



Republic of the Philippines
Supreme Court
Manila

EN BANC

NAOMI LOURDES A. HERRERA,
Petitioner,

G.R. Nos. 217064-65

Present:

GESMUNDO, C.J.,*
LEONEN, **
CAGUIOA,
HERNANDO,***
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,****
MARQUEZ,
DIMAAMPAO,
KHO, JR., and
SINGH, JJ.

- versus -

SANDIGANBAYAN OF THE
PHILIPPINES,
Respondent.

Promulgated:

June 13, 2023

X-----

R E S O L U T I O N

INTING, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed under

* Took no part and on official leave.

** Acting Chief Justice per Special Order No. 2977 dated June 1, 2023.

*** On official leave.

**** On leave.

¹ *Rollo*, pp. 16-47.

Rule 45 of the Rules of Court assailing the ruling of the Sandiganbayan, Fifth Division, in Criminal Case No. 24338 in its consolidated Decision² dated October 23, 2014, and the Resolution³ dated February 10, 2015, in Criminal Case Nos. 24337 and 24338. In Criminal Case No. 24338, the Sandiganbayan found Naomi Lourdes A. Herrera (petitioner) and her co-accused Anecito P. Ambray (Anecito), Leonardo S. Calo (Calo), Leyminda⁴ R. Violan (Violan), and Marlene B. Quiñones (Quiñones) guilty beyond reasonable doubt of Falsification of Public Documents under Article 171 of the Revised Penal Code (RPC) and sentenced each of them to suffer the indeterminate penalty of six (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.⁵

The Antecedents

The Information in Criminal Case No. 24338 states:

That on or about February 22, 1994, in Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, pursuant to R.A. 7975, the above-named, accused Leyminda R. Violan, a high ranking public officer, being then the Provincial Treasurer, Leonardo S. Calo, Anecito P. Ambray, Ma. Naomi L. Herrera and Marlene B. Quiñones, all low ranking public officers, being then Executive Assistant III, General Services Officer, Management and Audit Analyst IV and Budget Officer IV, respectively, all of the Provincial Government of Surigao del Sur, Tandag, Surigao del Sur, while in the performance of their official functions, thus, committing the offense in relation to their offices, with evident bad faith and manifest partiality, taking advantage of the position as members of the Committee on Awards, did then and there willfully, unlawfully and feloniously falsify Resolution No. 007 dated 22 February 1994 of the Committee on Awards of the Provincial Government of Surigao del Sur on the purchase of Olympia typewriters, by making it appear therein that New Datche Philippines Traders Corporation of Cebu City and Olympia Business Machines Co. (Phils.), Inc. of Manila were among the bidders when, in truth and in fact, as the accused very well knew that only Family Part Center, Sunlight Marketing and Adelina Center participated, during the bidding at 10:00 o'clock in the morning on 31 January 1994 for seven (7) Olympia typewriters.

² Id. at 80-110. Penned by Associate Justice Alexander G. Gesmundo (now Chief Justice of the Court) and concurred in by Associate Justices Roland B. Jurado and Ma. Theresa Dolores C. Gomez-Estoesta.

³ Id. at 52-57.

⁴ Referred to as "Leonida" in some parts of the *rollo*.

⁵ *Rollo*, p. 109.

CONTRARY TO LAW.⁶

On January 6, 1994, the Provincial Government of Surigao del Sur (the Provincial Government) issued Invitation to Bid No. 034-A for the procurement, among others, of three units of 24-inch and four units of 18-inch Olympia Carriage typewriters.⁷

On January 31, 1994, Tandag General Hardware, Sunlight Marketing, and Adelina Center, participated in the bidding⁸ wherein Adelina Center quoted the lowest price.⁹

On February 22, 1994, the Provincial Bids and Awards Committee (BAC), led by Anecito, the Provincial General Services Officer, held a meeting wherein numerous complaints against Adelina Center were raised and deliberated upon.¹⁰ Among the complaints were (1) its lack of warranty over its products, and (2) its delivery of rebuilt typewriters instead of brand-new units, typewriters with detached keys, and those that did not tabulate.¹¹

During the BAC meeting, Anecito informed the attendees that he conducted an open canvass in Cebu City on February 8, 1994 to solicit quotations from other suppliers of Olympia typewriters.¹² Anecito presented the price quotations submitted by New Datche Philippines Traders Corporation (New Datche), and Olympia Business Machines, and the respective Invitations to Bid which he furnished them.¹³ Anecito also presented the Certification of New Datche that it was the exclusive distributor and authorized dealer of Olympia typewriters.¹⁴

The BAC resolved that in awarding procurement contracts, it is not always the bid price which should be considered but also the following factors: (1) the quality of the product; (2) the reliability of the supplier; and (3) the warranty given for the units. Hence, by virtue of Resolution No. 007 dated February 22, 1994, the BAC awarded the contract for the

⁶ Id. at 82. As culled from the Sandiganbayan Decision.

