

FIRST DIVISION

[G.R. NO. 170453, October 30, 2006]

**NESTOR A. BERNARDINO AND CELEDONIA N. TOMAS,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

[G.R. NO. 170518]

**EUGELIO G. BARAWID, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Assailed in these consolidated petitions for review are the September 19, 2005 Decision^[1] of the Sandiganbayan which found petitioners guilty of falsification of public document in Criminal Case No. 27548 and its November 18, 2005 Resolution^[2] denying petitioners' motion for new trial.

The facts show that petitioner **Nestor A. Bernardino (Bernardino)** was the former Municipal Mayor of Guimba, Nueva Ecija and Chairman of the PreQualification Bid and Awards Committee (PBAC) for the construction of the extension of the public market of Guimba; while petitioner **Eugelio G. Barawid (Barawid)**, a Municipal Treasurer was a member of the PBAC. Petitioner **Celedonia N. Tomas (Tomas)** was the PBAC's acting Secretary. The other members of the PBAC were Municipal Councilors, Ernesto T. Mateo and Benito A. Rillo; Municipal Planning and Development Coordinator Efren N. Fronda; Municipal Budget Officer Abraham P. Coloma; Municipal Engineer Jose F. Mateo; Municipal Accountant Renato L. Esquivel; and non-government organization representatives Paulino G. Quindara and Luis F. Rendon, Jr.

The "**Minutes of the opening of bids**"^[3] show that on December 8, 1997, the PBAC members convened at the Municipal Library of Guimba, Nueva Ecija. The Acting Chairman, assisted by Commission on Audit (COA) representative Rolando E. Ronquillo (Ronquillo), assessed the qualifications of the four bidders who participated and thereafter awarded the project to Mascom Design and Engineering International (MASCOS) whose bid was determined to be the lowest and most advantageous to the government of Guimba. The Minutes was signed by petitioner Tomas in her capacity as the acting Secretary of the PBAC.

On the same date, petitioners Bernardino and Barawid and the other PBAC members signed a "**Prequalification Bid and Award Committee**"^[4] stating that "after due deli[b]eration, the committee resolved as it is hereby resolved, to recommend [the] Award [of the] Contract [to MASCOS] for offering the lowest [bid]." Their signatures also appear in an "**Abstract of Bidding**"^[5] and "**Abstract of Proposal**"^[6] both

reflecting the names of the four bidders and their respective bids.

Meanwhile, prior to the construction of the public market extension, prosecution witness Jose Lucius Pocholo Dizon (Mayor Dizon) was elected Municipal Mayor of Guimba, Nueva Ecija in the May 1998 local elections. He thereafter conducted a public bidding for the construction of the same extension of the public market and awarded the project to KYRO Builder as the lowest bidder. Consequently, MASCOM filed before the Office of the Ombudsman a criminal complaint against Mayor Dizon and petitioner Barawid for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

In his Rejoinder-Affidavit,^[7] Mayor Dizon contended that the award to KYRO is proper because the project could not be validly given to MASCOM as there was in fact no competitive public bidding held on December 8, 1997. In support thereof, he attached the similarly dated June 27, 2000 affidavits^[8] of former PBAC members, namely, Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., stating that no public bidding was held in connection with the construction of the Guimba public market extension nor was the local PBAC convened on December 8, 1997. Affiants also declared that the documents in connection with the alleged bidding were delivered to their residence/office; and that they signed the same upon the representation of MASCOM's representative that the documents were necessary for the Philippine National Bank loan application of the municipality in connection with the construction of the public market.^[9]

On the basis of the admission of the said affiants, the Office of the Ombudsman dismissed the case against Mayor Dizon and petitioner Barawid and instead filed the instant case for falsification of public documents under Article 171, paragraph 2 of the Revised Penal Code against all the members of the PBAC members including the herein petitioners.

