of the Awards Committee signed and approved Bid No. [xxx], which was opened on [xxx] and approved by above-named accused Isaac T. Mananquil, Highway District Engineer; (d) accused Wilfredo Monte, Zosimo S. Dinsay, Cresencia L. Tan, Trinidad T. Manlolyo, and Adventor Fernandez correspondingly signed and approved Requisition for Supplies or Equipment dated [xxx] for the said Item 200; (e) accused [name] correspondingly signed and approved Purchase Order No. [xxx] dated [xxx] in favor of [name of contractor/supplier]; (f) accused [names of Shed employees] signed and certified to the correctness of the Statement of Deliveries of Road Materials (Item 200) for [name of contractor/supplier], pursuant to said Purchase Order No. [xxx]; (g) accused Eugenia

S. Machan, Wilfredo Monte, Cresencia L. Tan, Jose R. Velaso and Isaac T. Mananquil, correspondingly signed, preaudited and approved General Voucher No. [xxx] in favor of accused [name of contractor/supplier] in the amount of [words and figures] Pesos allegedly in payment of said Item 200; (h) accused [names of SHED officials], issued, signed, and counter-signed, respectively, TCAA [check no. and date] in favor of [name of contractor/supplier] in payment of said General Voucher No. [xxx]; (i) and finally [name of contractor/supplier] received and encashed the aforesaid TCAA Check, thus, the above-names accused were able to appropriate, as they did appropriate and convert to their own personal use and benefit, to the damage and prejudice of the Government of the Philippines in the total amount of (words and figures) Pesos.

ALL ACTS CONTRARY to Article 315, par. 2, in relation to Article 171 of the Revised Penal Code.

Duly arraigned under each of the different Informations, all of the accused pleaded "Not Guilty".

Thereafter, by agreement of the parties, a joint trial was held. The Sandiganbayan, later rendered a single decision for all the cases. Herein petitioner Tan, then employed as District Accountant of SHED, was found guilty as charged in 22 cases (Criminal Case No. 2073-2095, except 2077).

Initially, it may be a useful backgrounder if We examine the procedure involved in the funding of different regions of the Ministry of Public Highways and in the disbursement of said funds which petitioner accurately synthesized thus:

At the beginning of each quarter, the Ministry of the Budget issues to the Ministry of Public Highways the advice of allotment (AA), which is the authority to obligate, and the Cash Disbursement Ceiling (CDC) which is the authority to disburse. In turn, the Ministry of Public Highways, issues sub-advice of allotments (SAA) to the various regional offices, and the corresponding advice of cash disbursement ceilings (ACDC). The regional offices then issue Letter of Advice of Allotment (LAA) to the various districts to enable the district offices to incur obligations, and the corresponding sub-advice of Cash Disbursement Ceilings (ACDC). The LAAs are prepared in the Budget Section of the Accounting and Finance Division of the Regional Office, forwarded to the Accounting Section for obligation and certification of availability of funds by the Chief Accountant, after which it is forwarded to the Finance Officer for signature and the Regional Director or his duly authorized representative for counter-signature. Thereafter, it is brought back to the Budget Section for proper release.

With the receipt of the LAAs and the CDCs, the district is now equipped with authority to incur obligation and authority to disburse. However, as a matter of procedure, 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 also prepares a Request for Obligation of Allotment (ROA) which is likewise certified by the District Accountant as to the availability of funds. The RSE, together with the program of work, is transmitted to the Regional Director for approval, after which it is returned to the district. Thereafter, canvass bid forms are sent to the different contractors or suppliers for quotation of prices for the materials or supplies called for in the approved RSE. After all bid forms are submitted, they are opened on specified dates and the determination of the lowest bidder is made. This is indicated in the Abstract of Sealed Quotations. A Purchase Order is then made in favor of the winning bidder or contractor. Deliveries are made by the contractor and, thereafter, a General Voucher, supported by delivery receipts and inspection reports and other supporting documents, is processed for the payment of the delivered materials or supplies. Finally, the corresponding check is prepared and released to the contractor, who encashes the same.

