

SPECIAL SECOND DIVISION

[G.R. No. 188487, October 22, 2014]

**VAN D. LUSPO, PETITIONER, VS, PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

[G.R. No. 188541]

**SUPT. ARTURO H. MONTANO AND MARGARITA B. TUGAOEN,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R. No. 188556]

**C/INSP. SALVADOR C. DURAN, SR., PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

RESOLUTION

BRION, J.:

We resolve the present motions filed by C/Insp. Salvador C. Duran, Sr., Supt. Arturo H. Montano and Margarita B. Tugaoen (*accused*), seeking reconsideration of our February 14, 2011 Decision which reads:

WHEREFORE, foregoing considered, the conviction of Salvador Duran, Sr., Arturo Montano, and Margarita Tugaoen in Sandiganbayan Criminal Case No. 20192 is hereby AFFIRMED.

The conviction of Van Luspo in Criminal Case No. 20192 is REVERSED and SET ASIDE, and he is hereby ACQUITTED. The bailbond posted for his provisional liberty is hereby CANCELLED.

Salvador Duran, Sr., Arturo Montano, and Margarita Tugaoen are further ORDERED to jointly and severally indemnify the Philippine National Police of Ten Million Pesos (P10,000,000.00).

SO ORDERED.

Let us briefly recall the facts.

On August 11, 1992, the Office of the Directorate for Comptrollership (*ODC*) of the Philippine National Police (*PNP*) issued two (2) Advices of Sub-Allotment (*ASA*), amounting to five million pesos each, for the purchase of combat, clothing, and individual equipment (*CCIE items*) for the PNP's North Capital Command (*CAPCOM*).

[1]

Upon receipt of the ASAs, P/Supt. Arturo Montano (*Montano*), Chief Comptroller, North CAPCOM, directed Police Chief Inspector Salvador Duran, Sr. (*Duran*), Chief,

Regional Finance Service Unit, North CAPCOM, to prepare and draw 100 checks of P100,000.00 each, for a total of P10,000,000.00. The checks were all dated August 12, 1992 and payable to four different entities^[2] that are all owned and operated by Margarita Tugaoen (*Tugaoen*) who later collected the proceeds of the checks from the United Coconut Planters Bank (*UCPB*), Cubao Branch.

In her March 5, 1993 sworn statement, Tugaoen admitted that she received the P10 million worth of checks as payment for the previously accumulated PNP debts and not for any CCIE items that she delivered.^[3] P/CInsp. Isaias Braga, Chief Logistics Officer, North CAPCOM, and Rolando Flores, Supply Accountable Officer, North CAPCOM confirmed the non-delivery of the CCIE.

After the PNP, General Headquarters, Office of the Inspector General (*GHQ-OIG*), and subsequently the Ombudsman, conducted an investigation on the CCIE North Capcom transaction, the Ombudsman for the Armed Forces of the Philippines (now Ombudsman for the Military and Other Law Enforcement Offices) recommended the filing of an Information for 100 counts of Malversation of Public Funds against several PNP officials, including the accused.

On January 26, 2004, the Office of the Special Prosecutor (*OSP*) filed an Information, but this was for violation of Section 3(e) of Republic Act (*RA*) No. 3019,^[4] the Anti-Graft and Corrupt Practices Act. The Information alleged that the accused, among others, conspired with each other and with bad faith and manifest partiality caused undue injury to the government by causing the payment of P10,000,000.00 to Tugaoen for the CCIE items that were not actually delivered.

After the prosecution presented its evidence, the accused filed a demurrer to evidence, primarily questioning the admissibility of the checks (and its accompanying documents) and Tugaoen's sworn statements. The Sandiganbayan denied the demurrer to evidence.^[5] While none of the accused took the witness stand, Montano and Tugaoen maintained the inadmissibility of the evidence.^[6]

The Sandiganbayan found the accused guilty as charged.^[7] The court found that the prosecution successfully established the elements of Section 3(e) of RA No. 3019. *First*, the accused are public officers, except Tugaoen who, however acted in conspiracy with her co-accused. *Second*, the accused acted with evident bad faith by splitting the payment of P10,000,00.00 into 100 checks for P100,000.00 despite the fact that the ultimate payee is one and the same and contrary to the accused's claim that they are authorized to sign the checks regardless of amount. At the same time, the splitting of payment violates Commission on Audit (*COA*) Circular No. 76-41.^[8]

Second, by issuing the checks, the accused made it appear that there were legal transactions between PNP and the four business establishments owned by accused Tugaoen on the purchase and delivery of CCIE items despite the lack of documents to support these alleged transactions.

Third, undue injury is present in the amount of P10,000,000.00 for the supposed purchases of CCIE items that were never delivered to the end-users.