⁷ Id. at 83 and 87.

⁸ Id. at 87-88.

⁹ Id.

¹⁰ Id. at 91-92.

¹¹ Id.

¹² Id. at 88 and 93.

¹³ Id. at 93.

¹⁴ Id.

supply and procurement of Olympia typewriters to New Datche instead of Adelina Center.¹⁵

The pertinent portions of Resolution No. 007 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[;]*¹⁶

X X X X

*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.*¹⁷

The signatories of Resolution No. 007 dated February 22, 1994, are the following: (1) Anecito; (2) Calo, the Assistant Provincial Administrator; (3) Violan, the Provincial Treasurer; (4) Quiñones, Budget Officer IV, who signed on behalf of Susan Montero,¹⁸ the Provincial Budget Officer; and (5) petitioner, Management Audit Analyst IV, who signed on behalf of Gracia Coletto (Coletto), the Acting Provincial Accountant.¹⁹

Meanwhile, the Commission on Audit (COA) created a Special Audit Team to examine the financial transactions and operations of the Provincial Government for calendar years 1992 and 1993 and the first half of calendar year 1994.²⁰ During the audit, they examined the documents pertaining to the procurement of 10 Olympia typewriters and determined the following: (1) the price per unit of the Olympia Carriage typewriter that New Datche quoted was higher than the bid of Adelina Center by ₱1,230.00 for the 24-inch typewriter and by ₱25.00 for the 18-inch typewriter, for a total cost difference of ₱8,233.00;²¹ (2) the Provincial Government paid New Datche in advance through a check in the amount of ₱199,409.09 on February 28, 1994;²² and (3) despite the delay of New Datche in the delivery of the typewriters, the Provincial Government did not impose liquidated damages against New Datche.²³

¹⁵ Id. at 92-93.

¹⁶ Id. at 21. As culled from the Petition for Review on *Certiorari*.

¹⁷ Id.

¹⁸ Referred to as "Susonte Montero" in some parts of the *rollo*; id. at 94.

¹⁹ Id. at 95 and 101-102.

²⁰ Id. at 86-87.

²¹ Id. at 85 and 88.

²² Id. at 88.

²³ Id.

Consequently, the Special Audit Team disallowed the amount of ₱8,233.00 which represented the total cost difference between the prices offered by Adelina Center and New Datche.²⁴

Thereafter, the Office of the Ombudsman (Ombudsman) charged Anecito, Calo, Violan, Higino C. Llaguno, Jr.²⁵ (Llaguno), Provincial Administrator, and Ma. Clara M. Ambray²⁶ (Clara), Executive Assistant IV, with violation of Section 3(e) and (g) of Republic Act No. (RA) 3019²⁷ in Criminal Case No. 24337.²⁸

Likewise, the Ombudsman charged Violan, Anecito, Calo, Quiñones, and petitioner, with the crime of Falsification of Public Documents under Article 171 of the RPC in Criminal Case No. 24338.²⁹

In the Resolution dated May 19, 2010 in Criminal Case No. 24337, the Sandiganbayan granted the demurrer to evidence of Anecito, Calo, Violan, and Quiñones insofar as the charge of violation of Section 3(g) of RA 3019 was concerned.³⁰

The Sandiganbayan Ruling

In the Decision³¹ dated October 23, 2014, the Sandiganbayan acquitted Clara, Anecito, Calo, and Llaguno as regards the charge for violation of Section 3(e) of RA 3019 in Criminal Case No. 24337.³² The Sandiganbayan ratiocinated as follows:

The prosecution, x x x, did not offer any evidence to show that Adelina Center suffered actual damage due to the fact that it did not get the contract. No one from Adelina Center testified as to the damage that the company may have suffered. x x x Notably, Adelina Center did not even complain when it was not awarded the contract.

²⁴ Id. at 85, 89.

