

## THIRD DIVISION

[ G.R. No. 164891, June 06, 2011 ]

**VIRGINIA M. GUADINES, PETITIONER, VS. SANDIGANBAYAN  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**VILLARAMA, JR., J.:**

Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the Decision<sup>[1]</sup> promulgated on April 30, 2004 and Resolution<sup>[2]</sup> dated August 20, 2004 of the Sandiganbayan convicting petitioner of violation of Section 3(e) of Republic Act (R.A.) No. 3019 or the Anti-Graft and Corrupt Practices Act.

The factual antecedents:

On August 25, 1992, the Provincial Treasurer of Quezon directed the Municipal Treasurer of Polillo, Quezon, Naime Ayuma, to conduct a public bidding for the materials to be used in the repair and construction of Navotas Bridge along Polillo-Burdeos provincial road at Barangay Sibulan. As a result of the bidding held on September 8, 1992, the contract was awarded to V.M. Guadines Construction Supply owned and managed by petitioner Virginia M. Guadines. On October 19, 1992, Purchaser Order No. 2019 was issued by the Provincial Government of Quezon for construction materials in the total price of P83,228.00. On November 13, 1992, the materials consisting of lumber (*Macaasim* hardwood cut by chainsaw) were stockpiled along the road about five meters away from the Navotas Bridge, and received by Bernie H. Azaula (Azaula).<sup>[3]</sup> Azaula was then Barangay Chairman of Poblacion, Polillo and Member of the *Sangguniang Bayan* being the President of the Association of Barangay Captains of Polillo.<sup>[4]</sup>

On November 20, 1992, a team of Department of Environment and Natural Resources (DENR) officials/forest rangers from the Community and Environment Resources (CENR) Polillo Station led by Officer-in-Charge Herminio M. Salvosa confiscated seventy-three (73) pieces of *Macaasim* lumber (4,172 board feet valued at P41,172.00) which were stockpiled alongside the Polillo-Burdeos road at Barangay Sibulan, approximately five meters away from the Navotas Bridge. They measured the confiscated lumber using Marking Hatchet No. 1742 in which the number 1742 was 1/6 of an inch thick so that when you strike the lumber, the number 1742 will appear on the lumber. They also marked the lumber with the words "DENR CONFISCATED" using white paint. These forest products were confiscated in favor of the government pending submission of certain required documents. No person or entity was apprehended as owner/possessor of the lumber. Since Azaula volunteered to take custody as a public official in the locality, the CENR decided to turn over the seized lumber to him and required him to sign the Seizure

Receipt.<sup>[5]</sup>

On December 14, 1992, the *Sangguniang Bayan* of Polillo acting upon the petition of some 460 individuals, and after debating on whether to still wait for the DENR officials to ascertain the identity of the contractor involved in the illegally cut timber or to proceed with the construction of the bridge using the confiscated lumber, resolved to formally request the DENR Regional Director to donate the seized lumber so it can be used for the delayed repair and construction of the Navotas Bridge. The logs remained stockpiled near the said bridge, apparently abandoned by its owner.

<sup>[6]</sup> Later however, the *Sanggunian* passed a resolution (*Kapasiyahan Blg. 24, t. 1993*) requesting the Department of Public Works and Highways (DPWH) through Provincial Engineer Abelardo Abrigo to send their personnel to work on the repair and construction of the Navotas Bridge in the earliest possible time.<sup>[7]</sup> Azaula was among those members of the *Sanggunian* who had opposed the proposal to request the DENR Regional Director for the donation of the confiscated lumber, insisting that the contractor (petitioner) be paid for said materials.<sup>[8]</sup>

In his letter dated January 25, 1993 addressed to Engr. Bert Nierva of the Provincial Engineer's Office (PEO), Polillo Mayor Rosendo H. Escara requested for assistance in the immediate construction of the Navotas Bridge, citing the approval of *Kapasiyahan Blg. 24, t. 1993* by the *Sangguniang Bayan*. On January 28, 1993, Polillo Municipal Treasurer Naime Ayuma prepared the Inspection Report stating that the materials specified under Purchase Order No. 2019 were delivered by the contractor (V.M. Guadines Construction Supply) and "[r]eceived in good order and condition." The Inspection Report was signed by both Ayuma and Mayor Escara.<sup>[9]</sup>

By February 5, 1993, the repair and construction of Navotas Bridge was finished. Upon the request of Azaula, Disbursement Voucher 001-9302-957 was prepared, authorizing the Provincial Treasurer to pay V.M. Guadines Construction Supply the total amount of P83,228.00. On February 18, 1993, petitioner received from the Provincial Treasurer's Office the amount of P83,228.00 as payment for the lumber and other materials she delivered for the repair and construction of Navotas Bridge.<sup>[10]</sup>

