

FIRST DIVISION

[G.R. No. 189343, July 10, 2013]

BENILDA N. BACASMAS, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

[G.R. NO. 189369]

ALAN C. GAVIOLA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

[G.R. NO. 189553]

EUSTAQUIO B. CESA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

Before us are three consolidated cases: (1) Petition for Review on Certiorari^[1] dated 16 September 2009 (G.R. No. 189343), (2) Petition for Review on Certiorari^[2] dated 15 September 2009 (G.R. No. 189369), and (3) Petition for Review on Certiorari^[3] dated 12 October 2009 (G.R. No. 189553). All assail the Decision^[4] in Crim. Case No. 26914 dated 7 May 2009 of the Sandiganbayan, the dispositive portion of which reads:

ACCORDINGLY, **accused Alan C. Gaviola ("Gaviola"), Eustaquio B. Cesa ("Cesa"), Benilda N. Bacasmas ("Bacasmas") and Edna J. Jaca ("Jaca")** are found **guilty beyond reasonable doubt** for violation of Section 3 (e) of Republic Act No. 3019 and are sentenced to suffer in prison the penalty of **12 years and 1 month to 15 years**. They also have to suffer perpetual disqualification from holding any public office and to indemnify jointly and severally the City Government of Cebu the amount of Nine Million Eight Hundred Ten Thousand, Seven Hundred Fifty-two and 60/100 Pesos (Php 9,810,752.60).^[5] (Emphases in the original)

The Petitions also question the Resolution^[6] dated 27 August 2009 denying the Motions for Reconsideration^[7] of the Decision dated 7 May 2009.

Antecedent Facts

All the petitioners work for the City Government of Cebu.^[8] Benilda B. Bacasmas

(Bacasmás), the Cash Division Chief, is the petitioner in G.R. No. 189343.^[9] Alan C. Gaviola (Gaviola), the City Administrator, is the petitioner in G.R. No. 189369.^[10] Eustaquio B. Cesa (Cesa), the City Treasurer, is the petitioner in G.R. No. 189553.^[11]

By virtue of their positions, they are involved in the process of approving and releasing cash advances for the City. The procedure is as follows:

A written request for a cash advance is made by paymaster Luz Gonzales (Gonzales), who then submits it to Cash Division Chief Bacasmás for approval. Once the latter approves the request, she affixes her initials to the voucher, which she forwards to City Treasurer Cesa for his signature in the same box. By signing, Bacasmás and Cesa certify that the expense or cash advance is necessary, lawful, and incurred under their direct supervision.^[12]

Thereafter, the voucher is forwarded to City Accountant Edna C. Jaca (Jaca) for processing and pre-audit. She also signs the voucher to certify that there is adequate available funding/budgetary allotment; that the expenditures are properly certified and supported by documents; and that previous cash advances have been liquidated and accounted for. She then prepares an Accountant's Advice (Advice).^[13]

This Advice is returned with the voucher to the Chief Cashier for the preparation of the check. After it has been prepared, she affixes her initials to the check, which Cesa then signs. Afterwards, City Administrator Gaviola approves the voucher and countersigns the check.^[14]

The voucher, the Advice, and the check are then returned to the Cash Division, where Gonzales signs the receipt portion of the voucher, as well as the Check Register to acknowledge receipt of the check for encashment.^[15]

Upon receipt of the check, Gonzales encashes it at the bank, signs the voucher, and records the cash advance in her Individual Paymaster Cashbook. She then liquidates it within five days after payment.^[16]

A report of those cash advances liquidated by Gonzales is called a Report of Disbursement (RD). An RD must contain the audit voucher number, the names of the local government employees who were paid using the money from the cash advance, the amount for each employee, as well as the receipts. The RDs are examined and verified by the City Auditor and are thereafter submitted to the Cash Division for recording in the official cash book.^[17]

On 4 March 1998, COA issued Office Order No. 98-001 creating a team to conduct an examination of the cash and accounts of the accountable officers of the Cash Division, City Treasurer's Office of Cebu City.^[18]