²⁵ Referred to as "Higino C. Llaguno" and erroneously designated as Executive Assistant IV in the Information; id. at 81, 90.

²⁶ Referred to as "Clara P. Ambray" and erroneously designated as Provincial Administrator in the Information; id. at 81, 96.

²⁷ Entitled "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.

²⁸ *Rollo*, p. 81.

²⁹ Id. at 81-82.

³⁰ Id. at 90.

³¹ Id. at 80-110.

³² Id. at 109.

It was also not proven that the Provincial Government of Surigao del Sur suffered undue injury. The prosecution relied on the P3,865.00 price difference offered by Adelina Center and that of New Datche Philippines Traders Corporation. This specific element of the amount involved was, however, not alleged in the Information. In any case, the Court believes that said price difference is not substantial enough as to amount to undue injury. x x x. Moreover, the price difference and the liquidated damages of P4,368.00 were deducted and paid as early as 4 March 1997, before this case was filed with the Court, from the retirement benefits of Anecito Ambray x x x.

Neither was it shown that New Datche Philippines Traders Corporation was given unwarranted benefits. x x x it appears that it was subject to the same terms and conditions as the other suppliers and it complied with the specifications of the contract. x x x, all the units were delivered and upon inspection by the GSO, were found to be in good condition. x x x.³³

On the other hand, in the assailed ruling in Criminal Case No. 24338, the Sandiganbayan found petitioner, Anecito, Calo, and Quiñones guilty beyond reasonable doubt of Falsification of Public Documents under Article 171 of the RPC.³⁴ It held:

With respect to accused Calo, [petitioner] and Quiñones, they also admitted that they signed the document but they did so as representatives of their superiors who were the regular members of the BAC.

x x x Similarly, it was also part of the duties of [petitioner] as Management and Audit Analyst and as designated in-charge of the administrative division of the Provincial Accountant's Office to represent her immediate superior Mrs. Gracia Coletto, the Acting Provincial Accountant, whenever she is absent or on official leave. She testified that her authority to represent Coletto was by virtue of an office order and as such, she is authorized to attend conferences and meetings as well as sign certain documents. x x x.

From the foregoing, it is clear that accused Calo, [petitioner] and Quiñones were armed with authority to participate in the deliberations of the BAC with respect to the procurement of the ten units of typewriters. The fact that they participated in the deliberations of the Committee in their official functions goes to show that they intervened in the preparation of Resolution No. 007. Ultimately, by signing the said Resolution, they certified that what were contained therein were true and correct.³⁵

³³ Id. at 107-108.

³⁴ Id. at 109.

³⁵ Id. at 101-102.

Thus, the instant Petition for Review on *Certiorari*.³⁶

Proceedings Before the Court

Via a Resolution³⁷ dated December 4, 2019, the Court dismissed petitioner's Petition for Review on *Certiorari* on the ground that "*the [a]ssailed Resolution [of] the Sandiganbayan [was] supported by factual and legal [basis].*"³⁸ Aggrieved, petitioner filed a Motion for Reconsideration³⁹ of the dismissal of her petition, but the Court denied it with finality in a Minute Resolution⁴⁰ dated February 26, 2020.

Undaunted, petitioner filed an Urgent Supplemental Motion for Reconsideration⁴¹ (Second Motion for Reconsideration) of the Resolution dated February 26, 2020. There being no action taken on the Second Motion for Reconsideration, petitioner filed the Urgent Additional Supplemental Manifestation and Motion with Leave of Court⁴² to hold in abeyance the finality of the Resolution dated February 26, 2020, until the Second Motion for Reconsideration is resolved.

Meanwhile, an Entry of Judgment⁴³ was made on February 26, 2020. Thereafter, petitioner filed a Motion with Leave of Court to Refer Matter to the Court *En Banc*⁴⁴ dated August 26, 2020.

In the Resolution⁴⁵ dated July 27, 2021, the Court granted, among others, petitioner's Motion with Leave of Court to Refer Matter to the Court *En Banc*. The Court found that the Resolution dated December 4, 2019, which denied the Petition for Review on *Certiorari*, failed to expound on the facts upon which conclusions of law were made. For instance, it only made general deductions from petitioner's mere participation in the BAC deliberations without considering the peculiarity of her involvement in the meeting. Thus, in the Resolution dated July 27, 2021, the Court found that the petition ought to be reinstated in the higher

³⁶ Id. at 16-47.

³⁷ Id. at 377-383.

