



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

OFELIA C. CAUNAN,
 Petitioner,

G.R. No. 183529

Present:

VELASCO, JR., J.,
Chairperson,

- versus -

PEREZ,
 REYES,
 PERLAS-BERNABE,* and
 JARDELEZA, JJ.

PEOPLE OF THE PHILIPPINES
and the SANDIGANBAYAN,
 Respondents.

Promulgated:

February 24, 2016

X-----*[Signature]*-----X

DECISION

REYES, J.:

For review is the Decision¹ dated April 29, 2008 of the Sandiganbayan in Criminal Case No. 28068, finding Ofelia Caunan (Caunan) guilty of violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act.” The case involves the government’s purchase and payment of equipment not delivered; a transaction dubbed as “ghost delivery.”

* Additional Member per Raffle dated February 24, 2016 *vice* Associate Justice Diosdado M. Peralta.

¹ Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Samuel R. Martires concurring; *rollo*, pp. 78-96.

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Facts of the Case

On August 15, 2000, Dra. Magnolia Punzalan (Punzalan), as the then Chairman of Barangay Marcelo Green, requested for the purchase of Compost Garbage and Recycling Equipment (compost equipment) from the City Government of Parañaque (City Government), intended to be used in their barangay. However, her request was not acted upon even after she finished her term in 2002. On July 20, 2002, Dante Pacheco (Pacheco) succeeded Punzalan and assumed his post as the Chairman of Barangay Marcelo Green. Like his predecessor Punzalan, Pacheco requested for the purchase of compost equipment for their barangay.²

In September 2002, the Office of the City Auditor of Parañaque (Office of the City Auditor) conducted an investigation on the City Government's reported purchase of 14 sets of compost equipment worth ₱6,287,500.00 in the year 2000. As part of the investigation, state auditors sent letters of inquiry³ to barangay captains to confirm the delivery of compost equipment to their respective barangays in the year 2000.⁴

Punzalan was alerted of the ongoing investigation when Pacheco furnished her with a copy of his reply⁵ to the state auditor. In the letter, Pacheco stated that Punzalan did not turn over to him any compost equipment she received during her tenure. Punzalan also received a similar letter of inquiry from the Office of the City Auditor.⁶ In a letter⁷ dated October 21, 2002, Punzalan repudiated that she received the delivery of compost equipment in Barangay Marcelo Green; she likewise disclaimed the signature purporting to be hers on the documents attached to the letter of inquiry.

The foregoing events led Punzalan to visit the Office of the City Auditor where she discovered the existence of documents relative to the purchase and delivery of compost equipment to Barangay Marcelo Green during her term of office.⁸ The following documents were uncovered: (1) Purchase Order (P.O.) No. 0005031 was issued naming Julia Enterprises and General Merchandise (Julia Enterprises) as the supplier/dealer; (2) Disbursement Voucher No. 101-00-12-8580, for a total amount of ₱900,000.00 for the delivery of compost equipment, with Julia Enterprises indicated as the claimant; (3) Check No. 123787 dated December 12, 2000,

² Id. at 81, 83-84.

³ Exhibit "C-2", folder of exhibits, p. 5.

⁴ *Rollo*, p. 124.

⁵ Exhibit "C", folder of exhibits, p. 4.

⁶ *Rollo*, p. 125.

⁷ Exhibit "N- 28", folder of exhibits, p. 68.

⁸ *Rollo*, p. 81.

with Julia Enterprises as the payee, for the amount of ₱861,600.00; and (4) Memorandum Receipt, allegedly signed by Punzalan and Caunan on December 13, 2000.⁹

Incidentally, Pacheco's purchase request was granted. In 2003, one set of compost equipment was delivered by another supplier, Lacto South Metro Enterprises (Lacto South) to Barangay Marcelo Green under P.O. No. 001100,¹⁰ which was received by Pacheco.¹¹

Meanwhile, the Office of the City Auditor continued with the investigation. In a Memorandum¹² dated November 5, 2002, State Auditor Arturo F. Garcia disclosed that 10 sets of compost equipment worth ₱4,493,750.00 were purchased and paid in full by the City Government in 2000 and 2001 for different barangays, but were not delivered by the suppliers. One of the barangays that did not receive such compost equipment is Barangay Marcelo Green.¹³

To clear her name,¹⁴ Punzalan lodged a complaint before the Ombudsman. After preliminary investigation, an Information¹⁵ was filed before the Sandiganbayan against the following: Silvestre De Leon (De Leon), City Treasurer; Antonio Abad III (Abad), City Administrator; Caunan, the Officer-in Charge of the General Services Offices; and Ricardo Adriano (Adriano), the proprietor of Julia Enterprises for violation of Section 3(e) of R.A. No. 3019. The Information reads:

That on or before 12 December 2000 or sometime prior or subsequent thereto, in the City of Parañaque, and within the jurisdiction of this Honorable Court, accused [De Leon], a public official being then the City Treasurer of Parañaque City, [Abad], likewise a public officer, being then the City Administrator, and [Caunan], a public official, being the OIC, General Services Offices, all from the [City Government], while in the performance of their duties and taking advantage of their official positions, conspiring and confederating with a private individual [Adriano], Proprietor of [Julia Enterprises], with evident bad faith or manifest partiality, did then and there willfully, unlawfully and criminally cause damage or undue injury to the government in the amount of Nine Hundred Thousand Pesos (P900,000.00) by causing it to appear that a [compost equipment] was delivered by [Julia Enterprises] to a certain [Punzalan], then Barangay Chairman, Barangay Marcelo Green, Parañaque City, when in truth and in fact no such delivery was made, and thereafter, did then and there cause the payment thereof in the amount of Nine Hundred Thousand Pesos (P900,000.00) to the damage and prejudice

⁹ Id. at 83.

¹⁰ Exhibit "T-1", folder of exhibits, p. 91.

¹¹ *Rollo*, pp. 132-133.

¹² Exhibit "N to N-4", folder of exhibits, pp. 40-44.

¹³ Exhibit "N-2-a", id. at 42.

¹⁴ TSN, February 6, 2006, p. 27.

¹⁵ *Rollo*, pp. 97-99.

of the government.

CONTRARY TO LAW.¹⁶

On April 29, 2008, the Sandiganbayan rendered a Decision finding Caunan guilty of violating Section 3(e) of R.A. No. 3019 while her co-accused Abad was exonerated of the charge against him, viz:

ACCORDINGLY, accused [Caunan] is found guilty beyond reasonable doubt of having violated [R.A. No.] 3019, Section 3 (e) and is sentenced to suffer in prison the penalty of 6 years [and] 1 month to 10 years. She also has to suffer perpetual disqualification from holding any public office. Accused [Caunan] is directed to reimburse the City of Parañaque the amount of eight hundred sixty[-]one thousand six hundred [pesos] (P861,600.00) representing the cost of the undelivered compost equipment.

For failure of the prosecution to prove the guilt of accused [Abad], beyond reasonable doubt, he is ACQUITTED.

Costs against accused [Caunan].

SO ORDERED.¹⁷

Accused De Leon was freed from criminal liability in view of his death during the pendency of the case, whereas Adriano was at large.¹⁸

During trial, the defense primarily argued that an ocular inspection would prove that the compost equipment was actually delivered to Barangay Marcelo Green. Yet, the Sandiganbayan found that the existing compost equipment in Barangay Marcelo Green was not delivered by Julia Enterprises, but by Lacto South under another fully paid transaction.¹⁹ The Sandiganbayan took note of the uncontested fact that the City Government entered into two separate transactions for the purchase of compost equipment for Barangay Marcelo Green. The first transaction was initiated by Punzalan's request on August 15, 2000 while the second transaction was a result of Pacheco's request on September 5, 2002. It is the non-delivery under the *first transaction* which is the subject of the case.²⁰

¹⁶ Id. at 97-98.

¹⁷ Id. at 95.

¹⁸ Id. at 80. (Note: Adriano was eventually arrested and detained at the National Bureau of Investigation Security Management Division, Sandiganbayan *rollo*, Vol. II, p. 227; arraigned on July 10, 2008, Sandiganbayan *rollo*, Vol. II, p. 246.)

¹⁹ *Rollo*, p. 90.

²⁰ Id. at 91.

Caunan moved to reconsider the decision but it was denied by the Sandiganbayan in its Resolution²¹ dated July 11, 2008.

Thus, Caunan filed a petition for *certiorari*²² assailing the decision and resolution of the Sandiganbayan.

