AURELIO M. DE LA PEÑA AND ISAAC T. MANANQUIL, PETITIONERS, VS. SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 89700-22. October 01, 1999

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

Before us is a Petition for Review on Certiorari of the decision of the Sandiganbayan[1] in Criminal Case Nos. 2073-2095 and 3323-3345 finding AURELIO M. DE LA PEÑA guilty beyond reasonable doubt of ten (10) counts[2] of Estafa through Falsification of Public Documents and ISAAC T. MANANQUIL guilty beyond reasonable doubt of twenty three (23) counts[3] of Estafa through Falsification of Public Documents.[4] The informations filed against the accused-appellants Aurelio M. Dela Peña (DE LA PEÑA) and Isaac T. Mananquil (MANANQUIL) were worded insofar as pertinent, as follows:

> "That during the period from xxx to xxx, or thereabout, in the City of Cebu and in the province of Siquijor (both of 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 xxx, and mutually helping one another, and taking advantage of their public positions, did, then and there willfully, 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: x x x
>
> In Crim. Case No. 2073:
>
> (c) above-named accused Trinidad T. Manloloyo, 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. 049-12-77 which was opened on Dec. 7, 1977 and approved by above-named accused Isaac T. Mananquil, Highway District Engineer I;

In Crim. Case No. 2074:

> (c) above-named accused Trinidad T. Manloloyo, Aurelio M. de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan, Asst. Highway District Engineer, Administrative Officer, Supervising Civil Engineer, Senior Civil Engineer, District Accountant, respectively of the Siquijor Highway District Engineer, and Chairman and Members, respectively, of the Committee on Awards, approved the Abstract of Bids which was opened on November 3, 1977 and made an award to M & M Enterprises, owned by co-accused Manuel Mascardo, to supply 500 gallons of Rust Remover when, as the accused well know that there was no funds for the purpose;

In Crim. Case No. 2076:

> (e) accused Eugenio S. Machan, Wilfredo L. Monte, Cresencia L. Tan, Aurelio M. de la Peña, Isaac T. Mananquil and Jose R. Veloso, signed, pre-audited and approved Gen. Voucher No. 00739 in favor of M & M Enterprises, owned by co-accused Manuel Mascardo, in the total amount of P49,610.00, in payment of the

above-mentioned paints, charged to the aforesaid fake LAA;

In Crim. Case No. 2083:

(b) Accused Aurelio M. de la Peña, Cresencia L. Tan, Herminio T. Buac, Zosimo Dinsay and Trinidad T. Manloloyo, signed and approved the Abstract of Bids No. 048-12-77 and awarded the Bid to co-accused Juliana de los Angeles for the latter to supply 1,450 Cu. M. of Aggregate Sub-Base, Item 108, and 450 Cu. M. of Aggregate Base Course, Item 200;

In Crim. Case No. 2084:

(c) accused Aurelio M. de la Peña, Administrative Officer, SED, Ediltrudes S. Kilat, Auditing Aide, and Jose R. Veloso, Auditor, both of the Commission on Audit, jointly signed the Report of Inspection of the said guard rails, knowing that there was neither purchase order nor funds for the purpose;

(d) accused Aurelio M. de la Peña, Cresencia L. Tan, Zosimo S. Dinsay, Herminio T. Buac and Jose R. Veloso, all officials of the Siquijor Engineering District, prepared, signed, certified, pre-audited and approved Gen. Voucher No. 00228 in favor of M & M Enterprises, owned by co-accused Manuel Mascardo, in the amount of P44,550.00 in payment of said Steel Guard Rails, and charged to the said fake LAA;

(f) accused Aurelio M. de la Peña, Ediltrudes S. Kilat and Jose R. Veloso, jointly signed the Report of Inspection of the said 100 pcs. Steel GuardRails, knowing that there was neither purchase order nor funds for the purpose;

In Crim. Case No. 2085:

