



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

JOVITO C. PLAMERAS,

Petitioner,

G.R. No. 187268

Present:

- versus -

CARPIO, J.,

Chairperson,

BRION,

DEL CASTILLO,

PEREZ, and

PERLAS-BERNABE, JJ.

PEOPLE OF THE PHILIPPINES,

Respondent.

Promulgated:

SEP 04 2013

X ----- X

DECISION

PEREZ, J.:

This resolves the appeal interposed by petitioner Jovito C. Plameras (petitioner), who at the time relevant to the case at bench was discharging the duties of a Governor of the Province of Antique, from the Decision¹ promulgated on 2 December 2008 by the Sandiganbayan in Criminal Case No. 26172 entitled *People of the Philippines v. Jovito C. Plameras*. The dispositive portion of the decision appealed from is hereunder quoted as follows:

WHEREFORE, finding accused Jovito C. Plameras, Jr. guilty beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), judgment is hereby rendered sentencing the said accused to an indeterminate prison term of SIX (6)

¹ Rollo, pp. 56-105.

years and ONE (1) month as minimum to TEN (10) years as maximum, and to suffer perpetual disqualification from public office.²

The Facts

This case stems from the implementation of a project known as the “Purchase of School Desks Program” piloted by the Department of Education, Culture and Sports (DECS) Central Office, through the Poverty Alleviation Fund (PAF) for the purpose of giving assistance to the most depressed provinces in the country. The Province of Antique was among the beneficiaries, with a budget allocation of ₱5,666,667.00.

It was on 12 March 1997, during his incumbency as Provincial Governor of the Province of Antique, that petitioner Plameras received two (2) checks from the DECS-PAF in the total amount of ₱5,666,667.00 drawn against the Land Bank of the Philippines (LBP), for the purchase of school desks and armchairs. The checks were deposited with the LBP, San Jose, Antique Branch, where the Province of Antique maintains an account. Later on, the Province of Antique, through the petitioner, issued a check drawn against its account at the LBP San Jose, Antique Branch in the same amount and deposited it to the LBP Pasig City Branch.

On 8 April 1997, petitioner signed a Purchaser-Seller Agreement for the Supply and Delivery of Monoblock Grader’s Desks³ with CKL Enterprises, as represented by Jesusa T. Dela Cruz (Dela Cruz), the same enterprise which the DECS Central Office had entered into, through a negotiated contract for the supply of desks, sometime in 1996.

Consequently, on 21 April 1997, petitioner applied with the LBP Head Office for the opening of an Irrevocable Domestic Letter of Credit⁴ in behalf of the Provincial School Board of Antique in the amount of ₱5,666,600.00 in favor of CKL Enterprises/Dela Cruz. Such application was approved by the LBP; thus, the issuance of Letter of Credit No. 97073/D⁵ was issued on 22 April 1997 in favor of Dela Cruz.

In both the LBP application form and Letter of Credit, it was duly noted that “All documents dated prior to LC opening date acceptable. This L/C is transferable and withdrawable.”

² Id. at 103.

³ Exhibit “5,” records, volume III, pp. 142-148.

⁴ Exhibit “7,” folder of exhibits.

⁵ Exhibit “8,” id.

On 24 April 1997, the petitioner signed Sales Invoice No. 0220⁶ and accepted LBP Draft No. DB97121.⁷ The sales invoice stated that the petitioner received and accepted 1,354 grader's desks and 5,246 tablet armchairs in good order and condition for the total value of ₱5,666,600.00.

On even date, Dela Cruz of CKL Enterprises submitted the said sales invoice and draft to the LBP Head Office. Thereupon, the said bank fully negotiated the letter of credit for the full amount and remitted its proceeds to Land Bank Pasig City Branch for credit to the account of CKL Enterprises/Dela Cruz, charging the full payment to the Provincial School Board/Governor Jovito Plameras, Jr. Province of Antique.

On 2 March 1998,⁸ upon inquiry by the petitioner, the Office of the Provincial Committee On Award reported that CKL had delivered only 1,294 pieces of grader's desks and 1,838 pieces of tablet armchairs as of 9 July 1997.

