

EN BANC

[G.R. No. 126995, October 06, 1998]

**IMELDA R. MARCOS, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN (FIRST DIVISION), AND THE PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

RESOLUTION

PURISIMA, J.:

This scenic Philippine archipelago is a citadel of justice, due process and rule of law. Succinct and clear is the provision of the constitution of this great Republic that every accused is presumed innocent until the contrary is proved. [Art. 111, Sec. 14(2)]. As held in *People of the Philippines vs. Ellizabeth Ganguso y Decena* (G.R. No 115430, November 23, 1995, 250 SCRA 268, 274-275):

"An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged."

So also, well-settled, to the point of being elementary, is the doctrine that when inculpatory facts are susceptible to two or more interpretations, one of which is consistent with the innocence of the accused, the evidence does not fulfill or hurdle the test of moral certainty required for conviction. (*People of the Philippines vs. Eric F. Timtiman*, G.R. No. 101663, November 4, 1992, 215 SCRA 364, 373 citing *People vs. Remorosa*, 200 SCRA 350, 360 [1991]; *People vs. Raquel*, 265 SCRA 248; *People vs. Aranda*, 226 SCRA 562; *People vs. Maongco*, 230 SCRA 562; *People vs. Salangga*, 234 SCRA 407)

Mindful of and guided by the aforecited constitutional and legal precepts, doctrines and principles prevailing in this jurisdiction, should petitioner's Motion for Reconsideration be granted?

Docketed as Criminal Case No. 17450 before the Sandiganbayan, the Information indicting Imelda R. Marcos and Jose P. Dans, Jr. for a violation of Section 3(g) of

Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, alleges:

"That on or about June 8, 1984, and for sometime prior or subsequent thereto, in Makati, Metro-Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused IMELDA R. MARCOS and JOSE P. DANS, JR., public officers, being then Chairman and Vice-Chairman, respectively, of the Light Rail Transit Authority (LRTA), a government corporate entity created under Executive Order No. 603 of the former President Ferdinand Marcos, while in the performance of their official functions, taking advantage of their positions and committing the crime in relation to their offices, did then and there wilfully, unlawfully and criminally conspiring with one another, enter on behalf of the aforesaid government corporation into a Lease Agreement covering LRTA property located in Pasay City, with the Philippine General Hospital Foundation, Inc. (PGHFI), a private enterprise, under terms and conditions manifestly and grossly disadvantageous to the government.

CONTRARY TO LAW."

The case was raffled off to the First Division of the Sandiganbayan, with Presiding Justice Francis E. Garchitorena, as Chairman and Justices Jose S. Balajadia and Narciso T. Atienza, as members. On September 15, 1993, when the First Division failed to comply with the legal requirement of unanimity of its three members due to the dissent of Justice Narciso T. Atienza, Presiding Justice Garchitorena issued Administrative Order No. 288-93 constituting a Special Division of five and designating Justices Augusto M. Amores and Cipriano A. Del Rosario, as additional members.

On September 21, 1993, Justice Amores wrote Presiding Justice Garchitorena requesting that he be given fifteen (15) days to send in his Manifestation. However, on the same day, September 21, 1993, when Justice Balajadia and Presiding Justice Garchitorena agreed with the opinion of Justice Del Rosario, Presiding Justice Garchitorena issued Administrative Order No. 293-93, dissolving the Special Division of Five, without waiting for Justice Amores' manifestation. Justice Garchitorena considered the said request of Justice Amores as *"pointless because of the agreement of Justice Balajadia and the undersigned to the conclusion reached by Justice Atienza."* Thus, on September 24, 1993, the now assailed decision was handed down by the First Division of the Sandiganbayan.

Under the aforequoted Information charging accused Imelda R. Marcos and Jose P. Dans, Jr. with a violation of Section 3(g) of RA 3019, the following elements of the offense charged must be proved beyond reasonable doubt, to wit: 1] that the accused acted as a public officer; 2] that subject Contract or transaction entered into by the latter is manifestly and grossly disadvantageous to the government.

There is no dispute that sometime in the year 1984, the herein petitioner, Imelda R. Marcos, was Minister of Human Settlement while Jose P. Dans, Jr. was the Minister of Transportation and Communication. The two served as *ex officio* Chairman and Vice Chairman, respectively, of the Light Rail Transport Authority (LRTA). Petitioner Marcos was also Chairman of the Board of Trustees of the Philippine General Hospital Foundation, Inc. (PGHFI).

On June 8, 1984, petitioner, in her capacity as Chairman of PGHFI, and Jose P. Dans, Jr. as Vice Chairman of LRTA, signed the Lease Agreement (*Exhibit "B"*) by virtue of which LRTA leased to PGHFI subject lot with an area of 7,340 square meters, at a monthly rental of P102,760.00 for a period of twenty-five (25) years.

On June 27, 1984, the PGHFI, represented by its Chairman Imelda R. Marcos, and Transnational Construction Corporation, represented by its President Ignacio B. Gimenez, signed the Sub-lease Agreement (*Exhibit "D"*), wherein said lessee rented the same area of 7,340 square meters for P734,000.00 a month, for a period of twenty-five (25) years.

For executing the aforesaid Lease Agreement (*Exhibit "B"*), petitioner and Jose P. Dans, Jr. were indicted in the said Information, for conspiring and confederating with each other in entering into subject Lease Agreement alleged to be manifestly and grossly disadvantageous to the government.

After trial, as earlier alluded to, the Sandiganbayan convicted the petitioner and Jose P. Dans, Jr. of the offense charged.

On June 29, 1998, the Third Division of this court came out with its decision affirming the judgment, as against petitioner Imelda R. Marcos, in G.R. No. 126995, but reversing the same judgment, as against Jose P. Dans, Jr., in G.R. No. 127073.

In affirming the judgment of conviction against petitioner, the Third Division found the rental price stipulated in the Lease Agreement, (*Exhibit "B"*) unfair and unreasonably low, upon a comparison with the rental rate in the Sub-lease Agreement (*Exhibit "D"*), which contract petitioner subsequently signed on behalf of PGHFI, with TNCC. Undaunted, the petitioner interposed the present Motion for Reconsideration.

The pivot of inquiry here is whether all the elements of the offense charged have been duly substantiated. As regards the first element, did petitioner Imelda R. Marcos enter into the Lease Agreement marked Exhibit "B" as a public officer? As clearly stated on the face of the subject contract under scrutiny, petitioner signed the same in her capacity as Chairman of PGHFI and not as Human Settlement Minister nor as *ex-officio* Chairman of LRTA. It was Jose P. Dans, Jr. who signed said Contract, as *ex-officio* Vice-Chairman of LRTA. Although petitioner was the *ex-officio* Chairman of LRTA, at the time, there is no evidence to show that she was present when the Board of Directors of LRTA authorized and approved the Lease Agreement sued upon.

In light of the foregoing antecedent facts and circumstances, the irresistible conclusion is that petitioner did not sign subject Lease Agreement as a public officer, within the contemplation of RA 3019 and, therefore, the first element of the offense charged is wanting.

It bears stressing, in this connection, that Jose P. Dans, Jr., the public officer who signed the said Lease Agreement (*Exhibit "B"*) for LRTA, was acquitted.

As regards the second element of the offense - that such Lease Agreement is grossly and manifestly disadvantageous to the government, the respondent court

based its finding thereon against the petitioner and Jose P. Dans, Jr., on a ratiocination that while the rental price under the Lease Agreement is only P102,760.00 a month, the monthly rental rate under the Sub-lease Agreement is P734,000.00. After comparing the two rental rates aforementioned, the respondent court concluded that the rental price of P102,760.00 a month is unfair, unreasonable and disadvantageous to the government.

But Exhibit "B" does not prove that the said contract entered into by petitioner is "manifestly and grossly disadvantageous to the government." There is no established standard by which Exhibit "B"'s rental provisions could be adjudged prejudicial to LRTA or the entire government. Exhibit "B" standing alone does not prove any offense. Neither does Exhibit "B" together with the Sub-lease Agreement (*Exhibit "D"*) prove the offense charged.

At most, it creates only a doubt in the mind of the objective readers as to which (between the lease and sub-lease rental rates) is the fair and reasonable one, considering the different circumstances as well as parties involved. It could happen that in both contracts, neither the LRTA nor the Government suffered any injury. There is, therefore, insufficient evidence to prove petitioner's guilt beyond reasonable doubt.

Verily, it is too obvious to require an extended disquisition that the only basis of the respondent court for condemning the Lease Agreement (*Exhibit "B"*) as "manifestly and grossly disadvantageous to the government " was a comparison of the rental rate in the Lease Agreement, with the very much higher rental price under the Sub-lease Agreement (*Exhibit "D"*). Certainly, such a comparison is purely speculative and violative of due process. The mere fact that the Sub-lease Agreement provides a monthly rental of P734,000.00 does not necessarily mean that the rental price of P102,760.00 per month under the Lease Agreement (*Exhibit "B"*) is very low, unreasonable and manifestly and grossly disadvantageous to the government. There are many factors to consider in the determination of what is a reasonable rate of rental.

What is more, as stressed by Jose P. Dans Jr., when subject Lease Agreement was inked, the rental rate therein provided was based on a study conducted in accordance with generally accepted rules of rental computation. On this score, Mr. Ramon F. Cuervo, Jr., the real estate appraiser who testified in the case as an expert witness and whose impartiality and competence were never impugned, assured the court that the rental price stipulated in the Lease Agreement under scrutiny was fair and adequate. According to him, witness, the reasonable rental for subject property at the time of execution of Exhibit "B" was only P73,000.00 per month.

That the Sub-lease Agreement (*Exhibit "D"*) was for a very much higher rental rate of P734,000.00 a month is of no moment. This circumstance did not necessarily render the monthly rental rate of P102,760.00 manifestly and grossly disadvantageous to the lessor. Evidently, the prosecution failed to prove that the rental rate of P102,760.00 per month was manifestly and grossly disadvantageous to the government. Not even a single lease contract covering a property within the vicinity of the said leased premises was offered in evidence. The disparity between the rental price of the Lease Agreement and that of the Sublease Agreement is no evidence at all to buttress the theory of the prosecution, "that the Lease Agreement in question is manifestly and grossly disadvantageous to the government". "Gross"

is a comparative term. Before it can be considered "gross," there must be a standard by which the same is weighed and measured.

All things viewed in proper perspective, it is decisively clear that there is a glaring absence of substantiation that the Lease Agreement under controversy is grossly and manifestly disadvantageous to the government, as theorized upon by the prosecution.

Furthermore, that the lessee, PGHFI, succeeded in obtaining a high rental rate of P734,000.00 a month, did not result in any disadvantage to the government because obviously, the rental income realized by PGHFI from the Sub-lease Agreement (Exhibit "D") augmented the financial support for and improved the management and operation of the Philippine General Hospital, which is, after all, a government hospital of the people and for the people.

Another sustainable ground for the granting of petitioner's motion for reconsideration is the failure and inability of the prosecution to prove that petitioner was present when the Board of Directors of LRTA authorized and approved the Lease Agreement complained of. Albeit, petitioner was ex officio chairman of the Board of Directors of LRTA when the said Lease Agreement was entered into, there is no evidence whatsoever to show that she attended the board meeting of LRTA which deliberated and acted upon subject Lease Agreement (Exhibit "B"). It is thus beyond cavil that petitioner signed the said Lease Agreement as Chairman of the PGH Foundation, Inc., a private charitable foundation, and not as a public officer.

Neither can petitioner be considered as in conspiracy with Jose P. Dans, Jr., who has been found without any criminal liability for signing the same Lease Agreement. Absent any conspiracy of petitioner with Dans, the act of the latter cannot be viewed as an act of the former. Petitioner is only answerable for her own individual act. Consequently, petitioner not having signed Exhibit "B" as a public officer, there is neither legal nor factual basis for her conviction under Section 3 (g) of Rep Act 3019.

It bears repeating that apart from the Lease Agreement and Sub-lease Agreement marked Exhibits "B" and "D", respectively, the prosecution offered no other evidence to prove the accusation at bar.

What makes petitioner's stance the more meritorious and impregnable is the patent violation of her right to due process, substantive and procedural, by the respondent court. Records disclose that: (a) the First Division of the Sandiganbayan composed of Presiding Justice Garchitorena and Associate Justices Balajadia and Atienza could not agree on whether to convict or acquit the petitioner in the five (5) criminal cases pending against her. Justice Atienza was in favor of exonerating petitioner in Criminal Case Nos. 17449, 17451 and 17452. Justices Garchitorena and Balajadia wanted to convict her in Criminal Case Nos. 17450, 17451, 17452 and 17453. As there was no unanimity of votes in Criminal Case Nos. 17451 and 17452; (b) on September 15, 1993, in accordance with Sec. 5 of P. D. No. 1606, Presiding Justice Garchitorena issued Adm. Order No. 288-93 constituting a Special Division of five (5) justices, and naming thereto, Justices Augusto M. Amores and Cipriano A. del Rosario; (c) on September 21, 1993, Justice Amores sent a written request to Presiding Justice Garchitorena asking that he be given fifteen (15) days to submit his Manifestation; (d) on the same day, September 21, 1993, however, Presiding