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[G.R. No. 81563. December 19, 1989]

AMADO C. ARIAS, *petitioner, vs.* **THE SANDIGANBAYAN,** *respondent.*

[G.R. No. 82512. December 19, 1989]

CRESENCIO D. DATA, *petitioner, vs.* **THE SANDIGANBAYAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY; PROOF OF EXISTENCE THEREOF. — A conspiracy need not be proved by direct evidence of the acts charged, but may and generally must be proven by a number of indefinite acts, conditions and circumstances.

2. ID.; ID.; ID.; ESTABLISHED BY THE SILENCE AND INACTION OF ACCUSED. — This case presents a conspiracy of silence and inaction where chiefs of office who should have been vigilant to protect the interest of the Government in the purchase of Agleham's two-hectare riceland, accepted as gospel truth the certifications of their subordinates, and approved without question the million-peso purchase which, by the standards prevailing in 1976-78, should have pricked their curiosity and prompted them to make inquiries and to verify the authenticity of the documents presented to them for approval. The petitioners kept silent when they should have asked questions; they looked the other way when they should have probed deep into the transaction. Since it was too much of a coincidence that both petitioners were negligent at the same time over the same transaction, the Sandiganbayan was justified in concluding that they connived and conspired to act in that manner to approve the illegal transaction which would favor the seller of the land and defraud the Government.

3. ADMINISTRATIVE LAW; STATE AUDIT CODE OF THE PHILIPPINES; ASPECTS OF THE AUDITORIAL FUNCTION OF AN AUDITOR. — The primary function of an auditor is to

Supreme Court E-Library

prevent irregular, unnecessary, excessive or extravagant expenditures of government funds. The auditorial function of an auditor, as a representative of the Commission on Audit, comprises three aspects: (1) examination; (2) audit: and (3) settlement of the accounts, funds, financial transactions and resources of the agencies under their respective audit jurisdiction. Examination, as applied to auditing, means "to probe records, or inspect securities or other documents; review procedures, and question persons, all for the purpose of arriving at an opinion of accuracy, propriety, sufficiency, and the like."

4. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; TAX DECLARATION; A GUIDE OR INDICATOR OF THE REASONABLE VALUE OF THE PROPERTY.** — The acquisition of Agleham's riceland was not done by expropriation but through a negotiated sale. In the course of the negotiations, there was absolutely no allegation nor proof that the price of ₱80 per square meter was its fair market value in 1978, *i.e.*, eleven (11) years ago. What the accused did was to prove the value of the land through fake tax declarations, false certifications and a forged sworn statement on the current and fair market value of the real property ubmitted by the accused in support of the deed of sale. Because fraudulent documents were used, it may not be said that the State agreed to pay the price on the basis of its fairness, for the Government was in fact deceived concerning the reasonable value of the land. When Ocol testified in 1983 that ₱80 was a reasonable valuation for the Agleham's land, he did not clarify that was also its reasonable value in 1975, before real estate values in Pasig soared as a result of the implementation of the Mangahan Floodway Project. Hence, Ocol's testimony was insufficient to rebut the valuation in Agleham's genuine 1978 Tax Declaration No. 47895 that the fair valuation of the riceland then was only ₱5 per square meter. A Tax Declaration is a guide or indicator of the reasonable value of the property.

5. **ID.; EVIDENCE; PARTIALITY; MAYBE PROVEN BY ATTENDANT CIRCUMSTANCES IN THE ABSENCE OF DIRECT EVIDENCE.** — Partiality for Agleham/Gutierrez may be inferred from their having deliberately closed their eyes to the defects and irregularities of the transaction in his favor and their seeming neglect, if not deliberate omission, to check, the authenticity of the documents presented to them for approval.

Supreme Court E-Library

Since partiality is a mental state or predilection, in the absence of direct evidence, it may be proved by the attendant circumstances.

GRIÑO-AQUINO, *J.*, *dissenting*:

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY; MUST BEPROVEN BY A NUMBER OF INDEFINITE ACTS, CONDITIONS AND CIRCUMSTANCES. — A conspiracy need not be proved by direct evidence of the acts charged, but may and generally must be proven by a number of indefinite acts, conditions and circumstances.

2. ADMINISTRATIVE LAW; STATE AUDIT CODE OF THE PHILIPPINES; PRIMARY FUNCTION OF AN AUDITOR; EXPLAINED. — We cannot accept Arias' excuse that because the deed of sale had been signed and the property transferred to the Government which received a title in its name, there was nothing else for him to do but approve the voucher for payment. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds.

3. ID.; ID.; AUDITORIAL FUNCTION OF AN AUDITOR; ASPECTS, ENUMERATED. — The auditorial function of an auditor, as a representative of the Commission on Audit, comprises three aspects: (1) examination; (2) audit: and (3) settlement of the accounts, funds, financial transactions and resources of the agencies under their respective audit jurisdiction. Examination, as applied to auditing, means "to probe records, or inspect securities or other documents; review procedures, and question persons, all for the purpose of arriving at an opinion of accuracy, propriety, sufficiency, and the like."

APPEARANCES OF COUNSEL

Paredes Law Office for petitioner.
The Solicitor General for respondent.

Supreme Court E-Library

DECISION

GUTIERREZ, JR., *J.*:

The facts of this case are stated in the dissenting opinion of Justice Carolina C. Griño-Aquino which follows this majority opinion. The dissent substantially reiterates the draft report prepared by Justice Griño-Aquino as a working basis for the Court's deliberations when the case was being discussed and for the subsequent votes of concurrence or dissent on the action proposed by the report.

There is no dispute over the events which transpired. The division of the Court is on the conclusions to be drawn from those events and the facts insofar as the two petitioners are concerned. The majority is of the view that Messrs. Arias and Data should be acquitted on grounds of reasonable doubt. The Court feels that the quantum of evidence needed to convict petitioners Arias and Data beyond reasonable doubt, as co-conspirators in the conspiracy to cause undue injury to the Government through the irregular disbursement and expenditure of public funds, has not been satisfied.