³⁸ Id. at 383.

³⁹ Id. at 384-398.

⁴⁰ Id. at 400-A.

⁴¹ Id. at 425-429.

⁴² Id. at 410-411.

⁴³ Id. at 463.

⁴⁴ Id. at 443-458.

⁴⁵ Id. at 474-483.

interest of justice in view of the persuasive merit of petitioner's defense. The dispositive portion thereof, reads:

WHEREFORE, the Court resolves as follows:

1. PARTLY GRANT the Urgent Supplemental Motion for Reconsideration dated March 16, 2020 of petitioner Naomi Lourdes A. Herrera;
2. REINSTATE the Petition for Review on *Certiorari* dated April 7, 2015 of Petitioner Naomi Lourdes A. Herrera and DIRECT Office of the Special Prosecutor to file its Comment on the Petition for Review on *Certiorari* within ten (10) days from notice hereof;
3. RECALL the Entry of Judgment dated February 26, 2020;
4. GRANT the Urgent Additional Supplemental Manifestation and Motion with Leave of Court dated July 28, 2020 of petitioner Naomi Lourdes A. Herrera which seeks to hold in abeyance the finality of the Minute Resolution dated February 26, 2020;
5. NOTE the Urgent Supplemental Manifestation and Motion with Leave of Court dated July 20, 2020;
6. GRANT the Motion with Leave of Court to Refer Matter to the Court *En Banc* dated August 26, 2020;

x x x⁴⁶

The Issue

The issue to be resolved is whether the Sandiganbayan erred in finding petitioner guilty beyond reasonable doubt of the crime of Falsification of Public Documents under Article 171 of the RPC in Criminal Case No. 24338.

The Court's Ruling

The Court finds the petition meritorious.

⁴⁶ Id. at 481-482.

At the outset, the Court underscores that among all the accused convicted of Falsification of Public Documents under Article 171 of the Revised Penal Code in Criminal Case No 24338, petitioner is the only one who filed the instant petition to assail the judgment of conviction.

Petitioner imputes error on the part of the Sandiganbayan in holding that all the elements of the crime of Falsification of Public Documents are present at bar. Petitioner contends that she could not have committed the crime charged as she was in good faith and did not take advantage of her official position in signing Resolution No. 007, the public document subject of the criminal charge for falsification.⁴⁷

Notably, the errors that petitioner impute against the Sandiganbayan are personal and pertinent to her and do not apply to the rest of the accused. She specifically prays that the Court consider her situation during the BAC meeting held on February 22, 1994, which led her to sign Resolution No. 007.

Petitioner points out the peculiarity of her participation during the BAC meeting, as opposed to that of her co-accused, in view of the following circumstances: (1) it was her first and only attendance at a BAC meeting; (2) she was only a substitute of Coletto, the regular member of the BAC and the Acting Provincial Accountant; (3) it was unclear whether she had authority to attend the BAC meeting and consequently sign Resolution No. 007, considering that the Office Order that allegedly authorized her to attend meetings and sign documents on behalf of Coletto was not offered in evidence.⁴⁸

Based on the attendant circumstances, the Court is convinced that there was a failure to establish petitioner's guilt beyond reasonable doubt for the crime of Falsification of Public Documents.

Paragraph 2, Article 171 of the RPC provides:

ART. 171. *Falsification by public officer, employee; or notary or ecclesiastical minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos 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:

⁴⁷ Id. at 34.

⁴⁸ See Prosecutor's Formal Offer of Exhibits, Records Volume 7, pp. 389-397.

x 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 x

Thus, the crime of Falsification of Public Documents has the following elements: (1) the offender is a public officer, employee, or 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 Article 171 of the RPC.⁴⁹

That petitioner was a public officer at the time of the incident is undisputed.⁵⁰ Petitioner held the position of Management Audit Analyst IV under the Office of the Provincial Accountant when she signed Resolution No. 007.⁵¹ Thus, the core issue is whether petitioner took advantage of her official function in signing Resolution No. 007.

For the crime of Falsification of Public Documents, public officers are considered to have taken advantage of their official position in making the falsification 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.⁵²

In the case, the document that petitioner allegedly falsified was Resolution No. 007, an official issuance of the BAC, wherein the contract for the supply and procurement of Olympia typewriters was awarded to New Datche instead of Adelina Center.