In a letter dated 4 March 1998,⁹ the petitioner demanded from CKL Enterprises/Dela Cruz, the complete delivery of the purchased items. Unheeded, the petitioner, in a letter dated 5 March 1998,¹⁰ requested the LBP for the copies of pertinent documents pertaining to the Letter of Credit in favor of CKL Enterprises as well as debit memos or status of the fund deposited therein. In addition, the petitioner, in a separate letter dated 26 November 1998,¹¹ asked assistance from the LBP to compel CKL Enterprises to complete the delivery of the purchased items under the Letter of Credit and to settle the case amicably, claiming some deception or misrepresentation in the execution of the sales invoice.

For failure to settle the matter, a case was filed by the Province of Antique, represented by its new Governor, Exequiel B. Javier before the Regional Trial Court (RTC), Branch 12 of San Jose, Antique docketed as Civil Case No. 99-5-3121¹² to compel CKL Enterprises to refund the amount of ₱5,666,600.00 with interests at the legal rate.

⁶ Exhibit "9," id.

⁷ Exhibit "10," id.

⁸ Exhibit "13," id.

⁹ Exhibit "14," id.

¹⁰ Exhibit "15," id.

¹¹ Exhibit "16," id.

¹² Exhibit "17," id.

While the civil case was pending in court, Governor Javier likewise instituted a criminal complaint before the Office of the Ombudsman against petitioner Plameras for Violation of Section 3(e) of R.A. No. 3019.

In its Resolution¹³ dated 18 May 2000, the Office of the Ombudsman for Visayas found probable cause to indict petitioner for the offense charged. It concluded, among others, that:

The purchase of 1,356 desks and 5,246 armchairs by the Province of Antique was made in apparent violation of existing rules and regulations as evident [sic] by the following facts:

1. Payment was made before the desks and chairs were delivered;
2. Procurement was made without the required authorization from the Provincial School Board;
3. Proper procedure was disregarded, there being no bidding process.

As a result thereof, delivery of desks and armchairs was delayed and the said desks and armchairs delivered are defective. Moreover, the remaining 3,468 desks and chairs amounting to ₱2,697,168.00 have not been delivered by the supplier despite demands. Unwarranted benefit was thus given to the supplier and undue injury was caused to the government.

Respondent's evident bad faith and manifest partiality are indicated by the fact that the purchase and payment of the desks and chairs were made in clear violation of existing COA rules and regulations.

The pending civil case filed by the Province of Antique for the reimbursement of the amount of ₱5,666,600.00 is not determinative of the guilt or innocence of respondent in this case. The issues in the civil case are independent of the issue of whether or not there is a *prima facie* case against respondent for Violation of Sec. 3(e) of R.A. 3019, as amended. No prejudicial question therefore, need be resolved in this case.¹⁴

Consequently, an Information¹⁵ was filed before the Sandiganbayan, the accusatory portion of which reads:

That in or about the month of April 1997, at the Municipality of San Jose, Province of Antique, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being then the Provincial Governor of the Province of Antique, in such capacity and committing the offense in relation to office, with deliberate intent, with

¹³ Records, volume I, pp. 5-7.

¹⁴ Id. at 6-7.

¹⁵ Id. at 1-3.

manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously disburse or cause the payment of the amount of FIVE MILLION SIX HUNDRED SIXTY-SIX THOUSAND SIX HUNDRED PESOS (₱5,666,600.00), Philippine Currency, to Jesusa T. Dela Cruz/CKL Enterprises,) for the purchase of 1,356 desks and 5,246 armchairs, without authorization from the Provincial School Board and without observance of the proper procedure, there being no bidding process, and before delivery of the said desks and chairs purchased by the Province of Antique, resulting in delayed delivery of desks and armchairs which are defective, and non-delivery of sixty (60) desks valued at SEVENTY THREE THOUSAND THREE HUNDRED SIXTY PESOS (₱73,360.00), Philippine Currency, and three thousand four hundred eight (3,408) armchairs, valued at TWO MILLION SIX HUNDRED NINETY-SEVEN ONE HUNDRED SIXTY-EIGHT PESOS (₱2,697,168.00), Philippine Currency, thus, accused in the course of the performance of his official functions had given unwarranted benefit to Jesusa T. Dela Cruz/CKL Enterprises, to the damage and injury of the Province of Antique, and detriment public interest.¹⁶

Prior to his arraignment, or on 16 August 2000, petitioner filed a Motion for Reinvestigation and/or Suspend Proceedings¹⁷ which was granted in the 23 August 2000 Resolution of the Sandiganbayan cancelling the arraignment and further directing the Office of the Special Prosecutor (OSP) to reevaluate its findings and conclusions of the case. As a result, the OSP issued the 29 May 2001 Order,¹⁸ recommending the withdrawal of the Information due to the existence of undisputed facts that led to irrefutable conclusions negating criminal liability on the part of the petitioner.¹⁹ However, upon review, the Office of the Ombudsman in its 18 July 2001 Memorandum,²⁰ set aside and ignored said recommendation ratiocinating that the grounds, as set forth, are matters of evidence to be ventilated in court.