At the end of each month, the District Accountant of the various engineering districts prepare several reports including the Report of Obligations Incurred (ROI) and the Report of Checks Issued by Deputized Disbursing Officers (RCIDDO) which are submitted to the region. The reports form the basis for the preparation of the monthly trial balance. This trial balance is prepared in the Regional Office and submitted to the Central Office of the Ministry of Public Highways on or before the 5th of the succeeding month, for final consolidation by the

Central Office in a single trial balance for the entire Ministry, which is then submitted to the Commission on Audit. The ROIs which is then submitted by the various districts to the regional office at the end of each month are summarized and consolidated by the Chief Accountant of the Region in a Journal Voucher, which is then approved by the Finance Officer of the region. The monthly trial balance is likewise prepared and signed by the Chief Accountant of the region, recommended for approval by the Finance Officer thereof, and finally approved by the Regional Director before it is submitted to the central office. (pp. 245-247, Rollo.)

The facts of the case are as follows:

As a result of an extensive investigation undertaken by different agencies of the government involving the alleged Central Visayas highway anomalies which surfaced in mid 1978, an audit team was organized on June 21, 1978, by Sofronio Flores, Jr., Regional Director, COA, Region VII, with station at Cebu City. The team was to look into the alleged issuance of fake Letters of Advice of Allotments (LAAs) to the different highway engineering districts of the region.

The team, composed of Victoria Tejada (sometimes referred to in the record as Quejada) and Ruth Paredes, both Auditors IV of Region VII, made a detailed study of the system and accounting procedures in the issuance of Advices of Allotments. They also prepared a worksheet containing a summary of sub-advices of allotments (SAAs) under Fund 101 in 1977 based on the records of the Regional Office.

Region VII covers 15 highway engineering districts, one of which is the Siquijor Highway Engineering District or SHED, headed by the District Engineer. The SHED LAAs were matched with the SAAs (Exhs. D to D-1). Some LAAs (Exhibits J, J-1 to J-37) were found to be regular inasmuch as they were recorded in the Regional Office's Logbook (Exhibits H-20 to H-24) while other LAAs (Exhibits K, K-1 to K-29) turned out to be fake or irregular since they were (1) not covered by SAAs; (2) could not be found in the logbook; (3) do not contain the accounting release stamp at the upper portion; (4) issued without authority, and (5) contain prior years' obligation numbers. Most of the regular LAAs were signed by accused Angelina Escaño or Heracleo Faelnar. (Regional Finance Officer and Asst. Regional Director, respectively) while the fake LAAs were signed by Rolando Mangubat or Adventor Fernandez (Regional Accountant and Regional Highway Engineer, respectively). The Advices of Cash Disbursement Ceilings (ACDCs) received by the Regional Office from 1975 to 1977 appear in a certification (Exhibit L) wherein said ACDCs are listed (Exhibits M to M-1 and N to N-54), aside from being also listed in the logbook (Exhibits H-25 to H-31). They also prepared a list of the regular Sub-advices of Cash Disbursement Ceilings (SACDCs) which could be traced to the Cash Disbursement Ceiling (CDC) subsidiary ledger maintained by the Regional Office (Exhibits O to O-18; P to P-17). Aside from the latter, there were also SACDCs in the possession of the SHED in the year 1977 which could not be traced in the subsidiary ledgers of CDCs maintained by the Regional Office and over which they also made a listing (Exhibits Q, Q-1 to Q-22). The regular SACDCs bear accounting department release stamps and were signed either by Rolando Mangubat, Delia Preagido, or Angelina Escaño while the fake SACDCs were signed only by Mangubat and did not bear any release stamps.

After making the listings and compilations, and following analysis of the same the auditors determined the disbursements that were made out of the fake allotments by going over the general vouchers (GVs) of SHED for the year 1977 (Exhibits R, R-1 to R-23) which were retrieved by the COA team on October 2, 1978 which then prepared a working paper matching the vouchers against the fake LAAs (Exhibits S, S-1 to S-3 and T). The basis for matching the vouchers with the fake allotments are the Reports of Checks Issued by Deputized Disbursing Officer (RCIDDO) of SHED for 1977 (Exhibits U, U-1 to U-40). The total payments made from the 24 vouchers which are the fake allotments was P982,207.60. The total amount of the regular LAAs assigned for Siquijor for the year 1977 was P1,647,890.23 while the fake LAAs amounted to P1,586,080.00. The fake SACDCs amount to P2,147,533.73 and the regular CDCs totalled P1,660,084.53 (Exhibits O and Q). The total disbursements made by

SHED in 1977 amounted to P2,560,332.99 based on the RCIDDO. (See pp. 35-38, Decision, pp. 50-53, Rollo pp. 10-11 Petitioner's Memorandum, pp. 247-248, pp. Rollo.)