The Information charged petitioners and the PBAC members of falsification by making it appear in the "Minutes of the opening of bids," "Prequalification Bid and Award Committee," "Abstract of Proposal," and "Abstract of Bidding," that they and COA representative conducted a public bidding on December 8, 1997, participated in by four bidders, when no such bidding was in fact conducted, to wit:

That sometime on December 8, 1997, or immediately prior or subsequent thereto, in Guimba, Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, accused Celedonia N. Tomas, Acting Secretary of the Prequalification, Bids and Award Committee (PBAC) of the Municipal Government of Guimba, Nueva Ecija; Nestor A. Bernardino, then Mayor and PBAC Chairman; and the PBAC members, namely: Benito A. Rillo and Ernesto T. Mateo, both members of the Sangguniang Bayan; Eugelio G. Barawid, Municipal Treasurer; Efren N. Fronda, Municipal Planning and Development Coordinator; Abraham P. Coloma, Municipal Budget Officer; Jose F. Mateo, Municipal Engineer; Renato L. Esquivel, Municipal Accountant; and Paulino G. Quindara and Luis [F.] Rendon, Jr., NGO representative, while in the performance of and taking advantage of their official positions, conspiring and confederating with one another, did then and there, willfully, unlawfully and feloniously prepare and make it

appear in the "ABSTRACT OF BIDDING", the "ABSTRACT OF PROPOSAL", the MINUTES OF THE OPENING OF BIDS" and the "PBAC RECOMMENDATION", that a public bidding for the construction of the New Guimba Public Market Extension (wet market) was concluded, that four (4) firms, to wit:

1. Bounty Builders
2. M.O.M Enterprise
3. F.L. Reguyal Construction
4. MASCOM Design and Engineering International

purportedly participated therein and submitted their bids, that a COA representative was supposedly present during the opening of the bids, and that the PBAC supposedly convened and deliberated on the purported bids when, in truth and in fact, the aforesaid firms and the COA representative did not so participate and the PBAC did not actually convene and deliberate on the purported bids, as in fact, no such public bidding was conducted and said documents were executed to justify the award of the contract to build the aforesaid public market extension to MASCOM Design and Engineering International to the damage and prejudice of the government.

CONTRARY TO LAW.^[10]

Upon arraignment, petitioners and the other PBAC members, except for Benito A. Rillo who died on December 5, 2001, pleaded not guilty.

At the trial, prosecution witness and COA representative Ronquillo declared that he did not attend any public bidding regarding the construction of the Guimba public market on December 8, 1997.^[11] He admitted, however, that he has no personal knowledge whether or not a bidding was truly conducted on said date.^[12] The same declaration was made by prosecution witness Mayor Dizon who admitted that he does not know whether the PBAC conducted a public bidding.^[13]

The prosecution also offered in evidence the affidavits of PBAC members, Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., in support of its theory that no public bidding was held by the PBAC on December 8, 1997. Counsel for the said affiants admitted the genuineness of the signature appearing in the affidavits.^[14]

Petitioners and the PBAC members filed their separate motions for leave to file demurrer to evidence but were denied. They were, however, given a 10 day period within which to file their respective demurrer to evidence without prior leave of court, subject to the legal consequences under Section 23, Rule 119 of the Rules of Court. Nevertheless, petitioners and the PBAC members filed separate demurrer to evidence.

On September 19, 2005, the Sandiganbayan rendered the assailed judgment of conviction holding that the Affidavits of Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr., as corroborated by the testimonies of COA representative Ronquillo and

Mayor Dizon proved beyond reasonable doubt that no public bidding was conducted by the PBAC on December 8, 1997. The dispositive portion thereof, states:

WHEREFORE, judgment is hereby rendered finding accused Nestor A. Bernardino, Ernesto T. Mateo, Eugelio G. Barawid, Efren [N.] Fronda, Abraham [P.] Coloma, Jr., Jose F. Mateo, Renato [L.] Esquivel, Paulino [G.] Quindara, Luis [F.] Rendon, Jr. and Celedonia N. Tomas guilty beyond reasonable doubt of the offense charged in the Amended Information and, with the application of the Indeterminate Sentence law and without any mitigating or aggravating circumstance, hereby sentencing each of them to suffer the indeterminate penalty of TWO (2) Years, FOUR (4) MONTHS and ONE (1) DAY of *prision correccional* as minimum to EIGHT (8) YEARS and ONE DAY of *prision mayor* as maximum with the accessories thereof and to pay a fine of TWO THOUSAND PESOS (P2,000.00) with costs against the accused.