Thus, arraignment proceeded where the petitioner pleaded not guilty.²¹

Thereafter, trial on the merits ensued.

The prosecution presented seven (7) witnesses, namely: Exequiel V. Javier, Zyril D. Arroyo, Cesar Maranon, Pedro B. Juluat, Jr., Sherlita

¹⁶ Id. at 1-2.

¹⁷ Id. at 50-55.

¹⁸ *Rollo*, pp. 127-142.

¹⁹ Id. at 140.

²⁰ Records, volume I, pp. 108-110.

²¹ Id. at 171.

Mahandog, Atty. Eufracio R. Rara, Jr. and Elizabeth Arevalo, whose testimonies primarily supported the allegations in the complaint.

After the prosecution had rested its case, the petitioner filed a Motion for Leave of Court to File Demurrer to Evidence,²² which the Sandiganbayan granted in its Resolution dated 30 August 2006.²³ However, in its Resolution dated 15 January 2007,²⁴ the Sandiganbayan denied the Demurrer to Evidence²⁵ filed by the petitioner. Likewise, the Motion for Reconsideration thereof was denied in the Sandiganbayan's Resolution of 12 April 2007.²⁶

The petitioner thereby proceeded with the presentation of his testimonial and documentary evidence. Petitioner offered his testimony²⁷ and that of his two (2) witnesses, namely: Florante Moscoso (Moscoso), the former Head Executive Assistant²⁸ of petitioner, and Atty. Marciano G. Delson,²⁹ Legal Counsel of former DECS Undersecretary Antonio B. Nachura (Nachura) and the late former DECS Secretary Ricardo T. Gloria (Gloria). Taken together, the testimonies of both the petitioner and Moscoso as summarized by the court *a quo*, hereto quoted in part, show that:

x x x. On March 12, 1997, he [Moscoso] was in the governor's office when an unidentified Tagalog-speaking DECS lady representative and Jesusa dela Cruz of CKL Enterprises visited the accused in the latter's office to personally hand, and in fact they handed, to the governor two checks worth ₱5,666,667.00, as the share of the province from the Poverty Alleviation Fund of DECS from the national government. The checks were intended for the Antique Provincial School Board for the procurement of chairs and desks to be used by the elementary and high school students of the different municipalities of Antique. In answer to the question of the governor, the DECS representative told the governor that there was no need for a public bidding inasmuch as a public bidding was already held in the Central Office of DECS, and it failed because there was only one bidder, CKL Enterprises, in view of which the DECS resorted to a negotiated contract with the lone bidder. When asked by the accused if there was still a need for public bidding inasmuch as the fund was from the national government, the provincial treasurer said the procurement entered into by the national government should be resorted to inasmuch as those were national funds and do not involve the local procedures. Thereupon, on the instruction of the accused, he called some of the members of the provincial school board at the office of the

²² Id. at 406.

²³ Id. at 424.

²⁴ *Rollo*, pp. 214-218.

²⁵ Records, volume II, pp. 6-40.

²⁶ Id. at 127-129.

²⁷ TSN dated 14 January 2008.

²⁸ TSN dated 13 August 2007.

²⁹ TSN dated 1 October 2007.

accused for consultation. The accused informed the members of the school board present about the funds received from DECS and that inasmuch as it was only a consultation dialogue that they were having, the procurement system by the national government would be followed like rest of the recipient provinces had done.

After almost a month later, or on April 8, 1997, the same DECS representative and Jesusa dela Cruz returned to the office of the accused bringing with them the Purchaser-Seller Agreement, which the accused, after reading, signed. After that, the accused gave him a copy of the agreement. In a matter of days thereafter, or on April 12, 1997, the two ladies came back handing two documents that is, the sales invoice and the bank draft, for the signature of the accused. Because of the voluminous routine work of the accused, and because the DECS representative and Jesusa dela Cruz told him that the sales invoice and the bank draft would satisfy the conditions of the Purchaser-Seller Agreement, the accused just immediately signed the sales invoice and the bank draft³⁰ x x x.