(b) accused Juan O. Sumagang, Herminio T. Buac and Aurelio M. de la Peña, officials of Siquijor Engineering District, prepared, signed and approved Requisition and Issue Voucher dated December 19, 1977 for 1,450 Cu. M. of Aggregate Sub-Base, Item No. 108, and 450 Cu. M. of Aggregate Base Course, Item 200;

In Crim. Case No. 2086:

(c) accused Aurelio M. de la Peña, Herminio T. Buac, Zosimo Dinsay, Cresencia L. Tan, and Trinidad T. Manloloyo, signed and approved Abstract of Bids No. 036-10-77, awarding the Bid to accused Juliana de los Angeles for the latter to supply the said road materials;

In Crim Case No. 2087:

(c) accused Aurelio M. de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan and Trinidad T. Manloloyo, all members of the Bids and Awards Committee of the Siquijor Engineering District, signed and approved Abstract of Bids No. 036-10-77, and awarded to co-accused Juliana de los Angeles for the latter to supply the said road materials;

In Crim. Case No. 2088:

(c) accused Aurelio M. de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan and Trinidad Manloloyo, all members of the Bids and Awards Committee of the Siquijor Engineering District, signed and approved the Abstract of Bids No. 036-10-77 and awarded the Bid to Juliana de los Angeles for the latter to supply the said road materials;

In Crim. Case No. 2093:

(b) accused Eugenio S. Machan, Wilfredo Monte, and Aurelio M. de la Peña, Property Custodian, Asst. Chief, Maintenance Engineer and Administrative Officer, respectively, of the Siquijor Engineering District, prepared, signed and approved Requisition and Issue Voucher for 1380 Cu. M. Aggregate Base Course, Item 200;

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> (d) accused Aurelio de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan and Trinidad Manloloyo, members of the Bids & Awards Committee of the SED, signed and approved abstract of Bids No. 043-12-77;

In Crim. Case No. 2094:

> (b) accused Wilfredo Monte and Aurelio M. de la Peña, Asst. Chief, Maintenance Engineer and Administrative Officer, respectively, of the Siquijor Engineering District, prepared, certified and approved Requisition and Issue Voucher for the purchase of 1470 Cu. M. Aggregate Base Course, item 200;
>
> (d) accused Aurelio M. de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan and Trinidad T. Manloloyo, members of the Bids and Awards Committee of the Siquijor Engineering District, signed and approved Abstract of Bids No. 047-12-77 and awarded the Bid to co-accused Clodualdo G. Gomilla;

In Crim. Case No. 2095:

> (c) accused Aurelio M. de la Peña, Herminio T. Buac, Zosimo S. Dinsay, Cresencia L. Tan and Trinidad T. Manloloyo, all members of the Bids and Awards Committee of the Siquijor Engineering District, signed and approved Abstract of Bids No. 047-12-77 and awarded the Bid to Clodualdo G. Gomilla;
>
> xxx thus, the above-named accused were able to appropriate, as they did in fact appropriate and convert to their own personal use and benefit, to the damage and prejudice of the Government of the Republic of the Philippines in the total amount of x x x.

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

Manila, August 15, 1980."[5]

In each of the criminal cases, both accused-appellants were sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional as minimum, to ten (10) years of prision mayor as maximum; to pay a fine of P1,500.00; to pay the cost of the action for each of the aforementioned cases; and to indemnify jointly and severally the Government of the Republic of the Philippines.

At the outset, we resolve to dismiss the criminal cases against MANANQUIL who died of cardio-respiratory arrest on January 3, 1991[6] , in line with the ruling in the case of People vs. Bayotas[7] where this Court ruled that the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon[8] . We thus limit our discussion to the case of petitioner DE LA PEÑA.