In acquitting the petitioners, the Court agrees with the Solicitor General[1] who, in 80 pages of his consolidated manifestation and motion, recommended that Messrs. Arias and Data be acquitted of the crime charged, with costs *de oficio*. Earlier, Tanodbayan Special Prosecutor Eleuterio F. Guerrero had also recommended the dropping of Arias from the information before it was filed.

There is no question about the need to ferret out and convict public officers whose acts have made the bidding out and construction of public works and highways synonymous with graft or criminal inefficiency in the public eye. However, the remedy is not to indict and jail every person who may have ordered the project, who signed a document incident to its

[1] The Solicitor General was assisted by Assistant Solicitor General Zoilo A. Andi and Solicitor Luis F. Simon.

Supreme Court E-Library

construction, or who had a hand somewhere in its implementation. The careless use of the conspiracy theory may sweep into jail even innocent persons who may have been made unwitting tools by the criminal minds who engineered the defraudation.

Under the Sandiganbayan's decision in this case, a department secretary, bureau chief, commission chairman, agency head, and all chief auditors would be equally culpable for every crime arising from disbursements which they have approved. The department head or chief auditor would be guilty of conspiracy simply because he was the last of a long line of officials and employees who acted upon or affixed their signatures to a transaction. Guilt must be premised on a more knowing, personal, and deliberate participation of each individual who is charged with others as part of a conspiracy.

The records show that the six accused persons were convicted in connection with the overpricing of land purchased by the Bureau of Public Works for the Mangahan Floodway Project. The project was intended to ease the perennial floods in Marikina and Pasig, Metro Manila.

The accused were prosecuted because 19,004 square meters of "riceland" in Rosario, Pasig which had been assessed at ₱5.00 a square meter in 1973 were sold as "residential land" in 1978 for ₱80.00 a square meter. The land for the floodway was acquired through negotiated purchase.

We agree with the Solicitor-General that the assessor's tax valuation of ₱5.00 per square meter of land in *Rosario, Pasig*, Metro Manila is completely unrealistic and arbitrary as the basis for conviction.

Herein lies the first error of the trial court.

It must be stressed that the petitioners are not charged with conspiracy in the falsification of public documents or preparation of spurious supporting papers. The charge is causing undue injury to the Government and giving a private party unwarranted benefits through manifest partiality, evident bad faith, or inexcusable negligence.

Supreme Court E-Library

The alleged undue injury in a nutshell is the Government purchase of land in Pasig, Rizal for ₱80.00 a square meter instead of the ₱5.00 value per square meter appearing in the tax declarations and fixed by the municipal assessor, not by the landowner.

The Sandiganbayan, without any clear factual basis for doing so has assumed that the ₱5.00 per square meter value fixed by the assessor in the tax declarations was the correct market value of the Mangahan property and if the Government purchased the land for ₱80.00 a square meter, it follows that it must have suffered undue injury.

The Solicitor General explains why this conclusion is erroneous:

"1. *No undue injury was caused to the Government.* —

a. *The ₱80. 00 per square meter acquisition cost is just, fair and reasonable.*

It bears stress that the Agleham property was acquired through negotiated purchase. It was, therefor, nothing more than an ordinary contract of sale where the purchase price had to be arrived at by agreement between the parties and could never be left to the discretion of one of the contracting parties (Article 1473, New Civil Code). For it is the essence of a contract of sale that there must be a meeting of the minds between the seller and the buyer upon the thing which is the object of the contract and upon the price (Article 1475, New Civil Code). Necessarily, the parties have to negotiate the reasonableness of the price, taking into consideration such other factors as location, potentials, surroundings and capabilities. After taking the foregoing premises into consideration, the parties have, thus, arrived at the amount of ₱80.00 per square meter as the fair and reasonable price for the Agleham property.

It bears stress that the prosecution failed to adduce evidence to prove that the true and fair market value in 1978 of the Agleham property was indeed ₱5.00 per square meter only as stated by the assessor in the tax declaration (Exhibit W). On the contrary, the prosecution's principal witness Pedro Ocol, the Assistant Municipal Assessor of Pasig, admitted that the purchase price of ₱80.00 per square meter paid for the Agleham property as stated in the Deed of Sale (Exhibit G) is 'reasonable' (tsn, August 19,

Supreme Court E-Library

1983, p. 20) and 'fair' (*Ibid.*, p. 76); that 'the value of lands within the town of Pasig ranges from ₱80.00 to ₱500.00' (*Ibid.*, p. 21); that the Agleham property is 'around 300 meters' from Ortigas Avenue, 'adjacent to the existing Leongson [Liamson] Subdivision x x x end near Eastland Garment Building' (*Ibid.*, pp. 12-13); that said property is surrounded by factories, commercial establishments and residential subdivisions (*Ibid.*, pp. 73-74); that the ₱5.00 per square meter assessed valuation of the Agleham property appearing on the tax declaration (Exhibit W) was based on actual use only (*Ibid.*, pp. 26-27), it being the uniform rate for all ricefields in Pasig irrespective of their locations (*Ibid.*, pp. 72-74) and did not take into account the existence of many factories and subdivisions in the area (*Ibid.*, pp. 25-27, 72-74), and that the assessed value is different from and always lower than the actual market value (*Ibid.*, pp. 22-23)." (At pp. 256-259, *Rollo*)

A negotiated purchase may usually entail a higher buying price than one arrived at in the course of expropriation proceedings.

In *Export Processing Zone Authority v. Dulay* (149 SCRA 305, 310 [1987]) we struck down the martial law decree that pegged just compensation in eminent domain cases to the assessed value stated by a land owner in his tax declaration or fixed by the municipal assessor, whichever is lower. Other factors must be considered. These factors must be determined by a court of justice and not by municipal employees.

In the instant case, the assessor's low valuation, in the fixing of which the landowner had no participation, was used for a purpose infinitely more weighty than mere expropriation of land. It forms the basis for a criminal conviction.