Under Section 33 of COA Circular No. 92-386,⁵³ which prescribes the rules and regulations on the supply and property management in the local governments, the act of deciding on the bids or questions of awards or signing committee resolutions is reserved for the regular members of the BAC, viz.:

⁴⁹ *Office of the Ombudsman v. Santidad*, 867 Phil. 440, 467 (2019).

⁵⁰ *Rollo*, p. 101.

⁵¹ *Id.* at 95.

⁵² *Office of the Ombudsman v. Santidad*, *supra* at 468, citing *Galeos v. People*, 657 Phil. 500, 521 (2011).

⁵³ With the subject, "Prescribing Rules and Regulations on Supply and Property Management in the Local Governments," dated October 20, 1992.

SECTION 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 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.* (Italics supplied.)

Corollary thereto, Section 31 of the COA Circular No. 92-386 provides for the composition of the BAC, viz.:

SECTION 31. *Composition of the Committee on Awards.* — The Committee on Awards shall be composed of the *local chief executive* as chairman, the *local treasurer*, the *local accountant*, the *local budget officer*, the *local general services officer* (in case of provinces and cities), and the *head of office or department* for whose use the property or supplies are being procured, as members. In case a head of office or department would sit in a dual capacity, or when the requisitioning office is a national government agency located in the local government unit and which supply or property requirement is authorized by law to be augmented by said local government unit, *member of the Sanggunian* elected from among its members shall sit as a member.

x x x x (Italics supplied.)

To emphasize, Section 31 of the COA Circular No. 92-386 enumerates the members of the BAC: (1) the local chief executive; (2) the local treasurer; (3) the local accountant; (4) the local budget officer; (5) the local general services officer (in case of provinces and cities); and (6) the head of the office for whose use the supplies will be procured, or the member of the *Sanggunian*, as the case may be. Indubitably, they are the only ones who “*shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions.*”⁵⁴

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.

⁵⁴ See Section 33 of COA Circular No. 92-386.

It bears stressing that petitioner only attended the BAC meeting on February 22, 1994, to substitute for her superior Coletto, the Acting Provincial Accountant, who was then on a brief official leave. In fact, the meeting was petitioner's first and last attendance at a BAC meeting. Not being a member of the Committee, petitioner was certainly not authorized, as Management and Audit Analyst IV, to decide on the bids and sign Resolution No. 007.

The purported Office Order which allegedly authorized petitioner to attend meetings and sign documents on behalf of Coletto could not have empowered petitioner to sign Resolution No. 007, because Section 33 of COA Circular No. 92-386 itself provided that only the Committee members shall personally decide on the bids and/or questions of awards and shall sign the Committee decisions. In any case, the Court cannot use the purported Office Order as basis of petitioner's culpability because such document is not in the records of the case.⁵⁵ This lends credence to petitioner's averment that while the office order was testified to during the trial, it was never presented or offered by the prosecution as documentary evidence.

Apparently, the Committee merely made petitioner sign Resolution No. 007 as she represented Coletto during the BAC meeting. Considering that petitioner was not an authorized signatory to Resolution No. 007, her signature therein was a mere surplusage and, thus, inconsequential. Prosecution witness State Auditor Garcia shared this view:

Q: x x x Therefore, not being a member of the committee and awards, insofar as accused Herrera is concerned her signature on the subject resolution number 007 which I believe is Exhibit F for the prosecution was invalid, was it not?

A: Based on Section 33 that is invalid, it should be signed by the regular member, sir.

Q: And, since the signature of accused Herrera on the subject resolution was invalid, therefore the same did not have any force and effect?

WITNESS:

A: Well, it was considered by the bids and awards committee in

⁵⁵ See Prosecutor's Formal Offer of Exhibits, Records Volume 7, pp. 389-397.

awarding the contract for the purchase of the typewriter, sir.

Q: I am not asking about the consideration given by the committee on awards, but what I am asking Mr. Witness is, [it] did not have any force and effect being an invalid signature in the document?

A: As far as the signature of the representative, sir.

Q: Meaning to say accused Herrera?

A: Accused Herrera, sir.

Q: It does not have any force and effect?

WITNESS

A: Yes, sir.⁵⁶

The element of “taking advantage of one's official position” in the crime of Falsification of Public Documents is absent in the case.

