

## FIRST DIVISION

[ G.R. No. 147333, August 12, 2004 ]

**ROSALIA \* M. DUGAYON, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### DECISION

#### QUISUMBING, J.:

Petitioner Rosalia Dugayon seeks the review of the **Decision**<sup>[1]</sup> dated November 24, 2000 of the Sandiganbayan in Criminal Case No. 20344, convicting her and her co-accused, Jessie<sup>[2]</sup> Callangan, of violating Section 3(e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act.

The following facts, as summarized by the Sandiganbayan, are undisputed:<sup>[3]</sup>

Sometime in July 1989, the Department of Social Welfare and Development (DSWD), Region 2, Tuguegarao, Cagayan, embarked on a P239,460<sup>[4]</sup> project involving the procurement of 19 typewriters. A Procurement Board was formed, composed of Assistant Regional Director Rosalia Dugayon as Chairman, Supply Officer Rogelio Hipolito and Carlito Catabay as authorized canvasser.

The Board prepared the Requisition for Equipment and Supplies (RES) for the 19 typewriters indicating their specifications. The RES was submitted to Regional Director Consolacion Arafiles for signature and approval. Upon approval of the RES, petitioner Dugayon released letters of canvass (similar to an invitation to bid) addressed to dealers in Tuguegarao and Manila. From four proposals, San Sebastian Marketing, represented by Jessie Callangan, won the bid. When State Auditor Judy Singson, resident auditor of DSWD, Region 2, Tuguegarao, Cagayan, learned about the opening of the bids, she sent a letter dated July 21, 1989 to Regional Director Consolacion Arafiles about the deficiencies in the bidding. In her letter, Auditor Singson observed that the Auditor's Office was not informed of the opening of the bids, in violation of Section 391<sup>[5]</sup> of the Government Accounting and Auditing Manual; that the Auditor was not furnished with copies of bid invitations at least two weeks ahead of the opening date; that bidder's bonds were not imposed; and that the bidders were not required to submit or present their License/Accreditation before the opening of the bid proposals. She recommended that the bidding be cancelled and another one be conducted.

In a letter dated July 25, 1989, Director Arafiles responded that the opening of the bids was done in good faith.

Auditor Singson<sup>[6]</sup> sent another letter dated July 28, 1989 advising Director Arafiles to require the winning bidder to post a performance bond instead, to ensure the delivery of the equipment since it was already late to impose a bidder's bond.

Thereafter, the Procurement Board prepared the Purchase Order specifying the brands and specifications of the 19 typewriters to be delivered and addressed to San Sebastian Marketing c/o Jessie Callangan.

San Sebastian made three partial deliveries on August 14, 16 and 21, 1989. Upon delivery, the Inspection and Acceptance Committee headed by Supply Officer Rogelio Hipolito, inspected and tested the typewriters and certified in the Reports of Inspection<sup>[7]</sup> that the deliveries were in accordance with the specifications in the Purchase Order.

Subsequently, Supply Officer Hipolito prepared the voucher for payment attaching therein the supporting documents including the Reports of Inspection dated August 14, 16 and 21, 1989. San Sebastian Marketing was paid with three checks in the amounts of P92,880, P88,560 and P58,050, as evidenced by three official receipts, all dated August 24, 1989.

Upon post-audit, acting on the Inspection Report dated November 15, 1989 by Agapito Malaki, Technical Audit Specialist of the COA, Regional Office No. 2, Tuguegarao, Cagayan, the Commission on Audit (COA) disallowed the vouchers/checks. The Inspection Report stated, among others, that all the 19 typewriters were not brand new, but merely rebuilt and reconditioned.

In notices dated November 29, 1989, the COA informed petitioner Dugayon, Director Arafiles, Supply Officer Hipolito and San Sebastian Marketing of the report.

The petitioner, Arafiles, Hipolito and Callangan were indicted for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan. Quoted below is the Amended Information dated June 17, 1994:

That for the period July 25 to August 24, 1989 or immediately prior and subsequent thereto, in Tuguegarao, Cagayan and within the jurisdiction of this Honorable Court, the accused, CONSOLACION ARAFILES, ROSALIA DUGAYON, ROGELIO D. HIPOLITO and JESSEE CALLANGAN, Regional Director, Asst. Regional Director, Supply Officer III, all of DECS<sup>[8]</sup> and Supplier, respectively, the said public officers in the discharge of their duties as such, conspiring and confederating with one another and with JESSEE CALLANGAN as supplier, did then and there wilfully, unlawfully, with evident bad faith, purchase, pay and accept nineteen (19) second-hand rebuilt and reconditioned typewriters from Jessee Callangan of San Sebastian Marketing, contrary to the intention to purchase brand new units of typewriters only, for a total cost of P239,490.00, when in truth and in fact, the total and actual cost of the said nineteen (19) units of second-hand, rebuilt and reconditioned typewriters at the time of purchase was only P141,800.00 or a difference of P97,690.00 to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>[9]</sup>

On July 6, 1994, the Sandiganbayan ordered the immediate arrest of the accused. Except for Hipolito, who remains at-large, all of the accused were arrested and later released on bail.