In his own testimony, petitioner added that:

x x x. The DECS representative told him that such Purchaser-Seller Agreement was the standard format of the DECS that was followed by all the beneficiary provinces. The DECS representative informed him that sometime in November 1996, DECS conducted a public bidding for the purchase of desks and armchairs but it resulted to a failure and so DECS resorted to a negotiated contract and awarded the contract to CKL Enterprises. He forgot the name of the lady DECS representative. Although the DECS representative told him that the resolution of Provincial School Board may no longer be necessary, after he had signed the Purchaser-Seller Agreement, he still consulted the members of the Provincial School Board about the Purchaser-Seller Agreement and about the assistance from the Poverty Alleviation Fund of the DECS. He knew and was aware that an important condition of the Purchaser-Seller Agreement was that payment shall be effected upon submission of delivery receipts, inspection report, acceptance report, sales invoice and letter to the bank to effect payment equal to the equivalent amounts of the units delivered. After signing the agreement, he applied for a letter of credit with Land Bank, Pasig Branch, and he attached to the application a copy of the Purchaser-Seller Agreement to inform Land Bank of the conditions of payment, because it was Land Bank that would pay the supplier. He paid Land Bank for the letter of credit the amount of ₱5,666,600.00 through a check on April 16, 1997. The application was approved by the Land Bank the day after he filed it, which approval he came to know because Land Bank informed CKL about it through the Irrevocable Domestic Letter of Credit No. 97073/D. Land Bank also issued a draft. On April 24, 1997, Jesusa dela Cruz returned to the accused's office and had him sign Sales Invoice No. 0220 as well as assured him that "the other required documents will follow", referring to the delivery receipt, acceptance report, sales invoice and letter of the bank

³⁰

Rollo, pp. 72-74.

which will prove performance of the seller under the contract and which performance will be the basis of payment by Land Bank. He signed the sales invoice and the bank draft upon this assurance of Jesusa dela Cruz thinking that the required documents will pass his office. On March 2, 1998 Provincial General Services Officer Pedro Juluat, Jr. gave him a Summary Report on the desks and armchairs delivered to the province by CKL showing a shortage of delivery. Meanwhile, on the same day that he signed the sales invoice and the bank draft on April 24, 1997 CKL Enterprises/Jesusa T. dela Cruz negotiated the letter of credit and Land Bank fully paid CKL which he came to know after writing Land Bank on November 26, 1998, and which full negotiation and full payment Land Bank certified on December 4, 1998. Land Bank Pasig branch, through its manager Leila C. Martin, informed him through a letter, dated December 11, 1998, that the negotiation was based on the bank draft and the sales invoice. There was misrepresentation in securing his signature on the sales invoice because he was assured that the other (required) documents will follow, only to realize that the letter of credit was fully negotiated that same day. Gov. Exequiel Javier filed a case against him at the Office of the Ombudsman.³¹

For his part, Atty. Marciano G. Delson stated that:

He handled the administrative case of former DECS Undersecretary Nachura and the late former Secretary Gloria before the Office of the Ombudsman in connection with the purchase of armchairs and desks from CKL Enterprises through a negotiated contract. There was a failed bidding so the DECS proceeded with the execution of the negotiated contract. The Poverty Alleviation Program of the DECS was a project for the acquisition of school desks for the poorest provinces around the country. The mode of payment in that contract was a letter of credit opened by the DECS Central Office with the Land Bank, with the payment to CKL conditioned that delivery of the desks to the recipients.³²

In rebuttal, the prosecution presented another witness named Lydia de Asis,³³ Head of International Banking Department of the LBP who testified that when her department received the Letter of Credit Application Form from LBP Pasig Branch, only the application with the sales invoice and the duly accepted beneficiary's draft were received without any copy of the Purchaser-Seller Agreement. Under the Letter of Credit, only those two documents were required, with the draft duly accepted by the petitioner.

After assessing the facts and evidence of the case, the Sandiganbayan issued its 2 December 2008 Decision, now being assailed in this petition.

³¹ Id. at 76-79.

³² Id. at 75.

³³ TSN dated 3 April 2008.

In questioning the ruling contained in the assailed decision, the petitioner claims misappreciation of facts and evidence. Petitioner contends that he never profited from the transaction. The school desk procurement program was implemented by the then DECS, with the Province of Antique where petitioner was then Governor, as a mere beneficiary. Petitioner insists that he had no hand in choosing the procurement method and the means of effecting payment through Letter of Credit adopted by DECS as the implementing agency. Also, petitioner did not actually pay the supplier since by the terms of the Letter of Credit, it was the LBP that was tasked to release the payment only after compliance with some requirements, such as the delivery receipts, among others. According to him, there was patent collusion with the DECS and LBP personnel that enabled the supplier to immediately negotiate and encash the Letter of Credit without his knowledge and without the required documents for the release of payment. Yet, the DECS people are scot-free, the LBP personnel got off the hook, and the supplier was spared. The petitioner, on the other hand, was convicted.

Hence, this petition at bench assigning as errors the following:

A.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN TREATING THE PURCHASER-SELLER AGREEMENT ENTERED INTO BY CKL WITH THE PROVINCE OF ANTIQUE SEPARATE AND INDEPENDENT OF THE MOTHER CONTRACT ENTERED INTO BY CKL WITH THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS. THESE TWO (2) AGREEMENTS WERE COMPONENTS OF ONLY ONE PROJECT WHICH WAS THE POVERTY ALLEVIATION FUND (PAF) PURCHASE OF SCHOOL DESKS PROGRAM OF THE DEPARTMENT OF EDUCATION CULTURE AND SPORTS TO ASSIST THE MOST DEPRESSED PROVINCES IN THE COUNTRY.

B.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT PETITIONER PLAMERAS VIOLATED THE PROCUREMENT RULES ON PUBLIC BIDDING. IT WAS THE DECS AS IMPLEMENTING AGENCY THAT WAS REQUIRED TO CONDUCT THE BIDDING, THE FAILURE OF WHICH RESULTED TO PROCUREMENT BY NEGOTIATED CONTRACT. THE PROVINCE OF ANTIQUE WAS ONLY A BENEFICIARY.

C.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING THAT PETITIONER PLAMERAS VIOLATED SECTION 338 OF RA 6170, WHICH PROHIBITS ADVANCE PAYMENT. IN THE FIRST PLACE, PETITIONER DID NOT PAY CKL. THERE WAS NO ADVANCE PAYMENT SINCE THE OPENING OF THE LETTER OF CREDIT WITH THE LAND BANK OF THE PHILIPPINES IS NOT TANTAMOUNT TO AND CANNOT BE EQUATED TO PAYMENT IN FAVOR OF CKL IN VIEW OF THE STRICT INSTRUCTIONS PRESCRIBED FOR THE RELEASE BY THE BANK OF PAYMENT. SINCE THE OFFICE OF THE OMBUDSMAN EXONERATED DECS OFFICIALS WHO USED THE SAME SCHEME IN THE INITIAL IMPLEMENTATION OF THE PROGRAM, THERE IS NO REASON WHY THE SAME TREATMENT CANNOT BE ACCORDED [TO PETITIONER].

D.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING BEYOND REASONABLE DOUBT THAT PETITIONER PLAMERAS ACTED WITH EVIDENT BAD FAITH AND MANIFEST PARTIALITY. PETITIONER WAS OBVIOUSLY THE VICTIM OF THE COLLUSION AMONG CKL, DECS, AND LAND BANK PERSONNEL.

E.

THE HONORABLE SANDIGANBAYAN ERRED IN FINDING PETITIONER PLAMERAS GUILTY OF GIVING UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE IN THE DISCHARGE OF HIS FUNCTIONS TO CKL. IT WAS NOT [PETITIONER] BUT THE LAND BANK OF THE PHILIPPINES PERSONNEL WHO PAID THE MONEY TO CKL IN VIOLATION OF THE TERMS OF THE LETTER OF CREDIT. THE CONCLUSION OF THE HONORABLE SANDIGANBAYAN THAT [PETITIONER] DID NOT ATTACH A COPY OF THE PURCHASER-SELLER AGREEMENT TO HIS APPLICATION FOR A LETTER OF CREDIT HAS NO BASIS. ON THE CONTRARY, IT WAS STIPULATED BY THE PARTIES THAT THE DELIVERY RECEIPT, ACCEPTANCE AND INSPECTION REPORTS AND A LETTER OF AUTHORITY ARE REQUIREMENTS FOR THE RELEASE OF THE FUND.³⁴

Our Ruling

The petition must fail.