This team conducted a surprise cash count on 5 March 1998.^[19] The examination revealed an accumulated shortage of ₱9,810,752.60 from 20 September 1995 to 5 March 1998 from the cash and accounts of Gonzales.^[20] The team found that Bacasmás, Gaviola, Cesa, and Jaca failed to follow the above-mentioned procedure,

thus facilitating the loss of more than nine million pesos on the part of the city government. Specifically, the team said in its report that there were irregularities in the grant, utilization, and liquidation of cash advances; shortages were concealed; and inaccurate and misleading pieces of information were included in the financial statements.^[21] These irregularities were manifested in the following: additional cash advances were granted even if previous cash advances had not yet been liquidated, cash advance vouchers for salaries were not supported by payrolls or lists of payees, and cash advances for salaries and wages were not liquidated within five days after each 15th day or end-of-the-month pay period.^[22]

The report stated that Bacasmas, Gaviola, Cesa, and Jaca not only signed, certified, and approved the cash advance vouchers, but also signed and countersigned the checks despite the deficiencies, which amounted to a violation of Republic Act No. (R.A.) 7160; Presidential Decree No. (P.D.) 1445; and the circulars issued by the Commission on Audit (COA), specifically COA Circular Nos. 90-331, 92-382 and 97-002.^[23] According to the COA, the violation of the foregoing laws, rules, and regulations facilitated the loss of a huge amount of public funds at the hands of Gonzales.^[24]

Hence, an Information^[25] was filed with the Sandiganbayan on 30 July 2001 against Bacasmas, Gaviola, Cesa, and Jaca, to wit:

That on or about the 5th day of March 1998, and for sometime prior and subsequent thereto, at Cebu City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ALAN C. GAVIOLA, EUSTAQUIO B. CESA, BENILDA N. BACASMAS and EDNA J. JACA, public officers, being then the City Administrator, City Treasurer, Cash Division Chief and City Accountant, respectively, of the Cebu City Government, in such capacity and committing the offense in relation to Office, conniving and confederating together and mutually helping with each other [sic], with deliberate intent, with manifest partiality, evident bad faith and with gross inexcusable negligence, did then and there allow LUZ M. GONZALES, Accountant I, Disbursing Officer-Designate of the Cebu City Government, to obtain cash advances despite the fact that she has previous unliquidated cash advances, thus allowing LUZ M. GONZALES to accumulate Cash Advances amounting to NINE MILLION EIGHT HUNDRED TEN THOUSAND SEVEN HUNDRED FIFTY-TWO PESOS AND 60/100 (?9,810,752.60), PHILIPPINE CURRENCY, which remains unliquidated, thus accused in the performance of their official functions, had given unwarranted benefits to LUZ M. GONZALES and themselves, to the damage and prejudice of the government, particularly the Cebu City Government.^[26]

The prosecution presented the testimonies of the COA Auditors who had conducted the examination on the cash and accounts of Gonzales: Cecilia Chan, Jovita Gabison, Sulpicio Quijada, Jr., Villanilo Ando, Jr., and Rosemarie Picson.^[27] The COA Narrative Report^[28] on the results of the examination of the cash and accounts of Gonzales covering the period 20 September 1995 to 05 March 1998 was also

introduced as evidence.^[29]

Bacasmás testified in her own defense. She said that she could not be held liable, because it was not her responsibility to examine the cash book. She pointed to Jaca and the City Auditor as the ones responsible for determining whether the paymaster had existing unliquidated cash advances. Bacasmás further testified that she allowed the figures to be rounded off to the nearest million without totalling the net payroll, because it was customary to round off the cash advance to the nearest amount.^[30]

Cesa averred that Jaca was the approving authority in granting cash advances. Hence, when he signed the vouchers, he merely relied on Jaca's certification that Gonzales had already liquidated her cash advances. Besides, he said, he had already delegated the function of determining whether the amount stated in the disbursement voucher was equal to the net pay, because it was humanly impossible for him to supervise all the personnel of his department.^[31]

Jaca admitted that cash advances were granted even if there were no liquidations, so that salaries could be paid on time, because cash advances usually overlapped with the previous one. Additionally, she acknowledged that when she affixed her signatures to the vouchers despite the non-attachment of the payrolls, she was aware that Gonzales still had unliquidated cash advances.^[32]

