

## SECOND DIVISION

[ G.R. No. 185224, July 29, 2015 ]

**AMELIA CARMELA CONSTANTINO ZOLETA, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN [FOURTH DIVISION] AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**BRION, J.:**

We resolve the petition for review on *certiorari*<sup>[1]</sup> filed by petitioner Amelia Carmela Constantino Zoleta assailing the November 5, 2008 decision<sup>[2]</sup> of the Sandiganbayan (Fourth Division) in Criminal Case No. 28326.

The case stemmed from an anonymous complaint filed against the petitioner, Mary Ann Gadian, and Sheryll Desiree Tangan before the Office of the Ombudsman-Mindanao (Ombudsman) for participating in the scheme of questionable grants and donations to fictitious entities using provincial funds. As a result of this complaint, the Commission on Audit (COA) conducted a special audit in Sarangani Province. Among the irregularities discovered by the Special Audit Team was a P20,000.00 financial assistance given to Women in Progress (WIP), a cooperative whose members were mostly government personnel or relatives of the officials of Sarangani Province.

The COA Special Audit Team submitted its report to the Ombudsman which, in turn, conducted a preliminary investigation. Thereafter, the Ombudsman, through the Office of the Special Prosecutor, charged the petitioner, Vice-Governor Felipe Constantino, Violeta Bahilidad, Maria Camanay, and Teodorico Diaz with malversation of public funds by falsification of public documents defined and penalized under Article 217 in relation to Article 171(2) and Article 48 of the Revised Penal Code, as amended, before the Sandiganbayan in an Information which reads:

That on January 24, 2002 or prior or subsequent thereto in Sarangani, Philippines, and within the jurisdiction of this Honorable Court, accused **Felipe Katu Constantino**, a high-ranking public officer, being the Vice-Governor of the Province of Sarangani, **Maria D. Camanay**, Provincial Accountant, **Teodorico F. Diaz**, Provincial Board Member, **Amelia Carmela C. Zoleta**, Executive Assistant III, all accountable public officials of the Provincial Government of Sarangani, by reason of the duties of their office, conspiring and confederating with **Violita Bahilidad**, private individual, the public officers, while committing the offense in relation to office, taking advantage of their respective positions, did then and there wilfully, unlawfully and feloniously take, convert and misappropriate the amount of **TWENTY THOUSAND PESOS (P20,000.00)**, Philippine Currency, in public funds under their custody, and for which they are accountable, by falsifying or causing to be falsified

the corresponding Disbursement Voucher No. 101-2002-01-822 and its supporting documents, making it appear that financial assistance had been sought by Women In Progress, Malungon, Sarangani, represented by its President, Amelia Carmela C. Zoleta, when in truth and in fact, the accused knew fully well that no financial assistance had been requested by the said group and her association, nor did Amelia Carmela C. Zoleta and her association receive the aforementioned amount, thereby facilitating the release of the above-mentioned public funds in the amount of **TWENTY THOUSAND PESOS (P20,000.00)** through encashment by the accused at Land Bank of the Philippines (LBP) Check No. 36481 dated January 24, 2002 issued in the name of the Violeta Bahilidad, which amount they subsequently misappropriated to their personal use and benefit and despite demand, the said accused failed to return the said amount to the damage and prejudice of the government and the public interest of the aforesaid sum.

CONTRARY TO LAW.<sup>[3]</sup> (Emphasis in the original.)

On arraignment, the petitioner, Vice-Governor Constantino and Bahilidad pleaded "not guilty." Diaz and Camanay, on the other hand, remained at large.

On March 22, 2006, the Sandiganbayan issued a Pre-trial Order.<sup>[4]</sup> The People of the Philippines, through the Office of the Special Prosecutor, filed its *Comment and Ex Parte Motion to Include Testimonial Evidence and Issue to Pre-trial Order*<sup>[5]</sup> essentially claiming that the Pre-trial Order did not reflect certain testimonial evidence "as stated during the Pre-Trial."<sup>[6]</sup>

In its Order<sup>[7]</sup> dated April 5, 2006, the Sandiganbayan amended certain portions of the Pre-trial Order.

On April 25, 2006, Vice-Governor Constantino died in a vehicular accident, resulting in the dismissal of the case against him.

