

## THIRD DIVISION

[ G.R. No. 218902, October 17, 2016 ]

**HELEN EDITH LEE TAN, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

**PEREZ, J.:**

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision<sup>[1]</sup> and the Resolution<sup>[2]</sup> dated 7 November 2013 and 30 June 2015, respectively, of the Sandiganbayan in Criminal Case No. 25674. The questioned Decision found herein petitioner Helen Edith Lee Tan (Tan), President/Proprietor of International Builders Corporation (IBC),<sup>[3]</sup> together with her co-accused therein, namely: Rene Mondejar (Mondejar), Municipal Mayor; Francisco Tolentino (Tolentino), *Sangguniang Bayan* Secretary; Ildefonso Espejo (Espejo), *Sangguniang Bayan* Member; Margarita Gumapas (Gumapas), *Sangguniang Bayan* Member; Manuel Piolo (Piolo), *Sangguniang Bayan* Member; and Roberto Velasco (Velasco), *Sangguniang Bayan* Member; all of Maasin, Iloilo City, guilty beyond reasonable doubt of Violation of Section 3(e) of Republic Act (R.A.) No. 3019,<sup>[4]</sup> as amended. Each of them was meted with the penalty of imprisonment of six (6) years and one (1) month, as minimum, to 10 years, as maximum, as well as perpetual disqualification to hold public office.<sup>[5]</sup> The questioned Resolution, on the other hand, denied for lack of merit the separate Motions for Reconsideration of petitioner and Mondejar, as well as the joint Motion for Reconsideration of Tolentino, Gumapas, Velasco and Espejo.<sup>[6]</sup>

The antecedents of this case are:

To protect Barangay Naslo in Maasin, Iloilo City, from the dangers posed by the Tigum River, which usually overflows during the rainy season, its *Sangguniang Barangay* enacted on 16 June 1996 Resolution No. 9<sup>[7]</sup> requesting the IBC to rechannel the path of the Tigum River and, after the temporary river control is replenished, to extract whatever surplus of sand and gravel supply, as payment for its services.<sup>[8]</sup> A day after, or on 17 June 1996, the Municipal Development Council (MDC) of Maasin, Iloilo City, adopted a similar resolution, *i.e.*, Resolution No. 9,<sup>[9]</sup> also requesting the IBC to perform the rechanneling of the Tigum River path because it has the necessary equipment for that kind of work, as well as the Department of Environment and Natural Resources (DENR) to issue the Environmental Clearance Certificate (ECC) in connection with the implementation of the project.<sup>[10]</sup> With these in view, the *Sangguniang Bayan* of Maasin, Iloilo City, enacted on 21 June 1996 the questioned (1) Resolution No. 30-A<sup>[11]</sup> strongly endorsing the resolutions of Barangay Naslo and MDC; and (2) Resolution No. 30-B<sup>[12]</sup> authorizing Mondejar to exercise his emergency powers to negotiate with the

IBC for the rechanneling of the Tigum River path.<sup>[13]</sup>

On 27 June 1996, pursuant to the aforesaid *Sangguniang Bayan* resolutions, the Municipality of Maasin, Iloilo City, through Mondejar, entered into a Memorandum of Agreement (MOA)<sup>[14]</sup> with the IBC, through petitioner Tan, for the rechanneling of the Tigum River path. Per the said MOA, the parties agreed that the IBC will do the rechanneling for no monetary considerations whatsoever, except that it can get the surplus supply of sand and gravel taken out therefrom after the necessary dike has been established, as what has been provided for in the alleged Resolution No. 30-A, on account of financial constraints since the municipality has already exhausted all its resources due to a series of calamities.<sup>[15]</sup>

Soon thereafter, Criminal Complaints for Falsification under Article 171 of the Revised Penal Code (RPC) and for Violation of Section 3(e) of R.A. 3019 were filed before the Office of the Ombudsman-Visayas (OMB-Visayas) against the local officials involved in the project of rechanneling the Tigum River path, including petitioner Tan.<sup>[16]</sup> The case was docketed as OMB-VIS-CRIM-98-0372.

The alleged Falsification was committed by Mondejar, Arnaldo Partisala (Partisala),<sup>[17]</sup> Tolentino, Espejo, Gumapas, Piolo, and Velasco when they made it appear in the Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, held on 21 June 1996, that Resolution No. 30-A and Resolution No. 30-B were deliberated, approved and/or enacted by the *Sangguniang Bayan* on the said date. Allegedly, no such resolutions were passed and/or enacted by the said body on that date. It was argued that this was done to give Mondejar legal basis or authority to enter into a MOA with the IBC, through petitioner Tan, for the supposed rechanneling of the Tigum River path. In reality, however, such MOA is a grant of an authority for the IBC to engage into massive quarrying activities in the area even without the required permit. As the argument ran, all the local officials involved in the project of rechanneling the Tigum River path, in conspiracy with petitioner Tan, indubitably committed also a Violation of Section 3(e) of R.A. 3019 inasmuch as they gave unwarranted benefits, advantage and displayed manifest partiality in favor of the IBC. They entered into a contract that is grossly disadvantageous to the government, particularly to the Municipality of Maasin, Iloilo City, as it has been deprived of the revenues, which could have been collected from the IBC out of the hauling activities of the latter for sand and gravel if there was no such MOA.<sup>[18]</sup>