This case stems from the discovery of fake Letters of Advice Allotments (LAAs) issued during the period of 1976-1978[9] in the Siquijor Highway Engineering District (SHED) which led to irregular disbursements of public funds for the payment of non-existent deliveries of supplies used for various highway projects in the district amounting to P982,207.60.[10] The disbursement of funds for engineering projects and the issuance of a LAA in connection therewith is described in the following standard operating procedure as found by the Sandiganbayan:

> "Among the fifteen (15) highway engineering districts which comprises Region VII of the Ministry of Public Highways (or MPH) in 1976-1978 is the Siquijor Highway Engineering District (SHED, for short) which covers the entire province of Siquijor. It is headed by the District Engineer of Siquijor and maintains its auditing staff headed by the District Auditor. At the start of every quarter of the year, the Ministry of Budget releases funds appropriated for the MPH in the form of Advice of Allotments (AAs) and Cash Disbursement Ceilings (CDCs) which are released to the Regional Offices in the form of Sub-Advice of Allotments (SAAs) and Advices of Cash Disbursement Ceilings (ACDCs) and, in turn, the Regional Offices released said funds to the district level in the form of Letters of Allotments (LAAs) and Sub-Advice of Cash Disbursement Ceilings

(SACDCs).

While AAs, SAAs and LAAs serve as authority to incur obligations by the MPH, its regional offices and the latter's district offices, the authority to make payments for said obligations incurred is derived from Cash Disbursement Ceilings (CDCs), which are also issued by the Ministry of Budget to the MPH together with the AAs. The MPH, in turn, issue Advices of Cash Disbursement Ceilings (ACDCs) to its regional offices, and the latter then issue the corresponding Sub-Advice of Cash Disbursement Ceilings (SACDCs) to the different highway engineering districts under it. Said releases made through LAAs and SACDCs are entered in the appropriate books of account or ledgers of the regional office, principally in the Budget and Finance Division thereof. In the case of the Siquijor Highway Engineering District (SHED), disbursement of the quarterly allotments for regular maintenance or other needs of the districts is effected through the proper written request by the District Engineer for the release of such funds accompanied by the supporting programs of work, directed to the Regional Director. Upon approval of said request by the latter, an LAA is issued to the District Engineer by the Regional Finance Officer, certified as to the availability of funds by the Regional Accountant, and countersigned by the Regional Director. Correspondingly, the requisite SACDC is prepared by the Regional Finance Officer to be signed by him and the Regional Director, after which they are duly recorded in a logbook. Both the LAA and SACDC are then sent to the district office and which are carried and received by duly-authorized representatives. The LAA is signed by the Finance Officer and, in her absence, by her authorized representative, such as the Chief Accountant. The LAA indicates the authority, the allotment and the project number.

When the LAA reaches the office of the District Engineer, it is received and kept by the District Accountant. The allotments to the district engineering office normally increase from year to year although there is no fixed amount of increase but the District Engineer would know how much funds would be needed by his district. If the vouchers (GVs) in question do not exceed P50,000.00, there is no need for the Regional Office to approve the vouchers and it is only the RIV or RSE which has to be approved by the Regional Office. However, it is incumbent upon the Regional Office to supervise the operations of the district offices and by going over the approved programs of work, the regional officials would be able to find out whether the allowable expenses intended for the district had already been exhausted.

Implementation of the district's program of work now go into the requisition stage, wherein the proper Requisition and Issue Voucher (RIV), or Requisition for Supplies and Equipment (RSE), for the procurement of the supplies and materials needed for the prosecution of the project as embodied in the approved program of work, is prepared by the requisitioning officer in the district office and approved by the Regional Director. Also, the District Accountant prepares a Request for Obligation of Allotment (ROA) and certifies as to the availability of funds.