Lastly, Gaviola claimed that when he affixed his signatures, he was not aware of any anomaly. Allegedly, he only signed on the basis of the signatures of Cesa and Jaca.^[33]

The Sandiganbayan, in its Decision dated 7 May 2009, did not give credence to the defense of the accused, but instead afforded significant weight to the COA Narrative Report submitted in evidence. It found that the accused, as public officers, had acted with gross inexcusable negligence by religiously disregarding the instructions for preparing a disbursement voucher and by being totally remiss in their respective duties and functions under the Local Government Code of 1991.^[34] Their gross inexcusable negligence amounted to bad faith, because they still continued with the illegal practice even if they admittedly had knowledge of the relevant law and COA rules and regulations.^[35] The Sandiganbayan held that the acts of the accused had caused not only undue injury to the government because of the P9,810,752.60 shortage, but also gave unwarranted benefit to Gonzales by allowing her to obtain cash advances to which she was not entitled.^[36] Lastly, it found conspiracy to be present in the acts and omissions of the accused showing that they had confederated, connived with, and mutually helped one another in causing undue injury to the government through the loss of public money.^[37]

Gaviola, Cesa, Bacasmás, and Jaca individually filed their Motions for Reconsideration of the 7 May 2009 Decision.^[38] Their motions impugned the sufficiency of the Information and the finding of gross inexcusable negligence, undue injury, and unwarranted benefit.^[39] To support their innocence, they invoked the cases of *Arias v. Sandiganbayan*,^[40] *Magsuci v. Sandiganbayan*,^[41] *Sistoza v. Desierto*,^[42] *Alejandro v. People*,^[43] and *Albert v. Gangan*,^[44] in which we held

that the heads of office may rely to a reasonable extent on their subordinates.^[45] The Motion for Reconsideration of Jaca also averred that her criminal and civil liabilities had been extinguished by her death on 24 May 2009.^[46]

The Sandiganbayan, in a Resolution^[47] promulgated 27 August 2009 denied the Motions for Reconsideration of the accused. It ruled that the Information was sufficient, because the three modes of violating Section 3(e) of R.A. 3019 commonly involved willful, intentional, and conscious acts or omissions when there is a duty to act on the part of the public official or employee.^[48] Furthermore, the three modes may all be alleged in one Information.^[49] The Sandiganbayan held that the accused were all guilty of gross inexcusable negligence. Claiming that it was the practice in their office, they admittedly disregarded the observance of the law and COA rules and regulations on the approval and grant of cash advances.^[50] The anti-graft court also stated that the undue injury to the government was unquestionable because of the shortage amounting to P9,810,752.60.^[51] It further declared that the aforementioned cases cited by the accused were inapplicable, because there was paucity of evidence of conspiracy in these cases.^[52] Here, conspiracy was duly proven in that the silence and inaction of the accused - albeit ostensibly separate and distinct - indicate, if taken collectively, that they are vital pieces of a common design.^[53] Finally, the Sandiganbayan decided that although the criminal liability of Jaca was extinguished upon her death, her civil liability remained.^[54] Hence, the Motions for Reconsideration were denied.^[55]

Thus, Bacasmas, Gaviola, and Cesa filed their respective Petitions for Review on Certiorari, in which they rehashed the arguments they had put forward in their Motions for Reconsideration previously filed with the Sandiganbayan.

We resolved to consolidate the three Petitions on 23 November 2009.^[56] The Office of the Special Prosecutor was required to comment on the three Petitions,^[57] after which petitioners were instructed to file a Reply,^[58] which they did.^[59]

Petitioners, through their respective Petitions for Review on Certiorari and Comments, bring these two main issues before us:

I. Whether the Information was sufficient; and

II. Whether petitioners are guilty beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019

We deny the Petitions.

I.

The Information specified when the crime was committed, and it named all of the accused and their alleged acts or omissions constituting the offense charged.

An information is deemed sufficient if it contains the following: (a) the name of all the accused; (b) the designation of the offense as given in the statute; (c) the acts or omissions complained of as constituting the offense; (d) the name of the