After the trial, the Sandiganbayan rendered its assailed **Decision** on November 24, 2000, convicting petitioner and Callangan, acquitting Arafiles and ordering the archiving of the case against Hipolito. The decretal portion of said decision reads:

WHEREFORE, under the premises, this Court finds accused ROSALIA M. DUGAYON and JESSEE G. CALLANGAN "GUILTY" beyond reasonable doubt of Violation of Section 3, paragraph (e) of R.A. No. 3019, as amended, and are hereby sentenced to suffer each an indeterminate prison term of Six (6) years and One (1) day, as minimum, to Nine (9) years and One (1) day, as maximum; to indemnify the government jointly and severally, in the amount of Ninety-Seven Thousand Six Hundred and Ninety Pesos (P97,690.00), with costs; and accused Dugayon to further suffer perpetual disqualification from public office.

On the other hand, in view of the above findings, accused CONSOLACION D. ARAFILES, is hereby ACQUITTED of the charge. Accordingly, the Clerk of Court of the Fifth Division of this Court is ordered to release Original Receipt No. 4193001 dated July 18, 1994, in the amount of P15,000.00 covering her cash bond, upon proper receipt therefor, subject to the usual auditing and accounting procedures.

As far as accused ROGELIO D. HIPOLITO is concerned, who is still at-large up to this time, the case against him is hereby ordered archived until the Court shall have obtained jurisdiction over his person. Correspondingly, let an alias warrant of arrest be issued against him.

SO ORDERED.<sup>[10]</sup>

The Sandiganbayan denied the respective motions for reconsideration of the petitioner and Callangan in its **Resolution**<sup>[11]</sup> dated February 26, 2001. Callangan's petition for review on certiorari was denied by the Supreme Court in a resolution dated August 8, 2001 for his failure to file the same within the reglementary period.

Here, before us, petitioner Dugayon assigns to the Sandiganbayan the following errors:

(1) THE HONORABLE SANDIGANBAYAN (FIFTH DIVISION) GRAVELY ERRED IN HOLDING AND DECLARING ON THE EXISTENCE OF A CONSPIRACY AMONG PETITIONER-APPELLANT ROSALIA M. DUGAYON, ACCUSED (AT-LARGE) ROGELIO D. HIPOLITO, AND JESSEE CALLANGAN.

(2) THE HONORABLE SANDIGANBAYAN (FIFTH DIVISION) IN CONVICTING PETITIONER-APPELLANT ROSALIA M. DUGAYON, FOR THE OFFENSE CHARGED FAILED TO APPRECIATE THE FACT THAT THE EVIDENCE ADDUCED BY THE PROSECUTION ARE NOT SUFFICIENT AND ADEQUATE TO ESTABLISH HER GUILT BEYOND REASONABLE DOUBT.<sup>[12]</sup>

In our view, the following issues must be resolved: (1) Was there a conspiracy to defraud the government? and (2) Is the evidence sufficient to prove the crime beyond reasonable doubt?

On the first issue, petitioner avers that conspiracy is not presumed and that the elements of conspiracy, like the physical acts constituting the crime itself, must be proven beyond reasonable doubt. She notes that the Sandiganbayan could only point to her having signed the certification portion of the disbursement vouchers that states,

3. CERTIFIED: Expenses necessary, lawful and incurred under my direct supervision. Additional in case of contracts, or purchases of goods or services prices reasonable and not in excess of the current rates in the locality.

(Sgd.) ROSALIA M. DUGAYON  
ARD FOR Admin.<sup>[13]</sup>

While she admits being the Chairman of the Procurement Board, she denies being a member of the Inspection and Acceptance Committee. She argues that, as Assistant Regional Director of the DSWD, she relies entirely on the recommendations of her subordinates, on the recommendation of the accountant with respect to the Purchase Order, and on the signatures and recommendations of four subordinates who process the documents with respect to the disbursement vouchers. She likewise denies she conspired with her co-accused. Petitioner submits that the elements of conspiracy were not established beyond reasonable doubt and she should be acquitted.<sup>[14]</sup>

On the issue of conspiracy, petitioner relies on *Magsuci v. Sandiganbayan*,<sup>[15]</sup> which cited *Arias v. Sandiganbayan*,<sup>[16]</sup> as precedent to prove the high improbability of her conspiring with her co-accused. She quotes,

“ [the Court] would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence—is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority. (Underscoring ours.)

. . .

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.”

. . .

When, however, that infraction consists in the reliance in good faith, *albeit* misplaced, by a head of office on a subordinate upon whom the primary responsibility rests, absent a clear case of conspiracy, the *Arias doctrine* must be held to prevail.