The Court upheld the conviction of the accused on appeal. The Court ruled that

Montano and Duran's bad faith was evident from their "failure to prepare and submit the required documentation ordinarily attendant to procurement transactions and government expenditures, as mandated by Section 4(6) of P.D. No. 1445."^[9] The element of undue injury was likewise established by the prosecution's evidence showing that the North CAPCOM did not receive the ten million pesos worth of CCIE items despite Tugaoen's admitted receipt and encashment of the checks.

Duran's Motion for Reconsideration

Duran reiterates that his alleged participation in the conspiracy is not sufficient to establish his guilt beyond reasonable doubt. The act of issuing 100 checks at P100,000.00 does not prove that he conspired with his co-accused because he only acted in accordance with the instruction and assurance of his superior, co-accused Montano, and in pursuance of his ministerial duty of preparing and counter-signing the checks.^[10] In other words, he was acting in good faith in preparing and counter-signing the checks.^[11]

Duran argues that he cannot be faulted for the lack of documentation accompanying the transaction. He claims that the lack of documentation is "none of [his] business"^[12] since documentation matters pertain to the office of his co-accused, Montano, as Chief Comptroller of North CAPCOM.^[13] The Court erred in imputing bad faith on him based on "the acts enumerated by [the] Court" in its Decision because these acts "do not fall within the ambit of his sworn duties."^[14]

Montano and Tugaoen's Motion for Reconsideration

Montano and Tugaoen alleged that the Court erred in imputing bad faith on them based on documentary evidence that shows the absence of supporting documents^[15] to the transactions because these documents are inadmissible in evidence for being hearsay. None of the persons who executed these documents testified in open court.^[16]

The prosecution failed to show that Montano and Tugaoen conspired with those charged in the information.^[17] The splitting of the checks cannot be the basis of conspiracy because to begin with, the admissibility of the secondary evidence of the checks is in question. The accused ask the Court to review the admissibility of these secondary pieces of evidence.^[18]

Accused Tugaoen's admission that she did not deliver any CCIE items as contained in her statement is inadmissible under Section 12, Article III of the 1987 Constitution.^[19]

Court's Ruling

We deny the motions.

***Signing the checks is
not a ministerial duty***

Contrary to Duran's claim, affixing his signature on the checks is not a ministerial

duty on his part. As he himself stated in his petition and in his present motion, his position as Chief of the Regional Finance Service Unit of the North CAPCOM imposed on him the duty "to be responsible for the management and disbursement and accounting of PNP funds." This duty evidently gives him the discretion, within the bounds of law, to review, scrutinize, or countercheck the supporting documents before facilitating the payment of public funds.

His responsibility for the disbursement and accounting of public funds makes him an accountable officer. Section 106 of Presidential Decree No. 1445 requires an accountable officer, who acts under the direction of a superior officer, to notify the latter of the illegality of the payment in order to avoid liability. This duty to notify presupposes, however, that the accountable officer had duly exercised his duty in ensuring that funds are properly disbursed and accounted for by requiring the submission of the supporting documents for his review.

By relying on the supposed assurances of his co-accused Montano that the supporting documents are all in order,^[20] contrary to what his duties mandate, Montano simply assumed that these documents exist and are regular on its face even if nothing in the records indicate that they do and they are. The nature of his duties is simply inconsistent with his "ministerial" argument. With Duran's failure to discharge the duties of his office and given the circumstances attending the making and issuance of the checks, his conviction must stand.

We clarify that the Court's finding of bad faith is not premised on Duran's failure "to prepare and submit" the supporting documents but for his failure to *require their submission for his review*. While the preparation and submission of these documents are not part of his responsibilities, his failure to require their submission for his review, given the circumstances, amply establishes his bad faith in preparing and issuing checks that eventually caused undue injury to the government.

Tugaoen's statement before the PNP investigating committee is admissible in evidence

On the issue raised by Tugaoen and Montano on the admissibility of the checks and of the statements made by Tugaoen before the investigating committee, we note that these arguments are mere rehashes of the arguments that they raised before the Sandiganbayan in their Motion to Dismiss and in this Court in their Petition for Review. We maintain our ruling that the Sandiganbayan committed no reversible error in this regard.

In an attempt to prove the applicability of the best evidence rule rather than the exception - entries in the regular course of business - on the secondary evidence of the checks, Tugaoen and Montano direct the Court's attention to the ruling of the Sandiganbayan in *another case* involving the issuance of checks in the aggregate amount of Php20 million as cash advances intended as payment for CCIE items for the use of PNP personnel of Region 7. In that case, the Sandiganbayan rejected the admissibility of the microfilm copies of the checks presented by the prosecution on the ground that it violates the best evidence rule, and eventually acquitted the accused.^[21]

We do not and cannot share their positions.