The Court is not prepared to say that ₱80.00 to ₱500.00 a square meter for land in Pasig in 1978 would be a fair valuation. The value must be determined in eminent domain proceedings by a competent court. We are certain, however, that it cannot be ₱5.00 a square meter. Hence, the decision, insofar as it says that the "correct" valuation is ₱5.00 per square meter and on that basis convicted that petitioners of causing undue injury, damage, and prejudice to the Government because of gross overpricing, is grounded on shaky foundations.

Supreme Court E-Library

There can be no overpricing for purposes of a criminal conviction where no proof adduced during orderly proceedings has been presented and accepted.

The Court's decision, however, is based on a more basic reason. Herein lies the principal error of the respondent court.

We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

There appears to be no question from the records that documents used in the negotiated sale were falsified. A key tax declaration had a typewritten number instead of being machine numbered. The registration stampmark was antedated and the land reclassified as residential instead of ricefield. But were the petitioners guilty of conspiracy in the falsification and the subsequent charge of causing undue injury and damage to the Government?

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies

Supreme Court E-Library

or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.

Was petitioner Arias part of the planning, preparation, and perpetration of the alleged conspiracy to defraud the government?

Arias joined the Pasig office on July 19, 1978. The negotiations for the purchase of the property started in 1977. The deed of sale was executed on April 20, 1978. Title was transferred to the Republic on June 8, 1978. In other words, the transaction had already been consummated before his arrival. The pre-audit, incident to payment of the purchase, was conducted in the first week of October, 1978. Arias points out that apart from his signature on the voucher, there is no evidence linking him to the transaction. On the contrary, the other co-accused testified they did not know him personally and none approached him to follow up the payment.

Should the big amount of ₱1,520,320.00 have caused him to personally investigate the smallest details of the transaction?

Yes, if the land was really worth only ₱5.00 a square meter. However, if land in Pasig was already worth ₱80.00 a square meter at the time, no warning bell of intuition would have sounded an inner alarm. Land along Ortigas Avenue on the way to Pasig is now worth ₱20,000.00 to ₱30,000.00 *a square meter*. The falsification of the tax declaration by changing "riceland" to "residential" was done before Arias was assigned to Pasig. Besides, there is no such thing as "riceland" in inner Metro Manila. Some lots in outlying or easily flooded areas may still be planted to rice or *kangkong* but this is only until the place is dedicated to its real purpose which is commercial, industrial, or residential. If the Sandiganbayan is going to send somebody

Supreme Court E-Library

to jail for six years, the decision should be based on firmer foundations.

The Sandiganbayan asked why Arias kept the documents from October, 1978 to June 23, 1982. Arias explained that the rules of the Commission on Audit require auditors to keep these documents and *under no circumstance* to relinquish custody to other persons. Arias was auditor of the Bureau of Public Works in Pasig up to September 1 , 1981. The seven months delay in the formal turnover of custody to the new auditor was explained by prosecution witness Julito Pesayco, who succeeded him as auditor and who took over the custody of records in that office.

The main reason for the judgment of conviction, for the finding of undue injury and damage to the Government is the alleged gross overprice for the land purchased for the floodway project. Assuming that ₱80.00 is indeed exorbitant, petitioner Arias cites his testimony as follows:

"Q In conducting the pre-audit, did you determine the reasonableness of the price of the property?

A In this case, the price has been stated, the transaction had been consummated and the corresponding Transfer Certificate of Title had been issued and transferred to the government of the Philippines.

The auditors have no more leeway to return the papers and then question the purchase price.

Q Is it not a procedure in your office that before payment is given by the government to private individuals there should be a pre-audit of the papers and the corresponding checks issued to the vendor?

A Correct, Your Honor, but it depends on the kind of transaction there is.

Q Yes, but in this particular case, the papers were transferred to the government without paying the price. Did you not consider that rather odd or unusual? (TSN, page 17, April 27, 1987)

A No, Your Honor.

Supreme Court E-Library

Q Why not?

A Because in the Deed of Sale as being noted there, there is a condition that no payments will be made unless the corresponding title in the payment of the Republic is committed is made.

Q *In this case you said that the title is already in the name of the government*?

A *Yes, Your Honor. The only thing we do is to determine whether there is an appropriation set aside to cover the said specification. As of the price it is under the sole authority of the proper officer making the sale.*

Q My point is this. Did you not consider it unusual for a piece of property to be bought by the government; the sale was consummated; the title was issued in favor of the government without the price being paid first to the seller?

A *No, Your Honor. In all cases usually, payment made by the government comes later than the transfer.*

Q *That is usual procedure utilized in road right of way transaction?*

A Yes, Your Honor. (TSN, p. 18, April 27, 1987).

Q And of course as auditor, 'watch-dog' of the government there is also that function you are also called upon by going over the papers . . . (TSN, page 22, April 27, 1987) . . . vouchers called upon to determine whether there is any irregularity as at all in this particular transaction, is it not?

A Yes, Ma'am.

Q And that was in fact the reason why you scrutinized also, not only the tax declaration but also the certification by Mr. Jose and Mr. Cruz?

A As what do you mean of the certification, ma'am?

Q Certification of Mr. Jose and Mr. Cruz in relation to PD No. 296.

A *They are not required documents that an auditor must see.* (TSN, page 23, April 27, 1987).