In a Memorandum dated February 26, 1993, CENR Polillo Station OIC Salvosa reported to the CENRO of Real, Quezon that despite warnings from forest rangers, workers headed by Engr. Nierva of the PEO utilized the confiscated lumber in the construction of Navotas Bridge. Salvosa further informed the CENRO that while Engr. Nierva claimed to be acting on official instructions from the Provincial Governor, they were not furnished any copy of such directive or instruction.<sup>[11]</sup> Accordingly, Juan dela Cruz, CENRO of Real, Quezon, prepared a memorandum-report and forwarded the same to the DENR Region IV Executive Director with a request for a lawyer to be sent to their office to assist in the preparation and filing of appropriate charges against the custodian who is the Barangay Chairman of Poblacion, Polillo, Quezon. In a letter dated March 10, 1993, CENRO dela Cruz asked Azaula to explain why he should not be charged with estafa and malversation for disposing the confiscated lumber without legal authority or clearance from the DENR Secretary.<sup>[12]</sup>

On May 5, 1993, the Provincial Auditor of Quezon directed Edgardo A. Mendoza,

State Auditor II, to conduct an investigation regarding the payment made for confiscated lumber used in the repair and construction of Navotas Bridge. After inspecting the site and inventory of the lumber in the newly constructed bridge together with the Municipal Engineer, Mendoza confirmed that these materials were the same ones confiscated by the CENR personnel, differing only in length of the logs used. Mendoza concluded that there was no justification for the government to pay the purchase price of the lumber allegedly delivered by the contractor. Thus, in his final report submitted to the Provincial Auditor, Mendoza recommended that V.M. Guadines Construction be ordered to refund the amount paid by the provincial government and that administrative and criminal actions be filed against said contractor, as well as the public officials who participated in defrauding the government in the amount of P83,228.00 and for violation of the Anti-Graft and Corrupt Practices Act.<sup>[13]</sup>

On November 15, 1994, a Notice of Disallowance was issued by the Commission on Audit (COA), Lucena City for the amount of P70,924.00. From the original amount of P83,228.00, they deducted the value of the common materials used such as nails and "kawad." The difference represents the value of the confiscated lumber actually used in the construction of the bridge.<sup>[14]</sup>

Subsequently, a complaint was filed before the Office of the Ombudsman by *Sangguniang Bayan* member May Verzo-Estuita against petitioner, Ayuma, Azaula and Escara for violation of the Anti-Graft and Corrupt Practices Act (OMB 0-93-1388). On April 22, 1994, a Resolution<sup>[15]</sup> was issued by the Ombudsman recommending the filing of appropriate information against all the respondents for violation of Section 3(e) of R.A. No. 3019. The Ombudsman found to be without merit respondents' denial that the lumber used in the construction of Navotas Bridge were the same lumber earlier confiscated by the CENR field personnel, noting that Azaula took cognizance of the said materials during the deliberations in the *Sangguniang Bayan*. Respondents were thus held liable for causing undue injury to the provincial government which was made to pay the amount of P83,228.00 for the confiscated lumber.

The Information charging petitioner, Azaula, Escara and Ayuma with violation of Section 3(e) of R.A. No. 3019 (Criminal Case No. 20878) reads:

That in or about February of 1993, or immediately prior or subsequent thereto, in Polillo, Quezon, and within the jurisdiction of this Honorable Court, accused Bernie H. Azaula, Rosendo N. Escara, Namie V. Ayuma, being the Barangay Captain, Municipal Mayor and Municipal Treasurer, respectively, of Polillo, Quezon, in the exercise of their administrative and/or official functions, with evident bad faith, conspiring and confederating with accused Virginia M. Guadinez, doing business under the V.M. Guadinez Construction Supply, did then and there wi[|]fully and unlawfully cause undue injury and/or damage to the province of Quezon, by using in the construction of the Navotas Bridge in Sibulan, Polillo, Quezon, confiscated lumber consisting of 73 pieces with a volume of 4,172 board feet, valued at P11,172.00, more or less, and make it appear in a Disbursement Voucher, Delivery Receipt No. 0063, and Inspection Report dated January 28, 1993, that the lumber used in the

construction of the Navotas Bridge were purchased from the V.M. Guadinez Construction Supply for P83,228.00, thus enabling accused Virginia Guadinez to receive the said purchase price, to the damage and prejudice of the Province of Quezon, in the aforementioned amount.

