

SECOND DIVISION

[G.R. No. 145927, August 24, 2007]

**SIMON FERNAN, JR. AND EXPEDITO TORREVILAS,^[1]
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

VELASCO, JR., J.:

The instant petition under Rule 45 originated from 119 criminal cases^[2] filed with the Sandiganbayan (SB) involving no less than 36 former officials and employees of the then Ministry of Public Highways (MPH) and several suppliers of construction materials for defalcation of public funds arising from numerous transactions in the Cebu First Highway Engineering District in 1977. Because of the sheer magnitude of the illegal transactions, the number of people involved, and the ingenious scheme employed in defrauding the government, this infamous 86 million highway scam has few parallels in the annals of crime in the country.

The Case

Petitioners Simon Fernan, Jr. and Expedito Torrevillas seek the reversal of the December 4, 1997 Decision^[3] of the SB in the consolidated Criminal Case Nos. 1640, 1641, 1642, 1643, 1818, 1819, 1820, 1821, 1822, 1823, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2915, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2936, 2937, 2938, and 2939,^[4] all entitled *People of the Philippines v. Rocilo Neis, et al.*, finding them guilty of multiple instances of estafa through falsification of public documents;^[5] and the subsequent August 29, 2000 SB Resolution which denied their separate pleas for reconsideration.

Petitioner Fernan, Jr. disputes the adverse judgment in only six (6) cases, namely: 2879, 2880, 2881, 2885, 2914, and 2918; while petitioner Torrevillas seeks exoneration in nine (9) cases, namely: 2855, 2856, 2858, 2859, 2909, 2910, 2914, 2919, and 2932.

Both petitioners assert their strong belief that their guilt has not been established beyond reasonable doubt and, hence, exculpation is in order.

The Facts

The SB culled the facts^[6] this way:

On June 21, 1978, COA Regional Director Sofronio Flores Jr. of COA Regional Office No. 7, directed auditors Victoria C. Quejada and Ruth I. Paredes to verify and submit a report on sub-allotment advises issued to various highway engineering districts in Cebu, particularly, the Cebu City, Cebu 1st, Cebu 2nd and the Mandaue City Highway Engineering Districts. Complying with the directive, they conducted an investigation and in due course submitted their findings. Their report (Exhibit C) confirmed the issuance of fake Letters of Advice of Allotments (LAAs) in the districts mentioned. They discovered that two sets of LAAs were received by the districts. One set consists of regular LAAs which clearly indicated the covering sub-allotment advises and were duly signed by Mrs. Angelina Escaño, Finance Officer of the MPH Regional Office. The LAAs were numbered in proper sequence and duly recorded in the logbook of the Accounting, Budget and Finance Division. The other set consists of fake LAAs which do not indicate the covering sub-allotment advice and were signed by Chief Accountant Rolando Mangubat and Engr. Jose Bagasao, instead of the Finance Officer. These fake LAAs were not numbered in proper sequence; they were mostly undated and were sometimes duplicated. They could not be traced to the files and records of the Accounting, Budget and Finance Division. The accounting entry for the disbursements made on the fake LAAs was debited to the Accounts-Payable Unliquidated Obligations (8-81-400) and credited to the Checking Account with the Bureau of Treasury (8-70-790). Nevertheless, the expenditures were taken from obligations of the current year (1978) because all the supporting papers of the payment vouchers were dated in that year. The entries in the journal vouchers filed with the MPH Regional Office were adjusted every month to 8-81-400 (unliquidated or prior years obligation), 8-83-000 (liquidated or current year obligations) and 8-70-700 (Treasury/Agency Account). All of these were approved for the Finance Officer by Chief Accountant Rolando Mangubat. Mangubat, however, had no authority to approve them because since October 1977, he had already been detailed to the MPH Central Office. There were indications that the practice had been going on for years.

x x x x

Due to these serious irregularities, then President Marcos created a Special Cabinet Committee on MPH Region VII "Ghost Projects Anomalies" which in turn organized a Special Task Force composed of representatives from the Finance Ministry Intelligence Bureau (FMIB), National Bureau of Investigation (NBI), the Bureau of Treasury and the Commission on Audit. The mission of the task force was to conduct a wider and more extended investigation in all the fifteen (15) highway engineering districts of MPH Region VII, including the Cebu First Highway Engineering District, the 1977 questionable disbursements of which are the subject matter of these cases.

x x x x

For a better understanding of these highways cases, the flow in the release of funds to the various agencies of the government and the control devices set up for disbursement and accounting of public funds should first be explained. A chart (Exhibit B) graphically shows the flow of allotments from the Ministry down to the district level.

