

THIRD DIVISION

[G.R. No. 161778, April 07, 2009]

**CAYETANO A. TEJANO, JR. PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN AND THE PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

PERALTA, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court filed by petitioner Cayetano A. Tejano, Jr. seeking to reverse the Resolution^[1] dated January 26, 2004 of respondent Sandiganbayan which denied his Motion for New Trial in Criminal Case No. 24675, entitled *People of the Philippines v. Dolores Arancillo, Assistant Regional Administrator Central Bank, Cebu City; Cayetano A. Tejano, Jr., Manager and Vice-President, Amelia Fufunan, Cash Custodian, both of Philippine National Bank (PNB), Cebu Branch, Cebu City.*

Petitioner Tejano, Jr. was Vice-President of Philippine National Bank (PNB) and Manager of PNB Cebu (Casino Unit) Branch; and his co-accused Dolores Arancillo and Amelia Fufunan were Central Bank Assistant Regional Administrator and Cashier-Reliever, respectively, of PNB Cebu (Casino Unit) Branch.

On December 8, 1992, a certain "Juan dela Cruz" wrote a letter to then Ombudsman Conrado M. Vasquez seeking the investigation of certain accounts of PNB Cebu Branch, one of which was Jovana Fish Farms, Inc. owned by Arancillo. The letter alleged that Far East Bank & Trust Company (FEBTC) Check No. 742414 dated February 1, 1991, in the amount of P200,000.00, was approved for encashment by petitioner, and remained in his custody and made part of the cash on hand in the PNB-Casino Vault until February 7, 1991. Said check was sent for clearing only after the loan of Jovana Fish Farms, Inc. was approved and the proceeds were released to fund the same.

The letter was treated as a complaint lodged with the Office of the Ombudsman for the Visayas, docketed as OMB-VIS-(CRIM)-96-0363. On October 28, 1996, the Deputy Ombudsman for the Visayas issued an Order requiring accused Arancillo, petitioner, and Ma. Teresita Chan, Assistant Vice-President of PNB Cebu Branch, to submit their respective counter-affidavits, with which they all complied.

In her Counter-Affidavit^[2] dated February 18, 1997, accused Fufunan stated that she was informed by another Cashier, Gaudioso Ypanto, that FEBTC Check No. 742414 was signed and approved for encashment by petitioner and was to be considered as cash until it could be deposited on the next banking day. She alleged that she was forced by circumstances to follow the treatment of the check as cash, for to do otherwise would result in a shortage in her Teller's Transfer Form.

In his Counter-Affidavit with Counter-Complaint^[3] dated February 26, 1997, petitioner claimed that the grant of loan to Jovana Fish Farms, Inc. had been confirmed in the restructuring of its amount as approved by the Seniro Management Credit Committee, PNB Head Office. He also denied that the said check in the amount of P200,000.00 was allowed to remain as part of the cash on hand of PNB Cebu Branch.

On March 5, 1998, the Office of the Ombudsman for the Visayas rendered a Resolution,^[4] the dispositive portion of which reads:

In sum, there is probable cause that respondents CAYETANO TEJANO, JR. and AMELIA FUFUNAN in the discharge of their official, administrative duties and DOLORES ARANCILLO conspired with each other in the realization of the treatment of subject FEBTC check as "cash" in the PNB-Casino Vault, thereby substituting its face value of P200,000.00 in cash, giving unwarranted benefit with manifest partiality to Dolores Arancillo and prejudicing the government or the PNB in terms of foregone interest; and that their conjoint acts are violative of Sec. 3(e), RA 3019.

Premises considered, it is recommended that an INFORMATION for violation of Section 3(e), RA 3019 be filed against respondents CAYETANO A. TEJANO, JR., AMELIA FUFUNAN and DOLORES ARANCILLO before the Sandiganbayan.

SO RESOLVED.

05 March 1998, Cebu City.

On March 25, 1998, Graft Investigation Officer II Edgemelo C. Rosales of the Office of the Ombudsman for the Visayas filed an Information for violation of Section 3(e) of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act) against petitioner and his co-accused, Amelia Fufunan and Dolores Arancillo, before respondent Sandiganbayan, stating:

That on or about the 1st day of February 1991, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, public officers, having been duly appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to their office, conniving and confederating together and mutually helping with each other, with deliberate intent, evident bad faith and manifest partiality, did then and there willfully, unlawfully and feloniously accommodate a personal Far East Bank and Trust Company (FEBTC) check bearing SN-742414, dated February 1, 1991, in the amount of P200,000.00, issued by accused Dolores Arancillo, with accused Cayetano A. Tejano, Jr., endorsing the same, and directing accused Amelia Fufunan to place the said check at the PNB-Casino Vault of accused Amelia Fufunan, in lieu of the cash of P200,000.00, Philippine Currency, taken therefrom; which check remained at the said vault until the 7th day of February, 1991 and formed part of the cash therein, and treating the substituted check as part of the "operating cash" of the PNB-Casino Unit for a number of days and, thus, accused, in the discharge or performance of their official functions, had

given unwarranted benefits and advantage to Dolores Arancillo, to the damage and prejudice of the government.

CONTRARY TO LAW.

Cebu City (for Manila), Philippines.

March 25, 1998.

BAIL BOND RECOMMENDED : P30,000.00 each.^[5]

During the arraignment of petitioner on November 12, 1999 and accused Amelia Fufunan on August 13, 2001, both entered a plea of "not guilty" to the crime charged while accused Arancillo remained at large.

The prosecution sought to establish the liability of petitioner and accused Arancillo through the Audit Investigation Report dated October 25, 1993, prepared by the Commission on Audit (COA), and Cash Count Sheet dated February 5, 1991, submitted by Douglasia Canuel, Cashier of PNB Cebu Branch.

The Audit Investigation Report yielded that accused Arancillo temporarily borrowed the amount of P200,000.00, without interest, from the operating cash of the PNB Cebu Branch and issued a personal check, FEBTC Check No. 742414 dated February 1, 1991. On February 3, 1991, Elvisa Villamor, then Assistant Cashier of PNB, discovered the said check together with a note from accused Fufunan stating that the check was to form part of the "cash in vault temporarily," and that petitioner would be taking it back on February 4, 1991. On February 5, 1991, Villamor found that the check in question was still part of the cash in vault. Two days later, or on February 7, 1991, Villamor noticed that the check was no longer in the cash vault.^[6]

In her Cash Count Sheet, Douglasia Canuel noted the existence of FEBTC Check No. 742414 as part of the cash in vault on February 5, 1991.^[7]

Petitioner, on the other hand, cited Item "G" of the PNB Manual of Policies on Cash as part of his defense:

G. The encashment of checks whose amounts exceed the Teller's authority shall be approved by officers/supervisors, depending [on] the limit of their respective approving authorities.

In considering checks for approval, the Approving Officer/Personnel should be guided by the following:

1. Out-of-town checks (except those issued by us) should be accepted by the Bank for deposit/collection only and not for outright encashment. The encashment of these checks is purely an act of accommodation as the Bank is not obliged to pay these checks. Approval of these checks for payment, therefore, should be done on a very selective basis depending on the merits of each case, and always on the Approving Personnel's responsibility.^[8]

This document was also adopted by accused Fufunan as part of her defense.

Petitioner also averred in his Counter-Affidavit dated February 26, 1997 that he did not violate Section 19 of Executive Order No. 80 (The 1986 Revised Charter of the Philippine National Bank),^[9] as the loan to the corporation Jovana Fish Farms, Inc. was not a loan to Arancillo.^[10] He explained in his Further Suppletory Affidavit dated October 26, 1998 that his alleged accommodation of FEBTC was not a prohibited act in the performance of his functions because the encashment of checks was covered by the PNB Manual of Policies on Cash, COCI and Deposits Operations,^[11] and within his discretionary authority as Manager and Vice-President of PNB.^[12]

During the pre-trial conference on August 27, 2001, the prosecution and the defense, petitioner and accused Fufunan, entered into the following stipulation of facts:

- 1) That during the material time and date alleged in the Information, herein accused are all public officers, Cayetano Tejano, Jr., being then the Vice-President of Philippine National Bank and Manager of PNB-Cebu (Casino Unit) Branch; Dolores Arancillo, being then a Central Bank Assistant Regional Administrator; and Amelia Fufunan, a cashier-reliever at the PNB Cebu (Casino Unit) Branch;
- 2) That Cayetano Tejano, Jr., Dolores Arancillo, and Amelia Fufunan admit their identity as the same persons who are accused in this case;
- 3) That sometime in the early part of February, 1991, Cayetano A. Tejano, Jr. accommodated FEBTC Check No. 742414, dated February 1, 1991 in the amount of P200,000.00 of Dolores Arancillo and was kept in the PNB-Cebu (Casino Branch) vault from February 3 to 5, 1991;
- 4) That Amelia Fufunan was assigned as cashier-reliever at the PNB-Cebu (Casino Unit) on February 2, 1991 and prepared a Note addressed to Ms. Elvira M. Villamor to the effect that the attached check (referring to FEBTC Check No. 742414) formed part of the cash on hand;
- 5) That [Douglasia] Canuel conducted a cash count and prepared a cash count sheet, dated February 5, 1991 and duly acknowledged by Ms. Elvira Villamor;
- 6) That State Auditor IV Delia Monte De Ramos conducted an audit and prepared an Audit Investigation Report dated October 25, 1993;
- 7) That there exists PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;
- 8) That on or before February 7, 1991, FEBTC Check No. 74241^[4] disappeared and actual P200,000.00 cash appeared in the vault;
- 9) That after Fufunan, there was another cashier-reliever in the name of Elvira Villamor; and that Elvira Villamor also treated this check of P200,000.00 as part of the cash.

The following documents were also pre-marked by the prosecution, to wit:

- Exhibits- "A" - Audit Investigation Report dated October 25, 1993 conducted and prepared by Ms. Delia Monte De Ramos (COA State Auditor IV), consisting of 29 pages, including attachments;
- "A-1" - Signature of Delia Monte De Ramos appearing on page 7 of Exh. "A";
- "A-2" - SEC Reg. Certificate of Jovana Fish Farms;
- "A-3" - Certified xeroxed copy of FEBTC Check No. 742414 in the amount of P200,000.00, dated February 1, 1991 (back to back);
- "A-4" - Note of Amelia Fufunan to Ms. Elvira Villamor;
- "A-5" - Cash Count Sheet dated Feb. 5, 1991, prepared by Douglasia Canuel;
- "B" - Reply-Affidavit & Reply to Counter-Charge dated April 24, 1997, prepared by Delia Monte De Ramos, consisting of (4) pages, including attachment;
- "B-1" - Signature of Delia Monte De Ramos, appearing on page 3 of Exh. "B";
- "B-2" - Sworn Affidavit of Elvira M. Villamor, dated July 27, 1993, attesting to the fact that she saw the subject check inside the vault;
- "C" - Counter-Affidavit of accused Amelia Fufunan, dated Feb. 18, 1997, attesting to the fact that, indeed, she found Arancillo's FEBTC Check, dated February 1, 1991 in the amount of P200,000.00 inside the PNB vault and further found out that the same was treated as cash;
- "D" - Further Suppletory Affidavit of Cayetano Tejano, Jr., dated October 26, 1998.
- "D-1" - Signature of Cayetano Tejano, Jr. appearing on page 3 of Exh. "D."

On the part of the accused Tejano, the following documents were pre-marked:

- Exhibits- "1" - PNB Manual of Policies on Cash, COCI, and Deposit Operations, 1991 edition;
- "1-A" - Item "G" found on pages 25 and 26 of said Manual of Policies;