

SUPREME COURT OF THE PHILS.
MARIA LOURDES P. A. SERENO
CHIEF JUSTICE

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Republic of the Philippines
Supreme Court
Manila

SPECIAL SECOND DIVISION

VAN D. LUSPO,

Petitioner,

G.R. No. 188487

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

X-----X

**SUPT. ARTURO H. MONTANO and
MARGARITA B. TUGAOEN,**

Petitioners,

G.R. No. 188541

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

X-----X

C/INSP. SALVADOR C. DURAN, SR.,
Petitioner,

G.R. No. 188556

Present:

CARPIO, J., *Chairperson,*
BRION,
MENDOZA,
REYES, and
JARDELEZA, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

OCT 22 2014

X-----X

RESOLUTION

BRION, J.:

We resolve the present motions filed by C/Insp. Salvador C. Duran, Sr., Supt. Arturo H. Montano and Margarita B. Tugaoen (*accused*), seeking reconsideration of our February 14, 2011 Decision which reads:

WHEREFORE, foregoing considered, the conviction of Salvador Duran, Sr., Arturo Montano, and Margarita Tugaoen in Sandiganbayan Criminal Case No. 20192 is hereby AFFIRMED.

The conviction of Van Luspo in Criminal Case No. 20192 is REVERSED and SET ASIDE, and he is hereby ACQUITTED. The bailbond posted for his provisional liberty is hereby CANCELLED.

Salvador Duran, Sr., Arturo Montano, and Margarita Tugaoen are further ORDERED to jointly and severally indemnify the Philippine National Police of Ten Million Pesos (₱10,000,000.00).

SO ORDERED.

Let us briefly recall the facts.

On August 11, 1992, the Office of the Directorate for Comptrollership (*ODC*) of the Philippine National Police (*PNP*) issued two (2) Advices of Sub-Allotment (*ASA*), amounting to five million pesos each, for the purchase of combat, clothing, and individual equipment (*CCIE items*) for the PNP's North Capital Command (*CAPCOM*).¹

Upon receipt of the ASAs, P/Supt. Arturo Montano (*Montano*), Chief Comptroller, North CAPCOM, directed Police Chief Inspector Salvador Duran, Sr. (*Duran*), Chief, Regional Finance Service Unit, North CAPCOM, to prepare and draw 100 checks of ₱100,000.00 each, for a total of ₱10,000,000.00. The checks were all dated August 12, 1992 and payable to four different entities² that are all owned and operated by Margarita Tugaoen (*Tugaoen*) who later collected the proceeds of the checks from the United Coconut Planters Bank (*UCPB*), Cubao Branch.

In her March 5, 1993 sworn statement, Tugaoen admitted that she received the ₱10 million worth of checks as payment for the previously accumulated PNP debts and not for any CCIE items that she delivered.³

¹ Exhibit "F" of the Prosecution and Exhibit 7 for the Defense; Pre-Trial Order, Records, Vol. I, p. 387.

² These entities are: DI-BEN Trading, MT Enterprises, J-MOS Enterprises, and Triple 888 Enterprises.

³ Volume 1, pp. 94-95.

P/CInsp. Isaias Braga, Chief Logistics Officer, North CAPCOM, and Rolando Flores, Supply Accountable Officer, North CAPCOM confirmed the non-delivery of the CCIE.

After the PNP, General Headquarters, Office of the Inspector General (*GHQ-OIG*), and subsequently the Ombudsman, conducted an investigation on the CCIE North Capcom transaction, the Ombudsman for the Armed Forces of the Philippines (now Ombudsman for the Military and Other Law Enforcement Offices) recommended the filing of an Information for 100 counts of Malversation of Public Funds against several PNP officials, including the accused.

On January 26, 2004, the Office of the Special Prosecutor (*OSP*) filed an Information, but this was for violation of Section 3(e) of Republic Act (*RA*) No. 3019,⁴ the Anti-Graft and Corrupt Practices Act. The Information alleged that the accused, among others, conspired with each other and with bad faith and manifest partiality caused undue injury to the government by causing the payment of ₱10,000,000.00 to Tugaoen for the CCIE items that were not actually delivered.

After the prosecution presented its evidence, the accused filed a demurrer to evidence, primarily questioning the admissibility of the checks (and its accompanying documents) and Tugaoen's sworn statements. The Sandiganbayan denied the demurrer to evidence.⁵ While

⁴ Volume 1, pp. 1-3.

⁵ We quoted the Sandiganbayan decision in our February 14, 2011 Decision as follows:

There have been several instances where the courts have accorded due credence to the admissibility of microfilm copies or photostatic copies of microfilmed documents such as checks and other commercial documents relying on the factual justification that these checks were microfilmed in the ordinary course of business and there is an ample showing that they were accurate and [have] not been substantially altered.

x x x x

Thus, if the witnesses presented attested to the fact that the checks are microfilmed in the ordinary course of business and that the Photostats have attained acceptable degree of accuracy, the same are no doubt admissible in evidence in lieu of the original, not on the basis of the "best evidence" rule but because they may be considered as entries in the usual or regular course of business. This Court may also want to take judicial notice of the fact that one of reliable means to preserve checks and other commercial papers and documents is by way of microfilm.

In his testimony, prosecution witness Emmanuel E. Barcena has sufficiently explained the procedure ordinarily adopted by the Philippine Clearing House when it receives checks from its various clients. According to him, once the Philippine Clearing House receives checks for processing and captures the same in a microfilm, it generates a report called the Master List and the Detail List. The data are then eventually stored in a tape and are submitted to Citron (a service provider) to enable the latter to transfer the contents of the tape to a microfiche which would then contain all the reports of the PCH. After the transfer of the contents of the tape from the tape or "disc" to microfiche, Citron returns the microfiche to PCH for archive and future purposes. In case of a request from the banks or from the courts for any data regarding past transactions involving checks received by PCH from its clients, the PCH will have a basis where to get the reproduction of the print out.

x x x As what he categorically stated, the microfilming of checks is just one of the regular or routinary functions being performed by PCH. Hence, the reproductions or

none of the accused took the witness stand, Montano and Tugaoen maintained the inadmissibility of the evidence.⁶

The Sandiganbayan found the accused guilty as charged.⁷ The court found that the prosecution successfully established the elements of Section 3(e) of RA No. 3019. *First*, the accused are public officers, except Tugaoen who, however acted in conspiracy with her co-accused. *Second*, the accused acted with evident bad faith by splitting the payment of ₱10,000,00.00 into 100 checks for ₱100,000.00 despite the fact that the ultimate payee is one and the same and contrary to the accused's claim that they are authorized to sign the checks regardless of amount. At the same time, the splitting of payment violates Commission on Audit (COA) Circular No. 76-41.⁸

Second, by issuing the checks, the accused made it appear that there were legal transactions between PNP and the four business establishments owned by accused Tugaoen on the purchase and delivery of CCIE items despite the lack of documents to support these alleged transactions.

Third, undue injury is present in the amount of ₱10,000,000.00 for the supposed purchases of CCIE items that were never delivered to the end-users.

The Court upheld the conviction of the accused on appeal. The Court ruled that Montano and Duran's bad faith was evident from their "failure to prepare and submit the required documentation ordinarily attendant to procurement transactions and government expenditures, as mandated by Section 4(6) of P.D. No. 1445."⁹ The element of undue injury was likewise established by the prosecution's evidence showing that the North CAPCOM did not receive the ten million pesos worth of CCIE items despite Tugaoen's admitted receipt and encashment of the checks.

Duran's Motion for Reconsideration

Duran reiterates that his alleged participation in the conspiracy is not sufficient to establish his guilt beyond reasonable doubt. The act of issuing 100 checks at ₱100,000.00 does not prove that he conspired with his co-accused because he only acted in accordance with the instruction and assurance of his superior, co-accused Montano, and in pursuance of his ministerial duty of preparing and counter-signing the checks.¹⁰ In

copies of the preserved checks it issues, obtained from its existing records facility such as microfilms, may, therefore, be considered admissible in evidence.

⁶ Duran was declared to have waived his right to formally offer his evidence (Records, Vol. IV, p. 473).

⁷ Decision promulgated on January 19, 2009 and Resolution promulgated June 30, 2009.

⁸ Sandiganbayan Decision, p. 46.

⁹ Decision, p. 35.

¹⁰ *Rollo*, pp. 17-18, 237 (GR No. 188556).

other words, he was acting in good faith in preparing and counter-signing the checks.¹¹

Duran argues that he cannot be faulted for the lack of documentation accompanying the transaction. He claims that the lack of documentation is “none of [his] business”¹² since documentation matters pertain to the office of his co-accused, Montano, as Chief Comptroller of North CAPCOM.¹³ The Court erred in imputing bad faith on him based on “the acts enumerated by [the] Court” in its Decision because these acts “do not fall within the ambit of his sworn duties.”¹⁴

Montano and Tugaoen’s Motion for Reconsideration

Montano and Tugaoen alleged that the Court erred in imputing bad faith on them based on documentary evidence that shows the absence of supporting documents¹⁵ to the transactions because these documents are inadmissible in evidence for being hearsay. None of the persons who executed these documents testified in open court.¹⁶

The prosecution failed to show that Montano and Tugaoen conspired with those charged in the information.¹⁷ The splitting of the checks cannot be the basis of conspiracy because to begin with, the admissibility of the secondary evidence of the checks is in question. The accused ask the Court to review the admissibility of these secondary pieces of evidence.¹⁸

Accused Tugaoen’s admission that she did not deliver any CCIE items as contained in her statement is inadmissible under Section 12, Article III of the 1987 Constitution.¹⁹

Court’s Ruling

We deny the motions.

Signing the checks is not a ministerial duty

Contrary to Duran’s claim, affixing his signature on the checks is not a ministerial duty on his part. As he himself stated in his petition and

¹¹ Id. at 26.

¹² Id. at 248.

¹³ Id. at 27, 244.

¹⁴ Id. at 245.

¹⁵ Abelardo F. Madridejo, Chief Accountant of North CAPCOM, in a Certification dated March 23, 1993; The written statement of the PNP Chief Directorate for Material Services, P/Supt. Jesus Arceo; written statement of State Auditor Erlinda Cargo of COA-PNP North CAPCOM.

¹⁶ Motion for Reconsideration, p. 2, *rollo*, p. 286 (GR No. 188541).

¹⁷ *Rollo*, pp. 15-18.

¹⁸ Motion for Reconsideration, pp. 3-7; *rollo*, pp. 287-291.

¹⁹ Motion for Reconsideration, pp. 9-12; *rollo*, pp. 293-296.

in his present motion, his position as Chief of the Regional Finance Service Unit of the North CAPCOM imposed on him the duty “to be responsible for the management and disbursement and accounting of PNP funds.” This duty evidently gives him the discretion, within the bounds of law, to review, scrutinize, or countercheck the supporting documents before facilitating the payment of public funds.

His responsibility for the disbursement and accounting of public funds makes him an accountable officer. Section 106 of Presidential Decree No. 1445 requires an accountable officer, who acts under the direction of a superior officer, to notify the latter of the illegality of the payment in order to avoid liability. This duty to notify presupposes, however, that the accountable officer had duly exercised his duty in ensuring that funds are properly disbursed and accounted for by requiring the submission of the supporting documents for his review.

By relying on the supposed assurances of his co-accused Montano that the supporting documents are all in order,²⁰ contrary to what his duties mandate, Montano simply assumed that these documents exist and are regular on its face even if nothing in the records indicate that they do and they are. The nature of his duties is simply inconsistent with his “ministerial” argument. With Duran’s failure to discharge the duties of his office and given the circumstances attending the making and issuance of the checks, his conviction must stand.

We clarify that the Court’s finding of bad faith is not premised on Duran’s failure “to prepare and submit” the supporting documents but for his failure to *require their submission for his review*. While the preparation and submission of these documents are not part of his responsibilities, his failure to require their submission for his review, given the circumstances, amply establishes his bad faith in preparing and issuing checks that eventually caused undue injury to the government.

***Tugaoen’s statement before the
PNP investigating committee is
admissible in evidence***

On the issue raised by Tugaoen and Montano on the admissibility of the checks and of the statements made by Tugaoen before the investigating committee, we note that these arguments are mere rehashes of the arguments that they raised before the Sandiganbayan in their Motion to Dismiss and in this Court in their Petition for Review. We maintain our ruling that the Sandiganbayan committed no reversible error in this regard.

²⁰ *Rollo*, p. 22.

In an attempt to prove the applicability of the best evidence rule rather than the exception - entries in the regular course of business - on the secondary evidence of the checks, Tugaoen and Montano direct the Court's attention to the ruling of the Sandiganbayan in *another case* involving the issuance of checks in the aggregate amount of Php20 million as cash advances intended as payment for CCIE items for the use of PNP personnel of Region 7. In that case, the Sandiganbayan rejected the admissibility of the microfilm copies of the checks presented by the prosecution on the ground that it violates the best evidence rule, and eventually acquitted the accused.²¹

We do not and cannot share their positions.

It is inappropriate for the accused to rely on a lower court's decision (although involving some factual similarities with the present criminal case) that was rendered *after* this Court had already made its own ruling, affirming the accused's conviction. To begin with, in our judicial hierarchy, only the pronouncements of this Court are doctrinal and binding on all other courts. There is only one Supreme Court from whose decisions all other courts should take their bearings. Our judicial system does not work the other way around.

For our present purposes, we are only called upon to determine whether the Sandiganbayan committed an error of law in convicting the petitioners of the crime for which they were charged. The legal correctness of its decision in *another case* does not only lack the force of jurisprudence but is not even an issue before us. It would do well for the petitioners not to confuse themselves. With the admissibility of the checks in evidence and the prosecution's evidence on the manner and circumstances by which they were prepared, we find no reason to disturb our finding that conspiracy exists and that the accused acted in bad faith.

The prosecution was also able to prove injury to the government through the testimony of Tuscano (the Supply Accountable Officer of the PNP) that the delivery of P10 million worth of CCIE items for North CAPCOM in 1992 is not supported by the available record. This testimony in turn finds support from accused Tugaoen's own statement that she did not deliver any CCIE in exchange for the checks that she encashed (and from the written declarations of P/CInsp. Isaias Braga, Chief Logistics Officer, North CAPCOM, and Rolando Flores, Supply Accountable Officer, North CAPCOM).

Tugaoen though questions the admissibility of her statement before the investigating committee that she did not deliver any CCIE items in exchange for the checks on the ground that it violates her right under Section 12, Article III of the 1987 Constitution.

²¹ Id. at 301-308.

In *People v. Marra*,²² we held that custodial investigation involves any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. The rule on custodial investigation begins to operate **as soon as the investigation ceases to be a general inquiry** into an unsolved crime and the interrogation is then **aimed on a particular suspect** who has been taken into custody and to whom the police would then direct interrogatory questions that tend to elicit incriminating statements. The situation contemplated is more precisely described as one where –

After a person is arrested and his custodial investigation begins a confrontation arises which at best may be termed unequal. The detainee is brought to an army camp or police headquarters and there questioned and cross-examined not only by one but as many investigators as may be necessary to break down his morale. He finds himself in a strange and unfamiliar surrounding, and every person he meets he considers hostile to him. The investigators are well-trained and seasoned in their work. They employ all the methods and means that experience and study has taught them to extract the truth, or what may pass for it, out of the detainee. Most detainees are unlettered and are not aware of their constitutional rights. And even if they were, the intimidating and coercive presence of the officers of the law in such an atmosphere overwhelms them into silence xxx.²³

Accordingly, contrary to the accused Tugaoen's claim, the fact that she was "invited" by the investigating committee does not by itself determine the nature of the investigation as custodial. The nature of the proceeding must be adjudged on a case to case basis.

The Sandiganbayan correctly ruled that the investigation where Tugaoen made her statement was not a custodial investigation that would bring to the fore the rights of the accused and the exclusionary rule under paragraph 3, Section 12, Article III of the 1987 Constitution. The investigator's reminder to Tugaoen of her Miranda rights during the investigation cannot be determinative of the nature of the investigation. Otherwise, following the logic of this claim, the law enforcer's own failure or even disregard of his duty to inform an individual he investigates of his custodial investigation rights would suffice to negate the character of an investigation as legally a custodial investigation. Ultimately, the nature of the investigation must be determined by appreciating the circumstances surrounding it as a whole.

In the present case, the investigation conducted by the PNP GHQ-OIG, was prompted by the report from the COA regarding disbursement irregularities for CCIE items in Regions VII and VIII, North CAPCOM. In short, it was simply a *general inquiry* to clear the air of reported

²² G.R. No. 108494, September 20, 1994, 236 SCRA 565.

²³ *People v. Uy*, G.R. No. 157399, November 17, 2005, citing *Morales, Jr. v. Minister Enrile, et al.*, 206 Phil. 466, 488 (1983).

anomalies and irregularities within the PNP which a constitutional body found and reported as part of its constitutional power and duty. Naturally, this investigation would involve persons with whom the PNP had contracts that are subject of the COA scrutiny. That what was conducted is an ordinary administrative (and not custodial) investigation is supported by the fact that the investigating committee also took the statements of other PNP officials who ended up not being charged with a crime. In this regard, the Sandiganbayan correctly observed:

The most crucial question to answer that could have absolved the accused from liability is whether the subject purchases of CCIE items were truly “ghost purchases”, as contended by the prosecution. It is very ironic that no single end user among thousands of police officers and men came forward to attest and declare to the world that indeed he received the CCIE items subject matter of the case, thereby leaving the prosecution’s theory reinforced and un rebutted.

The admitted non-delivery of the CCIE items by the supposed contractor, Tugaoen, well explains why Duran had to argue in vain that the making and issuance of the checks were ministerial on his part (despite his clear responsibility for the “management and disbursement and accounting of PNP funds”). Accordingly, the fact that none of the persons who executed the documents cited by the Court in its Decision testified in open court is not fatal to the accused’s conviction. As we already observed in our February 14, 2011 Decision, the prosecution sufficiently discharged its burden of proof based on the confluence of evidence it presented showing the guilt of the accused beyond reasonable doubt.

WHEREFORE, premises considered, the motions for reconsideration are **DENIED with FINALITY**.

SO ORDERED.




ARTURO D. BRION
Associate Justice

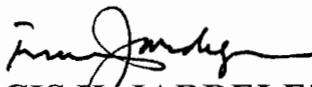
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson

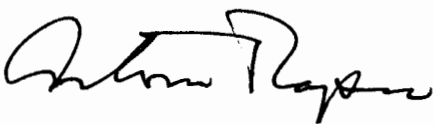

JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


A T T E S T A T I O N

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Special Second Division

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice