



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 12 February 2020 which reads as follows:

“G.R. No. 201942 (*Sr. Insp. Leo Marzan and PO3 Ramon Lihay-Lihay v. People of the Philippines*). – This is a petition for review on *certiorari*,¹ filed under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision² dated November 4, 2011 and the Resolution³ dated May 14, 2012 of the Sandiganbayan in Criminal Case No. 20185. The Sandiganbayan found the petitioners Leo Marzan (Leo) and Ramon Lihay-Lihay (Ramon) guilty beyond reasonable doubt for the violation of Section 3(e) of Republic Act (R.A.) No. 3019.⁴

On February 9, 1993, the Philippine National Police (PNP), Office of the Inspector General directed the investigation of several purchases of Combat Clothing and Individual Equipment (CCIE) in 1992, which amounted to ₱241,992,827.72. In a report dated March 2, 1993, the Investigation Team found that the supposed CCIE suppliers did not make actual deliveries to the PNP. The suppliers further stated that these “ghost purchases” were made for purposes of collecting their receivables from the PNP.⁵

The Investigation Team further reported that the Chief Directorate for Material Services, who was also the Chairman of the Acceptance Committee at that time, admitted signing the records of acceptance and inspection of the CCIE, even if there were no actual receipt or delivery of the items. The Chief of the PNP Supply Center also stated that they did not receive deliveries of the CCIE supplies.⁶

¹ *Rollo*, pp. 27-69.

² Penned by Associate Justice Alexander G. Gesmundo (now a Member of this Court), with the concurrence of Associate Justices Roland B. Jurado and Alex L. Quiroz; *id.* at 72-114.

³ *Id.* at 117-133.

⁴ ANTI-GRAFT AND CORRUPT PRACTICES ACT (Approved: August 17, 1960).

⁵ Records (Vol. 6), pp. 22-24.

⁶ *Id.* at 24-26.

From these findings, the Investigation Team recommended that the police officers involved should be held responsible for the irregularities in the procurement of the CCIE. The petitioners, together with the other responsible officers of the PNP, were charged with acting in conspiracy with one another.⁷ The following actions of the petitioners were deemed as willful participation in the conspiracy, to wit:

17. SR INSP LEO MARZAN PNP was assigned as Purchasing Officer for quarter-master items at the Procurement Center, PNP LSC. He signed for the CO Procurement Center to the effect that he received the CCIE listed in the requisition, when in fact, he received no such items.⁸

X X X X

21. POIII Ramon Lihay-Lihay PNP, was the inspector, under the Directorate for Comptrollership. He certified in his inspection report that the items from PNP SS consisting of 500 pieces of rubber shoes were duly received and accepted by Mr. Tomas Flores, SAO, PNP LSC when in fact there was no such receipt or acceptance as testified by Mr. Tomas Flores himself. This is only one (1) example of his participation in the transaction.⁹

The Investigation Team thus recommended to charge the petitioners and the other accused officers with the following: (a) complex crime of Estafa through Falsification of Public Documents; and (b) violation of R.A. No. 3019.¹⁰

In a Resolution dated June 11, 1993,¹¹ the Office of the Deputy Ombudsman for the Military recommended charging the petitioners and the other accused officers with Malversation of Public Funds through Falsification of Public Documents, punishable under Articles 217 and 171, paragraph 2 of the Revised Penal Code.¹² Upon review, the Office of the Special Prosecutor (OSP) issued a Memorandum dated August 23, 1993,¹³ which reads as follows:

WHEREFORE, in recapitulation, the undersigned most respectfully recommend the prosecution for violation of Section 3(e) of R.A. 3019 of Director General Cesar P. Nazareno, Chief Supt. Everlino Nartatez, Senior Supt. Alejandro Espritu, Jr., Supt. Obedio Espena, Supt. Alejandro Camello, Chief Inspectors Jose de Vera and Adolfo Pamplona, Sr. Inspector Lloyd Cawan, Tomas Flores, SPO4 Ernesto Pillado, Sr. Inspector Leo Marzan, PO3 Ramon Lihay-Lihay, Sr. Inspectors Eduardo Octaviano and Alfredo Lotho, COA Representative Bartolome

⁷ Id. at 28-30.

⁸ Id. at 31.

⁹ See Investigation Report dated March 2, 1993 signed and submitted by Commissioner Alexis C. Canonizado, Col. Rafael I. Jaime, and Inspector Felicidad P. Ramos; id. at 31-32.

¹⁰ Id. at 32-34.

¹¹ Records (Vol. 1), pp. 28-49.

¹² Id. at 48.

¹³ Id. at 17-27.

Castillo and Belinda Abecendario.¹⁴ (Emphasis ours; underscoring in the original)

Meanwhile, on January 10, 1994, the Commission on Audit (COA) submitted its report on the audit of the PNP's financial transactions and operations for the period 1991 to 1992.¹⁵ The COA's audit findings noted the following irregularities in the procurement and delivery of the CCIE purchased in 1992:

13. Supplies, materials and services worth ₱162,544,808.14 were acquired by PNP from 25 suppliers who were not duly registered/licensed as required by COA Circular No. 85-55A.

14. The procurement and delivery of the [CCIE] worth ₱133 M purchased from January to June, 1992 is doubtful. The procurement was not covered by a procurement directive and eight of the purported receiving units denied having received CCIE worth ₱56 M.

15. Public bidding for the procurement of CCIE items in May and June 1992 amounting to ₱33,238,020 was simulated. The agency allowed one person to quote for several companies. As a result, prices quoted were all the same.¹⁶

Similar to the Investigation Team, the COA recommended the filing of appropriate charges against those involved in the procurement of the CCIE.¹⁷

Accordingly, the Information charging the petitioners and their co-accused police officers was filed with the Sandiganbayan on January 20, 1994.¹⁸ Prior to the arraignment of the accused officers, the prosecution moved to amend the information on February 7, 1994.¹⁹ The Sandiganbayan granted the motion.²⁰ The Amended Information charged the petitioners and their co-accused police officers with the violation of Section 3(e) of R.A. No. 3019, to wit:

That on or about the period comprised between January to June 1992, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, all public officers, GEN. CESAR P. NAZARENO, being then the Director General of the PNP, Director Guillermo Domondon, being then the Director for Comptrollership, Senior Superintendent CESAR ALVAREZ, being then the Chief, (*sic*) Comptroller for NSSU-PNP-LSC, CHIEF SUPT. EVERLINO NARTATEZ, being then the Director of the PNP Logistics and Support Command, SR. SUPT. ALEJANDRO ESPIRITU, JR., being then the Administrator of the PNP Service Store System, SUPT. OBEDIO

¹⁴ Id. at 26.

¹⁵ Records (Vol. 6), p. 39.

¹⁶ Id. at 42.

¹⁷ Id. at 45.

¹⁸ Records (Vol. 1), pp. 1-5.

¹⁹ Id. at 95-102.

²⁰ Id. at 104.

ESPENA, being then the Chief of the Procurement Center, Logistics Support Command, SUPT. ALEJANDRO CAMELLO, being then the Chief of Directorate for Materials, CINSP. JOSE DE VERA, CINSP. ADOLFO PAMPLONA, SR. and SR. INSP. LLOYD CAWAN, being then the Members of the Acceptance Committee, TOMAS FLORES, being then the Supply Accountable Officer, PNP-wide, SPO4 ERNESTO PILLADO, SR., being a PNP Inspector in the Directorate for Comptrollership, **SR. INSP. LEO MARZAN, being then the PNP Purchasing Officer, PO3 RAMON LIHAY-LIHAY, being then a PNP Inspector in the Directorate for Comptrollership,** SR. INSP. EDUARDO OCTAVIANO and SR. INSP. ALFREDO LOTHO, being then Members of the Bids and Awards Committee, BARTOLOME CASTILLO, being then the COA Representative in the PNP and BELINDA ABECENDARIO, being then the C-6, while in the performance of their official functions, taking advantage of their position, committing the offense in relation to their office and conspiring and confederating with one another, did then and there willfully, unlawfully, [criminally] and through evident bad faith cause undue injury to the [Government] in the following manner:

[A]ccused, without proper authority from the Department of Budget and Management (DBM), released or cause to be released the amount of ₱168 Million from the Personal Services Funds for the purchase of [CCIE] items for the Philippine National Police for the year 1992, and thereafter, caused it to appear that biddings for the partial purchase of said items were conducted on January 10, January 13, February 7, March 27 and June 10, 1992 and that awards were made to the lowest bidders, therein, after which purchases of the same nature from each winning dealer were deliberately and maliciously divided into Purchase Orders of not more than ₱500,000.00 each, pursuant to which the following Purchase Orders were made and payments were made [therefore] through the corresponding checks, to wit:

X X X X

[T]hereafter, accused certified or caused to be certified that the CCIE items covered by the aforementioned Purchase Orders and invoices were delivered, properly inspected and accepted, and subsequently distributed to the end-users; in truth and in fact, however, and as the accused very well knew, no such purchases of CCIE items were made, the biddings purportedly conducted for said purpose and the awards supposedly made pursuant thereto were merely simulated and no items were delivered, inspected, accepted and distributed to the respective end-users, as a result of which the Government, having been caused to pay for inexistent purchases and deliveries, suffered undue injury in the amount of THIRTY EIGHT MILLION TWO HUNDRED SEVENTY FIVE THOUSAND FIVE HUNDRED SEVENTY THREE and 50/100 PESOS (₱38,275,573.50). Philippine Currency, more or less.

CONTRARY TO LAW.²¹

²¹ Id. at 98-101.

After several requests for reinvestigation, the OSP issued an Order²² dated December 15, 1998, which recommended the withdrawal of the information against all the accused.²³ On review, the Office of the Ombudsman resolved to disapprove the OSP's recommendation, and likewise dropped Guillermo Domondon and Cezar Alvarez as accused in this case.²⁴

In a Resolution²⁵ dated July 26, 1999, the Sandiganbayan resolved to drop said accused individuals from the Amended Information. Another co-accused, Belinda Abecendario, was also dropped, having died during the pendency of the proceedings.²⁶ Several postponements of the arraignment were made until finally, on October 3, 2003, the arraignment of the petitioners pushed through. The petitioners both pleaded "not guilty" to the charge.²⁷

The following stipulations were agreed upon during pre-trial:

- (a) All of the accused public officers, including the petitioners Leo and Ramon, were public officers during the time material to the case;
- (b) PNP issued Purchase Orders for CCIE and paid the amount of [₱14,794,100.00]²⁸ to the following suppliers: Squareline, Double I Enterprises, S-Ben Trading, and A.C. Sto. Domingo;
- (c) PNP also issued Purchase Orders for CCIE and paid the amount of ₱15,874,223.50 to the following: An-An Enterprises, LFJ Int'l., R.M. Maniego Enterprises, M. Tugaoen Enterprises, Jaff Trading/Motor Shop, Jur'l Trading Int'l., Midland Intertrade, Olvina Trading, Sedeka Marketing, and Jalca Trading; and
- (d) PNP issued Purchase Orders for CCIE and paid ₱7,607,250.00 from the PNP Service Store System.²⁹

During trial, the prosecution witnesses include the former Chief of the Supply Center of the PNP Logistics Support Service, Retired P/Supt. Jesus Buenaventura Arceo. He testified that during his term, his office did not receive any CCIE from the Supply Center. Neither was he aware of the purchase of CCIE, as he was not a party to the procurement. The other prosecution witnesses include Col. Rafael Idia Jaime, a member of the Investigation Team that prepared the Report dated March 2, 1993, and Lydia

²² Id. at 248-261.

²³ Id. at 261.

²⁴ Id. at 264.

²⁵ Id. at 283-285.

²⁶ Id. at 285.

²⁷ *Rollo*, pp. 76-77.

²⁸ Records (Vol. 1), p. 99.

²⁹ *Rollo*, p. 77-78.

Fernandez de Joya, a State Auditor that conducted the audit of the PNP in 1992.³⁰

Employees from the units that were supposedly the end-users of the CCIE also testified that they neither requested nor received the supply of CCIE in 1992. The owner of one of the business enterprises supposedly supplying the CCIE, Margarita Bangit Tugaoen, also testified in open court to identify her sworn statement. In this statement, she admitted not making actual deliveries of the items listed in the purchase orders.³¹

After the prosecution formally offered their evidence, petitioner Leo and several of the accused police officers³² filed a demurrer to evidence on January 19, 2007. However, this was denied by the Sandiganbayan in its Resolution³³ dated September 12, 2007 for lack of merit. The defense then proceeded to present their evidence.³⁴

While petitioner Leo then submitted the required memorandum to the Sandiganbayan, petitioner Ramon did not.³⁵ The case was thereafter submitted for resolution.³⁶

In a Decision dated November 4, 2011,³⁷ the Sandiganbayan found the petitioners guilty beyond reasonable doubt, thus:

WHEREFORE, premises considered, the Court finds the accused EVERLINO NARTATEZ, ALEJANDRO ESPIRITU, JR., OBEDIO ESPEÑA, ALEJANDRO CAMELLO, JOSE DE VERA, ADOLFO PAMPLONA, SR., LLOYD CAWAN, LEO MARZAN and RAMON LIHAY-LIHAY **GUILTY** beyond reasonable doubt as charged in the Information and sentences each of them to suffer an indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to indemnify, jointly and severally, the government the total amount of ₱38,275,573.50 representing the losses it suffered.

For insufficiency of evidence, accused EDUARDO OCTAVIANO, ALFREDO LOTHO and BARTOLOME CASTILLO are hereby **ACQUITTED** of the same charge. Accordingly, the surety bonds posted by Octaviano and Lotho are ordered cancelled while the cash bond posted by Castillo may now be withdrawn by him or his duly authorized representative upon presentation of the original receipt evidencing payment thereof subject to the usual accounting and auditing procedures. Furthermore, the Hold Departure Order issued by this Court dated 26 July 1999 is set aside insofar as Octaviano, Lotho and Castillo are concerned.

³⁰ Id. at 78-86.

³¹ Id. at 86-88; Records (Vol. 6), pp. 482-483.

³² Namely, Jose De Vera, Eduardo Octaviano, Alejandro Camello, Alejandro Espiritu, Jr., Alfredo Lotho, Lloyd Cawan, Adolfo Pamplona, Sr., and Bartolome Castillo.

³³ Records (Vol. 7), pp. 409-475.

³⁴ *Rollo*, pp. 89-94.

³⁵ Records (Vol. 9), pp. 328-357.

³⁶ Id. at 447.

³⁷ *Rollo*, pp. 72-114.

SO ORDERED.³⁸

The Sandiganbayan found that the petitioners actively participated in the conspiracy with the other accused police officers. In particular, petitioner Leo, as the Senior Inspector and Purchasing Officer, prepared the disbursement vouchers (DVs) for the ghost purchases of the CCIE items. Meanwhile, petitioner Ramon, as the PNP Inspector under the Directorate for Comptrollership, certified in his inspection report that the items from the PNP Service Store System were duly received and accepted, even if the actual items were not received. Their individual acts were deemed essential to the common design to defraud the government.³⁹

Aggrieved, the petitioners moved for the reconsideration of the Sandiganbayan's decision. However, their motion was denied in the Resolution⁴⁰ dated May 14, 2012, which held:

WHEREFORE, premises considered, the separate motions for reconsideration filed by herein accused-movants are **DENIED** for lack of merit.

SO ORDERED.⁴¹

The petitioners thus filed the present petition for review *via* Rule 45 of the Rules of Court, challenging the ruling of the Sandiganbayan to convict them for violating Section 3(e) of R.A. No. 3019. Essentially, the issue to be resolved is whether the Sandiganbayan committed a reversible error in finding the petitioners guilty beyond reasonable doubt for the crime charged. They aver that the prosecution was unable to prove the existence of a conspiracy among them and the other accused officials. The petitioners also argue that the existence of all the elements of Section 3(e) of R.A. No. 3019 was not sufficiently established, especially since they merely obeyed the orders of their respective immediate superiors to prepare the necessary documents for the procurement of the CCIE items.⁴²

The petition for review must be denied for utter lack of merit.

Preliminarily, it should be noted that as a petition filed under Rule 45 of the Rules of Court, only questions of law may be raised. While this rule admits of exceptions, the general rule is that the appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited only to questions of law. As such, the factual findings of the Sandiganbayan are conclusive on the Court, which can neither review the credibility of

³⁸ Id. at 113-114.

³⁹ Id. at 111-113.

⁴⁰ Id. at 117-133.

⁴¹ Id. at 133.

⁴² Id. at 51-67.

witnesses nor weigh the probative value of the parties' evidence all over again.⁴³

The essential elements for the violation of Section 3 (e) of R.A. No. 3019 are as follows: (a) the accused must be a public officer discharging administrative, judicial or official functions; (b) he must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁴⁴

The parties had stipulated on the existence of the first element—that the petitioners were public officers during the time material to this case.⁴⁵ Thus, the prosecution only needs to prove the second and third elements in this case.

It is undisputed that there were purchase orders issued for CCIE items, and subsequently, payments were made in the aggregate amount of ₱38,275,573.50 to various suppliers.⁴⁶ Despite the disbursement of public funds, the CCIE items were not actually delivered. This was established by the prosecution through the testimony of P/Supt. Jesus Arceo, the Chief of the PNP Supply Center, who categorically denied receiving CCIE items for the first, second and third quarters of 1992. The following witnesses also corroborated his testimony: Col. Rafael Jaime, who was a member of the Investigation Team that prepared the report on the ghost purchases of the CCIE; and Lydia de Joya, the State Auditor that prepared the COA's Audit Report.⁴⁷

There is a conspiracy when two or more persons aimed their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment.⁴⁸ In this particular case, it was significantly found that the ghost purchases of the CCIE items were perpetuated by splitting the contracts into amounts not exceeding ₱500,000.00. By doing so, the approving authority for the procurement of the requisite purchase orders was the petitioners' co-accused, Everlino Nartatez, as amounts in excess thereof were already outside his authority.⁴⁹ Petitioner Leo prepared the corresponding disbursement vouchers for the procurement of the CCIE items from the PNP Service Store System, while petitioner Ramon, as the

⁴³ *Cabaron et al. v. People et al.*, 618 Phil. 1, 6 (2009).

⁴⁴ *Consigna v. People, et al.*, 731 Phil. 108, 123-124 (2014).

⁴⁵ *Supra* note 29.

⁴⁶ *Id.*

⁴⁷ *Rollo*, pp. 96-102.

⁴⁸ *People v. Del Rosario*, 365 Phil. 292, 307 (1999).

⁴⁹ *Rollo*, p. 107.

Inspector under the Directorate for Comptrollership, certified that the items were duly received and accepted.⁵⁰

As the Sandiganbayan aptly found, the actions of the petitioners overtly manifest their concurrence in the criminal design to facilitate the disbursement of public funds for the ghost purchases of CCIE items.⁵¹ It was indispensable for petitioner Leo to make sure that the disbursement vouchers were in the amount within the signing authority of his co-accused Everlino Nartatez. Meanwhile, petitioner Ramon must necessarily certify the receipt of the items in order to complete the disbursement.

The petitioners cannot deny the existence of a conspiracy by stating that they merely followed the orders of their superior officers in the preparation of the documents. Their actions manifest an explicit intent to circumvent the statutory requirements for the procurement process by splitting the contracts, in order to elude the review of a higher authority who was, most likely, not privy to the scheme of the petitioners and their co-accused officials. The fact that the CCIE items were not delivered should have also prompted the petitioners not to prepare the disbursement vouchers and inspection report, respectively. In doing otherwise and simulating the documents necessary for the payment of the ghost purchases, it is clear that the petitioners participated willingly in the conspiracy.

The Court's ruling in *Maderazo, et al. v. People, et al.*⁵² finds similar application to the case at bar:

The evidence established beyond reasonable doubt that Maderazo processed the Request for Obligation and Allotment instead of the municipal engineer, received the amount of P160,000 on 28 January 1998, and covered up the non-existent tapping saddles by belatedly effecting the delivery of the tapping saddles, which did not even conform to the Job Contract. For his part, Veruen approved the Disbursement Voucher despite the lack of supporting documents, as found upon audit, in violation of his duties. Moreover, Maderazo and Veruen signed the glaringly incomplete and undated Inspection Report. Verily, Maderazo and Veruen acted in evident bad faith, or such state of mind affirmatively operating 'with furtive design or with some motive or self-interest or ill will or for ulterior purposes. By disbursing P160,000 despite the non-existent tapping saddles, Maderazo and Veruen caused undue injury to the LGU of Caibiran for the said amount. Their concerted actions, which demonstrate a common design, justify the finding of conspiracy.

In *Lihaylihay v. People of the Philippines*, the Court found petitioners in evident bad faith for affixing their signatures on the disputed documents despite the glaring defects on it and for approving the "ghost" purchases in the amount of P800,000. In *Alvizo v. Sandiganbayan*, the Court convicted petitioners for violating Section 3(e) of RA 3019 upon a finding of conspiracy in the irregular preparation, processing, and

⁵⁰ Id. at 108-112.

⁵¹ Id. at 113.

⁵² 762 Phil. 685 (2015).


approval of simulated documents, and in the payment to the contractors for the non-existent projects.⁵³

In line with this, the petitioners clearly acted with manifest partiality and evident bad faith, which resulted in injury to the government in the amount of ₱38,275,573.50 for the ghost purchases of CCIE items. Accordingly, all the elements for the violation of Section 3(e) of R.A. No. 3019 were established.

WHEREFORE, premises considered, the petition for review on *certiorari* is hereby **DENIED**. The Decision dated November 4, 2011 and the Resolution dated May 14, 2012 of the Sandiganbayan in Criminal Case No. 20185 are **AFFIRMED in toto**.

SO ORDERED."

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *urh 7/3*
03 JUL 2020

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⁵³ Id. at 694-695.