In *Department of Finance-Revenue Integrity Protection Service v. Office of the Ombudsman*,⁵⁷ the Court explained when a public officer is considered to have taken advantage of his or her official position in falsifying public documents, viz.:

In this case, the element of taking advantage of one's position is patently lacking. There is no showing that private respondent had the duty to make or prepare, or otherwise, to intervene in the preparation of the SALNs, or he had the official custody of the same. *Taking advantage of one's official position for the purpose of committing falsification of public document under Article 171 “is considered present when the offender falsifies a document in connection with the duties of his office which consist of either making or preparing or otherwise intervening in the preparation of a document.”* x x x (Emphasis omitted; italics supplied)

The following account given by petitioner reveals that the element of “taking advantage of one's official position” is absent in the case:

⁵⁶ TSN, April 1, 2008; *rollo*, p. 180.

⁵⁷ G.R. No. 238660, February 3, 2021. Citations omitted.

- Q: Now, relative to this decision of the committee to award New Datche Philippines, what document if any did the committee prepare?
- A: The resolution, Sir.
- Q: Resolution to award this contract to New Datche Philippines?
- A: Yes, Sir.
- Q: Now who prepared this resolution, Madame Witness?
- A: The regular members of the bids and awards committee, Sir.
- Q: Now, what happened to this resolution that was prepared by the committee?
- A: It was prepared already, Sir.
- Q: After it was prepared?
- A: It was routed to us for our signatures. For our respective signatures, Sir.
- Q: So, did you sign this resolution?
- A: Yes, I did, Sir.
- Q: When did you sign this resolution?
- A: When I saw the signatures already of the regular members. Some regular members and the other one who represented the office, Sir.
- Q: You mean to say when you signed these documents there were already others who signed this resolution?
- A: Yes, Sir.
- Q: And when did you sign this resolution in terms of date, you had a meeting on February 22, 1994? When did you sign it?
- A: Yes, Sir. It was after the meeting one or two days later, after the February 22 meeting, Sir.
- Q: Not on February 22?
- A: No, Sir.⁵⁸

⁵⁸ TSN, September 9, 2013; *rollo*, pp. 238-239.



X X X X

Q: So, why did you sign Resolution No. 007?

A: I signed the resolution sir in good faith because it was based on supporting documents and I was confident and I rely on the knowledge and experience of the regular members of the committee who I know before they signed, before they affixed their respective signatures[,] I see to it that everything was in order, Sir.⁵⁹

X X X X

Q: *Madam Witness, in that experience how many times have you had the opportunity to participate in the bidding process?*

A: *That was my first only and the last experience, Sir.*

Q: *That was the first and last experience that you participated in the bidding process?*

A: *Yes, Sir.*

Q: That's why you relied on your other members especially the regular members?

A: Yes, sir. The regular members.

Q: Prior to the committee meeting what opportunity did you have to discuss with the other members or representatives the subject of your typewriters?

A: None, Sir.

Q: Now, during the actual committee meeting, what conspiracy did you have with the other members or representatives to influence the right or the result of the bidding?

A: None, Sir.

Q: Prior to the subject meeting did you personally know of anybody connected with either New Datche Philippines, Adelina Center or Sunlight Marketing?

A: None, Sir.

Q: Prior to the meeting did you have any previous dealings with or have come across New Datche Philippines, Adelina Marketing or Sunlight Marketing?

⁵⁹ Id. at 244.

A: None, Sir.⁶⁰ (Italics supplied.)

x x x x

Q: Finally, without saying that something was not in order in the subject procurement. However, considering that it was your first and last time to participate in the procurement process, what reason did you have not to believe and rely in good faith on the wisdom and experience of the members of the committee and on the subject Resolution no. 007 prepared by them?

A: None, Sir.⁶¹

As can be gleaned from the foregoing, it was the regular members of the BAC who prepared Resolution No. 007, and they merely coursed the document to petitioner for her signature a day or two after the BAC meeting. In short, petitioner had no direct participation in the preparation of Resolution No. 007.

It can be deduced from petitioner's testimony that she only signed Resolution No. 007 because of her reliance on the knowledge and expertise of the regular members of the Committee who already signed it. It is worthy of note that it was not petitioner's duty to make or intervene in the preparation of Resolution No. 007. Moreover, she was not the one who had the official custody thereof.

Beyond doubt, the element of "*taking advantage of one's official position*" in the crime of Falsification of Public Documents is absent in the case. It bears stressing that petitioner signed not as a regular member of the BAC, but as a mere representative of a regular member who was on leave. There is even no showing that her appearance in the BAC meeting carried with it the authority to sign for and on behalf of the principal, Coletto, the regular member.

