

SECOND DIVISION

[G.R. No. 188487, February 14, 2011]

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

[G.R. NO. 188541]

**SUPT. ARTURO H. MONTANO AND MARGARITA 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.**

D E C I S I O N

NACHURA, J.:

Petitioners, the accused in Sandiganbayan Criminal Case No. 20192, in this consolidated petition for review seek the reversal of the January 19, 2009 decision^[1] of the Sandiganbayan, finding them guilty beyond reasonable doubt of violating Section 3(e) of Republic Act (R.A.) No. 3019. Likewise assailed is the Sandiganbayan's June 30, 2009 resolution^[2] denying their motions for reconsideration.

The Facts

Acting on a report of the Commission on Audit (COA) regarding disbursement irregularities for combat, clothing, and individual equipment (CCIE) in Regions VII and VIII, North Capital Command (CAPCOM), the Philippine National Police-General Headquarters (PNP-GHQ), through the Office of the Inspector General (OIG), conducted an investigation of several officers of the PNP and of a private individual.

The investigation report^[3] disclosed that, on August 11, 1992, the Office of the Directorate for Comptrollership (ODC) issued two (2) Advices of Sub-Allotment (ASAs), (001-500-138-92 SN 4361 and 001-500-139-92 SN 4362), each amounting to Five Million Pesos (P5,000,000.00), purportedly for the purchase of CCIE for the North CAPCOM. The ASAs were approved "FOR THE CHIEF [Director General Cesar Nazareno (Nazareno)], PNP" by Director Guillermo Domondon (Domondon), Chief Director of ODC, and signed for him by Police Superintendent Van Luspo (Luspo), Chief, Fiscal Division, Budget and Fiscal Services of the ODC. The ASAs were issued without an approved personnel program from the Directorate for Personnel.^[4]

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 respectively to DI-BEN Trading, MT Enterprises, J-MOS Enterprises, and Triple 888 Enterprises, each to receive 25 checks. All enterprises were owned and operated by Margarita Tugaoen (Tugaoen), who collected the proceeds of the checks from the United Coconut Planters Bank (UCPB), Cubao Branch, on August 12, 13, and 14, 1992. [5]

In a sworn statement dated March 5, 1993 taken by Insp. Felicidad Ramos, a member of the investigating committee, Tugaoen admitted that she did not deliver any CCIE in exchange for the P10 million worth of checks, because the amount was allegedly intended as payment for the previously accumulated debts of the PNP. [6]

The nondelivery was confirmed by P/CInsp. Isaias Braga (Braga), Chief Logistics Officer, North CAPCOM, and Rolando Flores, Supply Accountable Officer, North CAPCOM. Both declared that, while they received CCIE in 1992, the same came from the PNP Logistics Command and not from Tugaoen, and that the value of the items they received was just P5,900,778.80 and had no relation at all to the P10 million CCIE purchase under investigation. [7] Their statements were corroborated by P/Supt. Jesus Arceo, Chief of the Supply Center of PNP Logistics Command. [8]

On the basis of the foregoing findings, the investigating team recommended that appropriate complaints be filed against Nazareno, Domondon, Montano, Tugaoen, and Pedro Sistoza (Director Sistoza), Regional Director, North CAPCOM. No reasonable ground was found to implicate Duran in the anomalous transaction, but he was still impleaded in the letter-complaint subsequently filed before the Office of the Deputy Ombudsman for the Armed Forces of the Philippines (OMB-AFP) [9] (now OMB-Military and Other Law Enforcement Offices [MOLEO]) because he was a cosignatory to the 100 checks.

Although the investigative report did not mention Luspo's criminal or administrative liability, the OMB-AFP included him in the charge since his signature appeared on the questioned ASAs.

