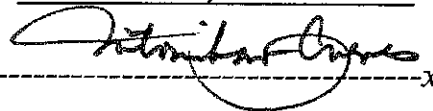


*EN BANC*

G.R. Nos. 217064-65 – NAOMI LOURDES A. HERRERA, Petitioner v. SANDIGANBAYAN, Respondent.

Promulgated:

June 13, 2023



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**DISSENTING OPINION**

**MARQUEZ, J.:**

This case was already closed and terminated more than three years ago when the Special Second Division of the Court on 26 February 2020 denied with finality<sup>1</sup> petitioner Herrera's motion for reconsideration<sup>2</sup> and ordered the issuance of an entry of judgment. This should have sent petitioner Herrera to prison for an indeterminate sentence of six months and one day of *prision correccional*, as minimum, to eight years and one day of *prision mayor*, as maximum, for falsifying a public document.

Petitioner Herrera however was unrelenting and continued to file numerous motions and manifestations, all seeking the reversal of her 23 October 2014 conviction<sup>3</sup> by the Sandiganbayan. On 2 June 2020, she filed an Urgent Manifestation<sup>4</sup> dated 16 March 2020 with attached Urgent Supplemental Motion for Reconsideration<sup>5</sup> of the same date. In its Resolution dated 17 June 2020, the Court **noted without action** the Urgent Manifestation and Urgent Supplemental Motion for Reconsideration.

On 29 July 2020, petitioner Herrera filed an Urgent Additional Supplemental Manifestation and Motion with Leave of Court dated 28 July 2020.<sup>6</sup> Almost a month later, on 27 August 2020, she filed a Motion with Leave of Court to Refer Matter to the Court *En Banc*<sup>7</sup> dated 26 August 2020. And, a day after, on 28 August 2020, she again filed an Urgent Supplemental Manifestation and Motion with Leave of Court dated 20 July 2020.<sup>8</sup>

In a highly unusual turn of events, on 22 June 2021, the Court *en banc* accepted the case,<sup>9</sup> and on 27 July 2021, **resolved the motions filed before the**

<sup>1</sup> *Rollo*, p. 400-A.

<sup>2</sup> *Id.* at 384–399.

<sup>3</sup> *Id.* at 109.

<sup>4</sup> *Id.* at 406–408.

<sup>5</sup> *Id.* at 437–441.

<sup>6</sup> *Id.* at 410–412.

<sup>7</sup> *Id.* at 443–458.

<sup>8</sup> *Id.* at 431–435.

<sup>9</sup> *Id.* at 472.



**Second Division, granting the Motion with Leave of Court to Refer Matter to the Court *En Banc*, reinstating the Petition, and recalling the entry of judgment,<sup>10</sup>** breathing new life into petitioner Herrera's appeal and resurrecting her case.

Worse, the majority now reverses the Second Division<sup>11</sup> of this Court and acquits petitioner Herrera of Falsification of Documents under Article 171, Revised Penal Code (RPC), for failure of the prosecution to prove her guilt beyond reasonable doubt. The majority anchors petitioner Herrera's acquittal on two points: first, that she did not take advantage of her official position to falsify Resolution No. 007; and second, that she had no criminal intent.

I disagree.

In acceding to petitioner Herrera's repeated attempts to obtain further review of a judgment that has long become final and executory, the majority has encouraged litigants to disregard basic procedural tenets and appeal the decisions and resolutions of the Court in Division to the Court *en banc* until a favorable decision is obtained. This is simply repugnant to the doctrine of immutability of final judgments and to the principle that the Court *en banc* is not an appellate court to which decisions or resolutions of a Division may be appealed.<sup>12</sup>

But even if the Court *en banc* takes a hard look at this case, still, this is not a meritorious case that should warrant a reversal by the *en banc*.

The appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited to questions of law, and the Court does not review the factual findings of the Sandiganbayan which are generally conclusive upon the Court.<sup>13</sup> While there are exceptions to the foregoing rule,<sup>14</sup> none of the exceptions are present in this case. As such, there was no need to review the Sandiganbayan's factual findings.

In addition, it appears that the majority overlooked certain material facts in its review of the Sandiganbayan's Decision and Resolution.

