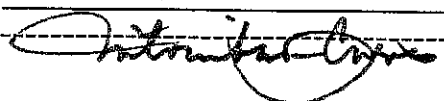


EN BANC

G.R. No. 217064-65 – NAOMI LOURDES A. HERRERA, *petitioner*, versus SANDIGANBAYAN, *respondent*.

Promulgated:

June 13, 2023

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DISSENTING OPINION

ROSARIO, J.:

In a Resolution¹ dated December 4, 2019, the Court's Second Division resolved to dismiss the present Petition for Review and affirm petitioner's conviction for Falsification of Public Document. It later denied petitioner's Motion for Reconsideration (MR) with finality in a minute resolution² dated February 26, 2020. Unfazed, petitioner filed a second MR. Meanwhile, an Entry of Judgment was issued, prompting petitioner to move that the case be referred to the Court *en banc*. In an unexpected turn of events, the Court *en banc*, in a Resolution³ dated July 27, 2021, granted the motion, recalled the Entry of Judgment, and held the finality of the denial of the Petition in abeyance. The majority now votes to acquit her.

Respectfully, I dissent.

I

While this is not the first time the Court has recalled an entry of judgment, the Court's basis for doing so here is unusual. As mentioned in the *ponencia*, the Court, in its July 27, 2021 Resolution, found that the December 4, 2019 Resolution which denied the Petition failed to expound on the facts upon which conclusions of law were made since, for instance, it only made general deductions from petitioner's mere participation without considering the peculiarity of her involvement. Hence, the Court found that the petition ought to be reinstated in the higher interest of justice in view of the persuasive merit of petitioner's defense.⁴ However, for unsigned extended resolutions, the only requirement is that they state clearly and distinctly the facts and the law on which they are based.⁵ Since all rulings of the Court undergo thorough deliberation, without exception, a ruling expressed in concise language does not mean that the Court only made general deductions during its deliberations. More importantly, mere purported failure to expound on the facts is no reason to disregard the doctrine of immutability of final judgment. This is not to say that there are no truly meritorious cases which should merit the Court *en banc*'s attention. However, this is hardly such a case, as will be discussed below.

¹ *Rollo*, pp. 377-383.

² *Id.* at 400-A.

³ *Id.* at 474-483

⁴ *Ponencia*, p. 7.

⁵ A.M. No. 10-4-20-SC, Rule 13, Sec. 6(c).

II

Petitioner was employed at the Provincial Accountant's Office of the Province of Surigao del Sur as Management and Audit Analyst IV. In 1994, the provincial government issued an Invitation to Bid for the procurement of typewriters. On January 31, 1994, three bidders participated, with Adelina Center quoting the lowest price. However, due to numerous complaints against said lowest bidder, Anecito, the Provincial General Services Officer, held a Bids and Awards Committee (BAC) meeting on February 22, 1994 informing the attendees that he conducted an open canvass on February 8, 1994 to solicit quotations from other suppliers, among which, New Datche and Olympia Business Machines. Petitioner attended said meeting as representative of the Acting Provincial Accountant, Mrs. Gracia Coletto, who was on official leave. The BAC eventually awarded the contract to New Datche *via* Resolution No. 007, the pertinent portions of which state:

Whereas, there was a meeting on February 22, 1994 in the Provincial Governor's Office to decide the award for the purchase of Olympia typewriters[;]

xxx

Whereas, among the bidders are: Family Parts Center, Adelina Center, Sunlight Marketing, all of Tandag, this Province, New Datche of Cebu City and Olympia Business Machines Co., Inc. of Manila.

The Resolution was signed by all the BAC members, save for two whose representatives signed on their behalves, petitioner included. Said signatories, except one who remained at large, were eventually charged with Falsification of Public Documents under par. 2, Art. 171 of the Revised Penal Code (RPC) and convicted thereof by the Sandiganbayan for causing it to appear that persons participated in the bidding when they did not in fact so participate.

Fast forward to the *ponencia* subject of this Opinion, the Court *en banc* now votes to acquit petitioner for failure of the prosecution to prove her guilt beyond reasonable doubt, particularly on the following grounds:

1. Petitioner's attendance in the BAC meeting was in the performance of her official function as a substitute of a regular member, but her signature in Resolution No. 007 is a surplusage as she was not a member of the BAC;⁶
2. The element of "taking advantage of one's official position" in the crime of Falsification of Public Documents is absent in this case;⁷ and
3. Petitioner believed in good faith that the award of the contract to New Datche Philippines was proper and allowed under procurement rules.⁸

⁶ *Ponencia*, pp. 11-12.