Supreme Court E-Library

and continuing:

A. . . . . The questioning of the purchase price *is now beyond the authority of the auditor* because it is inasmuch as the amount involved is beyond his counter-signing authority. (TSN, page 35, April 27, 1987)." (At pp. 15-16, Petition. Italics supplied)

The Solicitor General summarizes the participation of petitioner Data as follows:

"As regards petitioner Data's alleged participation, the evidence on record shows that as the then District Engineer of the Pasig Engineering District he created a committee, headed by Engr. Priscillo Fernando with Ricardo Asuncion, Alfonso Mendoza, Ladislao Cruz, Pedro Hucom and Carlos Jose, all employees of the district office, as members, specifically to handle the Mangahan Floodway Project, gather and verify documents, conduct surveys, negotiate with the owners for the sale of their lots, process claims and prepare the necessary documents; he did not take any direct and active part in the acquisition of land for the Mangahan floodway; it was the committee which determined the authenticity of the documents presented to them for processing and on the basis thereof prepared the corresponding deed of sale; thereafter, the committee submitted the deed of sale together with the supporting documents to petitioner Data for signing; on the basis of the supporting certified documents which appeared regular and complete on their face, petitioner Data, as head of the office and the signing authority at that level, merely signed but did not approve the deed of sale (Exhibit G) as the approval thereof was the prerogative of the Secretary of Public Works; he thereafter transmitted the signed deed of sale with its supporting documents to Director Anolin of the Bureau of Public Works who in turn recommended approval thereof by the Secretary of Public Works; the deed of sale was approved by the Asst. Secretary of Public Works after a review and re-examination thereof at that level; after the approval of the deed of sale by the higher authorities the covering voucher for payment thereof was prepared which petitioner Data signed; petitioner Data did not know Gutierrez and had never met her during the processing and payment of her claims (tsn, February 26, 1987, pp. 10-14, 16-24, 31-32)." (At pp. 267-268, *Rollo*.)

On the alleged conspiracy, the Solicitor General argues:

Supreme Court E-Library

"It is respectfully submitted that the prosecution likewise has not shown any positive and convincing evidence of conspiracy between the petitioners and their co-accused. There was no direct finding of conspiracy. Respondent Court's inference on the alleged existence of conspiracy merely upon the purported 'pre-assigned roles (of the accused) in the commission of the (alleged) illegal acts in question' is not supported by any evidence on record. Nowhere in the seventy-eight (78) page Decision was there any specific allusion to some or even one instance which would link either petitioner Arias or Data to their co-accused in the planning, preparation and/or perpetration, if any, of the purported fraud and falsifications alleged in the Information. That petitioners Data and Arias happened to be officials of the Pasig District Engineering Office who signed the deed of sale and passed on pre-audit the general voucher covering the subject sale, respectively, does not raise any presumption or inference that they were part of the alleged plan to defraud the Government, as indeed there was none. It should be remembered that, as aboveshown, there was no undue injury caused to the Government as the negotiated purchase of the Agleham property was made at the fair and reasonable price of ₱80.00 per square meter.

That there were erasures and superimpositions of the words and figures of the purchase price in the deed of sale from ₱1,546,240.00 to ₱1,520,320.00 does not prove conspiracy. It may be noted that there was a reduction in the affected area from the estimated 19,328 square meters to 19,004 square meters as approved by the Land Registration Commission, which resulted in the corresponding reduction in the purchase price from ₱1,546,240.00 to ₱1,520,320.00. The erasures in the deed of sale were simple corrections that even benefited the Government.

Moreover, contrary to the respondent Court's suspicion, there was nothing irregular in the use of the unapproved survey plan/ technical description in the deed of sale because the approval of the survey plan/technical description was not a prerequisite to the approval of the deed of sale. What is important is that before any payment is made by the Government under the deed of sale the title of the seller must have already been cancelled and another one issued to the Government incorporating therein the technical description as approved by the Land Registration Commission, as what obtained in the instant case." At pp. 273-275, *Rollo*)

Supreme Court E-Library

We agree with the counsel for the People. There is no adequate evidence to establish the guilt of the petitioners, Amado C. Arias and Cresencio D. Data, beyond reasonable doubt. The inadequate evidence on record is not sufficient to sustain a conviction.

WHEREFORE, the questioned decision of the Sandiganbayan insofar as it convicts and sentences petitioners Amado C. Arias and Cresencio D. Data is hereby SET ASIDE. Petitioners Arias and Data are acquitted on grounds of reasonable doubt. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Gancayco, Bidin, Cortés, and *Medialdea, JJ.*, concur.

Griño-Aquino, J., please see dissenting opinion.

Feliciano, Padilla, Sarmiento, and *Regalado, JJ.*, join the dissent of *J.* Griño-Aquino.

DISSENTING OPINION

GRIÑO-AQUINO, *J.*:

The lone issue in these consolidated petitions for review is whether the Sandiganbayan committed a reversible error in convicting the petitioners, Amado C. Arias and Cresencio D. Data, of having violated Section 3, paragraph (e), of the Anti-Graft and Corrupt Practices Act, in connection with the scandalous overpricing of land purchased by the Government as right of way for its Mangahan Floodway Project in Pasig, Rizal. The pertinent provision of the Anti-Graft Law reads as follows:

"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:

"x x x x x x x x x

Supreme Court E-Library

"(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

The amended information against them, to which they pleaded not guilty, alleged:

"That on or about the period covering April, 1978 to October 1978, in Rosario, Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, accused *Cresencio D. Data*, being then the district Engineer of the province of Rizal, Ministry of Public Works, and as such, headed and supervised the acquisition of private lands for the right-of-way of the Mangahan Floodway Project of the Government at Sitio Mangahan, Rosario, Pasig, Metro Manila; accused *Priscillo G. Fernando*, then the Supervising Engineer of the Office of the District Engineer of Rizal, Ministry of Public Works who acted as assistant of accused Cresencio D. Data in the Mangahan Floodway Project; accused *Ladislao G. Cruz*, then the Senior Engineer of the Office of the District Engineer of Rizal, Ministry of Public Works, who was charged with the acquisition of lots needed for the Mangahan Floodway Project; accused *Carlos L. Jose* then the Instrumentman of the office of the District Engineer of Rizal, Ministry of Public Works who acted as the surveyor of the Mangahan Floodway Project; accused *Claudio H. Arcaya*, then the Administrative Officer I of the Rizal District Engineer's Office, Ministry of Public Works who passed upon all papers and documents pertaining to private lands acquired by the Government for the Mangahan Floodway Project; and accused *Amado C. Arias*, then the Auditor of Rizal Engineering District, Pasig, Metro Manila, who passed upon and approved in audit the acquisition as well as the payment of lands needed for the Mangahan Floodway Project *all taking advantage of their public and official positions, and conspiring, confederating and confabulating with accused Natividad C. Gutierrez, the attorney-in-fact of Benjamin Agleham, who is the registered owner of a parcel of land situated at Rosario, Pasig, Metro Manila and covered by Original Certificate of Title No. 0097, with accused Ladislao G. Cruz, Carlos L. Jose and Claudio Arcaya acting with evident bad faith, while accused Cresencio D. Data, Priscillo G. Fernando and Amado C. Arias*, acting with manifest