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<sup>10</sup> Id. at 481. In the same Resolution, the Court *en banc* partly granted the Urgent Supplemental Motion for Reconsideration dated 16 March 2020 and the Urgent Additional Supplemental Manifestation and Motion with Leave of Court dated 28 July 2020 and noted the Urgent Supplemental Manifestation and Motion with Leave of Court dated 20 July 2020, the Letter dated 13 June 2021 of Appellate and Special Actions Bureau of the Office of the Special Prosecutor, and the Letter dated 12 January 2021 from the Office of the Ombudsman.

<sup>11</sup> The Resolution dated 26 February 2020 was issued by the Special Second Division of the Court.

<sup>12</sup> *Firestone Ceramics, Inc. v. Court of Appeals*, G.R. Nos. 127022 and 127245, 28 June 2000.

<sup>13</sup> *People v. Januto*, G.R. No. 252973, 1 March 2023.

<sup>14</sup> Namely, (1) the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact of the Sandiganbayan are premised on a want of evidence and are contradicted by evidence on record (*People v. Adana*, G.R. No. 250445, 29 March 2022).

According to the majority, petitioner Herrera could not have taken advantage of her official position as she did not have the duty to make or to prepare or otherwise intervene in the preparation of Resolution No. 007, nor did she have official custody of the document<sup>15</sup> as she is not a member of the Bids and Awards Committee (BAC) and only attended the 22 February 1994 meeting as Gracia Coletto's representative.<sup>16</sup> It was the regular members of the BAC who prepared Resolution No. 007, and petitioner Herrera only signed it because she relied on the knowledge and expertise of the former.<sup>17</sup>

The majority also makes much of the fact that the Office Order authorizing petitioner Herrera to represent Coletto and sign documents on her behalf is not in the records of the case. According to the majority, this precludes the Court from considering the contents of the Office Order in determining whether Herrera took advantage of her official position in falsifying Resolution No. 007.<sup>18</sup>

However, the majority's discussion on the element of "taking advantage of official position" is unduly limited and willfully ignores petitioner Herrera's testimony regarding her authority to represent Coletto and sign documents on the latter's behalf.

It is not disputed that petitioner Herrera is not a member of the BAC under Commission on Audit (COA) Circular No. 92-386. Accordingly, the relevant question is not whether she abused her authority as a member of the BAC, as this authority is non-existent. **Instead, the relevant question is whether she took advantage of her authority to represent Coletto under the Office Order to falsify Resolution No. 007.**

While the Office Order does not appear in the records, it must be emphasized that **petitioner Herrera herself testified that she was authorized to attend the 22 February 1994 meeting and sign Resolution No. 007 by virtue of an Office Order.** During her direct examination on 9 September 2013, she testified:

Q Now, as Management and Analyst of the Provincial Government of Surigao Del Sur, what were your duties and responsibilities?

A Excuse me, Sir. May I add to that. Even I was employed as management and audit analyst but was also designated in-charge of the administrative division of the provincial accountant's office, Sir.

Q Being a management and audit analyst and being designated as the one here mentioned what were your duties and obligations?

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<sup>15</sup> Majority Opinion, p. 15.

<sup>16</sup> Id. at 11-12.

<sup>17</sup> Id. at 12-15.

<sup>18</sup> Id. at 11.

A **Among others Sir, I represented my immediate boss then Acting Provincial Accountant, Mrs. Coletto whenever she went on official leave of absence, Mrs. Gracia Coletto our acting provincial accountant when she went on official leave, Sir.**

Q You mentioned that you represented your immediate superior, Mrs. Gracia Coletto, in her absence. Is that just mere representation or as a mere representative, Madam Witness?

A **Yes, Sir. I was. On the strength of the office order issued to me, I represented her, Sir.**

Q How about if you have to do anything in behalf of Mrs. Coletto are you also authorized?

A **Yes, Sir. Acting on signing, whatever documents that were to be signed, and attending conferences, meetings, Sir.**

Q Just to clarify Madam Witness. So, you are authorized to represent and act in behalf of your immediate superior, Mrs. Coletto?

A **Yes, Sir.**

Q In meetings

A Yes, Sir.

Q **And signing of documents?**

A **Yes, Sir.**

Q And, in [sic] those meetings that you were referring to did not include also the subject meeting of committee and awards?