The issue primarily raised in the petition is whether Caunan's conviction for the crime of violation of Section 3(e) of R.A. No. 3019 was proper.

Ruling of the Court

The petition has no merit.

At the outset, it is emphasized that a petition for review on *certiorari* under Rule 45 shall raise only questions of law. "It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; [and] (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record. None of the above exceptions obtains in this case."²³

The charge against Caunan is violation of Section 3(e) of R.A. No. 3019, which provides:

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

(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 impartiality, evident bad faith or gross inexcusable negligence. x x x.

x x x x

²¹ Id. at 101-106.

²² Id. at 17-76.

²³ *Ong v. People*, 616 Phil. 829, 834-835 (2009).

To be found guilty under the said provision, the following elements must concur:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- 3) That his action caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁴

First, it is undisputed that Caunan is a public officer, as she is the Officer in Charge of the Department of General Services of the City Government.²⁵ Under the Local Government Code of 1991, the general services officer performs all functions pertaining to supply and property management in the local government unit concerned.²⁶ The duties and functions of a general services officer were further expounded by the Sandiganbayan:

The functions of accused Caunan as the General Services Officer of the City of Parañaque are:

- 1) As the General Services Officer of the City of Parañaque, she is mandated under the Local Government Code to “(t)ake custody of and be accountable for all properties, real or personal, owned by the local government unit”.
- 2) As the General Services Officer, her purchasing function is specified under the Rules and Regulations On Supply and Property Management, Section 29 [of] which provides that:

In every province and city, the office of the general services officer shall exercise the function of acquiring for the province or city all its supply or property requirements. The municipal treasurer and barangay treasurer shall exercise said function for the municipal and barangay government, respectively.

For the transaction/purchase in this case, it was accused Caunan as the General Services Officer who acted as the purchasing officer for the City of Parañaque.

²⁴ *Plameras v. People*, G.R. No. 187268, September 4, 2013, 705 SCRA 104, 123-124, citing *Uriarte v. People*, 540 Phil. 477, 493 (2006).

²⁵ *Rollo*, p. 98.

²⁶ Article 20, Section 490, paragraph b.3.8.

3) On the point bearing on the delivery and inspection of purchased items, Section 114 of the Rules and Regulations on Supply and Property Management specifically provides that “(a)ll items to be inspected ***shall be accepted first by the general services officer***, municipal or barangay treasurer, as the case may be.” x x x Thus, the equipment (supposedly delivered) to be inspected should have first been accepted by her, as the purchasing officer.²⁷ (Citations omitted and emphasis and italics in the original)

Second, on the element of bad faith and manifest partiality, Caunan made it appear that the compost equipment subject of P.O. No. 0005031 was in the official custody of the government by signing the disbursement voucher and issuing a memorandum receipt for compost equipment which was not in fact delivered.²⁸

The Court explained that “‘partiality’ is synonymous with ‘bias’ which ‘excites a disposition to see and report matters as they are wished for rather than as they are.’ ‘Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.’”²⁹

Caunan’s bad faith was made even more evident in the irregularities committed in the delivery and acceptance of the compost equipment. Caunan claimed that her office merely prepared the Memorandum Receipt based on the documents indicating that the compost equipment was received by Punzalan in Barangay Marcelo Green.³⁰ These documents were supposedly brought to her office by a courier from the barangay.³¹ However, the details surrounding the delivery are not as straightforward; upon further questioning, Caunan revealed that the compost equipment was initially delivered in the premises of the city hall because of the lack of space to hold the equipment in Barangay Marcelo Green. It was the inspector from the Office of the City Treasurer who accepted and inspected the delivery in the city hall, after which Caunan issued the Memorandum Receipt.³² According to Caunan, the compost equipment was deposited later on with the manufacturer because of the confined space in the city hall.³³

²⁷ *Rollo*, p. 92.

²⁸ *Id.* at 93.

²⁹ *Sison v. People*, 628 Phil. 573, 583 (2010), citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687.

³⁰ TSN, March 2, 2007, p. 28.

³¹ *Id.* at 34.

³² *Id.* at 49.

³³ *Id.* at 37.