On 31 May 1999, the OMB-Visayas, through Special Prosecution Officer II Raul V. Cristoria, issued a Resolution<sup>[19]</sup> recommending the (1) dismissal of the charge against the local officials involved in the project of rechanneling the Tigum River path, except for Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco, for insufficiency of evidence; (2) filing of separate Informations for Falsification under Article 171 of the RPC and for Violation of Section 3(e) of R.A. 3019 against the afore-named public officials before the Sandiganbayan; and (3) inclusion of petitioner Tan as one of the accused in the Information for Violation of Section 3(e) of R.A. 3019.<sup>[20]</sup>

Upon review, the OMB, through Graft Investigation Officer II Julita M. Calderon, issued a Memorandum dated 16 September 1999<sup>[21]</sup> approving the Resolution dated 31 May 1999 of the OMB-Visayas, thus, approving the filing of the Informations

against the mentioned individuals. The said OMB Memorandum was later approved by the Acting Ombudsman Margarito P. Gervacio, Jr. on 17 September 1999.<sup>[22]</sup>

Accordingly, two separate Informations were filed against Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco, before the Sandiganbayan, to wit: **(1) for Violation of Section 3(e) of R.A. 3019 docketed as Criminal Case No. 25674,**<sup>[23]</sup> **where petitioner Tan was included as one of the accused;** and (2) for Falsification under Article 171 of the RPC docketed as Criminal Case No. 25675.<sup>[24]</sup>

The Information docketed as Criminal Case No. 25674 charging Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo, Velasco and petitioner Tan with Violation of Section 3(e) of R.A. 3019, *by giving the latter unwarranted benefits, advantage and preference, to the damage and prejudice of the government,* reads:

That on or about the 27<sup>th</sup> day of June 1996, and for sometime prior or subsequent thereto, in the Municipality of Maasin, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, above-named accused [Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco], public officers, having been duly elected, appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to Office, **and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with [herein petitioner Tan], a private individual and President/Proprietor of [IBC] Iloilo City with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously make it appear that Resolution No. 30-B, series of 1996, was validly enacted by the *Sangguniang Bayan* of Maasin, Iloilo, authorizing Mayor [Mondejar] to exercise his emergency powers as in fact accused [Mondejar], entered into a [MOA] with [petitioner Tan] of IBC authorizing the said IBC to engage in massive quarrying in the guise of rechan[n]eling the Tigum River in Maasin, Iloilo, thus accused in the performance of their official functions had given unwarranted benefits, advantage and preference to [petitioner Tan] and themselves, to the damage and prejudice of the government, particularly the Municipality of Maasin.**

CONTRARY TO LAW.<sup>[25]</sup> (Emphasis and italics supplied)

Criminal Case No. 25674 and Criminal Case No. 25675<sup>[26]</sup> were eventually consolidated.

Upon arraignment, petitioner Tan and her co-accused in Criminal Case No. 25674, except for Partisala, who still remains at large, pleaded NOT GUILTY to the charge.<sup>[27]</sup> The parties then entered into a Joint Stipulation of Facts, which states, among others:

1. That at the time material in the Information, accused were public officials holding the following official positions in the government:

- a. [MONDEJAR] - Municipal Mayor, Maasin, Iloilo;
- b. [TOLENTINO] - S. B. Member, Maasin, Iloilo;
- c. [ESPEJO] - S. B. Member, Maasin, Iloilo;
- d. [GUMAPAS] - S. B. Member, Maasin, Iloilo;
- e. [PIOLO] - S. B. Member, Maasin, Iloilo;
- f. [VELASCO] - S. B. Member, Maasin, Iloilo;

**While [herein petitioner Tan] was the President of [IBC].**

2. **That on 27 June 1996 a [MOA] was entered into between the Municipality of Maasin, Iloilo represented by Mayor [Mondejar] as the First Party and [IBC] represented by [petitioner Tan] as the Second Party, for the Rechanneling of the Tigum River path at Barangay Naslo, Maasin, Iloilo.**

3. That Resolution No. 9 Series of 1996 was passed by Barangay Naslo, Maasin, Iloilo, relative to the rechanneling of the Tigum River Path at Barangay Naslo.