Based on the approved RIV or RSE, the District Property Custodian of Purchasing/Supply Officer, with the approval of the District Engineer, sends out Requests for Sealed Quotations to various contractors or suppliers requesting them to submit, on or before the date fixed therein, their quotations for the supply of materials or supplies. Notices thereof are likewise publicized through either through newspaper publications or postings in public places. Within the reglementary period, the sealed bid forms are opened by the Committee on Bidding and Award in the presence of the representatives of the District Engineer and Auditor. After the lowest price quotation or bid is determined, the corresponding Abstract of Awards is prepared, and signed by the members of the committee, as well as the Auditor's and District Engineer's representatives, and the corresponding award is made to the lowest bidder, duly approved by the District Engineer. The Purchase Order, or Purchase Request, is then issued to the winning bidder or contractor/supplier and deliveries are then made within the period specified therein.

After completion of deliveries, the corresponding General Voucher (GV) for the payment of the supplies or materials delivered is prepared, usually by someone at the district office. Said GV is in the standard printed form, prepared in several copies and containing on the face thereof five (5) certifications to be signed by the

> proper officials, namely, the Property Custodian, the Project Engineer, the District Engineer, the District Accountant and the District Auditor, attesting and certifying to the correctness, legality and propriety of the transaction covered by said GV. Attached to said GV, and required to be examined and verified by the proper district officials and their subordinates, prior to their affixing their signatures or initials thereon, are the requisite supporting documents, such as, RSE or RIV, ROA, Program of Work, Detailed Estimates, Request for Sealed Quotations, Abstract of Bids, Purchase Order, Delivery and Tally Sheets, Receipts, Request for Inspection, Report or Record of Inspection, Test Reports and Tax Clearance Certificates of the supplier-contractor. After the GV is processed, pre-audited and approved, the papers are returned to the Cashier for the preparation of the treasury warrant or TCAA check, which is also pre-audited. The check is then released to the supplier or his duly authorized representative who issue the corresponding official receipt.
>
> At the end of calendar month, the District Accountant prepares several reports, including the Reports of Obligations Incurred (ROI), which are submitted to the Regional Office. At the Regional Budget and Finance Division, these reports, together with those coming from other districts, are entered in the proper journals and, in the course of ordinary accounting procedures, are entered in the General Ledger. In turn, the entries in the General Ledger become the basis for monthly Trial Balances (TBs) which are prepared cumulatively by the Regional Accountant, recommended for approval by the Regional Finance Officer and approved by the Regional Director. Said TBs are required to be submitted every month to the MPH Central Office in Manila. At the end of the fiscal calendar year, the annual Trial Balance is prepared by the Regional Office and likewise submitted to the MPH Central Office."[11]

By agreement of the parties, the cases were jointly heard by the Sandiganbayan which rendered a decision, the pertinent dispositive portion[12] of which reads:

> WHEREFORE, judgment is hereby rendered finding accused Rolando Mangubat, Isaac T. Mananquil, Wilfredo Monte, Eugenio S. Machan, Cresencia L. Tan, Francisco Ganhinhin, Trinidad T. Manloloyo, Aurelio M. De la Peña, Zosimo S. Dinsay, Jose R. Veloso, Ediltrudes S. Kilat, Regino Jumawan, Arsenio A. Pakilit, Urbano Arcamo, Juan Sumagang, and Clodualdo G. Gomilla GUILTY beyond reasonable doubt as co-principals in the complex crimes of Estafa thru Falsification of Public Documents, as defined and penalized under Articles 318 and 171, Paragraph 4, in relation to Article 48, all of the Revised Penal Code, and appreciating the mitigating circumstance of voluntary surrender in favor of all of the above-named accused, as well as the benefits of the Indeterminate Sentence Law xxx."[13]

DE LA PEÑA's motion for new trial was denied[14] hence, this petition where we are limiting the issue to whether or not DE LA PEÑA's alleged participation in the conspiracy has been established beyond reasonable doubt since he does not dispute the Sandiganbayan's finding that there were anomalies in the issuance of LAAs.