Supreme Court E-Library

partiality in the discharge of their official public and/or administrative functions, did then and there willfully, unlawfully and feloniously cause undue injury, damage and prejudice to the Government of the Republic of the Philippines by causing, allowing and/or approving the illegal and irregular disbursement and expenditure of public funds in favor of and in the name of Benjamin P. Agleham in the amount of ₱1,520,320.00 under General Voucher No. 8-047, supported by a certification, dated September 14, 1978, which was purportedly issued by the Municipal Treasurer of Pasig, and certified xerox copies of Tax Declarations Nos. 47895 and A-018-00911, both in the name of Benjamin P. Agleham, and an alleged owner's copy of Tax Declaration No. 49948, in the name of the Republic of the Philippines, said *supporting documents having been falsified by the accused to make it appear that the land mentioned in the above-stated supporting papers is a residential land with a market value of ₱80.00* per square meter and that 19,004 square meters thereof were transferred in the name of the Government of the Republic of the Philippines under Tax Declaration No. 49948, when in truth and in fact, the afore-stated land is actually a riceland with a true and actual market value of ₱5.00 per square meter only and Tax Declaration No. 49948 was truly and officially registered in the names of spouses Moises Javillonar and Sofia San Andres, not in the name of the Government, and refers to a parcel of land at Sagad, Pasig, Metro Manila; that the foregoing falsities were committed by the accused to conceal the fact that the true and actual price of the 19,004 square meters of land of Benjamin P. Agleham, which was acquired in behalf of the Government by way of negotiated purchase by the accused officials herein for the right of way of the Mangahan Floodway project at an overprice of ₱1,520,320.00 was ₱92,020.00 only; and finally, upon receipt of the over priced amount, the accused misappropriated, converted and misapplied the excess of the true and actual value of the above-mentioned land, *i.e.*, ₱1,428,300.00 for their own personal needs, uses and benefits, to the damage and prejudice of the Government in the amount of ₱1,428,800.00." (pp. 29-31, *Rollo* of G.R. No. 81563.)

Priscillo Fernando did not face trial for he has remained at large, his present whereabouts being unknown (p. 48, Sandiganbayan Decision, p. 75, *Rollo* of G.R. No. 81563).

In 1975, the Bureau of Public Works initiated the Mangahan Floodway Project to ease the perennial floods affecting the towns of Marikina and Pasig, Metro Manila. The project would

Supreme Court E-Library

traverse the northern and southern portions of Ortigas Avenue in Pasig, Metro Manila (Exhibits A and A-1). An announcement was published in leading newspapers advising affected property owners to file their applications for payment at the District Engineer's Office (p. 29, Sandiganbayan Decision, p. 56, *Ibid.*).

The implementation of the Mangahan Floodway Project was entrusted to the Pasig Engineering District headed by the District Engineer, Cresencio Data. He formed a committee composed of Supervising Civil Engineer Priscillo Fernando, as over-all in charge, Alfonso Mendoza and Pedro Hucom for acquisition of improvements, and Instrumentman Carlos Jose for surveys (p. 26, Sandiganbayan Decision, p. 53, *Ibid.*). The team was tasked to notify lot owners affected by the project of the impending expropriation of their properties and to receive and process applications for payment.

The reclassification of all lands around the Mangahan Floodway Project was suspended in 1975 by order of the President (p. 45, Sandiganbayan Decision, p. 72, *Ibid.*). Implementing that order, a memorandum was sent to Data on August 27, 1976, by Public Works Director Desiderio Anolin, directing that all affected lands covered by the Mangahan Floodway Project shall be excluded from reevaluation and reassessment (Annex A, Exh. DD, Counter-Affidavit of Data, p. 70, Sandiganbayan Decision, p. 97, *Ibid.*).

Among the lots affected was a 19,004-square-meter portion of a 30,169-square-meter riceland in Pasig registered in the name of Benjamin Agleham under Original Certificate of Title No. 0097 issued on May 5, 1977 (Exh. H). The land was previously owned by Andrea Arabit and Evaristo Gutierrez, parents of the accused Natividad Gutierrez.

After Agleham acquired the 3-hectare land in 1973 from the Gutierrez spouses, he had it subdivided into three (3) lots under plan (LRC) Psd-278456 which was approved by the Land Registration Commission on June 1, 1978 (Entry No. 27399/12071, Exh. H). Lot 1, with an area of 19,004 square meters, is the portion that Agleham, through Natividad Gutierrez, sold to the Government in 1978 for the Mangahan Floodway Project.

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On December 15, 1973, Agleham's property, classified as a "ricefield" with an area of 3.2 hectares, was declared for taxation under Tax Declaration No. 28246 (Exh. Y). Its assessed value was ₱4,800 or ₱0.15 per square meter (p. 10, Sandiganbayan Decision, p. 37, *Ibid.*).

On February 27, 1978, another Tax Declaration No. 47895 (Exh. Y-1) was issued for the same "ricefield" with a revised area of 30,169 square meters. The declared market value was ₱150,850 (or ₱5 per square meter), and the assessed value was ₱60,340.