A Yes, Sir.

Q **Do you have any, was this authority in writing Madam Witness, this authority to represent Mrs. Coletto was it verbal?**

A **Well, as I said earlier, it was an office order, Sir.**

Q **So, there was a written office request?**

A There was, Sir.<sup>19</sup> (Emphasis supplied)

Later the same day, petitioner Herrera again testified:

ATTY. JOSEF

Q You mentioned earlier that you signed in behalf of Mrs. Garcia Coletto, in what capacity did you sign it?

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<sup>19</sup> Rollo, pp. 229-230.

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A **Like I mentioned earlier, it was based on the office order, Sir.**<sup>20</sup>  
(Emphasis supplied)

On 10 September 2013, petitioner Herrera repeated her assertion that she was authorized to represent Coletto by virtue of an Office Order:

PROS. TORIBIO:

x x x x

Q **You testified yesterday during your direct testimony that you were authorized to sign documents and attend meetings in the absence of your boss?**

A **Yes, sir.**

Q And your boss is the Acting Provincial Accountant, Mrs. Gracia M. Coletto, right?

A Yes, sir.

Q Now, when was this Office Order issued?

A May I beg your pardon, sir.

Q When was this Office Order issued to you?

A Before Mrs. Coletto went on official travel, sir.

Q When did Mrs. Coletto went [sic] on official travel?

A I cannot recall anymore, sir.

x x x x

Q What was the effectivity of this Office Order, the period?

A That I cannot recall again anymore, sir.

Q Do you have a copy of the Office Order?

A I do not have it with me, sir.

x x x x

Q **So, despite this lack of experience and lack of knowledge about procurement law, why did you still participate?**

A **I acted on the Office Order of my immediate superior, sir.**

Q Based on this Office Order?

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<sup>20</sup> Id. at 243.

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A Office Order, sir.<sup>21</sup> (Emphasis supplied)

Petitioner Herrera's statements, as quoted above, constitute judicial admissions<sup>22</sup> tending to prove the existence of the Office Order authorizing her to represent Gracia Coletto. Courts should "utilize all evidence presented, **including admissions of the parties**, to resolve the judicial controversy presented before it and **not solely rely on the evidence laid by the prosecution**,"<sup>23</sup> and I simply cannot turn a blind eye to her judicial admissions.

As noted by the majority, the BAC had petitioner Herrera sign Resolution No. 007 *because* she represented Coletto at the 22 February 1994 meeting pursuant to the Office Order,<sup>24</sup> and petitioner Herrera signed as Coletto's representative despite the fact that there was no clear showing that the Office Order authorized her to sign this particular document on Coletto's behalf.<sup>25</sup> It was the Office Order that enabled petitioner Herrera to attend the 22 February 1994 meeting and consequently, sign Resolution No. 007. The fact that her signature may have been *ultra vires* because she is not an authorized signatory under the relevant rules of the COA is irrelevant, as the material question is whether she took advantage of her authority to sign documents on behalf of Coletto pursuant to the Office Order. In this regard, **she believed she was authorized to sign Resolution No. 007, and, as will be discussed below, she signed the Resolution on the basis of such authority despite full knowledge that it contained false statements.** In other words, **it was her official position as granted and authorized by the Office Order that she took advantage of to falsify Resolution No. 007**, not any form of membership in the BAC.

This conclusion is further reinforced by the fact that petitioner Herrera chose not to disclose her participation in the signing of Resolution No. 007 to Coletto once the latter returned. As testified by petitioner Herrera:

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.**

x x x x

<sup>21</sup> Id. at 202–203 and 215.

<sup>22</sup> Under Sec. 4, Rule 129, Rules of Evidence, a judicial admission is "[a]n admission, verbal or written, made by a 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 no such admission was made."

<sup>23</sup> *People v. Padilla*, G.R. No. 247824, 23 February 2022.

<sup>24</sup> Majority Opinion, p. 11.

<sup>25</sup> Id. at 15.

Q You said that you were not familiar with the whole bidding process, the law bidding process, Mrs. Herrera, after the meeting on February 22, 1994, did you not call Miss Gracia Coletto, your boss and consult about what happened during that meeting?