In Caunan's version of the events, there was no account on how the delivery eventually reached Barangay Marcelo Green after the compost equipment was allegedly "returned" to the manufacturer. She claimed that she cannot remember when the compost equipment was actually delivered in Barangay Marcelo Green³⁴ but she sent members of her staff to check on the equipment.³⁵ Notably, none of these staff members were presented to testify for the defense; there was no record as regards these staff members who could vouch for the inspection of the delivery in Barangay Marcelo Green under P.O. No. 0005031. In fact, Caunan declared that she personally inspected the compost equipment in Barangay Marcelo Green only in 2006.³⁶ This was long after the supplier was paid in the year 2000.

On the last element, Caunan raised in her petition that P.O. No. 0005031 was duly served and that no damage or prejudice was caused to the government; that Pacheco certified that two sets of compost equipment are currently operating in Barangay Marcelo Green; and that the delivery was not made by Julia Enterprises itself as the supplier, but by Lacto South as the manufacturer of the equipment. These circumstances would indicate that there was full performance of the obligation to deliver under P.O. No. 0005031.³⁷

But the delivery made by Lacto South is not an issue in this case as that delivery referred to a different transaction, duly paid and supported by another set of documents.³⁸ In his testimony, Pacheco clarified that his certification, affirming that two sets of compost equipment are operating in Barangay Marcelo Green, was issued sometime in 2004.³⁹ This was after the compost equipment under P.O. No. 001100 from Lacto South was delivered, while the second set of compost equipment was subsequently adopted from Barangay Baclaran.⁴⁰ This was also verified by a Technical Audit Specialist from the Commission on Audit in an Inspection Report⁴¹ when another

³⁴ Id. at 56.

³⁵ Id. at 57.

³⁶ Id. at 55.

³⁷ *Rollo*, p. 59.

³⁸ Documents related to P.O. No. 001100:

1) P.O. No. 001100 dated October 10, 2002, with Lacto South as supplier, for a total of ₱900,000.00, Exhibit "T-1", folder of exhibits, p. 91.

2) Disbursement voucher with Lacto South as the named claimant, for a total amount of ₱864,000.00, Exhibit "T-2," folder of exhibits, p. 92.

3) Check No. 15521, dated March 18, 2003 for the amount of ₱864,000.00, issued to Lacto South, Exhibit "T-3", folder of exhibits, p. 93.

4) Official Receipt issued by Lacto South dated March 18, 2003 for the amount of ₱864,000.00 for one set of compost equipment, Exhibit "T-4", folder of exhibits, p. 94.

5) Inspection and Acceptance Report dated January 8, 2003, Exhibit T-5", folder of exhibits, p. 95.

6) Memorandum Receipt, dated January 8, 2003, signed by Pacheco and Caunan, Exhibit "T-6", folder of exhibits, p. 96.

³⁹ TSN, February 13, 2006, p. 28.

⁴⁰ Id.

⁴¹ Exhibit "S", folder of exhibits, pp. 88-89.

ocular inspection was conducted in 2006. It was found that “there was a delivery of two (2) sets of [compost equipment] but not under the subject [P.O.] No. 0005031 and not supplied by [Julia Enterprises].”⁴² Furthermore, a perusal of the testimony⁴³ of Ronaldo Samala, managing partner of Lacto South, would show that he never claimed that Lacto South delivered any compost equipment under P.O. No. 0005031 on behalf of Julia Enterprises.

Thus, no delivery under P.O. No. 0005031 was made, resulting to a loss of ₱861,600.00 on the part of the government for which Caunan must be held liable. As the general services officer concerned, she participated in the issuance of documents which facilitated the payment of undelivered compost equipment.

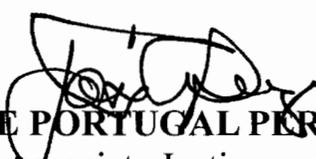
WHEREFORE, the petition is **DENIED**. The Decision dated April 29, 2008 and Resolution dated July 11, 2008 of the Sandiganbayan in Criminal Case No. 28068 are hereby **AFFIRMED**.

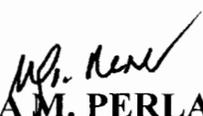
SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

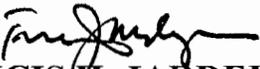

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

⁴² Id. at 88.

⁴³ TSN, July 2, 2007, pp. 5-26.


FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

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