4. That Resolution No. 9 was also passed by the Members of the [MDC] of Maasin, Iloilo endorsing the rechanneling of the said River Path.<sup>[28]</sup> (Emphasis and underscoring supplied.)

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Thereafter, the Sandiganbayan jointly tried Criminal Case No. 25674 and Criminal Case No. 25675.

The prosecution presented eight witnesses, namely, Jose S. Navarra (Navarra),<sup>[29]</sup> Imelda Maderada (Maderada),<sup>[30]</sup> Soledad R. Sucaldito (Sucaldito),<sup>[31]</sup> Rogelio T. Trinidad (Trinidad),<sup>[32]</sup> Elisa L. Trojillo (Trojillo),<sup>[33]</sup> Darell A. Cabanero (Cabanero),<sup>[34]</sup> Dr. Vicente Albacete (Dr. Albacete)<sup>[35]</sup> and Ernie Jesus Lee Malaga (Malaga).<sup>[36]</sup> All together, their testimonies tend to establish that (1) the accused public officials falsified the Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, held on 21 June 1996 by making it appear that the body enacted on that date Resolution No. 30-A and Resolution No. 30-B, which resolutions led to the signing of the MOA between Mondejar and petitioner Tan for the alleged rechanneling of the Tigum River path; and (2) the quarrying activities of petitioner Tan's IBC at the Tigum River in the guise of rechanneling the same.<sup>[37]</sup>

After the prosecution's formal offer of documentary evidence was admitted by the Sandiganbayan in its Order dated 23 May 2006 over the objection of petitioner Tan

and her co-accused,<sup>[38]</sup> the latter separately filed Demurrers to Evidence (with prior leave of court), which were denied in a Resolution dated 16 March 2007. They moved for its reconsideration but it was again denied in a Resolution dated 22 January 2008.<sup>[39]</sup>

Petitioner Tan and her co-accused then proceeded in presenting themselves as witnesses, together with Rolando B. Sison (Sison),<sup>[40]</sup> Engineer Juan Rentoy, Jr. (Engr. Rentoy, Jr.)<sup>[41]</sup> and Abner Tudela (Tudela).<sup>[42]</sup> Their testimonies as a whole tend to prove, among others, that (1) the old flood control system of Barangay Naslo, Maasin, Iloilo City, was almost destroyed by the previous typhoons that hit the community; thus, there is a great need to construct or build another flood control system and, that is, the rechanneling of the Tigum River path since that river always inundated Barangay Naslo during the rainy season; (2) resolutions were passed by both the *Sangguniang Barangay* of Barangay Naslo and the MDC requesting the IBC to do the rechanneling since the latter has the necessary equipment for that kind of work; (3) the resolutions of *Sangguniang Barangay* of Barangay Naslo and the MDC were endorsed by the *Sangguniang Bayan* of Maasin, Iloilo City, *via* Resolution No. 30-A; and Resolution No. 30-B authorized Mondejar to exercise his emergency powers to negotiate with the IBC for the rechanneling of the Tigum River path, which resolutions were validly enacted by the body on 21 June 1996; (4) pursuant thereto, the Municipality of Maasin, Iloilo City, through Mondejar, and the IBC, through petitioner Tan, entered into a MOA for the rechanneling of the Tigum River path; and (5) the IBC was able to rechannel the Tigum River path.<sup>[43]</sup>

Petitioner Tan and her co-accused subsequently made a formal offer of evidence, which was admitted by the Sandiganbayan in its Order dated 13 January 2011 despite the objection of the prosecution.<sup>[44]</sup>

Thereafter, the prosecution presented Shirlito A. Reyes (Reyes)<sup>[45]</sup> and Sucaldito as rebuttal witnesses. On 20 July 2012, the prosecution submitted its supplemental offer of evidence, which the Sandiganbayan admitted in its Order dated 21 September 2012 over the objection of petitioner Tan.<sup>[46]</sup>

Once the parties submitted their respective Memoranda, the Sandiganbayan accordingly rendered a joint Decision on 7 November 2013 in Criminal Case No. 25674 and in Criminal Case No. 25675, which dispositive portion reads:

**WHEREFORE,** premises considered, the Court hereby rules as follows:

1. **In Criminal Case No. 25674,** the Court finds the accused [MONDEJAR], [TOLENTINO], [ESPEJO], [GUMAPAS], [PIOLO], [VELASCO] and [HEREIN PETITIONER TAN] **GUILTY** beyond reasonable doubt of the offense of [Violation of Section 3 (e) of [RA 3019], as amended, and sentences each of them to suffer an indeterminate penalty of six (6) years and one (1) month[,], as minimum[,], to ten (10) years[,], as maximum; and to suffer perpetual disqualification from public office. Insofar as [PARTISALA] is concerned, since he is still at large up to the present, let the case be **ARCHIVED** and let an *alias* warrant of arrest issue against him.