⁷ *Id.* at 12-15.

⁸ *Id.* at 15-19.

The crime of falsification of public document by public officer, employee, or notary, as penalized under Art. 171⁹ of the RPC, has the following elements:

- (1) the offender is a public officer, employee, notary public;
- (2) the offender takes advantage of his or her official position; and
- (3) the offender falsifies a document by committing any of the acts enumerated in Art. 171 of the RPC.¹⁰

The presence of the first element is undisputed.

As regards the second element, public officers are considered to have taken advantage of their official position when (1) they have the duty to make or to prepare, or otherwise intervene in the preparation of the document, or (2) they have the official custody of the document which they falsify.¹¹

While I agree with the *ponencia* that this element is absent, I disagree in part with its reasoning.

Petitioner testified that she was authorized to sign documents and attend meetings in the absence of her superior by virtue of an office order.¹² However, the *ponencia* states that the Court cannot use the purported office order as basis for petitioner's culpability because such document is not in the records of the case and was never presented or offered by the prosecution as documentary evidence.¹³ On the contrary, I find that petitioner's testimony to that effect is a judicial admission of her authority to sign on behalf of her superior which dispenses with proof.¹⁴ Hence, it was unnecessary to present and offer the purported office order in evidence.

That said, authority to sign a document is not synonymous with "duty to make or to prepare, or otherwise intervene in the preparation of the document" for one may be authorized despite not having the duty to perform an act.

Sec. 33¹⁵ of Commission on Audit (COA) Circular No. 92-386 provides that while representatives of the members of the Committee may deliberate on the bids

⁹ REVISED PENAL CODE, art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* - The penalty of *prisión mayor* and a fine not to exceed P5,000 pesos [amended to One million pesos (P1,000,000) by REP. ACT NO. 10951] shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

x x x

¹⁰ *Typoco, Jr. v. People*, 816 Phil. 914, 929 (2017).

¹¹ *Id.* at 930.

¹² *Rollo*, p. 202. Transcript of Stenographic Notes (TSN) dated September 10, 2013 (Cross-Examination of Naomi Lourdes A. Herrera), p. 4.

¹³ *Ponencia*, p. 11.

¹⁴ RULES OF COURT, Rule 129, Sec. 4. *Judicial admissions.* - An admission, oral or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that the imputed admission was not, in fact, made.

¹⁵ COA Circular No. 92-386, Sec. 33. *Attendance in Proceedings.* - Every member of the Committee on Awards shall be present in all proceedings of the Committee unless prevented from doing so by sickness or other

for and in behalf of the Committee members, **only the Committee members shall personally decide** on the bids and/or questions of awards and **shall sign** the Committee decisions. Since the power and duty to sign Committee decisions belong exclusively to the regular Committee members, the authority that Mrs. Coletto granted to petitioner to sign in her absence was *ultra vires* insofar as Resolution No. 007 is concerned and did not confer upon petitioner any duty in relation thereto.

Anent the third element, there is no question that by signing Resolution No. 007, petitioner committed one of the acts enumerated in Art. 171, *i.e.*, she caused it to appear that New Datche and Olympia Business Machines participated in the bidding on January 31, 1994 when they did not in fact so participate.

Whether petitioner's signature was a mere surplusage because she was not one of those authorized under COA Circular No. 92-386 to sign Committee decisions is irrelevant because the law punishes the act of causing it to appear that persons participated in any act or proceeding when they did not in fact so participate, regardless of the legal effect thereof. Verily, an unauthorized signatory can, just as much as an authorized one, cause it to appear that persons participated in an act when in fact they did not.

Does the absence of the second element mean that petitioner committed no crime? The answer is in the negative.

While petitioner cannot be held guilty of falsification under par. 2, Art. 171 of the RPC, she can be held guilty under Art. 172¹⁶ in relation to par. 2, Art. 171.