Ten months later, or on December 15, 1978, Tax Declaration No. 47895 was cancelled and replaced by Tax Declaration No. A-018-00911 (Exh. Y-2) wherein the market value of the same "ricefield," jumped to ₱301,690 (₱10 per square meter). Its assessed value was fixed at ₱120,680. The description and value of the property, according to Pedro Ocol, the assistant Municipal Assessor of Pasig, was based on the actual use of the property (riceland) not on its potential use (p. 13, Sandiganbayan Decision, p. 40, *Ibid.*). The valuation was based on a compilation of sales given to the Municipal Assessor's office by the Register of Deeds, from which transactions the Assessor obtained the average valuation of the properties in the same vicinity (p. 14, Sandiganbayan Decision, p. 41, *Ibid.*).

Among those who filed an application for payment (Exhs. FF and FF-1) at the District Engineer's Office was the accused, Natividad Gutierrez, who was armed with a Special Power of Attorney allegedly executed on February 24, 1978 by Benjamin Agleham in her favor (Exhs. C and C-1). She submitted a falsified xerox copy of Tax Declaration No. 47895 (Exh. B) bearing a false date: December 15, 1973 (instead of February 27, 1978) and describing Agleham's 30,169-square-meter property as "residential" (instead of riceland), with a fair market value of ₱2,413,520 or ₱80 per square meter (instead of ₱150,845 at ₱5 per square meter). Its assessed value appeared to be ₱724,056 (instead of ₱60,340). Gutierrez submitted Agleham's Original Certificate of Title No. 0097 (Exh. H-1), the technical description of the property, and a xerox copy of a "Sworn Statement of

Supreme Court E-Library

the True Current and Fair Market Value of Real Property" required under P.D. No. 76 (Exh. I) The xerox copy of Tax Declaration No. 47895 was supposedly certified by the Municipal Treasurer of Pasig, Alfredo Prudencio.

The documents supporting Agleham's claim were "examined" by the Administrative Officer, accused Claudio Arcaya, who, after initiating them, turned them over to accused Ladislao G. Cruz. A Deed of Absolute Sale for Lot 1 (19,004 square meters valued at ₱80 per square meter) was prepared by Cruz who also initialed the supporting documents and transmitted them to District Engr. Data.

On April 20, 1978, the Deed of Absolute Sale (Exhs. G and G-1) was signed by Data and Gutierrez (as attorney-in-fact of Agleham). Thereafter, Data sent the papers to Director Desiderio Anolin of the Bureau of Public Works who recommended to the Assistant Secretary of Public Works the approval of the Deed of Sale (Exh. G-1). Afterwards, the documents were returned to Data's office for the transfer of title to the Government. On June 8, 1978, the sale was registered and Transfer Certificate of Title No. T-12071 (Exh. T) was issued in the name of the Government.

General Voucher (Exh. S) No. 85-2-7809-52 dated "9/29/78" for the amount of ₱1,520,320 bore four (4) certifications of: (1) Cruz as Senior Civil Engineer; (2) Priscillo G. Fernando as Supervising Civil Engineer II; (3) Cresencio Data as District Engineer I; and (4) Cesar V. Franco as Project Acting Accountant (p. 56, Sandiganbayan Decision, p. 83, *Ibid.*).

On October 23, 1978, the voucher and its supporting documents were pre-audited and approved for payment by the accused, Amado C. Arias, as auditor of the Engineering District. The next day, October 24, 1978, sixteen (16) PNB checks with Serial Nos. 188532 to 188547, inclusive (Exhs. X to X-15), for the total sum of ₱1,520,320.00 were issued to Gutierrez as payment for Agleham's 19,004-square-meter lot.

In October, 1979, an investigation was conducted by the Ministry of National Defense on the gross overpricing of Agleham's property. During the investigation, sworn statements

Supreme Court E-Library

were taken from Alfredo Prudencio, Municipal Treasurer of Pasig (Exh. AA), Pedro Ocol, Assistant Municipal Assessor of Pasig (Exh. BB), and the accused Claudio Arcaya (Exh. EE). Prudencio denied having issued or signed the certification dated September 14, 1978 (Exh. J), attesting that Agleham's property covered by Tax Declaration No. 47895 had a market value of ₱2,413,520 and that the taxes had been paid from 1975 to 1978. Prudencio also impugned the initial (purporting to be that of his subordinate Ruben Gatchalian, Chief of the Land Tax Division) that was affixed below Prudencio's typewritten name in Exhibit J. Both Prudencio and Gatchalian disowned the typewritten certification. They declared that such certifications are usually issued by their office on mimeographed forms (Exh. J-1).

Assistant Municipal Assessor Pedro Ocol produced and identified the original or genuine Tax Declaration No. 47895 dated February 27, 1978, and a certified copy thereof (Exh. Y-1). Therein, Agleham's property of 30,169 square meters was classified as a "ricefield" and appraised at ₱5 per square meter, with an assessed value of ₱60,340 and a market value of ₱150,850. Ocol testified that the supposed xerox copy of Tax Declaration No. 47895 (Exh. B), which Gutierrez submitted as one of the supporting documents of the general voucher (Exh. S), was fake, because of the following tell-tale signs:

(1) the tax declaration number was *typewritten*, not machine-numbered as in the genuine tax declaration, Exhibit Y;

(2) the stampmark of registration was antedated to December 15, 1973 in the fake, instead of the correct date — February 27, 1978 — in the genuine tax declaration;

(3) the classification of the property was "residential," instead of "ricefield" which is its classification in the genuine document; and

(4) the lot was overpriced at ₱80 per square meter in the fake tax declaration, instead of the appraised value of only ₱5 per square meter appearing in the genuine declaration.

Supreme Court E-Library

Also found to be fake was Tax Declaration No. 49948 in the name of the Republic of the Philippines (Exhs. K and K-1). The genuine Tax Declaration No. 49948 (Exhs. U and V-2) was actually filed on October 18, 1978 in the names of the spouses Moises Javillonar and Sofia Andres, for their 598-square-meter residential property with a declared market value of ₱51,630.