³⁴

Rollo, pp. 23-26.

Petitioner, in the main, insists that the questionable transaction that gave rise to the present controversy is related to the mother contract between the DECS and CKL Enterprises involving the purchase of desks and armchairs utilizing the PAF, which culminated in a case filed with the Office of the Ombudsman, entitled: “*Fact Finding and Intelligence Bureau v. Ricardo T. Gloria, Antonio E.B. Nachura & Blanquita D. Bautista*” docketed as OMB-0-97-0694.³⁵ Such case pertains to the award of the contract for the purchase of desks and armchairs in favor of CKL Enterprises sometime in 1996 through negotiated contract in the total amount of ₱81,788,170.70. The manner in which payment thereof was effected, likewise followed the scheme of opening a Letter of Credit with the LBP. However, unlike the present case, the Office of the Ombudsman in its 14 April 1998 Resolution, exonerated the DECS officials declaring that: (1) fault cannot be ascribed on therein respondents in view of the failure of LBP to uphold the conditions set forth in the Letter of Credit; (2) the irregularity in the payment for the contract ascribes liability to the officials of the LBP and; (3) that, in view of the need to determine the identity of those LBP officials liable for the irregularity, the Ombudsman required the conduct of further investigation by its Fact Finding and Intelligence Bureau which at such time is yet to be complied with.

Being a mere component of the said contract, the Province of Antique as represented by the petitioner should only be considered as a mere beneficiary, thereby, exonerating him of any liability for merely following the scheme observed by the DECS in allowing a negotiated contract, instead of a public bidding. This is not to mention the recommendation of the OSP in withdrawing the Information for insufficiency of evidence.

In other words, the petitioner wants us to uphold the validity of the contract he had entered into and the procedure undertaken therefor, on the basis of the exoneration of the DECS Officials in OMB-ADM-0-97-0694.

At the outset, we must say that OMB-ADM-0-97-0694 pertains to a separate transaction, the validity of which has yet to be fully determined. It has no bearing in this case where it was proved, without any doubt, that the Province of Antique was prejudiced by the non-delivery of the most needed school desks and armchairs.

Notably, the stand of the OSP for the dismissal of this case was already overturned by the Office of the Ombudsman. The Sandiganbayan in

³⁵ Exhibit “18,” folder of exhibits.

its 16 December 2002 Resolution,³⁶ followed suit denying the Motion for Judicial Determination of Probable Cause with Prayer to Throw Out Information, on the ground that all the elements of the offense charged are sufficiently alleged and that there exists probable cause. Eventually, the issues as presented were then fully litigated and the facts and evidence were exhaustively examined leading to petitioner's conviction.

At any rate, whether the questioned transaction entered into by the petitioner with the CKL Enterprises/Dela Cruz was part of a mother contract referred to as DECS Project, such that, the payment made was not his fault, but rather an error of the LBP, are matters of fact and does not involve a question of law. As defined, a question of fact also known as a point of fact, is "a question which must be answered by reference to facts and evidence, and inferences arising from those facts. Such a question is distinct from a question of law, which must be answered by applying relevant legal principles. The answer to a question of fact is usually dependent on a particular circumstances or factual situations."³⁷

We cannot, as a rule, re-evaluate the facts.

Section 1, Rule 45 of the Rules of Court states that petitions for review on *certiorari* "shall raise only questions of law which must be distinctly set forth." In *Pagsibigan v. People*,³⁸ the Court held that:

A petition for review under Rule 45 of the Rules of Court should cover only questions of law. Questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts. A question of fact exists when the doubt centers on the truth or falsity of the alleged facts.

In another case, the Court also held that:

There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The issue to be resolved must be limited to determining what the law is on a certain set of facts. Once the issue invites a review of the evidence, the question posed is one of fact.³⁹

Neither can we go into a re-evaluation as an exception to the rule.

³⁶ Records, volume I, pp. 150-151.

³⁷ Wikipedia, The Free Encyclopedia.