In its decision dated November 5, 2008, the Sandiganbayan found the petitioner and Bahilidad guilty beyond reasonable doubt of the crime charged, and sentenced them to suffer the indeterminate penalty of fourteen (14) years, eight (8) months and one (1) day, as minimum, to sixteen (16) years, five (5) months, and eleven (11) days of *reclusion temporal*, as maximum. It also imposed on them the additional penalty of perpetual disqualification from holding any public office. The Sandiganbayan likewise directed them to pay back the Province of Sarangani P20,000.00 plus interest, computed from January 2002 until fully paid.<sup>[8]</sup>

The Sandiganbayan held that Vice-Governor Constantino had control and custody of the funds by reason of his office, and that his signature was needed before a grant, donation, or assistance could be released to a requesting party. According to the Sandiganbayan, Vice-Governor Constantino approved the P20,000.00 disbursement despite the lack of the required documentation.

The Sandiganbayan further ruled that Vice-Governor Constantino conspired with the other accused in using a dummy organization - WIP - to facilitate the malversation. It explained that the petitioner, who was Vice-Governor Constantino's own daughter

and who held the position of Executive Assistant III in his office, committed the following acts: (a) ordered Mary Ann Gadian, a computer operator at the Office of the Sangguniang Panlalawigan of Sarangani, to make a letter-request for financial assistance using a nonexistent cooperative; (b) directed Jane Tangan, the Local Legislative Staff Officer of the Office of the Vice-Governor, to falsify the signature of WIP's secretary, Melanie Remulta, on the request-letter; and (c) certified and approved the disbursement voucher; and then presented it to Diaz, Camanay, and Vice-Governor Constantino for their respective signatures.

The Sandiganbayan likewise ruled that falsification was a necessary means to commit the crime of malversation.

### **THE PETITION FOR REVIEW ON CERTIORARI**

In the present petition, the petitioner argued that: (a) the Sandiganbayan's November 5, 2008 decision in Criminal Case No. 28326 was void because one of its signatories, Justice Gregory Ong, was not a natural-born Filipino citizen per *Kilosbayan Foundation v. Exec. Sec. Ermita*,<sup>[9]</sup> and hence not qualified to be a Sandiganbayan justice; (b) the totality of evidence presented by the prosecution was insufficient to overcome the petitioner's presumption of innocence; and (c) the Sandiganbayan denied her due process when it issued its Order dated April 5, 2006, amending certain portions of the pre-trial order without any hearing.

In its Comment,<sup>[10]</sup> the *People* countered that *Kilosbayan* merely required Justice Ong to complete "all necessary steps, through the appropriate adversarial proceedings in court, to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship." It added that *Kilosbayan* did not categorically rule that Justice Ong was not a natural-born Filipino who was disqualified from accepting an appointment to the position of Associate Justice of this Court. The *People* further pointed out that the Court in *Topacio v. Ong*<sup>[11]</sup> already acknowledged Justice Ong's actual physical possession and exercise of the functions of the office of an Associate Justice of the Sandiganbayan.

The *People* likewise argued that the issue of sufficiency of the prosecution evidence is a question of fact which is beyond the province of a petition for review on *certiorari*. It nonetheless maintained that the Sandiganbayan's findings were supported by the evidence on record.

On the third issue, the *People* maintained that a person charged with willful malversation can validly be convicted of malversation through negligence.

### **OUR RULING**

We **DENY** the petition.

#### **I. The Sandiganbayan's November 5, 2008 decision is valid**

The petitioner's reliance in *Kilosbayan* to challenge the validity of the Sandiganbayan's decision is misplaced.