SO ORDERED.^[15]

Petitioners Bernardino and Tomas filed a motion for new trial^[16] on the basis of the alleged newly discovered evidence consisting of the affidavits executed in 2003 to 2005 by Renato L. Esquivel, Ernesto T. Mateo, Efren N. Fronda, Jose F. Mateo, Abraham P. Coloma, Jr., Eugelio G. Barawid,^[17] Luis F. Rendon, Jr.,^[18] and Paulino G. Quindara,^[19] in connection with a separate administrative case filed against said affiants for dishonesty and grave misconduct before the Office of the Ombudsman. Affiants stated in the said affidavits that there was in fact a public bidding held on December 8, 1997; and that they executed their June 27, 2000 affidavit stating that no bidding occurred, because of the fear and intimidation employed by Mayor Dizon who needed said affidavits to bolster his defense in the case for violation of the Anti-Graft and Corrupt Practices Act filed against him. Petitioners Bernardino and Tomas claimed they were not party to the said administrative case against the affiants and that it was only after the promulgation of the decision in the falsification case that affiants apologized and informed them of the existence of said 2003 and 2005 affidavits.

Petitioner Barawid and the other PBAC members also filed their separate motion for new trial^[20] on the ground of alleged errors of law and irregularities in the trial of their case.

On November 18, 2005, the Sandiganbayan denied the separate motions for new trial.^[21] Renato Esquivel, Jose Mateo, Efren Fronda, Luis Rendon, Jr., and Paulino Quindara filed a petition before this Court docketed as G.R. No. 170499 but was denied in a Resolution dated June 26, 2006. Their motion for reconsideration was denied with finality on September 18, 2006.

Petitioner Barawid filed a separate petition docketed as G.R. No. 170518 which was consolidated with the petition of Bernardino and Tomas in G.R. No. 170453.^[22]

The issue is whether the guilt of petitioners was proven beyond reasonable doubt.

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. To justify the conviction of the accused, the prosecution must

adduce the quantum of evidence sufficient to overcome the constitutional presumption of innocence. The prosecution must stand or fall on its evidence and cannot draw strength from the weakness of the evidence of the accused. Accordingly, when the guilt of the accused-appellants have not been proven with moral certainty, it is our policy of long standing that their presumption of innocence must be favored and their exoneration be granted as a matter of right.^[23]

In the instant case, petitioners were charged with falsification under paragraph 2, Article 171 of the Revised Penal Code, by causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate. Its elements are: (1) that the offender is a public officer, employee or notary public; (2) that he takes advantage of his official position; (3) that he falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not in fact so participate.^[24]

The evidence presented by the prosecution to establish that no bidding was conducted on December 8, 1997 were the June 27, 2000 affidavits of Luis F. Rendon, Jr., Paulino G. Quindara, Renato L. Esquivel, Jose F. Mateo, Ernesto T. Mateo, Efren N. Fronda and Abraham P. Coloma, Jr. The testimonies of COA representative Ronquillo and Mayor Dizon could not be considered for purposes of determining whether a public bidding was indeed held on that day because of their admission that they do not have personal knowledge whether or not said bidding was indeed conducted.

Pertinent portions of the similarly worded affidavit of Luis F. Rendon, Jr., and Paulino G. Quindara, reads:

5) That the truth of the matter is that no public bidding for the contract to construct the new public market [extension] x x x of the Municipality of Guimba, Nueva Ecija was actually held or conducted on 08 December 1997 nor was the Local PBAC convened in connection therewith, and that bidding documents relative thereto purporting to show that a public bidding was conducted in accordance with the applicable laws, rules and regulations on public bidding and award of contracts were hand delivered to me in my residence by a representative of Mascom, a certain Caloy Santos for my signature.

6) That I have no knowledge of and/or participation in the preparation of the subject bidding documents, except my signature thereon.^[25]

Renato L. Esquivel deposed that:

3. That no actual public bidding was held and/or conducted on 08 December 1997 in connection with the contract for the construction of the new public market [extension] x x x of the Municipality of Guimba, Nueva Ecija as supported by the following:

a. The Office of the Municipal Accountant of the Municipality of Guimba, Nueva Ecija, was not furnished any communication/letters/notice stating that such public bidding will be conducted which is normally done before any public bidding is held.