A No, sir.

Q **After she came back you said awhile ago, you did not also consult her, correct?**

A Yes, sir.

Q So, you did not – you kept into [sic] yourself what transpired during that meeting on February 22, 1994, you did not anymore inform your boss about this?

A **Yes, I said, sir. She asked me what conferences I attended, and I told her about it, no details sir.**

Q No details?

A No details, sir.

Q That you just attended?

A **Regarding this meeting on Bids and Awards Committee, but no details, sir.**<sup>26</sup> (Emphasis supplied)

Considering petitioner Herrera's repeated and explicit assertions that her official position pursuant to the Office Order included the authority to represent Coletto and sign documents on her behalf, and that she attended the 22 February 1994 meeting and signed Resolution No. 007 pursuant to this Office Order, there is proof on record to show that she had the duty to intervene in the preparation of Resolution No. 007, evidence that should not have been lightly set aside by the majority.

The foregoing notwithstanding, I am willing to concede that the above testimony may not be sufficient to establish the element of taking advantage of official position beyond reasonable doubt. However, I agree with Justice Rosario that petitioner Herrera's conviction must still be upheld, albeit under Art. 172(1), RPC.

In *Malabanan v. Sandiganbayan*,<sup>27</sup> the Court explained that falsification of documents committed by public officers who take advantage of their official position under Art. 171 necessarily includes falsification by private persons punished under par. 1, Art. 172, RPC. The elements of the latter offense are:

1. That the offender is a private individual or a public officer or employee who did not take advantage of his or her official position.

<sup>26</sup> *Rollo*, pp. 211 and 219.

<sup>27</sup> G.R. No. 186329, 2 August 2017.

2. The falsification was committed in a public or official or commercial document.
3. The offender falsifies a document by committing any of the acts of falsification under Art. 171.<sup>28</sup>

In *Malabanan*, the Court found that the accused was a public officer who did not take advantage of his or her official position in committing the falsification. Since par. 1, Art. 172, RPC, is necessarily included in Art. 171, RPC, and the prosecution sufficiently alleged all the elements of par. 1, Art. 172, conviction for the lesser offense of falsification by a private person was proper.<sup>29</sup>

*Calderon v. People*<sup>30</sup> is of a similar tenor. In that case, the Court set aside the accused's conviction for violation of Art. 171(4), RPC, because the element of taking advantage of official position was absent. However, the Court convicted the accused for falsification under Art. 172(1), RPC, an offense that is necessarily included in Art. 171(4), RPC:

An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

**That Article 172 (1) is necessarily included in a charge for Article 171 (4) of the RPC is settled.** In *Tanenggee v. People*, the Court enunciated the elements of Article 172 (1) of the RPC in the following wise:

**Falsification of documents under paragraph 1, Article 172 in relation to Article 171 of the Revised Penal Code (RPC) refers to falsification by a private individual or a public officer or employee, who did not take advantage of his official position, of public, private or commercial document.** The elements of falsification of documents under paragraph 1, Article 172 of the RPC are: (1) that the offender is a private individual or a public officer or employee who did not take advantage of his official position; (2) that he committed any of the acts of falsification enumerated in Article 171 of the RPC; and, (3) that the falsification was committed in a public, official or commercial document.

**Hence, even if petitioner did not take advantage of his official position, We still find him guilty for having made a false narration of facts in his PDS, which is a public document.**<sup>31</sup> (Emphasis supplied)

Art. 172 prescribes the penalty of *prision correccional* in its medium and maximum periods with a duration of two (2) years, four (4) months and one (1) day

<sup>28</sup> Id., citing *Guillergan v. People*, 656 Phil. 527 (2011).

<sup>29</sup> Id.

<sup>30</sup> G.R. No. 258899, 25 April 2022.