We point out that *Kilosbayan* arose from a petition for *certiorari* filed by both

Kilosbayan Foundation and Bantay Katarungan - both nongovernmental organizations engaged in public and civic causes - assailing then President Gloria Macapagal-Arroyo's appointment of Justice Ong as an Associate Justice of the Court on the ground that the latter was not a natural-born citizen. Contrary to the petitioner's claim, *Kilosbayan* did not rule that Justice Ong was not a natural-born Filipino (and hence unqualified to assume the position of a Sandiganbayan Justice). The Court merely stated that Justice Ong cannot accept an appointment to the position of Associate Justice of the Supreme Court or assume the position of that office, "until he shall have successfully completed all the necessary steps, through the appropriate adversarial proceedings in court to show that he is a natural-born Filipino citizen and correct the records of his birth and citizenship."<sup>[12]</sup>

At any rate, the Court has long settled the issue of Justice Ong's citizenship. After the Court promulgated *Kilosbayan*, Justice Ong immediately filed with the Regional Trial Court (RTC), Branch 264, Pasig City, a *petition for the amendment/ correction/ supplementation or annotation of an entry in [his] Certificate of Birth*, docketed as S.P. Proc No. 11767-SJ. In its decision of October 24, 2007, the RTC<sup>[13]</sup> granted Justice Ong's petition to be recognized as a natural-born Filipino. Consequently, the RTC directed the Civil Registrar of San Juan, Metro Manila to annotate in the Certificate of Birth of Justice Ong its (RTC's) decision.

The RTC denied the motions moving for a reconsideration of its decision.

In its six-page resolution in 2013, the Court En Bane also held that Justice Ong was a natural-born citizen, thus:

The pronouncements of the Court in both GR No. 179895 and GR No. 180543, and the finality of the decision rendered by the RTC on October 24, 2007, in S.P. No. 11767-SJ recognizing Justice Ong as a natural born citizen of the Philippines and directing the correction of the existing records of his birth and citizenship have already definitively settled the subject of the query posed by SP Villa-Ignacio.<sup>[14]</sup>

Even without this ruling, we hold that Justice Ong was a *de facto* officer during the period of his incumbency as a Sandiganbayan Associate Justice. A *de facto* officer is one who is in possession of an office and who openly exercises its functions under color of an appointment or election, even though such appointment or election may be irregular.<sup>[15]</sup> It is likewise defined as one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent be not a mere volunteer.<sup>[16]</sup> Consequently, the acts of the *de facto* officer are as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned.<sup>[17]</sup>

In the light of these considerations, we find no basis to invalidate the November 5, 2008 decision of the Sandiganbayan in Criminal Case No. 28326.

## **II. Only questions of law should be raised in a Rule 45 petition**

It is settled that the appellate jurisdiction of the Supreme Court over decisions and final orders of the Sandiganbayan is limited only to questions of law; it does not

review the factual findings of the Sandiganbayan which, as a general rule, are conclusive upon the Court.

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. On the other hand, a question of fact exists when the doubt or controversy arises as to the truth or falsity of the alleged facts. The resolution of a question of fact necessarily involves a calibration of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations.<sup>[18]</sup>

In the present petition, the petitioner alleges that the presented evidence were insufficient to support a conviction. She thus seeks a re-evaluation of the Sandiganbayan's appreciation of the evidence presented, including the credibility of witnesses and the probative value of their testimonies. The petitioner likewise wants the Court to take a closer look into her claim that the charges against them were politically motivated.

To our mind, the Sandiganbayan's findings that: the testimonies of Gadian and Tangan were credible and worthy of belief; WPI was an unregistered cooperative; the signatures of the petitioner and her co-accused on the disbursement voucher were authentic; Remulta's signature had been forged; and the charges against the accused were not politically motivated, are questions of fact, as these matters were resolved after a calibration of the pieces of evidence presented during trial. The Court will not anymore weigh these pieces of evidence in the absence of a clear showing that these findings had been arrived at arbitrarily or are devoid of support in the records.

At any rate, we hold that the Sandiganbayan correctly convicted the petitioner of the complex crime of malversation of public funds through falsification of public documents.

Malversation may be committed by appropriating public funds or property; by taking or misappropriating the same; by consenting, or through abandonment or negligence, by permitting any other person to take such public funds or property; or by being otherwise guilty of the misappropriation or malversation of such funds or property.<sup>[19]</sup>

The elements common to all acts of malversation under Article 217 of the Revised Penal Code, as amended, are the following: (a) that the offender be a public officer; (b) that he had custody or control of funds or property by reason of the duties of his office; (c) that those funds or property were public funds or property for which he was accountable; and (d) that he appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them. All these elements have been established by the prosecution.

*First*, it is undisputed that all the accused, except Bahilidad, are all public officers. A public officer is defined in the Revised Penal Code as any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class. Constantino was