

FIRST DIVISION

[G.R. No. 164921, July 08, 2005]

ROSENDO H. ESCARA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

YNARES-SANTIAGO, J.:

This is a petition for review on certiorari of the April 30, 2004 decision^[1] and the August 20, 2004 resolution^[2] of the Sandiganbayan in Criminal Case No. 20878 which found petitioner Rosendo H. Escara and his co-accused Bernie H. Azaula (Azaula) and Virginia M. Guadines^[3] (Guadines) guilty of violating Section 3 (e) of Republic Act No. 3019 or the *Anti-Graft and Corrupt Practices Act*.

The facts are as follows:

On April 25, 1992, the Provincial Treasurer of Quezon Province, Sofia Beloso, directed^[4] the Municipal Treasurer of Polillo, Naime Ayuma, to conduct a public bidding for the materials to be used in the repair of Navotas Bridge located along the Polillo-Bordeos provincial roads. On September 8, 1992,^[5] the bidding was held and the contract was awarded to V.M. Guadinez Construction Supply (VMGCS) for P83,228.00.

Purchase Order No. 2019 was issued by the Provincial Government of Quezon in favor of VMGCS, who in turn, delivered the lumber materials on November 13, 1992 to Azaula, then Barangay Captain of Poblacion, Polillo, Quezon, as evidenced by Delivery Receipt No. 0063. The materials were placed about five meters from the construction site.^[6]

On November 20, 1992, Herminio Salvosa, officer-in-charge of the Department of Environment and Natural Resources (DENR) Polillo station, together with his fellow forest rangers, confiscated seventy-three (73) pieces of undocumented Makaasim lumber piled along the Polillo-Bordeos road, approximately five (5) meters from the Navotas Bridge. They measured the lumber using marking hatchet no. 1742 and marked them "DENR CONFISCATED"^[7] before turning them over to Azaula for safekeeping as evidenced by a Seizure Receipt.^[8]

Sometime in February 1993, Salvosa received information that the confiscated lumber was being used in the construction of the Navotas Bridge. When he went to the construction site to verify the report, he saw the wooden materials marked "DENR CONFISCATED" with hatchet number 1742 being used to repair the bridge.

Meanwhile, petitioner as then Mayor of Polillo, Quezon, together with Ayuma, issued an undated Inspection Report^[9] certifying that the materials for the repair of the

Navotas Bridge and covered by Purchase Order No. 2019, were delivered on November 13, 1992 in good order and condition.

Thereafter, Azaula prepared Disbursement Voucher No. 001-9302-957^[10] requesting the Provincial Treasurer's Office of Quezon to pay P83,228.00 to VMGCS. Petitioner also signed the voucher where he again certified that the goods described therein were received in good condition.^[11]

On February 18, 1993, Guadines received the amount of P83,228.00 as payment for the lumber and other materials she delivered.^[12]

Following the payment made to Guadines, May V. Estuita, then *Sangguniang Bayan* member of Polillo, Quezon, requested the Commission on Audit (COA) to investigate the payment on the confiscated lumber.^[13] State Auditor II Edgardo Mendoza, together with Polillo's municipal engineer, went to the construction site and took pictures of the bridge.^[14] They measured the weight, length and thickness of the lumber used in the construction thereof and noticed the markings "DENR" in bold white letters.^[15]

Based on Mendoza's report, the COA allowed only P12,204.00 to be paid to VMGCS covering the costs of the wires and nails and disallowed P70,924.00, from the original amount of P83,228.00, representing payment for the confiscated lumber, which was never refunded to the government.^[16]

An amended information^[17] was filed charging petitioner, Azaula, Guadines and Ayuma with violation of Section 3 (e) of R.A. No. 3019, to wit:

That in or about February of 1993, or immediately prior or subsequent thereto, in Polillo, Quezon, and within the jurisdiction of this Honorable Court, accused Bernie H. Azaula, Rosendo N. Escara, Naime V. Ayuma, being the Barangay Captain, Municipal Mayor and Municipal Treasurer, respectively, of Polillo, Quezon, in the exercise of their administrative and/or official functions, with evident bad faith, conspiring and confederating with accused Virginia M. Guadinez, doing business under the V.M. Guadinez Construction Supply, did then and there wilfully and unlawfully cause undue injury and/or damage to the province of Quezon, by using in the construction of the Navotas Bridge in Sibulan, Polillo, Quezon, confiscated lumber consisting of 73 pieces with a volume of 4,172 board feet, valued at P11,172.00, more or less, and make it appear in a Disbursement Voucher, Delivery Receipt No. 0063, and Inspection Report dated January 28, 1993, that the lumber used in the construction of the Navotas Bridge were purchased from the V.M. Guadinez Construction Supply for P83,228.00, thus enabling accused Virginia Guadinez to receive the said purchase price, to the damage and prejudice of the Province of Quezon, in the aforementioned amount.

CONTRARY TO LAW.

Ayuma was eventually dropped from the information.^[18]

On April 30, 2004, the Sandiganbayan rendered the assailed decision finding petitioner, Azaula and Guadines guilty as charged, to wit:

WHEREFORE, in view of all the foregoing, this Court finds accused BERNIE H. AZAULA, ROSENDO N. ESCARA AND VIRGINIA M. GUADINES GUILTY beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, and hereby sentences each of them to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years as maximum. They are also ordered to pay, jointly and severally, the costs of this suit.

Accused Guadines, having unlawfully received the amount of P70,924.00, representing payment for the confiscated lumber, is hereby ordered to return the said amount to the Province of Quezon.