<sup>31</sup> Id.



to six (6) years. In *Terado v. People*,<sup>32</sup> the Court calculated the penalty for falsification under Art. 172 as follows:

**There being no aggravating or mitigating circumstances, the penalty should be imposed in its medium period, which is three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days. Taking into consideration the Indeterminate Sentence Law, petitioner is entitled to an indeterminate penalty the minimum of which must be within the range of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or four (4) months and one (1) day to two (2) years and four (4) months. 12 Consequently, petitioner must be sentenced to suffer the penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum.**<sup>33</sup> (Emphasis supplied)

Petitioner Herrera alleges that she is already of advanced age. In this regard, it bears noting that a conviction for falsification under Art. 172, instead of Art. 171, would allow her to apply for probation under Presidential Decree No. 968, as amended by Republic Act No. 10707.<sup>34</sup>

As to the element of intent, the record fully bears out petitioner Herrera's intent to falsify Resolution No. 007, and to my mind, the majority gravely erred in overruling the Sandiganbayan's factual finding on this matter.

The majority discusses petitioner Herrera's lack of intent as follows:

In the case, petitioner could not have signed Resolution No. 007 with criminal intent. To stress, during the BAC meeting on February 22, 1994, the members of the Committee raised and deliberated on the numerous complaints against Adelina Center. Among the complaints against the supplier included the following: (1) its lack of warranty over its products; and (2) its delivery of rebuilt

<sup>32</sup> G.R. No. 238951, 3 March 2021.

<sup>33</sup> Id.

<sup>34</sup> The penalty imposed by the Sandiganbayan on petitioner Herrera was the indeterminate penalty of (6) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, with perpetual disqualification from holding public office. This penalty disqualified petitioner Herrera from applying for probation under Sec. 9(a) of Presidential Decree No. (PD) 968, which states that the benefit of probation shall not be extended to those sentenced to serve a maximum term of imprisonment of more than six years.

The modification of the penalty would allow petitioner Herrera to apply for probation under Section 4, PD 968, as amended, which provides:

SEC. 4. *Grant of Probation.* - x xx [W]hen a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

typewriters instead of brand new units, typewriters with detached keys, and those which did not tabulate.

Notably, the members of the BAC likewise explained to petitioner that the award of procurement contracts is not solely based on the bid price but also on the following factors: (1) the quality of the product; (2) the reliability of the supplier; and (3) the warranty given for the units. Anecito explained that although Adelina Center quoted the lowest price during the bidding on January 31, 1994, the complaints against it justified the award of the contract to New Datche.

X X X X

In fact, in Criminal Case No. 24337, the Sandiganbayan acquitted Anecito, Clara, Calo, and Llaguno with respect to the charge for violation of Section 3(e) of RA 3019. The Sandiganbayan found that: (1) the prosecution failed to prove that Adelina Center and the Provincial Government suffered any undue injury; (2) Anecito, Clara, Calo, and Llaguno did not give unwarranted benefits to New Datche; and (3) the typewriters which New Datche delivered to the Provincial Government were in fact brand-new and quality units.

Apparently, in relying upon the representations of Anecito and signing Resolution No. 007, petitioner only had in mind the interest of the Provincial Government that it may only procure fine and premium typewriters. As she was not motivated by any sense of partiality, evil intent, or malice in signing Resolution No. 007, petitioner could not incur criminal liability for Falsification of Public Document under Article 171 of the RPC.<sup>35</sup>

In thereby acquitting petitioner Herrera based on its finding that she “only had in mind the interest of the Provincial Government” and was motivated simply by a desire to assist it in procuring “fine and premium typewriters,” and emphasizing that no undue injury was caused to Adelina Center and the Provincial Government, the majority mistakenly: (1) conflates the concepts of intent and motive; and (2) implies that damage or injury is indicative of intent in cases involving falsification of public documents.

The Court defined motive in criminal cases in *People v. Pentecostes*:<sup>36</sup>

**Motive pertains to the reason which prompts the accused to engage in a particular criminal activity.** It is not an essential element of a crime and need not be proven by the State in criminal prosecutions. Hence, **proof of motive alone will not establish guilt in the same way that the absence thereof cannot establish innocence.** In previous occasions, the Court has held that the question of motive only becomes material when there is doubt as to the identity of the malefactor committing the offense charged.<sup>37</sup> (Emphasis supplied; citations omitted)

<sup>35</sup> Decision, pp. 16 & 18.

<sup>36</sup> G.R. No. 226158, 8 November 2017.

<sup>37</sup> Id.