In the instant appeal, petitioner claims that the Sandiganbayan erred when it held:

Accused Tan's liability arises from her certifications on all the RSEs and GVs as to the availability of funds therefor, knowing fully well as District Accountant that these were illegally funded and were irregularly charged to "Fund 81-400", and that the district's regular maintenance needs were adequately funded by, and prosecuted under, such regular allotments. She also signed seven (7) Abstract of Bids. (p. 83, Decision, p. 99, Rollo.)

We have given due course to the petition despite objections of the Solicitor General that because the petition raises only factual issues, appeal by certiorari is unavailing. We believe petitioner's case falls within the exceptions consistently upheld by Us in regard to findings of fact of lower courts. In the case of *Macadangdang vs. Sandiganbayan* (170 SCRA 308 [1989]), We stated that while the general rule is that factual findings of the Sandiganbayan are conclusive, this is, however, subject to established exceptions, among them :

1) The conclusion is a finding grounded entirely on speculation, surmise and conjectures; 2) the inference made is manifestly mistaken; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record. (*Cesar vs. Sandiganbayan*, 134 SCRA 105, 121-122) (at p. 325.)

As uniformly alleged by the prosecution, the manner of operation of the "conniving" accused, was to falsify any of the following documents:

1. Letter of Advice of Allotment (LAA)
2. Requisition and Issue Voucher (RIV)
3. Abstract of Bids
4. Report of Inspection
5. Purchase Order
6. General Voucher (GV)
7. Statement of Deliveries
8. Requisition for Supplies or Equipment (RSE)

(p. 2, Petition, p. 8, Rollo; p. 15, Comment, p. 142, Rollo.)

Petitioner denies any direct participation in the execution of the foregoing documents. She claims that her participation was limited to the certification, in her capacity as District Accountant, on the availability of funds, and her signature on seven Abstracts of Bids, in her capacity as member of the Committee on Awards.

The Sandiganbayan, however, included her in the conspiracy allegedly because she issued the certification on the availability of funds, "knowing fully well as District Accountant II" that:

- a. the RSEs and GVs were illegally funded;
- b. the funds were irregularly charged to Fund 81-400;
- c. the district's regular maintenance needs were adequately funded by, and prosecuted under, such regular

allotments.

On the charge that the RSEs and GVs were illegally funded, the Sandiganbayan relied principally on the "fake" or irregular LAAs, issued by the Regional Office (Region VII) of the Ministry of Public Highways.

Both the LAA, or Letter of Advice of Allotment, which is the authority to incur obligation, as well as the SACDC, or Sub-Advice of Case Disbursement, which is the authority to pay for the obligation incurred under the LAAs emanate from the Regional Office. All the LAAs, cited in the information against petitioner were duly covered by SACDCs.

Was there anything on the face of LAAs that should have warned petitioner of any possible irregularity?

She insists that there are no specific guidelines on the features of an LAA. The District Office was, at the time, guided only by the signature of the duly authorized official and the corresponding obligation number.

Thus, while LAAs are generally signed by Angelina Escaño, Regional Finance Officer, petitioner found nothing irregular in LAAs bearing the signature of her co-accused, Rolando Mangubat (Chief Accountant, Region VII), because there were instances where LAAs issued by the Regional Office, which were supposed to be signed by Escaño bore instead the signature of Mangubat. She thus found no need for verifying Mangubat's authority.

In an earlier case, *Escaño vs. Sandiganbayan* (160 SCRA 429 [1988]), which concerned the same Angelina Escaño spoken of earlier and which involved the same or similar transactions herein treated, this Court took judicial notice of Memorandum Circular No. 111, issued by the Ministry of Public Highways which authorized Mangubat "to act as the Finance Officer, for and in the absence of the Finance Officer". The authority given to Mangubat was subsequently revoked on May 17, 1978. The evidence of the prosecution in said case shows that 46 spurious LAAs bore the date May 16, 1976, which means that the LAAs were antedated in order to make it appear that Mangubat signed them before his authority was revoked (at p. 436).

Prosecution witness Victoria Tejada (or Quejada), one of the auditors who investigated the mess, likewise testified on cross-examination in COA Adm. Cases No. 81-513, 81-514, cited in the COA decision dated December 27, 1983, as follows:

Q - And that be the case, the District Auditor will not be in the position to know whether the LAA is fake or not.