The Agleham deed of sale was pre-audited by the auditor of the Rizal Engineering District, Amado Arias, who approved the payment of ₱1,520,320 to Gutierrez without questioning the fact that the amount of the purchase price therein had been altered, *i.e.,* "snowfaked (*sic*) and later superimposed by the amount of ₱1,520,320 in words and figures" (p. 71, Sandiganbayan Decision, p. 98, *Ibid.*), nor checking the veracity of the supporting documents listed at the back of the General Voucher (Exh. S), numbering fifteen (15) in all, among which were:

(1) the fake Tax Declaration No. 47895 showing that the value of the land was ₱80 per square meter (Exh. B);

(2) fake Tax Declaration No. 49948 in the name of the Republic of the Philippines (Exh. K);

(3) the forged certification of Municipal Treasurer Prudencio that the fair market value of the land was ₱100 per square meter (Exh. J);

(4) a false certification (Exh. D) dated September 19, 1978 signed by accused Cruz, Jose, and Fernando, certifying that the Agleham property was upon ocular inspection by them, found to be "residential;

"(5) a falsely dated certification where the original date was erased and a false date (February 15, 1978) was superimposed (Exh. E), issued by Engr. Fernando pursuant to DPWTC Circular No. 557, certifying that he had examined the real estate tax receipts of the Agleham property for the last three (3) years;

(6) the technical description of the land (Exhs. F and F-1) attached to the deed of sale dated April 20, 1978 was not an approved technical description for the subdivision survey executed

Supreme Court E-Library

by Geodetic Engineer Cipriano C. Caro was verified and approved by the Land Registration Commission on May 28, 1978 only. There were "substantial variations" noted by the Sandiganbayan between the approved technical description and the technical description of the land in the deed of sale (p. 61, Sandiganbayan Decision, p. 88, *Ibid.*);

(7) the special power of attorney dated February 24, 1978, supposedly given to Gutierrez by Agleham (Exhs. C, C-1) bore a fictitious residence certificate of Agleham (p. 64, Sandiganbayan Decision, p. 91, *Ibid.*); and

(8) the fake Sworn Statement on the Current and Fair Market Value of Real Properties (Exh. Z) dated October 1, 1973, contained a forged signature of Agleham, presumably made by Gutierrez herself. The Sandiganbayan observed that Agleham's supposed signature "appears to be identical to accused Gutierrez' signatures in the General Voucher (Exh. S), in the 'Release and Quitclaim' which she signed in favor of Agleham on July 20, 1983 (Exh. CC), and in her affidavits (Exhs. FF and FF-1)." (pp. 64-65, Sandiganbayan Decision, pp. 91-92, *Ibid.*).

After payment of the Agleham claim, all the supporting documents were kept by Arias. Even after he had been replaced by Julito Pesayco on September 1, 1981, as auditor of the Rizal Engineering District, he did not turn over the documents to Pesayco. It was only on June 23, 1982, after this case had been filed in the Sandiganbayan and the trial had begun, that Arias delivered them to Pesayco (Exh. T-1).

After a trial lasting nearly six years, the Sandiganbayan rendered a 78-page decision on November 16, 1987, whose dispositive portion reads as follows:

"WHEREFORE, judgment is hereby rendered finding accused Natividad G. Gutierrez, Cresencio D. Data, Ladislao G. Cruz, Carlos L. Jose, Claudio H. Arcaya and Amado C. Arias GUILTY beyond reasonable doubt of the violation of Section 3, paragraph (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and hereby sentences each of them to suffer the penalty of imprisonment for THREE (3) YEARS, as minimum to SIX (6) YEARS, as maximum; to further suffer perpetual

Supreme Court E-Library

disqualification from public office; to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of ₱1,425,300, and to pay their proportional costs of this action." (p. 104, *Rollo* of G.R. No. 81563.)

Both Arias and Data appealed.

Arias anchors his petition for review of the Sandiganbayan's decision (G.R. No. 81563) on his contention that the court's findings that he conspired with his co-accused and that he was grossly negligent are based on misapprehension of facts, speculation, surmise, and conjecture.

Data's main defense is that the acquisition of the Agleham property was the work of the committee of Precillo Fernando in which he did not take an active part, and that the price which the Government paid for it was reasonable. Hence, it suffered no injury in the transaction.

In his consolidated brief or comment for the State, the Solicitor General recommends the acquittal of the petitioners because the Agleham property was allegedly not grossly overpriced.

After deliberating on the petitions in these cases, we find no error in the decision under review. The Sandiganbayan did not err in finding that the petitioners conspired with their co-accused to cause injury to the Government and to unduly favor the lot owner, Agleham.

A conspiracy need not be proved by direct evidence of the acts charged, but may and generally must be proven by a number of indefinite acts, conditions and circumstances (*People vs. Maralit*, G.R. No. 71143, Sept. 19, 1988; *People vs. Roca*, G.R. No. 77779, June 27, 1988).

This case presents a conspiracy of silence and inaction where chiefs of office who should have been vigilant to protect the interest of the Government in the purchase of Agleham's two-hectare riceland, accepted as gospel truth the certifications of their subordinates, and approved without question the million-peso purchase which, by the standards prevailing in 1976-78, should have pricked their curiosity and prompted them to make

Supreme Court E-Library

inquiries and to verify the authenticity of the documents presented to them for approval. The petitioners kept silent when they should have asked questions; they looked the other way when they should have probed deep into the transaction.

Since it was too much of a coincidence that both petitioners were negligent at the same time over the same transaction, the Sandiganbayan was justified in concluding that they connived and conspired to act in that manner to approve the illegal transaction which would favor the seller of the land and defraud the Government.

We cannot accept Arias' excuse that because the deed of sale had been signed and the property transferred to the Government which received a title in its name, there was nothing else for him to do but approve the voucher for payment. The primary function of an auditor is to prevent irregular, unnecessary, excessive or extravagant expenditures of government funds.