Petitioner Herrera's supposed purpose of helping the Provincial Government obtain high quality typewriters does not speak of her criminal intent or lack thereof; at most, it constitutes her motive in the sense that it may be the reason she engaged in a particular criminal activity, *i.e.*, the falsification of Resolution No. 007.

**However, proof of motive or absence thereof is not relevant to these proceedings, and petitioner Herrera's supposed goal, however noble, does not excuse her from liability.** A conviction for falsification requires only proof of intent to falsify, and citing the alleged motive of the accused as basis to reverse the Sandiganbayan's factual findings on the presence of the element of intent is erroneous.

*Camania v. People*,<sup>38</sup> which also involved a criminal charge for falsification of public documents relating to a bidding conducted by a local government unit, is illuminating and bears quoting at length:

More importantly, by signing the bid documents which stated the names of Lotus Design and Construction Corporation, JTY Construction, and OQC Construction as well as their supposed bid proposals and bonds, **Councilor Camania made it appear that the three construction firms participated in competitive public biddings even if none was duly conducted.** The COA report and the Letters from JTY Construction and OQC Construction confirmed this fact. **In the sworn statement of Councilor Camania, which forms part of the COA report, he even attested in signing the bid documents in the absence of actual biddings.** To be sure, Councilor Camania admitted at the trial that no biddings were conducted on the projects and that the three firms neither appeared nor submitted any quotation or proposal, *viz.*:

X X X X

Q: Mr. Witness, why did Mayor Castillo, Jr., and Auditor Abad called (*sic*) you during that time?

A: During that time we were in Bayumbong, I am with Kagawad Perfecto Dela Cruz and all of a sudden our cellphone rang. It was Mayor Castillo and he said: "*Uncle pumunta kayo dito sa CIMAU Office.*"

X X X X

Q: What do you think why you were being called at the CIMAU Office?

A: **He would like us to sign some documents.**

X X X X

Q: And upon arrival at the CIMAU Office, what did you do?

A: The mayor talked to us, Sir.

<sup>38</sup> G.R. No. 226647, 14 September 2021.

Q: And what was the conversation all about?

A: He said, "Uncle since you are already here in CIMAU, can you please sign the document?"

x x x x

Q: And what happened next?

A: The Auditor said, "*Sige, pirmahan nyo, walang problema dyan. Ako bahala dyan.*" (Sign that, there will be no problem with that. I'll take care of that).

x x x x

Q: And what did you come up to do?

A: Since they said, "It is the project of our town, you must sign that because our townmate will benefit from that."

Q: After that, what did you do?

A: **We were pressured that's why we signed, Sir.**

x x x x

**So, you signed the documents asked?**

WITNESS:

**We signed, Your Honor.**

x x x x

ATTY. CARBONELL:

Q: **In your honest opinion Mr. Witness, why did you sign those documents?**

A: **I signed the documents so that there will be a project in our town and our townmates will benefits *[sic]* from it.**

x x x x

A: **There was really no bidding conducted, Sir. We only signed the bidding documents because we were pressured by Mayor Castillo.**

CROSS EXAMINATION

PROS. DAQUIS:

Q: **And you also confirmed that there was no bidding conducted for the two projects namely: Five Span Gymnasium Project and Lubiub-Dibilit Road project?**

A: **That is what I know Ma'am, there is none.**



Q: You know it because you are a part of the PBAC, Sir?

A: Yes, Ma'am.

x x x x

Q: Now, my question is, when you affix[ed] your signature[s] on [these] Exhibits "G[,]" "H[,]" and "I[,]" Sir, [were] there entries already appearing on these documents?

A: Almost complete, Ma'am.

Q: And when you signed these documents, Sir, did Mayor Castillo and Severo Abad explain to you that the entries appearing on these three documents marked as Exhibits "I[,]" "H[,]" and "G[?]"

A: The only thing that I remember they said to me is that, "you sign that so that we commence with the project[.]"

Q: And you would agree with me, Sir, that DQC [*sic*] Construction, JTY Construction and Lotus Design [and] Construction [Corporation] never appear[ed] in the Municipality of Castañeda to submit their quotation or their proposal for the two Construction project[s] namely Five Span Gymnasium Project and Lublud Dibilit Road Project?