DE LA PEÑA's conviction is predicated solely on the finding of a conspiracy which the respondent court based on the following findings:

> "Accused De la Peña's liability, as Administrative Officer, springs from his signing RIVs, Abstract of Bids, and Reports of Inspection, which he knew were fake, simulated or fictitious and in pursuance of the general conspiracy to defraud the government. xxx
>
> None of the accused regional and district officials can claim good faith or reliance on the regularity of the documents processed and signed by them or on the presumption that their subordinates and/or superiors have acted regularly, since by the very nature of their duties, they should have known or realized by mere scrutiny of the documents or by the exercise of ordinary diligence that there were irregularities or anomalies reflected on their very faces. This is exemplified by several circumstances patent on said documents, to wit, the irregular funding of the LAAs; the improper charging to prior year's obligations; the unauthorized and/or improper action by officials on the supporting documents; the lack or incompleteness of supporting documents, and the splitting of payments. Neither can the accused-contractors claim good faith likewise and reliance on the

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> actuations of their co-accused public officials since they knew fully well that their participation in the transactions under question were only make believe or a farce, and that their names, business standing and signatures were only utilized, with their whole hearted cooperation, in seeking the consummation of their plans to defraud the government.
>
> All in all, the evidence adduced by the prosecution have been subjected by this court to the utmost and rigid scrutiny, each and every facet thereof having been tested on the anvil of logic and reason, and the resultant conclusions unerringly and accurately lead to the existence of a gigantic conspiracy which had its embryo procreated in the Regional Office, reared and nurtured in the District Office and finally given added vim and vigor by the contractors-suppliers, without whose participation the conspiracy could not have attained maturity and outright consummation. For it cannot be denied that running pervasively throughout the questioned transactions are the individual and collective acts of the accused herein which implied or showed concert of design, common purpose and associated action, even in the absence of direct testimony or evidence to show such linkage or ties.
>
> The very essence of conspiracy is that there must exist an intention among the parties thereto to put the common design into effect. The intention cannot be anything but the will to attain the object of the agreement. However, to establish such conspiracy, direct proof of a prior agreement among the conspirators is not necessary. Proof of unity of purpose and pursuit of the same criminal objective is sufficient. There must be cooperation or agreement to cooperate or an intentional participation in the transaction with a view to the furtherance of the same criminal objective.
>
> Where the acts of each of the accused constitute an essential link in a chain and the desistance of even one of them would prevent the chain from being completed, then no conspiracy could result as its consummation would then be impossible or aborted. But when each and everyone of the accused in the instant cases performed their assigned tasks and roles with martinet-like precision and accuracy, by individually performing essential overt acts, so much so that the common objective is attained, which is to secure the illegal release of public funds under the guise of fake or simulated public documents, then each and every one of said accused are equally liable as co-principals under the well-established and universally-accepted principle that, once a conspiracy is directly or impliedly proven, the act of one is the act of all and such liability exists notwithstanding non-participation in every detail in the execution of the offense."[15]

The court found that DE LA PEÑA's acts of knowingly signing fake RIVs, Abstract of Bids, and Reports of Inspection proves that he was part of the conspiracy to defraud the government.

DE LA PEÑA claims that the Sandiganbayan erred in finding that he conspired with his co-accused in the commission of the crimes charged and thus convicting him thereof. There is no evidence at all to show that DE LA PEÑA and the other co-accused "met, planned and had 'come to an agreement concerning the commission' of the crimes charged".

The petition is impressed with merit; we resolve to acquit DE LA PEÑA.