Judge Guillermo Guevara, the father of Philippine criminology and member of the Committee that drafted the RPC, confirms this in his commentary on Art. 171 as follows:

It should be borne in mind that to constitute the crime of falsification of public documents by a public official, it is an indispensable requisite that **the offender should have taken advantage of his office. Otherwise it will be a simple case of falsification of public documents by a private person.** Thus, a court stenographer who deliberately and maliciously makes changes in the transcription of his notes on the statements of a witness taken by him is guilty of falsification under this Article; while any other officer, say a chief of police, who happens to make the same changes or alterations in the same document, is guilty of falsification of a public document committed by a private person. It is because, in the former example, the stenographer misused his public office in committing the crime, while the policeman in the latter example, did not.¹⁷ (Emphasis supplied)

unavoidable circumstance, in which case he may authorize in writing a representative to attend in his behalf. Representatives of the members of the Committee may deliberate on the bids for and in behalf of the Committee members. **However, the Committee members shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions.** (Emphasis supplied)

¹⁶ REVISED PENAL CODE, art. 172. *Falsification by private individual and use of falsified documents.* - The penalty of *prisión correccional* in its medium and maximum periods and a fine of not more than ₱5,000 pesos [amended to One million pesos (₱1,000,000) by REP. ACT NO. 10951] shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; x x x

¹⁷ GUILLERMO B. GUEVARA, COMMENTARIES ON THE REVISED PENAL CODE OF THE PHILIPPINES, 5th ed. (1957), p. 251. See also LUIS B. REYES, THE REVISED PENAL CODE, Book Two, 6th ed. (1965), p. 184.

Similarly, Justice Luis B. Reyes comments that “[e]ven if the offender was a public officer but if he *did not take advantage* of his official position, he would be guilty of falsification of a document by a *private person* under Art. 172.”¹⁸

In *Garong v. Villanueva*,¹⁹ a court interpreter, despite being a public employee, was held guilty of falsification by a private individual for simulating a court order. We explained:

The falsification by the petitioner could have been committed without taking advantage of his public position as the court interpreter. His work for the court that had supposedly issued Exhibit B was of no consequence to his criminal liability, for the crime could have been committed even by any other individual, including one who did not work in the court in any official capacity. In his case, the **petitioner committed the simulation of Exhibit B despite his not having the duty to make, or prepare, or otherwise intervene in the preparation of court orders.** (Emphases supplied)

Although the allegations in the Information describe a violation of par. 2, Art. 171 of the RPC, falsification of documents committed by public officers who take advantage of their official position under Art. 171 necessarily includes falsification by private persons punished by par. 1, Art. 172.²⁰ Since Art. 171 encompasses all the elements required in a conviction for falsification under par. 1, Art. 172, petitioner could still be convicted of the latter under the present Information.

Finally, I discuss petitioner’s defense of good faith.

The crime of Falsification of Public Documents falls under the category of *mala in se* offenses that requires the attendance of criminal intent²¹ which is presumed upon the consummation of the criminal act, *i.e.*, the execution of the false document.²² Failure of erring public officers to attain their objectives, if that really be the case, is not determinative of their guilt or innocence. *In fine*, the element of gain or benefit on the part of the offender or prejudice to a third party as a result of the falsification, or tarnishing of a document’s integrity, is not essential to maintain a charge for falsification of public documents.²³

Said the Supreme Court of Spain in an 1885 decision:

*Considerando que aun cuando las falsedades cometidas en documentos públicos ú oficiales, lo mismo por funcionarios que por particulares, no requieren como elemento esencial ni la idea del lucro ni el ánimo de perjuicio á tercero, porque á diferencia de las que se realizan en documentos privados, en aquella se castiga principalmente la violación de la fe pública y de la verdad solemnemente consignada x x x.*²⁴ (Emphasis supplied)

¹⁸ LUIS B. REYES, THE REVISED PENAL CODE, Book Two, 6th ed. (1965), p. 184.

¹⁹ 800 Phil. 18, 33-34 (2016).

²⁰ *Malabanan v. Sandiganbayan*, 815 Phil. 183, 199 (2017).

²¹ *Office of the Ombudsman v. Santidad*, 867 Phil. 440, 468 (2019).

²² *Goma v. Court of Appeals*, 596 Phil. 1, 12 (2009).