On the basis of appropriation laws and upon request made by heads of agencies, the then Ministry of Budget released funds to the various agencies of the government by means of an Advice of Allotment (AA) and a Cash Disbursement Ceiling (CDC). The Advice of Allotment is an authority for the agency to incur obligations within a specified amount in accordance with approved programs and projects. The Cash Disbursement Ceiling is an authority to pay. Upon receipt of the AA and CDC from the Budget, the Central Office of the agency prepares the Sub-Advice of Allotment (SAA) and the Advice of Cash Disbursement Ceiling (ACDC) for each region, in accordance with the disbursement allotment. These are sent to the Regional Office. Upon receipt, the Budget Officer of the region prepares the corresponding Letters of Advice of Allotment (LAA) which are forwarded to the various districts of the region (The amount that goes to each district is already indicated in the Advice of Allotment). Only upon receipt of the LAA is the district office authorized to incur obligations.

Now, how are funds released by the Regional Office to the different districts and ultimately paid out to contractors, the District Engineer submits to the Regional Director a request for allotment in accordance with the program of work prepared by the former. This procedure starts with the preparation of a Requisition for Supplies and Equipment (RSE) in the District Office by the Senior Civil Engineer, approved by the District Engineer, and signed by the Chief Accountant of the Highway Engineering District, who certifies as to the availability of funds. The RSE is then submitted to the Regional Director for approval. Once it is approved, a Request for Obligation of Allotment (ROA) is prepared by the Chief Accountant of the district Senior Civil Engineer. The ROA signifies that a certain amount of district funds has been set aside or earmarked for the particular expenditures stated in the RSE. On the basis of the ROA, the District Office puts up advertisements, [conducts] biddings, makes awards and prepares purchase orders which are served on the winning bidder. The District Office also prepares a summary of deliveries with the corresponding delivery receipts and tally sheets, conducts inspection and prepares the General Voucher for the payment of deliveries. Once the General Voucher (GV) has been prepared, the corresponding check in the form of a Treasury Check Account for Agency (TCAA) is drawn by the Disbursing Officer and finally released to the contractor.

At the end of every month, the Report of Checks Issued by Deputized Disbursing Officer (RCIDD) is prepared, listing all the checks issued during that period. The RCIDD is submitted to the accounting division of the region. Upon receipt of the RCIDD, the Regional Office draws a journal voucher, debiting the account obligation (liquidated or unliquidated obligation, whichever is applicable), and crediting the account Treasury Check Account for Agency (TCAA). The RCIDD is

recorded in the Journal of Checks Issued by Deputized Disbursing Officers (JCIDDO) and posted in the general ledger at the end of each month.

Simultaneous with the flow of the RCIDDO, the ROAs are summarized in the Reports of Obligations Incurred (ROI) in the District Office, once or twice a month, depending upon the volume of transactions. The ROI is then submitted to the Regional Office. Upon receipt of the ROI, the accountant of the Regional Office draws a journal voucher taking up the following entry: debiting the appropriation allotted (0-90-000) and crediting the obligation incurred (0-82-000). This is recorded in the general voucher and posted to the general ledger at the end of each month. The journal voucher is prepared, closing the account 8-70-709 to 8-71-100-199 at the end of each month. It is also recorded and posted to the general ledger. At the end of the month, the balances of each account shown in the general ledger are summarized in a statement called the trial balance. The trial balance is submitted to the MPH Central Office in Manila where it is consolidated with other trial balances submitted by other regional offices.

x x x x

The elaborate accounting procedure described above with its system of controls was set up obviously to make sure that government funds are properly released, disbursed and accounted for. In the hands of untrustworthy guardians of the public purse, however, it proved to be inadequate. There were loopholes which an unscrupulous person adroit in government accounting could take advantage of to surreptitiously draw enormous sums of money from the government.