SO ORDERED.^[19]

Petitioner's Motion for Reconsideration^[20] was denied,^[21] hence this petition for review^[22] under Rule 45 raising the following issues:

- a) THE HONORABLE SANDIGANBAYAN GRAVELY ERRED WHEN IT FOUND PETITIONER GUILTY OF VIOLATION OF REPUBLIC ACT NO. 3019 CONSIDERING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION FAILED TO MEET THE NECESSARY QUANTUM OF EVIDENCE OF PROOF BEYOND REASONABLE DOUBT.
- b) THE HONORABLE SANDIGANBAYAN GRAVELY ERRED WHEN IT PRESUMED BAD FAITH ON THE PART OF PETITIONER CONSIDERING THAT SUCH IS CONTRARY TO THE LEGAL PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY.
- c) THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN FAILING TO CONSIDER A NUMBER OF CRUCIAL FACTUAL CIRCUMSTANCES AND RELYING ON MERE SPECULATIONS AND CONJECTURES TO SUPPORT ITS FINDINGS.
- d) THE HONORABLE SANDIGANBAYAN GRAVELY ERRED WHEN IT FOUND THAT THERE WAS CONSPIRACY BETWEEN THE PETITIONER AND HIS CO-ACCUSED CONSIDERING THAT THE PROSECUTION DID NOT EVEN PRESENT EVIDENCE OF CONSPIRACY.^[23]

The petition lacks merit.

At the outset, we emphasize that factual questions are not reviewable by the Supreme Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Civil Procedure. There is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.^[24]

We held in *Meneses v. People*^[25] that in appeals to this Court from the *Sandiganbayan* only questions of law may be raised, not issues of fact.^[26] Thus:

It would seem quite obvious that such issues raised by Meneses and Bautista in G.R. No. 71651 as whether or not conviction was on the basis of alleged weakness of the defense evidence rather than on the strength of the prosecution's proofs or was founded on mere suspicions and conjectures; or the existence of conspiracy was inferred in the absence of positive and convincing evidence; or the evidence on record does not justify arrival at a verdict of guilt, are issues of fact, and not of law. So, too, such issues as are set up by Silva, Cruz and Almendral in G.R. No. 71728, to wit: whether or not there is sufficient evidence of conspiracy among the accused; or Silva and Cruz acted truthfully and in utmost good faith; or the Sandiganbayan relied on the weakness of the defense rather than on the strength of the evidence of the State; or the judgment of the Sandiganbayan was unduly influence(d) by the findings of the Civil Service Commission of grave misconduct and neglect of duties as regards accused Darum; or the evidence of the prosecution is insufficient to establish moral certainty of guilt are factual, not legal issues. But it is axiomatic that in appeals to this Court from the *Sandiganbayan* only questions of law may be raised, not issues of fact (Sec. 7, PD 1606; *Nuñez vs. Sandiganbayan*, 111 SCRA 433). ...^[27]

This well entrenched rule is, however, not without any exception. When the records clearly show a misapprehension of facts by the lower court, the Supreme Court — in the interest of speedy justice — may resolve the factual issue.^[28]

We have reviewed the records of this case and we find no reason to deviate from the decision of the Sandiganbayan which is supported by the testimonial and documentary evidence of the prosecution. The testimonies of Mendoza and Salvosa that the lumber used in the repair of the Navotas Bridge bore the markings "DENR CONFISCATED" show that it was the batch of lumber earlier confiscated. Hence, no grave abuse of discretion was committed by the Sandiganbayan.

It is an established doctrine of long standing that factual findings of the trial court on the credibility of witnesses are accorded great weight and respect and will not be disturbed on appeal.^[29] The trial court is in a unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh or the scant or full realization of an oath — all of which are useful for an accurate determination of a witness' honesty and sincerity.^[30] Thus, the clear and straightforward testimonies of Mendoza and Salvosa, who are disinterested witnesses, deserve credence.

The petitioner failed to disprove that the lumber used to repair the bridge were not the ones confiscated by the DENR. The testimony of SPO2 Marasigan that the confiscated lumber was deposited in his custody^[31] deserves no consideration. As the Sandiganbayan observed, Marasigan's testimony was vague. He could not even identify the lumber he received or the person who delivered them to his custody. The Scale Information listing the lumber turned over to the PNP^[32] and the Inventory Sheet^[33] prepared by the DENR enumerated lumber of varying dimensions which proves that the lumber in the PNP custody were not the lumber confiscated by the DENR on November 20, 1992.

Petitioner's claim that he acted in good faith when he affixed his signatures in the Inspection Report and in Disbursement Voucher No. 001-9302-957 is belied by his January 25, 1993 letter^[34] to Engr. Bert Nierva of the Provincial Engineering Office, to wit:

It is a known fact that the Provincial Engineering Office has already programmed its construction but due to interception of the Personnel of the local DENR the materials, especially lumber purposely for its construction and having been delivered on the site, said lumber was marked 'confiscated', whereby hampering its construction.

Eversince said construction materials was 'confiscated' commuters and agricultural products was delayed and found it hard to traverse said bridge. ...

Clearly, petitioner knew of the confiscation by the DENR of the lumber delivered by Guadines. His contention that placing quotation marks on the word confiscated shows that he was unsure that the lumber were indeed confiscated,^[35] is flawed. If at all, this information should have made him more circumspect in signing the Inspection Report and Disbursement Voucher. As petitioner had admitted, he signed the Inspection Report in his capacity as internal control representative of the governor^[36] hence, extra-diligence is required of him in order to maintain and protect the integrity of the transactions that pass through his office.

During the December 14, 1992 session of the *Sangguniang Bayan* where the matter of the confiscated lumber was taken up, Guadines admitted that the lumber which she delivered for the repair of the Navotas Bridge was confiscated by the DENR.^[37]

The facts obtaining in the cases of *Arias v. Sandiganbayan*^[38] and *Magsuci v. Sandiganbayan*^[39] are not analogous to this case.

In *Arias*, we ruled that:

All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval