

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 115221 March 17, 2000

JULIUS G. FROILAN, petitioner,

vs.

THE HONORABLE SANDIGANBAYAN, respondent.

YNARES-SANTIAGO, J.:

Once again, the issue of whether or not the constitutional right of an accused to be presumed innocent has been overcome so as to warrant a judgment of conviction confronts this Court.

On a petition for *certiorari*, petitioner, Julius Froilan, has challenged the judgment of conviction of respondent court finding him as well as three (3) other co-accused guilty of the crime of violation of Section 3(g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for being contrary to law and jurisprudence.

The facts of the case as found by the Sandiganbayan and quoted both by petitioner and the Office of the Solicitor General in their respective pleadings filed before us are quoted verbatim, to wit:

Needing chemicals for its laboratory, the Bohol Agricultural College, a government educational institution in Bilar, Bohol, purchased on June 13, 1984, chemicals priced at P10,633.00 from the JDS Traders, a business firm in Tagbilaran City. As required in the procurement of government supplies, an RIV (Requisition and Issue Voucher) was prepared on May 30, 1984 by Benigno V. Mandin, Supply Officer, and approved by Mateo M. Limbago, Superintendent of the school (Exhibit A). It would appear that requests for price quotations were sent out to and filled out by three suppliers, namely: Farmacia Libertad, Tower View General Merchandise and JDS Traders, all of Tagbilaran City (Exhibits B, C and D). On the basis of the quotations submitted by these suppliers, an abstract of canvass (Exhibit E) was prepared by Supply Officer Benigno Mandin, and recommended for approval by a Committee on Award, composed of Sergio L. Salubre, Rutillo G. Real and Victorio S. Pabe. The award was in favor of JDS

Traders which supposedly submitted the lowest quotation of P10,633.00, broken down as follows:

Name of	Qty.	Unit	Article	Unit Price	Amount
	1 gal.		Ether	P1,455.00/gal.	P1,455.00
Solution AR					
	1 gal.		Carbon Tetra-	1,55.00/gal.	1550.00
Chloride AR					
	1 Kilo		Glucose Pow-	1,420.00/kilo	1,420.00
der AR					
	1 lit.		Nitric Acid AR	1,320.00/lit.	1,320.00
	1 lit.		Hydrochloric	1,358.00/lit.	1,358.00
Acid AR					
	1 kilo		Sodium Hydro-	1,380.00/kilo	1,380.00
xide AR					
	1 lit.		Sodium Chlo-	1,425.00/lit.	1,425.00
ride AR					
	1 lit.		Acetone AR	725.00/lit	725.00

Total					P10,633.00

On June 13, 1984, Purchase Order No. 84-61 was approved by accused Mateo M. Limbago. The purchase order, however, appears to have been received by accused Julius Froilan, the supplier, on June 11, 1984 or two days earlier. Froilan

signed a certification stamped on the purchase order, stating that he will refund the difference if the prices are found to be overpriced.

It was Josef Enerio who operated JDS Traders; accused Froilan merely acted as an agent and used its receipts in the transaction. Thus, on June 14, 1984, accused Froilan issued JDS Traders Sales Invoice No. 057 in the total amount of P10,633.00. On the same date, Anastacio Macalolot, acting as authorized representative of the Bohol Agricultural College, accepted the articles described in Invoice No. 057 (Exhibit H). The corresponding Request for Obligation of Allotment (ROA) for sum of P10,633.00 was then prepared by accountant Wenceslao Guimadan and approved by accused Mateo M. Limbago (Exhibit I). On June 22, 1984, the corresponding disbursement voucher (Exhibit J) was processed and approved. Finally, on June 26, 1984, accused Froilan received payment and issued an Official Receipt for P10,633.00 under the business name of JDS Traders (Exhibit K).

Almost three years later, on March 24, 1987, Lebe C. Siono, Auditor I of the Commission on Audit, acting on a complaint made by unspecified concerned parties, wrote a letter (Exhibit N) to the COA Price Monitoring Division (PMD), Central Office, Quezon City, requesting for confirmation of the prices of various chemicals delivered to the Bohol Agricultural College covered by the said Purchase Order No. 84-61. Director Jose F. Mabanta of the COA Technical Services Office wrote a reply on May 15, 1987, stating that based on actual canvass made in the open market and verification from purchase documents or other government agencies with similar purchases, the prices in Metro Manila for the articles in question as compared to the quoted prices thereof, were as follows:

Item/Description	Quoted Price	Price	Findings
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(as of 6-13-84) Price Date

1. gal. Ether P1,455.00/gal P2,007.70/20 lit. (12/86)

solution AR or 401.5/gal.

1 gal. Carbon 1,550.00/gal. 110.00/lit. or (1/86)

Tetrachloride AR 440.00/gal.

1 kilo Glucose 1,420.00/kilo 22.00/kilo (4/87)

1 lit. Nitric 1,320.00/lit. 380.00/2.5 lit. (/87)

Acid AR or 152.00/lit.

1 lit. Hydro- 1,358.00/lit. 313.60/lit. or (10/86)

chloric Acid 52.27/lit. Baker

AR

1 kilo Sodium 1,380.00/kilo 190.00/kilo (1/87)

Hydroxide AR

1 lit. Sodium 1,425.00/lit. 190.00/kilo (1/87)

Chloride AR

1 lit. Acetone 725.00/lit. 380.00/4 lit. (5/86)

AR or 95.00/lit.

Using the above-quoted prices, State Auditor Lebe C. Siono Submitted to the Director of the COA Technical Services Office, a formula for computing the refund of the overprice by the dealer in the total amount of P5,233.17, which was arrived at as follows:

Action taken

PMD by Auditor

Article Description Qty. Quoted Findings Unit Price

Unit Unit Price per Unit allowed in

Audit

Ether Solution AR 1 gal. P1,455/gal. P401.54 (P1,003.85)

Carbon Tetrachlo- 1 gal. 1,550/gal. 440.00 (1,100.00)

ride AR

Glucose Powder 1 kilo 1,420/kilo 22.00 (55.00)

AR

Nitric Acid AR 1 liter 1,320/ltr 152.00 (380.00)

Hydrochloric 1 liter 1,358/ltr 52.27 (130.67)

Acid AR

Sodium Hydroxide 1 kilo 1,380/kilo 190.00 (475.00)

AR

Sodium Chloride 1 liter 1,425/ltr. 190.00 (475.00)

AR

Acetone AR 1 liter 725/ltr. 95.00 (237.50)

P10,633.00 P1,542.81 P3,857.02

Add: 100% Allowance P1,542.81

for price fluc-

tuations from

1984-87

Provincial delivery 50% 771.41

Total allowable price P3,857.02

in audit =====

Total original purchase P10,633.00

price

Less: Quoted PMD price 1,542.81

findings -----

Total overprice 9,090.19

Less allowable price 3,857.02

Net overprice P5,233.17

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(Exhibit Q-1)

On June 17, 1987, Auditor Siono wrote a letter addressed to JDS Traders, accused Limbago, Salubre, Real and Pabe informing them of the disallowance of P5,232.87 and demanding the settlement thereof (Exhibit 15). On February 17, 1988, accused Froilan refunded the full amount of P5,232.87, as evidenced by Official Receipt No. 1683654-L (Exhibit 16-Froilan), the certification dated February 19, 1988 issued by Disbursing Officer Ranulfo Opus (Exhibit 17-Froilan), and the certification dated September 22, 1988 issued by Auditor Lebe Siono (Exhibit 18-Froilan). This notwithstanding, an Information for the violation of Sec. 3 (g) of Republic Act No. 3019 was filed against all the herein accused. **1**

The Sandiganbayan found petitioner together with the three (3) other co-accused guilty of the crime as charged. The dispositive portion of the judgment of conviction is quoted hereunder:

WHEREFORE, judgment is hereby rendered, finding accused SERGIO SALUBRE, RUTILLO REAL, VICTORIO PABE AND JULIUS FROILAN, GUILTY beyond reasonable doubt in the Violation of Sec. 3 (g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for which they are hereby sentenced to each suffer the indeterminate penalty of Six (6) Years and One (1) Month as the minimum, to Nine (9) Years as the maximum; to each suffer perpetual disqualification from public office, to jointly and severally indemnify the government in the additional amount of P1,542.81; and, to pay their proportionate share of the costs of the action.

Accused MATEO M. LIMBAGO and JOSEF ENERIO are hereby ACQUITTED for insufficient evidence; accordingly, the bail bond posted by Mateo M. Limbago and the property bond filed by Josef Enerio for their respective provisional liberty are hereby ordered cancelled.

SO ORDERED. ²

Petitioner filed this petition for *certiorari* assailing the said decision on the following assignment of errors:

I

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING PETITIONER, A PRIVATE INDIVIDUAL, GUILTY OF VIOLATING SECTION 3 (g) OF RA 3019.

II

THE HONORABLE SANDIGANBAYAN ERRED IN GIVING CREDENCE TO THE PROSECUTION'S WITNESS, MS. BELMONTE AND IN RULING THAT PETITIONER WAS GUILTY OF OVERPRICING THE CHEMICALS HE SUPPLIED TO THE BOHOL AGRICULTURAL COLLEGE.

III

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT THERE WAS A CONSPIRACY AMONG PETITIONER AND HIS OTHER CO-ACCUSED.

IV

THE HONORABLE SANDIGANBAYAN ERRED IN NOT FINDING THAT THE GOVERNMENT WAS AMPLY PROTECTED IN THE TRANSACTION BETWEEN PETITIONER AND THE BOHOL AGRICULTURAL COLLEGE.³

Meanwhile, the other accused, Sergio L. Salubre, Rutillo Real and Victorio S. Pabe also filed a petition for *certiorari* with this Court.⁴ Said petition was denied on August 31, 1994 for failure to comply with the requirements of Supreme Court Revised Circular No. 1-88. Said accused filed a motion for reconsideration which was denied with finality on October 19, 1994. Unfated, they filed a motion for leave to file second motion for reconsideration. This, again, was denied by this Court in a Resolution dated February 1, 1995. Another motion for reconsideration was filed which was likewise denied on April 3, 1995. In an apparent attempt to revive their petition, the said accused moved to consolidate G.R. No. 115977 with this petition, but their motion was denied on May 29, 1995. Subsequent motions for reconsideration and relief from judgment filed by the three accused were all denied by this Court considering that judgment had already been entered in the Book of Entries of Judgments.

On November 22, 1995, accused Salubre, Real and Pabe filed with this Court a petition for *habeas corpus*,⁵ praying for their immediate release from commitment. This petition was consolidated with G.R. No. 115977 and the instant case. On February 7, 1996, this Court denied the petition for *habeas corpus* upon a finding that their commitment was a necessary consequence of the finality of the judgment of their conviction by the Sandiganbayan in Criminal Case No. 12881. Petitioners' motion for reconsideration was denied on June 26, 1996.

Going back to the instant petition for *certiorari*, we rule in favor of petitioner.

Petitioner strongly argues that there was no reason for him to be convicted of the offense charged because he was the one who gave the guarantee to the government that in case there would be a finding of an overprice by the Commission on Audit (COA), he would refund the same. It is undisputed that an actual refund of P5,232.87 was made by petitioner, which was the amount found by the COA to have been the overprice. Further, petitioner contends that if one of his co-accused, Mr. Mateo Limbago, the Superintendent of the Bilar Agricultural College (BAC), was acquitted by the Sandiganbayan on the ground that the government was amply protected by the guarantee given by him, then why should he be convicted when he was the one who gave the very same guarantee that protected the government from any possible injury brought about by the contract he executed with the BAC, the same contract alleged to be grossly and manifestly disadvantageous to the government in the Information?

After carefully reviewing the records of the case, we are constrained to agree with petitioner. The Information filed with the Sandiganbayan charged petitioner and five (5) other accused with the crime of entering into a contract that was alleged to be grossly and manifestly disadvantageous to the government. In this connection, it is axiomatic that in conspiracy the act of one is the act of all. ⁶ Too, conspiracy is never presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. ⁷

In this case, we are not persuaded with the theory of the prosecution that there was a conspiracy by and among the accused to defraud the government by overpricing the acquisition cost of the goods supplied to the BAC. We find it difficult to imagine how conspiracy in this case could have existed in the criminal act of causing damage to the government in terms of overpricing the goods bought by the latter from petitioner when, in reality, petitioner gave his guarantee to refund whatever overpricing the Commission on Audit will find out later on. In fact, it is not disputed that when the COA found an overprice in the amount of P5,232.87 and sought a refund thereof, petitioner, true to his promise, did actually make a refund.

Significantly, we note that one of petitioner's co-accused in the criminal case below, namely, Mr. Mateo Limbago, the Superintendent of the Bilar Agricultural College, was acquitted by the Sandiganbayan on the ground, among others, that the government after all was amply protected by petitioner in the transaction. The Sandiganbayan held:

. . . With such important things to attend to, it is plausible that accused Limbago really did not bother to read the unit prices of the chemicals being purchased and merely satisfied himself with the assurance that the purchase order was awarded to the supplier who submitted the lowest quotation and that, *with the written undertaking of the winning supplier to refund the difference in case of an overprice, the government was amply protected.* . . . ⁸

In the case at bar, it will be noted that one of the principal reasons for Mr. Limbago's acquittal was the fact that the government — the only entity which the law seeks to protect — was

amply protected by virtue of the written undertaking issued by petitioner, as the winning bidder, to refund whatever amount may be found as the overprice. Petitioner, being the one who gave the written guarantee and who saved the government from any perceived injury, must likewise be acquitted.

Likewise, the fact of the government being protected at all times by petitioner assumes another significance insofar as the innocence of petitioner is concerned. It must be remembered that in the crime for which petitioner was charged, *i.e.*, Section 3 (g) of Republic Act No. 3019,⁹ the elements are: (a) that the accused is a public officer; (b) that he entered into a contract or transaction on behalf of the government; and (c) that such contract or transaction is grossly and manifestly disadvantageous to the government.

Readily, we find that one of the elements of the crime, *i.e.*, that the contract or transaction is grossly and manifestly disadvantageous to the government, is conspicuously missing. The government was amply protected in the subject transaction, and consequently the contract was not grossly and manifestly disadvantageous to the government. Hence, the requirement of a moral certainty that the crime was committed, in order to uphold the judgment of conviction of petitioner, is absent in this case. Conviction must rest on nothing less than a moral certainty of guilt. **10**

In essence, the prosecution has failed to overcome the constitutional presumption of innocence enjoyed by petitioner. Failure of the prosecution's evidence to overcome the constitutional presumption of innocence entitles the accused to an acquittal. **11**

Lastly, in the challenged decision, we note that the Sandiganbayan found the computation of the Commission on Audit erroneous in that, there should still be a payable of P1,541.81 due from petitioner. We have reviewed the records of the case and find no basis to uphold such finding by the Sandiganbayan. Assuming *arguendo* that there was indeed an error in the computation as declared by the Sandiganbayan, the same cannot be ascribed to petitioner but to the COA, Petitioner cannot be held liable therefor.

WHEREFORE, the petition is GRANTED, The Decision of the Sandiganbayan in Criminal Case No. 12281, insofar as it found petitioner guilty of violation of Section 3 (g) of Republic Act No. 3019, is REVERSED and SET ASIDE. Consequently, petitioner is ACQUITTED of the crime charged.

SO ORDERED.

Davide, Jr., C.J., Puno and Kapunan, JJ., concur.

Pardo, J., on official business abroad.

Footnotes

1 Annex "A"; *Rollo*, pp. 55-60.

2 Criminal Case No. 12881. Penned by Associate Justice Cipriano A. Del Rosario, concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Regino Hermosissima, Jr.; *Rollo*, p. 74.

3 *Rollo*, p. 16.

4 G.R. No. 115977.

5 G.R. No. 122574.

6 *People v. Panganiban*, 241 SCRA 91, 102 (1995).

7 *Magsuci v. Sandiganbayan*, 240 SCRA 13, 17 (1995).

8 *Rollo*, p. 73; emphasis supplied.

9 Sec. 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx xxx xxx

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby. (R.A. 3019).

10 *People v. Quindipan*, 253 SCRA 421, 429 (1996).

11 *People v. Martinez*, 219 SCRA 502, 512 (1993).