

FIRST DIVISION

[G.R. NO. 146234, June 29, 2005]

**TOLENTINO MENDOZA AND SALOME MADAMBA, PETITIONERS,
VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

This is a petition for review^[1] to annul the Decision^[2] dated 11 December 2000 of the Sandiganbayan in Criminal Case No. 16756. The Sandiganbayan found petitioner Tolentino Mendoza ("Mendoza") and Salome Madamba ("Madamba") guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 ("RA 3019") and sentenced them to suffer imprisonment for eight years. The Sandiganbayan also perpetually disqualified Mendoza and Madamba from holding public office and ordered them to solidarily pay the Philippine government P295,597.79, with legal interest from 4 April 1989.

The Antecedent Facts

National Treasurer Rosalina S. Cajucom filed a complaint, docketed as OMB-0-89-01454, before the Ombudsman charging Mendoza, Madamba, and Marcelina Agustin ("Agustin") with Technical Malversation and violation of RA 3019. The Ombudsman found probable cause for violation of Section 3(e) of RA 3019. Hence, in a Resolution^[3] dated 5 February 1990, the Ombudsman ordered the filing of an Information in the Sandiganbayan against Mendoza, Madamba, Agustin, Jose Cruz ("Cruz"), Anita Lising ("Lising"), and Horacio Alvarez ("Alvarez").

The Information, dated 25 April 1991, alleged:

That on or about the period comprised from 07 February 1989 to 17 February 1989 and/or for sometime thereafter, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused TOLENTINO MENDOZA, JOSE CRUZ and ANITA LISING, all public officers, being then the National Cashier, COA Vault Auditor and Cashier IV, respectively, all of the Bureau of Treasury, Palacio del Gobernador, Intramuros, Manila, taking advantage of their public positions and while in the performance of their official duties as such, conspiring, confederating and conniving with co-accused private persons SALOME MADAMBA, MARCELINA AGUSTIN and HORACIO ALVAREZ, General Manager, Executive Care Services, Inc.; Bureau of Treasury Canteen Proprietor; and Proprietor, Triple Crown Services, Inc., respectively, did then and there willfully, unlawfully and criminally cause undue injury to the government by fraudulently causing the encashment of four (4) commercial checks at the Cash Division, Bureau of Treasury, Manila, to

wit:

RCBC Check No. 031840 dated 07 February 1989 issued by accused Horacio Alvarez in favor of Executive Care Services with accused Salome Madamba as General Manager in the amount of P150,000.00, Philippine Currency.

RCBC Check No. 031845 dated 09 February 1989 issued by Horacio Alvarez in favor of Executive Ca[r]e Services with Salome Madamba as General Manager in the amount of P140,000.00, Philippine Currency.

PNB Check Nos. A280215 and A280216 both dated 17 February 1989 issued by accused Salome Madamba in favor of Triple Crown Services, Inc. owned and operated by accused Horacio Alvarez in the amount of P75,000.00 each, Philippine Currency.

accused Tolentino Mendoza, knowing fully well that he had no authority, deliberately affixed his initials on the checks to insure smooth encashments of the same by his subordinate co-accused Anita Lising who paid the amounts corresponding thereto, and accused Jose Cruz, having the duty to determine [the] legality of encashment at post-audit, willfully, unlawfully affixed his initials thereon to insure non-discovery of the fraud after encashment, without obtaining the signature of the Asst. National Treasurer, Milagros Baltazar, without which, no commercial check could be encashed by the Cash Division, Bureau of Treasury, in willful violation of the requirements for encashment of commercial checks imposed by the Bureau of Treasury, which fraudulent acts committed by accused public officers, gave unwarranted advantage and benefits to their co-accused private persons thru manifest partiality and evident bad faith as the aforesaid checks were dishonored by the drawee banks for lack of sufficient funds, to the damage and prejudice of the government in the total amount of P440,000.00, Philippine Currency.^[4] (Emphasis in the original)

The Sandiganbayan issued warrants of arrest against Mendoza, Madamba, Cruz, Lising, Agustin, and Alvarez. All of them, except Cruz who has remained at large, surrendered before the Sandiganbayan and posted bail.

Mendoza, Agustin, and Lising filed separate motions for reinvestigation, which the Sandiganbayan denied. However, the Sandiganbayan granted Alvarez's motion for reinvestigation, and, after reinvestigation, dropped his name from the Information.

Mendoza, Madamba, Agustin, and Lising entered pleas of "Not Guilty" during their arraignment on 13 September 1991.

Mendoza and Lising filed separate motions to quash the Information. The Sandiganbayan denied their motions in the Resolution of 4 February 1992.

Trial commenced and the case was submitted for decision on 28 August 1999. The Sandiganbayan established the following facts:

In February 1989, accused Tolentino Mendoza was the National Cashier and Anita Lising was a paying teller occupying the position of Cashier IV at the Bureau of Treasury in Manila. Accused Jose Cruz, who has remained at large, was the COA Vault Auditor assigned at the said Bureau. Accused Salome Madamba was the General Manager of the Executive Care Services, Inc., a private corporation rendering janitorial services to the Bureau of Treasury; while accused Marcelina Agustin was a canteen operator at the same bureau.

On February 7, 1989, Horacio Alvarez of Triple Crown Services, Inc., a company engaged in the same business of providing janitorial services, issued in favor of Executive Care Services RCBC Check No. [031840] (Exhibit D) in the amount of P150,000.00. On the same date, Madamba and Agustin signed at the dorsal portion of said check as indorsers, Agustin being the last indorser. Madamba and Agustin brought the check to the office of Mendoza and after obtaining Mendoza's approval, Agustin presented the check to the paying teller, Anita Lising, for encashment. Lising paid the amount of P150,000.00 to Agustin who received it. The following day, the check went through the usual clearing procedure and was returned unpaid on February 9, 1989 for the reason that it was drawn against insufficient funds. Upon Mendoza's instructions, the Clearing Officer of the National Treasury, Maria Lourdes Remo, redeposited the check on February 10, 1989 but it was again returned unpaid on February 13, 1989, this time for the reason "Account Closed."

Meanwhile, on February 9, 1989, Horacio Alvarez of Triple Crown Services again issued another check, RCBC Check No. [031845] (Exhibit E) for P140,000.00 payable to Executive Care Services. Like the first check, it was signed at the dorsal portion by Madamba and Agustin, the latter being the last indorser, approved for encashment by Mendoza, paid by Lising on the same date and dishonored on February 13, 1989 for being drawn against insufficient funds, redeposited on February 16, 1989, and again dishonored on February 17, 1989 for the reason, "Account Closed."

On February 17, 1989, Executive Care Services issued a check for P150,000.00 in favor of Triple Crown Services. Madamba instructed her Liaison Officer at the treasury, Raulito Sanchez, to deliver the check to Triple Crown Services in partial payment of the emergency loan extended by Triple Crown Services to Executive Care Services. When Agustin saw the check, she asked that it be given to her because she needed money very badly as her nephew was getting married. After clearing the matter with Madamba, Sanchez gave the check to Agustin who indorsed it, obtained Mendoza's approval for its encashment, presented it for payment to Lising, and received the amount of P150,000.00. Later that morning, Mendoza borrowed this encashed check from Lising but afterwards never returned it. (The check has been missing since then. For easy reference, it will henceforth be called the "missing check").

It should be noted that the missing check for P150,000.00 is different from Exhibit D which is also a check for P150,000.00.

"AJ DEL ROSARIO TO WITNESS:

Q[:] The one that was cashed?

A[:] That was already encashed, Your Honor.

Q[:] That check is different from the check, marked Exhibit D?

A[:] Yes, Your Honor."

(Tsn, p. 14, October 28, 1996.)

The missing check was issued on February 17, 1989 by the Executive Care Services, payable to Triple Crown Services. On the other hand, the check marked Exhibit D is dated February 7, 1989 and was issued by the Triple Crown Services, payable to Executive Care Services. Both Exhibit D and the missing check were endorsed and encashed by Agustin. Their total amount (P300,000.00) when added to the P140,000.00 covered by Exhibit E, sums up to P440,000.00, which is the total amount paid out by the National Treasury.

On the same day, after the missing check had been encashed, the Vault Auditor, Jose Cruz, told Sanchez to replace it with two checks of P75,000.00 each, because the amount was too big. After a series of phone calls to Madamba, and on Madamba's instructions, Sanchez went to the accounting office of the Executive Care Services, in Ermita, Manila, got two company checks, filled them up and waited for Madamba at their office to sign them. Madamba, however, failed to return to their office, and getting frantic due to the closing of the bank, he again called Madamba on the telephone. Madamba told him to sign the checks. As instructed, Sanchez signed the checks with Madamba's name and delivered the checks to Cruz. At the close of banking hours that afternoon, Cruz handed to Lising the two checks, PNB Checks Nos. A280215 and A280216 (Exhibits B and C) each in the amount of P75,000.00, to replace the missing check for P150,000.00 that Lising had paid in the morning. These two checks were initialed by Cruz and Mendoza, without the endorsement of Agustin. When Lising confronted them about this, Cruz and Mendoza assured her that they will take care of obtaining Agustin's indorsement the next day. When these two PNB checks were presented for payment the following day, the drawee bank (PNB) returned both of them unpaid for the reason that they were drawn against insufficient funds. They were also presented for payment the second time, but were again dishonored for the same reason. Not one of the checks (Exhibits B, C, D and E) passed through the Assistant National Treasurer, Milagros Baltazar, for approval prior to their encashment, as required in a Memorandum dated May 27, 1998, issued by the Assistant National Treasurer, specifically addressed to Mendoza as National Cashier, and noted by the Treasurer of the Philippines, Rosalina J. Cajucom.

The clearing Officer, Maria Lourdes Remo then prepared the debit memoranda (Exhibits J, K and L) addressed to Lising, the paying teller, but Mendoza did not sign any of them. Consequently, the debit memos were never served on Lising. Formal demands (Exhibits F, G and H) for the restitution of the amounts covered by the dishonored checks not later