²³ *Id.*

²⁴ *Sentencia de 23 de Diciembre de 1885*, published in the *Gaceta* dated June 21, 1886, pp. 312-313. This was translated in *U.S. v. Mateo* (G.R. No. 8025, September 17, 1913) as follows: “Considering that even though in the falsification of public or official documents, whether by public official or by private persons, it is unnecessary that there be present the idea of gain or the intent to injure a third person, for the reason that, in contradistinction

Thus, in contradistinction to private documents, **the principal thing punished in falsification of public documents** is not the presence of gain or intent to injure a third person but **the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.**²⁵

Petitioner testified that she signed Resolution No. 007 in good faith because it was based on supporting documents and she merely relied on the knowledge and experience of the regular members of the BAC, not being familiar with procurement law. In believing her defense, the *ponencia* declares that it cannot fault her for relying on the representations of Anecito considering that it was her first and last attendance at a BAC meeting.²⁶ It adds that in relying upon the latter's representations and signing the resolution, petitioner apparently only had in mind the interest of the provincial government that it may only procure fine and premium typewriters.²⁷

While it was indeed petitioner's first and last time to attend a meeting in that particular bidding process, she confirmed on redirect examination that it was not her first and last time attending a bidding process.²⁸ Regardless, there is nothing that prevents even an inexperienced attendee from committing an act of falsification. Her testimony shows that she was fully aware of the falsity of the statement in the Whereas clauses and yet decided to sign anyway, to wit:

PROS. TORIBIO:

Q Now prior to signing this Resolution No. 007 of course you read the contents of this Resolution, correct?

A Before I signed, sir, yes.

Q Before you signed you read the contents of the Resolution?

A Yes, sir.

Q Everything that was stated here, you read it and you understood it, correct?

A Yes, sir.

x x x x

Q So, there were three (3) bidders, but there were only two (2) who participated? Is that what you are saying?

A Yes, sir.

Q And that those bidders are: Adelina?

A Adelina Center and Sunlight Marketing.

Q Now, kindly goes (sic) over again that second whereas clause does it states (sic) that fact that you just mentioned today?

A No, sir.

to private documents, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed xxx."

²⁵ *People v. Po Giok To*, 96 Phil. 913 (1955).

²⁶ *Ponencia*, pp. 16-17.

²⁷ *Id.* at 18.

²⁸ *Rollo*, p. 215. TSN dated September 10, 2013 (Redirect Examination of Naomi Lourdes A. Herrera), p. 17.

Q Now, despite that you still signed the Resolution, correct?

A Yes, sir.

x x x x

PROS. TORIBIO:

Q When did your boss, Provincial Accountant Gracia Coletto come back from her leave of absence?

A I cannot remember again, but when I signed that she was still out.

Q Did you not consult her about this Resolution?

A She was not yet back, sir.

Q Even after she came back?


A No, sir.²⁹

Obviously, petitioner did not need to be familiar with procurement law or have experience in bidding processes to determine whether certain suppliers did or did not participate in the bidding. Given the sheer importance of the document, the fact that petitioner did not even consult with her superior while the latter was on leave or after she returned betrays her lack of good faith.

As to her alleged noble interest that the provincial government may only procure quality typewriters, petitioner said nothing of the sort in her testimony and is a mere inference of the *ponencia* which cannot be appreciated in her favor. Even assuming *arguendo* that she intended it for good, the fact remains that she willfully made it appear that persons participated in an act or proceeding when in truth and in fact they did not. Again, **the law is not concerned with the effect of the document, whether it be detrimental or beneficial to the provincial government.** In our system of criminal justice, the end does not justify the means.³⁰

Petitioner may not have intended to gain from what she did or injure a third person but the same is immaterial³¹ as her act indubitably violated the public faith and destroyed the truth. Her claim of good faith, buttressed by nothing more than her self-serving testimony, must perforce fail.

In the final analysis, while I find that the December 4, 2019 Resolution erred in affirming petitioner's conviction for falsification under par. 2, Art. 171 of the RPC instead of par. 1, Art. 172 in relation to par. 2, Art. 171, such error did not justify disregarding the time-honored doctrine of immutability of final judgment.


RICARDO R. ROSARIO
Associate Justice

²⁹ Id. at 208-211. TSN dated September 10, 2013 (Cross-Examination of Naomi Lourdes A. Herrera), pp. 10-13.

³⁰ *Bagalihog v. Fernandez*, 275 Phil. 666 (1991).

³¹ *Typoco, Jr. v. People*, supra note 22, at 934-935.