A - Taking the LAA on this face, I would say it is difficult to determine whether it is fake or not, because as a matter of fact, our conclusion was not based solely on the physical appearance of the LAA.

xxx xxx xxx xxx

(tsn, Quejada-cross, December 5, 1981, p. 134)

Q - From the face of the LAA, you have no way of knowing that the LAA is valid. There is no copy of the SAA sent together with the LAA.

A - Yes, sir.

xxx xxx xxx xxx

(Idem. Quejada-cross, p. 138).

(p. 190, Rollo.)

On the charge that the LAAs in question were charged to Fund 81-400 (and 81-409) which pertains to the prior year's obligations or accounts payable (unliquidated obligations as of December 31st of the previous year),

petitioner explains:

Obligations incurred against current allotment are credited to account 82 (Obligation Incurred) and liquidation of these obligations are charged against account 83 (Obligation Liquidated). At the end of the fiscal or calendar year the difference between accounts 82 and 83 is credited to account 81-400 (Unliquidated Obligation). A statement of unliquidated obligation is prepared.

Prior to 21 July 1978, obligations for requisitions of fuel, oil, supplies and materials chargeable to the maintenance fund were based on estimates only and usually the estimated costs were more than the actual payments. These excess obligations become savings and if payments were to be made after the close of the fiscal year these excess obligations cannot be returned to the projects because these amounts are already credited to account 81-400. These savings are to be utilized for other purpose provided that it be in connection with the same project. Account 81-400 can be debited by payment of the obligations or by reversion to the Central Office. It cannot be adjusted because the beginning balance will be distorted. At most balances of Accounts Payable are reverted after two years. (COA Circular No. 76-45 dated 24 November 1976)

Charging Account 81-400 or 81-409 for current expenditures is valid as far back as 1965 when the Bureau of Public Highways (BPH) HAD A DECENTRALIZED ACCOUNTING SYSTEM. (BPH) Memorandum Circular No. 3 dated 15 January 1965, copy of which is hereto attached as Annex A) This is specifically closing the difference between Accounts 82 and 83 to Account 81-400 (Unliquidated Obligation).

x x x

x x x

x x x

. . . LAAs bearing account code 81- 400 or 81-409 are believed to be excess obligations or savings of the regional office from its various obligations as indicated by the regional office obligation numbers on the LAA. As indicated by the Account Code 81-400, the amounts were obligated during the previous year and that it is not known by the district accountant where these savings came from because it is the regional office that handles the allotments of all the districts. While the obligation was made in the district when the particular LAA is received, it is clearly indicated by the regional office in the LAA that it is a prior year's obligation. The district only ought to follow the account symbol for purposes of reconciliation with the records of the district and that of the region. (pp 260-262, Rollo, Emphasis supplied.)

With respect to maintenance funds, petitioner states that these are continuing appropriations, and the practice was to obligate the unexpended balances at the end of the year in the books, even without specific creditors. These balances are considered savings to be used the following year but solely for the purpose of maintenance projects. (This practice had been observed since June 30, 1965, but discarded on July 21, 1978 when the Regional Office directed, in a radio message, that obligations from the requisitions of supplies, materials, equipment, and services shall, henceforth, be covered by duly approved purchase orders).

Petitioner further explains:

Only the district engineer and the maintenance engineer knew the amount needed for the regular maintenance fund because it is the maintenance engineer who prepares the maintenance estimate for the whole year. The district accountant (who happens to be the petitioner) is not provided a copy of the maintenance estimate. The district engineer and the maintenance engineer determine the needs for regular maintenance.

Releases of quarterly allotments for regular maintenance funds based on the maintenance estimates are not covered by Programs of Work. Release of maintenance fund other than what is contained in the maintenance estimate (quarterly allotments) were received first by the district office after which programs of work were prepared.

The district accountant has nothing to do with the program of work. The accountant's signature on the GVs is for the purpose of certifying to the availability of funds, and that the GVs are properly approved, supported by documents appearing legal and proper and with the appropriate account codes.