There is no question that a conspiracy may be deduced from the mode and manner by which the offense was perpetrated, however, a conspiracy must be established by positive and conclusive evidence[16] . It cannot be based on mere conjectures but must be established as a fact. Moreover, it must be shown to exist as clearly and convincingly as the commission of the offense itself.[17]

We have examined the evidence of record and find that there is nothing therein to show, or from which it may reasonably be deduced with moral certainty, that DE LA PEÑA knew that the documents he signed were spurious. Although he was the Administrative Officer of the SHED whose functions consisted of reviewing vouchers and supporting papers and initialing these vouchers before the Assistant District Engineer and District Engineer sign said papers[18] , the mere fact of his signing the above-mentioned documents i.e. RIV, Abstract of Bids, and

Reports of Inspection, does not prove that he knew said documents were fake. His signature on the RIV only certified that the supplies requisitioned "were necessary and would be used solely for the purpose stated therein"[19] . On the other hand, his signature on the abstracts of bids[20] was merely incidental to his being member of the Committee on Awards[21] where his duties consisted of evaluating the offers and recommending the award to the lowest complying bidder or to one who offers the most advantageous terms to the government.[22] His signature in the Report of Inspection[23] only certified that he accepted the materials therein delivered. His signature does not appear on any of the fake LAAs and neither is there proof that he took part in the issuance of the same. From the testimonial evidence, it is possible that he never even saw the fake LAAs as only the District Engineer, the Resident Auditor and the District Accountant are sent copies thereof as testified to on cross-examination by prosecution witness, Ruth I. Paredes, Supervising COA Auditor:

ATTY. ONTAL TO PAREDES:

"ATTY. ONTAL:

Q. You testified that you were able to determine which are fake LAAs and which are genuine, first, because you traced the LAAs to the mother SAAs?

A. Yes, sir.

Q. Besides that, you also were able to determine because of the fake LAAs, because you have genuine LAAs to compare with?

A. No, we determine first which ones were regular and which ones were fake by matching them with the SAAs received and then we compare the fake LAAs to the regular LAAs and notes some characteristics on the fake LAAS which cannot be found in the regular LAAS.

Q. You, because you have another kind of LAA which you compare these with?

A. Yes, after we have determined the regular LAAs.

Q. So, without first looking at the regular LAAs, if you are shown only a fake LAA, you would not know if that is a fake LAA without first looking at the regular LAA without something else to compare with?

A. Yes, I can.

Q. You mean to say that if you are shown a LAA, when did you know? That you could determine?

A. After our investigation for 1978.

Q. Before you made these studies, you would not be able to determine the fake LAAs?

A. Before we investigated, whether we knew how to distinguish, well, our basis then would be actually our basis was to determine whether LAAs were covered by SAAs.

Q. That is the only way by which you can determine?

A. At the start.

Q. So, without going to the mother SAA, you would not be able to determine the fake LAAs, is that right, before your studies?

A. But we are also struck by the fact that some LAAs contain prior years obligations which should not be the case.

Q. But you knew about this only after your investigation?

A. During our investigation.

Q. Before that, before your investigation, you would not know, you would not be aware of these entries of the following years obligations?

A. We knew at the start that LAAs are issued for current allotments, so they could not contain prior years obligations numbers.

Q. Because you are an auditor?

A. Yes, sir.

Q. About one who is not an auditor?

JUSTICE KALLOS

She would not know.

A. I would not know.

ATTY. ONTAL

Q. Like an Assistant District Engineer, who does not know auditing and accounting procedures would not be able to determine what you have determined.

PROSECUTOR LLACAR

The witness would be incompetent.

JUSTICE KALLOS

That would be an expression of an opinion.

CHAIRMAN

Go to another point.

ATTY. ONTAL

Q. Now, Miss Paredes, in you flow chart from SAAs to LAAs would end up to the District Engineer?

A. Yes and goes back to the regional office and central office.

Q. There is no connecting flow of the SAAs or funding from the District Engineer down to the subordinates?

A. Which subordinates of the District Engineer?

Q. Like the accountant, like the employees in the district office, other than the District Engineer?

CHAIRMAN

You mean the personnel.