Upon a finding that the abovementioned PNP officials and the private individual conspired to swiftly and surreptitiously execute the "ghost purchase" of the CCIE, the OMB-AFP recommended the filing of the criminal information for 100 counts of Malversation of Public Funds under Article 217 of the Revised Penal Code against them. The OMB-AFP further found that the ASAs were charged against the "Personal Services Fund" instead of the "Maintenance and Other Operating Expense Fund" without the approval of the Department of Budget and Management (DBM). They were released to the North CAPCOM without the corresponding requisition from the Directorate for Logistics of the North CAPCOM as normally observed. [10]

On January 26, 1994, the Office of the Special Prosecutor (OSP) approved the resolution of the OMB-AFP, with the modification that the proper offense to be charged was violation of Section 3(e) of R.A. No. 3019, as amended, for only one (1) count. The OSP also cleared Director Sistoza from any participation in the anomalous deal. [11] Thusly, the accusatory portion of the Information filed with the

Sandiganbayan reads:

That in or about August 1992, and for sometime subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named public officers, namely: Cesar P. Nazareno, being then the Director General; Guillermo T. Domondon, Director for Comptrollership; Van D. Luspo, Chief, Fiscal Services and Budget Division; Arturo H. Montano, Chief Comptroller, North Capcom and Salvador C. Duran, Sr., Chief, Regional Finance Services Unit (RFSU), North Capcom, all of the Philippine National Police (PNP), while in the performance of their respective official and administrative functions as such, acting with evident bad faith and manifest partiality, conspiring, confederating and mutually helping one another, together with private accused Margarita B. Tugaoen, did then and there willfully, unlawfully and criminally cause undue injury to the government (PNP), by causing the preparation, issuance, release and payment, without supporting documents, of TEN MILLION PESOS (P10,000,000.00) to DI-BEN TRADING, MT ENTERPRISES, J-MOS ENTERPRISES and TRIPLE 888 ENTERPRISES, all owned and operated by accused Margarita B. Tugaoen, purportedly for the purchase of combat, clothing and individual equipment (CCIE) for use of North Capcom personnel, to which no actual delivery of said CCIE items were ever effected by accused supplier Margarita B. Tugaoen, thereby giving unwarranted benefits to the latter accused, to the damage and prejudice of the Philippine government in the total amount of TEN MILLION (P10,000,000.00) PESOS, Philippine Currency.

CONTRARY TO LAW.^[12]

After numerous postponements caused by supervening procedural incidents, Nazareno, Domondon, Luspo, Montano, and Tugaoen were finally arraigned on October 12, 2001. They individually entered a "not guilty" plea.^[13] Duran refused to make any plea during his arraignment on October 26, 2001 hence, a "not guilty" plea was entered for him.^[14] During pre-trial, all accused agreed to the following stipulation of facts:

1. That except for accused Margarita Tugaoen, all the accused are public officers at the time stated in the Information;
2. That on August 11, 1992, the Office of the Directorate for Comptrollership of the PNP, issued two (2) Advices of Sub-Allotment (ASAs) in favor of the North CAPCOM in the amount of Five Million Pesos (P5,000,000.00) each, making a total of TEN MILLION [PESOS] (P10,000,000.00) for payment of Combat, Clothing, and Individual Equipment (CCIE) of PNP personnel.^[15]

At the trial, the prosecution presented the following witnesses: 1) Evangeline Candia (Candia), Chief District Inspectorate of the Western Police District, and a member of

the committee formed by the PNP to investigate the CCIE anomaly; 2) Felicidad Ramos, also a member of the PNP investigating committee and the one who took the sworn statement of Tugaoen during the investigation proceedings; 3) Romulo Tuscano, Supply Accountable Officer of the PNP; 4) Rafael Jayme, Acting Deputy Inspector General at the Office of the Inspector General of the PNP at the time material in the Information; 5) Emmanuel Barcena, executive employee of the Philippine Clearing House (PCH); 6) Atty. Ismael Andrew Pantua Isip, lawyer of UCPB; and 7) Ma. Cristina Sagritalo-Fortuna, Branch Operations Officer of UCPB, Cubao Branch.^[16]

The foregoing witnesses' testimonies, together with documentary pieces of evidence marked as Exhibits "A" to "H-4," sought to establish that Nazareno, Domondon, Luspo, Duran, and Montano acted with evident bad faith and manifest partiality when they failed to observe the logistic requirement of North CAPCOM prior to the preparation of the 2 ASAs; and that they violated GHQ-AFP Circular No. 8 issued on January 25, 1985 when they failed to make any budget proposal relative to the purchase of CCIE for North CAPCOM in 1992. GHQ-AFP Circular No. 8 mandates that the yearly funding requirement of combat clothing should be included in the budget proposals of the concerned unit. ^[17]