All the alleged fake LAAs received by SHED bore Regional Office Obligation Number. They are not, therefore, to be included in the Statement of Accounts Payable of SHED otherwise the total of the Statement of Accounts Payable will exceed that of the total of the balances of each ROA - obligations incurred of SHED. Petitioner believes it to be erroneous to include amounts already obligated by the Regional Office and obligate them again in the books of SHED. It will constitute double obligation and wrong accounting procedures. (pp. 24-25, Petitioner's Memorandum; pp. 261-262, Rollo)

Petitioner's defense was capsulized by the Sandiganbayan in this matter:

. . . When she received the questioned LAAs, she classified them as unliquidated obligations for the year 1976, and since it bears the obligation numbers of the Regional Office, she did not include them in the unliquidated obligations of the district. The moment they received the LAAs with their respective ROA obligation numbers, they spend the amounts and later submit a report of checks issued. Since these are excess obligations, they can use them for other purposes and it is the District Engineer who will determine for what project the obligation will be spent. Despite the regular quarterly allotments released to SHED, she was not surprised when they received another P1 million plus, and she presumed that was an additional allotment for the district. They did not consume the amount because there was an excess of P512,000.00 (pp. 47-48, Decision; pp. 63-64, Rollo.)

On the claim of totally absent or irregular bidding procedures, petitioner points out:

There are two committees in SHED - the Committees on Bidding, which is responsible for the opening of bids and writing the quotations of bids on the Abstract of Bids; and the Committee on Awards, of which the petitioner was a member. Petitioner is not a member of the bidding committee. The Committee on Award recommends the award to the lowest bidder based on the quotations on the abstract of bids submitted by the bidding committee. The committee on award will not be in a position to know what transpired in the proceedings of the committee on bidding. Petitioner's signature on the Abstract of Bids is merely incidental to her being member of the Committee on Award. (p. 264, Rollo.)

On the charge that the LAAs (issued by the Regional Office) were not covered by Sub-Allotment Advices (SAA) from the Ministry of Public Highways, which circumstance impliedly, rendered the LAAs spurious, petitioner again points out that since, precisely, the SAAs emanate from the Ministry, the district office is not in a position to know whether or not an LAA is covered by an SSA.

Auditor Ruth I. Paredes, the companion of Tejada, declared for the prosecution that upon receipt by the Budget Officer of the Advice of Allotment (AA) from the Ministry of Budget, she prepares 5 copies for each regional office of the Ministry of Public Highways. The district offices are not furnished copies.

Auditor Paredes further testified that not all LAAs issued by the Regional Office are covered by SAAs. The only instance that the SSA number is indicated on the LAA is when the released funds come from savings on equipment rentals (TSN, p. 11, January 12, 1983; p. 25, Rollo).

Based on the foregoing facts and circumstances, it appears that petitioner merely applied and observed standard operating procedures. If there were deficiencies in these procedures which could have facilitated irregularities or misappropriation of funds, We believe that these should have been corrected at the Regional level where the anomaly seems to have been hatched.

Petitioner carefully pointed out that where LAAs indicate Fund 81-400, the district had no choice but to record them and allow the expenses because the Regional Office had already obligated the funds in its books.

There is no direct evidence to show that petitioner connived and schemed with the others. Seemingly, and only because the LAAs were spurious, the Sandiganbayan thereupon surmised that the funds authorized therein were illegal. Petitioner was convicted solely on the theory of conspiracy. We have emphasized times without number that conspiracy must be established by clear and convincing evidence (*Bayan vs. Court of Appeals*, 181 SCRA 844 [1990]). The liability of a person depends on his participation. In the case at bar, aside from petitioner's certification of the availability of funds as District Accountant and her signature on RSEs and GVs (which duty is attached to her position), there is no showing that she participated in transactions that would reveal a criminal intent or scheme to defraud.

We had occasion to observe in *Macadangdang vs. Sandiganbayan* (170 SCRA 308 [1989])

Simply because a person in a chain of processing officers happens to sign or initial a voucher as it is going the rounds, it does not necessarily follow that said person becomes part of a conspiracy in an illegal scheme. It is all too easy to be swept into a long prison term simply because the guilt of some conspirators is overwhelming and somehow it attached to all who happen to be charged in one indictment." (at p. 327)

And of course, We need but recall in this regard that to accuse is different from convicting, that assertion is not synonymous to proof. For basic in our criminal justice system is the universal principle that the guilt of the accused must be shown beyond reasonable doubt and that the strongest suspicion cannot suffice to convict. Rather, every circumstance favoring the innocence of the person charged must be taken into account and any doubt as to his culpability must be resolved in his favor.

WHEREFORE, the decision of the Sandiganbayan, insofar as it convicted petitioner Cresencia L. Tan, is hereby SET ASIDE. Petitioner Tan is acquitted on grounds of reasonable doubt. No special pronouncement is made as to costs.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Quiason, Puno, and Vitug, JJ., concur.

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