Petitioner Herrera believed in good faith that the award of the typewriter contract to New Datche Philippines was proper and allowed under procurement rules.

⁶⁰ Id. at 244-245.

⁶¹ Id. at 246.

In the case of *People v. Palma Gil-Roflo*,⁶² the Court explained that the crime of Falsification of Public Documents is an intentional felony which requires that the act be committed with deliberate evil intent and malice, thus:

Settled is the rule that Falsification of Public Documents is an intentional felony committed by means of “*dolo*” or “*malice*” and could not result from imprudence, negligence, lack of foresight or lack of skill. Intentional felony requires the existence of *dolus malus*—that the act or omission be done willfully, maliciously, with deliberate evil intent, and with malice aforethought. This felony falls under the category of *mala in se* offenses that requires the attendance of criminal intent. In fine, criminal intent is required in order to incur criminal liability under Article 171 of the RPC.⁶³ (Underscoring supplied)

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 were included the following: (1) its lack of warranty over its products; and (2) its delivery of rebuilt typewriters instead of brand-new units, typewriters with detached keys, and those which did not tabulate.⁶⁴

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.⁶⁵

The Court notes that during the BAC meeting, Anecito informed the attendees that (1) he conducted an open canvass in Cebu City on February 8, 1994 to solicit quotations from other suppliers of Olympia typewriters;⁶⁶ (2) he presented the price quotations submitted by New Datche and Olympia Business Machines, and the respective Invitations to

⁶² G.R. Nos. 249564 & 249568-76, March 21, 2022.

⁶³ *Id.*, citing *Fullero v. People*, 559 Phil. 524, 539 (2007) and *Villareal v. People*, 680 Phil. 527, 565 (2012).

⁶⁴ *Rollo*, p. 91.

⁶⁵ *Id.* at 92.

⁶⁶ *Id.* at 88, 93.

Bid which he furnished them;⁶⁷ and (3) he also presented the Certification of New Datche that it is the exclusive distributor and authorized dealer of Olympia typewriters.⁶⁸

Considering that the meeting held on February 22, 1994 was petitioner's first and last attendance at a BAC meeting, the Court cannot fault her for relying on the representations of Anecito, who was the Provincial General Services Officer and an official member of the BAC. In fact, the statement of Anecito was confirmed by State Auditor Garcia, the lone prosecution witness, who testified on October 16, 2006 that the lowest bidder does not always get the procurement contract, especially when it has a record of unreliability, *viz.*:

- Q: By the way, in the course of your previous cross-examination, you said that the guidelines, there are guidelines for local government?
- A: Yes, Sir.
- Q: And this is Circular No. 92-386?
- A: Yes, Sir.
- Q: On the basis of that Circular you said that there are several modes of procurement of supplies allowed as far as LGUs are concerned?
- A: Yes, Sir.
- Q: And you said that there are alternative modes?
- A: Alternative modes, Sir.
- Q: But the primary mode was what?
- A: The public bidding, Sir.
- Q: If the public bidding fails then they may go to the other alternative mode, is that correct?
- A: Not necessarily[,] there is a failure of bidding but there are alternative modes which the agency can make without going to public bidding, Sir.

⁶⁷ Id. at 93.

⁶⁸ Id.



Q: As a matter of fact, you agree with me that under the rules and guidelines if the public bidding fails then resort to other applicable modes, it is allowed, is it not?

A: Yes, Sir.⁶⁹

On October 17, 2006, Garcia continued to testify, viz.:

RET. JUSTICE FERNANDEZ

Q: Mr. Garcia, you already testified that the Abstract of Bids was only a recommendation, is that right?

WITNESS

A: Yes, Sir.

RET. JUSTICE FERNANDEZ

Q: Which means that the award or the decision of the Committee on Awards is to come later on.

A: Yes, Sir.

Q: And according to your testimony, you also confirmed that in making that decision of award, Awards may consider certain factors on whether to approve that recommendation, is it not?

A: Yes, Sir.

Q: And one of these is the liability of a bidder as a supplier or contractor, you mentioned that also.

A: Yes, Sir.

Q: Which means also that before the award is finally issued, if grounds are shown which would indicate that the bidder recommended in the abstract is unreliable, that may be a consideration for the committee to deny the award.

A: Yes, Sir.⁷⁰

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

⁶⁹ TSN, October 16, 2006; id. at 257-258.