A. There can be no more flow. It will flow up and down or nothing else below. There is no office below that.

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ATTY. ONTAL

Q. So, when the LAA reaches the office of the District Engineer, the flow goes back to the region, is that right?

A. The LAA is kept by the District Accountant or highway district office.

Q. How many copies of the LAA are sent to the District Office?

A. One for the district engineer, another one for the resident auditor, one is retained by the releasing unit in the regional office, and one for the District Accountant.

Q. So, only two copies actually reach the engineering district?

A. One for the District Engineer and one for the District Accountant. And for the auditor.

Q. Three (3) copies?

A. Yes, sir."[24]

Thus, the nature and extent of participation of DE LA PEÑA in the preparation and/or issuance of the fake/spurious LAAs in question was not clearly established.

DE LA PEÑA is not the first accused in the present case to appeal his conviction[25] . In Veloso vs. Sandiganbayan[26] , this Court convicted DE LA PEÑA's co-accused, Jose R. Veloso, Resident Auditor of the SHED. The Court stated that:

> "Petitioner, as resident auditor of the SHED was tasked with ensuring the regularity of all transactions that are subject to his review. In these cases, he had before him, for his signature, vouchers that were patently irregular, supported by similarly irregularly issued documents, which he should not have passed in audit. Instead of refusing to affix his signature and reporting the irregularities to his superiors, as he was duty bound to do, he turned a blind eye and signed the documents, completing the process that led to the consummation of the crime.
>
> He cannot rely on the excuse that his subordinates have already initialed the documents for his signature because his function, as their superior, is to check on their work and to ensure that they do it correctly. Otherwise, if his signature was a superfluity, petitioner would be serving no useful purpose in occupying his position as resident auditor.
>
> The number of transactions in which petitioner is involved and the magnitude of the amount involved also prevent a reasonable mind from accepting the proposition that the petitioner was merely careless or negligent in the performance of his functions. He passed in audit twenty-four (24) general vouchers which resulted in the issuance of twenty-three (23) checks amounting to Nine Hundred Eighty-Two Thousand Two Hundred Seven Pesos and Sixty Centavos (P982,207.60). Moreover, the irregularities were not of the kind that could have gone unnoticed by the trained eye of an auditor."[27]

Unlike the case of VELOSO where it was shown that it was his duty as Resident Auditor of the SHED to ensure the regularity of all the transactions that are subject to his review and to report the irregularities to his superiors, there is paucity of proof that from the nature of DE LA PEÑA's functions as Administrative Officer and Chairman of the Committee on Awards, he was tasked with the same duty to detect patently irregular vouchers or irregularly issued supporting documents. Moreover, while VELOSO passed in audit and signed twenty-four (24) general vouchers, evidence shows that DE LA PEÑA signed only one Report of Inspection at a time when the Property Custodian, Eugenio S. Machan, who normally signs the Report of Inspection was in Cebu. If DE LA PEÑA signed said Report of Inspection without verifying the authenticity of all the accompanying documents, perhaps it was because he was remiss in the performance of his duties or was negligent in assiduously examining

the supporting documents before approving and signing the same. But this goes into the realm of conjecture which can not take the place of direct or competent proof of culpable complicity or connivance. "Negligence and connivance are two different things. 'Connivance' is a deliberate act, and cannot arise from negligence."[28] As pointed out by this Court in Macadangdang vs. Sandiganbayan[29]

> "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 to easy to be swept into a long prison term simply because guilt of some conspirators is overwhelming and somehow it attached to all who happen to be charged in one indictment."[30]

With respect to the participation of the petitioner in the preparation of the abstract of bids, we are compelled to point out that in the case of Tan vs. Sandiganbayan[31] DE LA PEÑA's co-accused, Cresencia L. Tan, who was the District Accountant and who was also a member of the Committee on Awards, was acquitted by this Court on the following ratiocination:

> "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 xxx. The liability of a person depends on his participation. In the case at bar, aside from petitioner's certification of 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."[32]