Sometime in February, 1977, accused Rolando Mangubat (Chief Accountant), Delia Preagido (Accountant III), Jose Sayson (Budget Examiner), and Edgardo Cruz (Clerk II), all of MPH Region VII, met at the Town and Country Restaurant in Cebu City and hatched an ingenious plan to siphon off large sums of money from government coffers. Mangubat had found a way to withdraw government money through the use of fake LAAs, vouchers and other documents and to conceal traces thereof with the connivance of other government officials and employees. In fine, the fraudulent scheme involved the splitting of LAAs and RSEs so that the amount covered by each general voucher is less than P50,000.00 to do away with the approval of the Regional Auditor; the charging of disbursements to unliquidated obligations due the previous year to provide the supposed source of funds; and the manipulation of the books of account by negation or adjustment, i.e., the cancellation of checks through journal vouchers to conceal disbursements in excess of the cash disbursement ceiling (CDC), so as not to reflect such disbursements in the trial balances submitted to the Regional Office.

Mangubat enticed Preagido, Cruz and Sayson to join him. All three agreed to help him carry out his plan. They typed the fake LAAs during Saturdays. Cruz and Sayson also took charge of negotiating or selling the fake LAAs to contractors at 26% of the gross amount. Preagido on her

part manipulated the General Ledger, Journal Vouchers and General Journal thru negative entries to conceal the illegal disbursements. Thus, in the initial report of the auditors (Exhibit D), it was discovered that the doubtful allotments and other anomalies escaped notice due to the following manipulations:

"The letter-advices covering such allotments (LAA) were generally not signed by the Finance Officer nor recorded in the books of accounts. Disbursements made on the basis of these fake LAAs were charged to the unliquidated Obligations (Account 8-81-400), although the obligations being paid were not among those certified to the unliquidated obligations (Account 8-81-400) at the end of the preceding year. To conceal the overcharges to authorized allotments, account 8-81-400 and the excess of checks issued over authorized cash disbursements ceiling, adjustments were prepared monthly through journal vouchers to take up the negative debit to Account 8-81-400 and a negative credit to the Treasury Checking Account for Agencies Account 8-70-790. These journal vouchers in effect cancelled the previous entry to record the disbursements made on the basis of the fake LAAs. Thus, the affected accounts (Accounts 8-81-400 and 8-70-790), as appearing in the trial balance would not show the irregularity. The checks, however, were actually issued."

The four formed the nucleus of the nefarious conspiracy. Other government employees, tempted by the prospect of earning big money, allowed their names to be used and signed spurious documents.

Although the anomalies had been going on for sometime (February 1977 to June 1978), the PNB and Bureau of Treasury had no inkling about it until the NBI busted the illegal operations. (Some of the recipients of the stolen funds spent lavishly and bought two cars at a time). The reason for this is that, at that time, the PNB and Bureau of Treasury were not furnished copy of the mother CDC and the local branch of the PNB did not receive independent advice from the PNB head office in Manila. There were no deposits of money made with the PNB from which withdrawals could be charged. Only CDCs were presented to it, and not knowing that some of the CDCs were fake, the PNB branch paid out the checks drawn against them. The bank had also no way of knowing what amount was appropriated for the district; consequently, it did not know if the limit had already been exceeded. Only an insider steep in government accounting, auditing and banking procedures, particularly their flaws and loopholes, could have pulled off such an ingenious and audacious plan.

x x x x

Focusing our attention now on the anomalies committed in the Cebu First District Engineering District, hereinafter referred to as the Cebu First HED for brevity, the Court finds that the same pattern of fraud employed in the other highway engineering districts in MPH Region VII was followed. The Cebu First HED received from Region VII thirty-four Letters of Advice