⁷⁰ Id. at 291-292.



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.⁷¹

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 be held criminally liable for Falsification of Public Document under Article 171 of the RPC.⁷²

It must be stressed that under Section 2, Rule 133 of the Rules of Court, conviction in criminal cases requires proof beyond reasonable doubt.⁷³ This quantum of proof in criminal cases charges the prosecution with the great responsibility of proving moral certainty—a certainty that ultimately appeals to a person's very conscience.⁷⁴ Here, the Court finds such moral certainty to be lacking. The failure of the State to establish the guilt of petitioner beyond reasonable doubt warrants her acquittal.

WHEREFORE, the petition is **GRANTED**. The consolidated Sandiganbayan Decision dated October 23, 2014, and the Resolution dated February 10, 2015, in Criminal Case Nos. 24337 and 24338 are **AFFIRMED** with **MODIFICATION** in that petitioner Naomi Lourdes A. Herrera is **ACQUITTED** in Criminal Case No. 24338 for failure of the prosecution to prove her guilt beyond reasonable doubt.

⁷¹ Id. at 108-109.

⁷² Id. at 41 and 44.

⁷³ *People v. Adana*, G.R. No. 250445, March 29, 2022.

⁷⁴ Id., citing *Daayata v. People*, 807 Phil. 102, 117-118 (2017).

SO ORDERED.



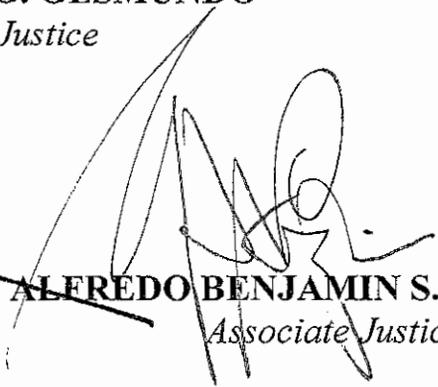
HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

(No Part and on Official Leave)
ALEXANDER G. GESMUNDO
Chief Justice

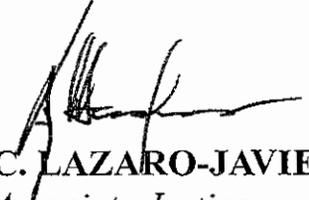


MARVIC M.V.F. LEONEN
Senior Associate Justice



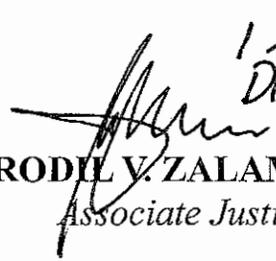
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On Official Leave)
RAMON PAUL L. HERNANDO
Associate Justice

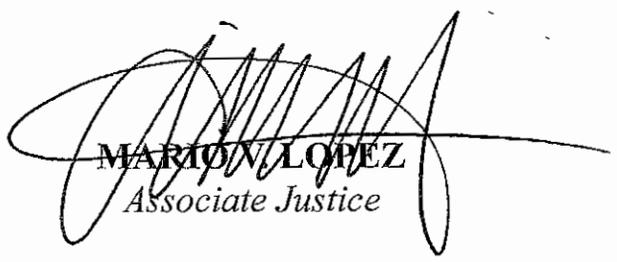


AMY C. LAZARO-JAVIER
Associate Justice

*I join the
Dissenting Opinion
of J. Marquez*

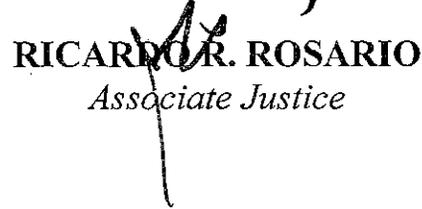


RODIL V. ZALAMEDA
Associate Justice



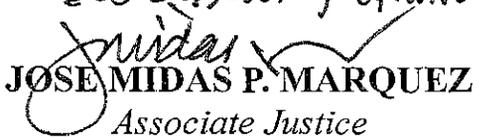
MARIO N. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

See Dissenting Opinion

RICARDO R. ROSARIO
Associate Justice

(On Leave)
JHOSEP Y. LOPEZ
Associate Justice


~~**JAPAR B. DIMAAMPAO**~~
Associate Justice

See Dissenting Opinion

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


MARVIC M.V.F. LEONEN
Acting Chief Justice
Per S.O. No. 2977
dated June 1, 2023