The prosecution further endeavored to prove that the vouchers and related documents pertaining to the procurement of the P10 million worth of CCIE did not pass the office of Abelardo Madridejo, Chief Accountant, North CAPCOM.^[18] State Auditor Erlinda Cargo of the COA for PNP North CAPCOM also certified that, as of March 23, 1993, the direct payment voucher amounting to P10 million intended for the purchase of CCIE was not liquidated because the records thereof were not forwarded to the COA.^[19]

To substantiate the allegation in the Information that the checks were delivered to Tugaoen and that she received their value, the prosecution submitted the sworn statements of Montano and Tugaoen, and the bank statement prepared by UCPB, Cubao Branch, relative to the account of Tugaoen, reflecting the transactions on August 12, 13, and 14, 1992.^[20]

In a sworn statement executed during the investigation conducted by PNP-GHQ, Montano declared that the checks relative to the P10-million ASAs were delivered to Tugaoen who, in turn, acknowledged receipt thereof in her own sworn statement executed before Candia during the investigations conducted by PNP.^[21] Tugaoen likewise admitted that she did not deliver CCIE in exchange for the value of the checks because they were intended to cover the previously accumulated debts of the PNP.^[22]

On December 16, 2004, the accused filed, upon leave of court,^[23] a Consolidated Motion for Demurrer to Evidence,^[24] arguing in the main the inadmissibility, under the best evidence rule, of the photocopies of the ASAs, the 100 checks, the original printout of the full master list and detail list of the checks from the PHC, and the bank statement prepared by the UCPB, respectively docketed as Exhibits A to A-1, C to C-27, C-28 to C-29c, H to H-4.

Claiming that the investigations conducted by the PNP were custodial in character

and not merely administrative, the accused argued that the sworn statements of Tugaoen (Exhibits "D" to "D-5"), Duran (Exhibits "B" to "B-2"), and Montano (Exhibits "F-13" to "F-13-C") should not be admitted in evidence because they were not assisted by counsel when the same were elicited from them.

In its resolution dated May 13, 2005,^[25] the Sandiganbayan denied the consolidated motion and ruled on the admissibility of the challenged exhibits in this wise:

There have been several instances where the courts have accorded due credence to the admissibility of microfilm copies or photostatic copies of microfilmed documents such as checks and other commercial documents relying on the factual justification that these checks were microfilmed in the ordinary course of business and there is an ample showing that they were accurate and [have] not been substantially altered. x x x.

Thus, if the witnesses presented attested to the fact that the checks are microfilmed in the ordinary course of business and that the photostats have attained acceptable degree of accuracy, the same are no doubt admissible in evidence in lieu of the original, not on the basis of the "best evidence" rule but because they may be considered as entries in the usual or regular course of business. This Court may also want to take judicial notice of the fact that one of the reliable means to preserve checks and other commercial papers and documents is by way of microfilm. x x x.

In his testimony, prosecution witness Emmanuel E. Barcena has sufficiently explained the procedure ordinarily adopted by the Philippine Clearing House when it receives checks from its various clients. According to him, once the Philippine Clearing House (PCH for brevity) receives the checks for processing and captures the same in a microfilm, it generates a report called the Master List and the Detail List. The data are then eventually stored in a tape and are submitted to Citron (a service provider) to enable the latter to transfer the contents of the tape to a microfiche which would then contain all the reports of the PCH. After the transfer of the contents of the tape from the tape or "disc" to microfiche, Citron returns the microfiche to PCH for archive and future purposes. In case of a request from the banks or from the courts for any data regarding past transactions involving checks received by PCH from its clients, the PCH will have a basis where to get the reproduction of the print-out.

Being a disinterested witness for the Prosecution, and there being no proof of any personal motive on his part to misrepresent the facts of the transactions, Barcena has made it clear, for the guidance and information of this Court, the process or procedure his company adopts or undertakes when it receives checks for clearing from different banks. As what he categorically stated, the microfilming of checks is just one of the regular or routinary functions being performed by PCH. Hence, the reproductions or copies of the preserved checks it issues, obtained from its existing