CONTRARY TO LAW.<sup>[16]</sup>

The aforementioned respondents filed motions for reconsideration and re-investigation with the Ombudsman. In his Order dated January 19, 1995, the Ombudsman recommended that the prosecution of petitioner, Azaula and Escara be continued while the complaint against Ayuma be dropped for insufficiency of evidence. Consequently, Ayuma was ordered excluded from the Information in Criminal Case No. 20878.<sup>[17]</sup>

After trial, the Sandiganbayan rendered its decision convicting petitioner, Escara and Azaula of the crime charged, as follows:

WHEREFORE, in view of all the foregoing, this Court finds accused BERNIE H. AZAULA, ROSENDO N. ESCARA AND VIRGINIA M. GUADINES GUILTY beyond reasonable doubt of violation of Section 3 (e) of R.A. No. 3019, and hereby sentences each of them to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum. They are also ordered to pay, jointly and severally, the costs of this suit.

Accused Guadines, having unlawfully received the amount of P70,924.00, representing payment for the confiscated lumber, is hereby ordered to return the said amount to the Province of Quezon.

SO ORDERED.<sup>[18]</sup>

In their motion for reconsideration,<sup>[19]</sup> petitioner and Azaula maintained that the lumber delivered by V.M. Guadines Construction Supply were not the same lumber confiscated by the CENR. They argued that (1) the confiscated lumber does not match the specified size, quality and quantity of the materials needed for the bridge repair/construction project; (2) petitioner purchased the logs from third persons there being no sawmills in the locality, and it is but proper that she be paid for the materials she delivered; and (3) since the municipalities of Polillo and Burdeos have benefited from the repair and construction of the Navotas Bridge, the allegation that the Province of Quezon suffered damage and prejudice is erroneous. As to the Sandiganbayan's reliance on the statements she made during the *Sangguniang Bayan* proceedings on December 14, 1992, petitioner vehemently denied making those statements and contended that to give them probative value would violate the rule on *res inter alios acta*. Petitioner further asserted that she acted in good faith, as in fact no *Sangguniang Bayan* member interposed an objection to the payment made in her favor.

In its August 20, 2004 Resolution, the Sandiganbayan denied the motions for reconsideration filed by petitioner, Azaula and Escara. The Sandiganbayan noted

that petitioner herself admitted in her direct testimony that the lumber she delivered were the ones used in the repair and construction of the Navotas Bridge. Even if the confiscated lumber were undersized, the pieces of lumber could have been bolted together to conform to the required length of 22 feet long. Testimonial evidence also clearly showed that the confiscated lumber were used in the construction of the bridge. As to petitioner's contention that no damage or injury was caused to the provincial government, the Sandiganbayan held that after confiscation by the DENR, the subject lumber became the property of the National Government and consequently the Municipality of Polillo had no right to utilize the same without authority from the DENR. And since the lumber had already been confiscated, petitioner had no right to receive payment; hence, the payment made in her favor by the Province of Quezon did not produce any legal effect, pursuant to Article 1240<sup>[20]</sup> of the Civil Code. Petitioner's denial of the statements she made before the *Sanggunian* was likewise found to be without merit. The certified copy of the minutes taken during the December 14, 1992 session of the *Sanggunian* being a public document and an official record of the proceedings, is considered *prima facie* evidence of the facts stated therein. The presumption of regularity and authenticity of public official records had not been overcome and rebutted by the petitioner, there being no competent evidence to support her denial. Further, there was no violation of the *res inter alios acta* rule because the declarations and admissions made by the accused (petitioner) are being used against her and not against any other individual or third persons. Finally, petitioner's claim of good faith was rejected by the Sandiganbayan stating that she clearly intentionally took advantage of the government when, despite her knowledge that the lumber delivered to the Province of Quezon was confiscated, she still accepted and received the purchase price paid by the provincial government.<sup>[21]</sup>

Hence, this petition alleging that the Sandiganbayan gravely abused its discretion in finding that she acted in conspiracy with Azaula and Escara in defrauding the provincial government under their contract for purchase of construction materials.

Petitioner reiterates her argument that the materials she delivered on November 13, 1992 were not the same lumber confiscated by the DENR field personnel on November 20, 1992. The delivered lumber having been left unguarded and unprotected along the national highway, some pieces thereof could have been stolen, which explains why there was a smaller number (73) of confiscated lumber than the actual quantity (99) delivered. In any case, petitioner asserts that the matter was not anymore her concern after she fulfilled her contractual obligation of delivering the specified quantity and quality of lumber. The fact that Ayuma had certified in his Inspection Report that the delivered lumber were received in good order and condition would only mean that there was no "CONFISCATED" marking found thereon. Ayuma need not have foreknowledge of the DENR confiscation to confirm such marking in the course of her physical inspection of the lumber delivered by petitioner.

On the allegation of conspiracy, petitioner contends that evidence is wanting to support the prosecution case against her. A finding of guilt must not be based on speculation, such as the lumber she delivered were the ones confiscated later by the DENR. Indeed, the lumber left along the highway exposed it to possibilities which include substitution. Even if the materials used in the repair and construction of Navotas Bridge bore the DENR marking "CONFISCATED", it cannot automatically