The auditorial function of an auditor, as a representative of the Commission on Audit, comprises three aspects: (1) examination; (2) audit: and (3) settlement of the accounts, funds, financial transactions and resources of the agencies under their respective audit jurisdiction (Sec. 43, Government Auditing Code of the Phil.). Examination, as applied to auditing, means "to probe records, or inspect securities or other documents; review procedures, and question persons, all for the purpose of arriving at an opinion of accuracy, propriety, sufficiency, and the like." (State Audit Code of the Philippines, Annotated by Tantuico, 1982 Ed., p. 57.)

Arias admitted that he did not check or verify the papers supporting the general voucher that was submitted to him for payment of ₱1,520,320 to Agleham or his attorney-in-fact, Natividad Gutierrez. Arias did not question any person for the purpose of determining the accuracy and integrity of the documents submitted to him and the reasonableness of the price that the Government was paying for the less than two-hectare riceland. We reject his casuistic explanation that since his subordinates had passed upon the transaction, he could assume that it was lawful and regular for, if he would be a mere rubber

Supreme Court E-Library

stamp for his subordinates, his position as auditor would be useless and unnecessary.

We make the same observation concerning District Engineer Cresencio Data who claims innocence because he allegedly did not take any direct and active participation in the acquisition of the Agleham property, throwing the blame on the committee which he created, composed of Fernando, Asuncion, Mendoza, Cruz, Hucom and Jose that negotiated with the property owners for the purchase of properties on the path of the Mangahan Floodway Project. He in effect would hide under the skirt of the committee which he himself selected and to which he delegated the task that was assigned to his — office to identify the lots that would be traversed by the floodway project, gather and verify documents, make surveys, negotiate with the owners for the price, prepare the deeds of sale, and process claims for payment. By appointing the committee, he did not cease to be responsible for the implementation of the project. Under the principle of command responsibility, he was responsible for the manner in which the committee performed its tasks for it was he who in fact signed the deed of sale prepared by the committee. By signing the deed of sale and certifications prepared for his signature by his committee, he in effect, made their acts his own. He is, therefore, equally guilty with those members of the committee (Fernando, Cruz and Jose) who accepted the fake tax declarations and made false certifications regarding the use and value of the Agleham property.

The Solicitor General has pointed out that Data signed, but did not approve, the deed of sale of Agleham's property because the approval thereof was the prerogative of the Secretary of Public Works. It should not be overlooked, however, that Data's signature on the deed of sale was equivalent to an attestation that the transaction was fair, honest and legal. It was he who was charged with the task of implementing the Mangahan Floodway Project within his engineering district.

We find no merit in the Solicitor General's argument that the Agleham riceland was not overpriced because the price of ₱80 *per square meter fixed in the* deed of sale was reasonable,

Supreme Court E-Library

hence, the petitioners are not guilty of having caused undue injury and prejudice to the Government, nor of having given unwarranted benefits to the property owner and/or his attorney-in-fact, Gutierrez. He further argues that the valuation in the owner's genuine tax declaration may not be used as a standard in determining the fair market value of the property because PD Nos. 76 and 464 (making it mandatory in expropriation cases to fix the price at the value of the property as declared by the owner, or as determined by the assessor, whichever is lower), were declared null and void by this Court in the case of *Export Processing Zone Authority (EPZA) vs. Dulay*, 149 SCRA 305, and other related cases.

That argument is not well taken because PD Nos. 76 and 464 (before they were nullified) applied to the expropriation of property for public use. The acquisition of Agleham's riceland was not done by expropriation but through a negotiated sale. In the course of the negotiations, there was absolutely *no allegation nor proof* that the price of ₱80 per square meter was its fair market value in 1978, *i.e.*, eleven (11) years ago. What the accused did was to prove the value of the land through fake tax declarations (Exhs. B, F, K), false certifications (Exhs. J, D and E) and a forged sworn statement on the current and fair market value of the real property (Exh. Z) submitted by the accused in support of the deed of sale. Because fraudulent documents were used, it may not be said that the State agreed to pay the price on the basis of its fairness, for the Government was in fact deceived concerning the reasonable value of the land.

When Ocol testified *in 1983* that ₱80 was a reasonable valuation for the Agleham's land, he did not clarify that was also its reasonable value in 1975, before real estate values in Pasig soared as a result of the implementation of the Mangahan Floodway Project. Hence, Ocol's testimony was insufficient to rebut the valuation in Agleham's genuine 1978 Tax Declaration No. 47895 that the fair valuation of the riceland then was only ₱5 per square meter. A Tax Declaration is a guide or indicator of the reasonable value of the property (*EPZA vs. Dulay, supra*).

Supreme Court E-Library

The petitioner's partiality for Agleham/Gutierrez may be inferred from their having deliberately closed their eyes to the defects and irregularities of the transaction in his favor and their seeming neglect, if not deliberate omission, to check, the authenticity of the documents presented to them for approval. Since partiality is a mental state or predilection, in the absence of direct evidence, it may be proved by the attendant circumstances.

WHEREFORE, I vote to affirm *in toto* the decision of the Sandiganbayan in SB Crim. Case No. 2010, with costs against the petitioners, Amado Arias and Cresencio Data.

SECOND DIVISION

[G.R. No. 82753. December 19, 1989]

ESTELA COSTUNA, *petitioner, vs.* **LAUREANA DOMONDON, THE HON. PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH XCVIII, QUEZON CITY, THE HON. PRESIDING JUSTICES OF THE COURT OF APPEALS, 13TH DIVISION, MANILA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP; HUSBAND CANNOT ALIENATE ANY REAL PROPERTY WITHOUT THE WIFE'S CONSENT; CASE AT BAR RECOGNIZED AS AN EXCEPTION. — There is no denying that Amadeo sought the petitioner's consent to the deed of sale which consent was adamantly withheld by the petitioner. As may be gleaned from the records, her refusal stemmed from her belief that the deed of sale was executed in fraud of her, yet she did not do anything