A: Yes, Ma'am.

x x x x

It is evident from the above testimony that **Councilor Camania voluntarily and intelligently signed the bid documents.** Under the rules of evidence, **it is presumed that a person takes ordinary care of his or her concerns.** In this case, Councilor Camania did not even attempt to overcome the presumption as no evidence was ever presented to show that he was in any way lacking in his mental faculties and, hence, could not have fully understood the ramifications of signing the bid documents. Neither did Councilor Camania present any evidence that he had been defrauded, forced, intimidated, or threatened into affixing his signature on the documents. **If Councilor Camania had any objections over the documents, he could have totally refrained from having any part in their execution.** Finally, we reiterate that the presence of the idea of gain, or an intent to injure a third person is not essential in the falsification of public or official documents. The law punishes the violation of the public faith and the destruction of the truth in these documents. The public character of the document is controlling.<sup>39</sup> (Emphasis and underscoring supplied; citations omitted)

Similarly, petitioner Herrera testified that she read and understood the text of Resolution No. 007 before voluntarily signing it, that she was aware that Adelina Center was the lowest bidder, and that New Datche Philippines Traders Corporation (New Datche) did not participate in the bidding:

<sup>39</sup> Id.

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 Now, Mrs. Herrera, you stated during your direct testimony and you confirmed it awhile ago that according to you what transpired during that meeting was that **you were informed that there were only two (2) bidders that was [sic] Adelina Center and Sunlight Marketing, correct?**

A There, sir.

PROS. TORIBIO:

Q And in that whereas clause, it's stated there that there are four (4) bidders?

A May I correct my first statement, sir. I said, I meant that of the three (3) bidders only two (2) actually quoted of the three (3) required bidders, only two (2) quoted – actually quoted.

Q So, two (2) actually quoted?

A Yes, sir.

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 those bidders are: Adelina?**

A **Adelina Center and Sunlight Marketing.**

Q Now, kindly go over again that second whereas clause does it states [sic] that fact that you just mentioned today?

A No, sir.

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

A **Yes, sir.**<sup>40</sup> (Emphasis supplied)

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<sup>40</sup> Rollo, pp. 208-210.

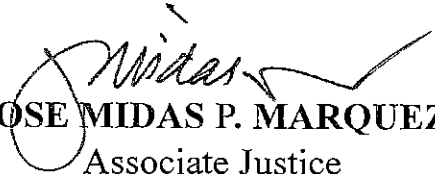
6

As in *Camania*, it is evident from the above testimony that **petitioner Herrera voluntarily and intelligently signed Resolution No. 007** despite her avowed lack of familiarity with procurement law or instructions from her superior to sign this document. No evidence was presented to show that she was in any way lacking in mental faculties or forced to sign Resolution No. 007 under duress, and if she had any reservations about the contents of Resolution No. 007—which, by her own testimony, she read and understood—she could have refrained from signing it or at the very least immediately consulted with Coletto upon the latter’s return.

Similar again to *Camania*, where the accused testified that he simply wanted his local government unit to benefit from a new project, **petitioner Herrera’s alleged motive of assisting the local government unit in acquiring high quality typewriters is irrelevant to the determination of her criminal liability for falsification.** It cannot be stressed enough that the idea of gain, or intent to injure a third person, is **not essential in the falsification of public or official documents, because what the law punishes is the violation of the public faith and the destruction of the truth in these documents.**<sup>41</sup>

In fine, petitioner should not go scot-free simply because she has become an octogenarian. For the same reason, courts should not change their decisions which have become final and executory.

In view of the foregoing, I vote to **MODIFY** the Sandiganbayan’s Decision dated 23 October 2014 and Resolution dated 10 February 2015. Petitioner Herrera’s conviction for Falsification of Public Documents under Art. 171(4), RPC, should be set aside, and a new judgment be rendered convicting petitioner Herrera of the lesser crime of Falsification of Public Documents under Art. 172(1), RPC, with a penalty of imprisonment for the indeterminate period of six (6) months of *arresto mayor*, as minimum, to two (2) years, four (4) months, and one (1) day of *prision correccional*, as maximum.

  
**JOSE MIDAS P. MARQUEZ**  
Associate Justice

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<sup>41</sup> *Camania v. People*, G.R. No. 226647, 14 September 2021.