This Court there failed to find any direct evidence to prove that Cresencia Tan took part in the conspiracy to defraud the government despite her signing Certificates of Availability of Funds, Requisition for Supplies or Equipment (RSE's), and General Vouchers, which duty is attached to her position as District Accountant, and Abstract of Bids as a member of the Committee on Awards. Similarly, in the case of petitioner DE LA PEÑA, who like Tan acted as a member of the Committee on Awards in signing the Abstracts of Bids, we likewise find that DE LA PEÑA's mere act of signing the said documents is insufficient without other evidence to prove that he was part of the conspiracy to defraud the government. As earlier stated, DE LA PEÑA signed only one Requisition and Issue Voucher and one Report of Inspection. From the evidence of record, no pattern indicative of a conspiracy can reasonably be established.

In the absence of any other convincing proof to prove his complicity, we are constrained to reverse the decision of the Sandiganbayan.

WHEREFORE, the decision of the Sandiganbayan is REVERSED and SET ASIDE and petitioner, Aurelio M. De La Peña is hereby ACQUITTED based on reasonable doubt. The criminal cases against Isaac T. Mananquil are hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Ynares-Santiago, JJ., concur.

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[1] Second Division, composed of the ponente, J. Romeo M. Escareal, Chairman and the members; J. Jose S. Balajadia and J. Cipriano A. Del Rosario concurring.

[2] Criminal Case Nos. 2073, 2074, 2076, 2084-2088, 2094, and 2095.

[3] Criminal Case Nos. 2073-2095.

[4] Decision, 93-102.

[5] Record, Crim. Case Nos. 2073-2095, pp. 1-3.

[6] See Death Certificate, Rollo, p. 201.

[7] 236 SCRA 239.

[8] Ibid., at pp. 255-256.

[9] This is not the first case brought to this Court involving the irregular issuance of LAAs. Please see Tan vs. Sandiganbayan, 225 SCRA 156[1993]; Veloso vs. Sandiganbayan, 187 SCRA 504[1990]; Ponce De Leon vs. Sandiganbayan, 186 SCRA 745[1990]; Mangubat vs. Sandiganbayan, 163 SCRA 52[1988]. Escaño vs. Sandiganbayan, 160 SCRA 429[1988].

[10] Decision, p. 8.

[11] Decision, pp. 29-35; Rollo, pp. 46-52.

[12] Only one dispositive portion is quoted as the rest are similarly worded.

[13] Decision, pp. 92-93; Rollo, pp. 109-110.

[14] Rollo, pp. 122-123.

[15] Decision, pp. 83-87.

[16] People vs. Berroya, 283 SCRA 111 at p. 129[1997].

[17] Ibid.

[18] Exhibit 9.

[19] Exhibit BB, Folder 2, p. 187.

[20] Exhibits R-0, R-1-G, R-2-G, R-13-F, R-14-A, R-15-F, R-13-F, R-17-F, R-22-N, R-22-G, R-22-T.

[21] He was also Chairman of the Committee on Bids where his duties consisted of opening sealed bids, deciding on requests for withdrawal of offers and abstracting the various offers submitted by respective bidders.

[22] Exhibit BB, p. 123.

[23] Exhibit BB, Folder 2, p. 350.

[24] T.S.N., January 12, 1993, pp. 70-75.

[25] Please see Tan vs. Sandiganbayan, 225 SCRA 156[1993]; Veloso vs. Sandiganbayan, 187 SCRA 504[1990]; Escaño vs. Sandiganbayan, 160 SCRA 429[1988].

[26] 187 SCRA 504[1990].

[27] Ibid., at p. 509.

[28] Escaño vs. Sandiganbayan, 160 SCRA 429 at p. 440[1988].

[29] 170 SCRA 308[1989]; also cited in Tan vs. Sandiganbayan, see note 9, Supra at p. 168.

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[30] Ibid., at p. 327.

[31] 225 SCRA 156[1997].

[32] Ibid. at p. 168.

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