³⁸ G.R. No. 163868, 4 June 2009, 588 SCRA 249, 256.

³⁹ *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

The Court reiterates the well-settled rule that, absent any clear showing of abuse, arbitrariness or capriciousness committed by the lower court, its findings of facts, especially when affirmed by the Court of Appeals, are binding and conclusive upon this Court.⁴⁰ As held in the case of *Navallo v. Sandiganbayan*,⁴¹ the Court ruled that “xxx *Findings of fact made by a trial court are accorded the highest degree of respect by an appellate tribunal and, absent a clear disregard of the evidence before it that can otherwise affect the results of the case, those findings should not be ignored xxx.*” (Italics supplied)

Indeed, even if the foregoing rules were, to be relaxed in the interest of substantial justice, this Court, nevertheless finds no reason to disagree with the comparative analysis of the Sandiganbayan between the 1996 DECS contract and the contract subject matter of this case, which resulted in the conclusion that the two contracts are different, separate and distinct from one another. Otherwise, there would have been no need for a separate check issued to the petitioner and for the opening of a letter of credit in favor of CKL Enterprise, in the same way, that it becomes unnecessary to draft another Purchaser-Seller Agreement – the same being already covered by the prior contract where CKL Enterprises/Dela Cruz was fully paid in the amount of ₱81,788,170.70 under Check No. 247768 dated 24 December 1996.⁴²

In all, the petitioner failed to demonstrate that the Sandiganbayan committed reversible errors in finding him guilty of the offense charged.

Section 3(e) of Republic Act 3019, provides:

Section 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 partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and

⁴⁰ *Castillo v. Court of Appeals*, 329 Phil. 150, 152 (1996)

⁴¹ G.R. No. 97214, 18 July 1994, 234 SCRA 175, 185-186.

⁴² Exhibit “18,” folder of exhibits.

employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

For the aforecited provision to lie against the petitioner, 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.⁴³

We focus on the next elements, there being no dispute that the first element of the offense is present.

The second element provides the different modes by which the crime may be committed, that is, through “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence.”⁴⁴ In *Uriarte v. People*,⁴⁵ this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is “manifest partiality” when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another.⁴⁶ “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.⁴⁷ “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes.⁴⁸ “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with

⁴³ *Uriarte v. People*, 540 Phil. 477, 493 (2006), citing *Santos v. People*, 520 Phil. 58, 68 (2006); *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004), and *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 26 (1989).

⁴⁴ *People v. Atienza*, G.R. No. 171671, 18 June 2012, 673 SCRA 470, 480 citing *Gallego v. Sandiganbayan*, 201 Phil. 379, 383 (1982).

⁴⁵ *Uriarte v. People*, supra note 42.

⁴⁶ *Id.* at 494, citing *Alvizo v. Sandiganbayan*, 454 Phil. 32, 72 (2003).

⁴⁷ *Id.*, citing *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002)

⁴⁸ *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 290 citing *Air France v. Carrascoso, et. al.*, 124 Phil. 722, 737 (1966).

conscious indifference to consequences insofar as other persons may be affected.⁴⁹

As correctly observed by the Sandiganbayan, certain established rules, regulations and policies of the Commission on Audit and those mandated under the *Local Government Code of 1991* (R.A. No. 7160) were knowingly sidestepped and ignored by the petitioner which enabled CKL Enterprises/Dela Cruz to successfully get full payment for the school desks and armchairs, despite non-delivery – an act or omission evidencing bad faith and manifest partiality.

It must be borne to mind that any procurement or “acquisition of supplies or property by local government units shall be through competitive public bidding”⁵⁰ This was reiterated in the *Local Government Code of 1991* on procurement of supplies which provides:

Sec. 356. **General Rule in Procurement or Disposal.** – Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. x x x

The petitioner admitted in his testimony⁵¹ that he is aware of such requirement, however, he proceeded just the same due to the alleged advice of the unnamed DECS representative that there was already a negotiated contract – a representation or misrepresentation he willfully believed in, without any verification. As a Governor, he must know that negotiated contract can only be resorted to in case of failure of a public bidding. As it is, there is no public bidding to speak of that has been conducted. Intentionally or not, it is his duty to act in a circumspect manner to protect government funds. To do otherwise is gross inexcusable negligence, at the very least, especially so, that petitioner acted on his own initiative and without authorization from the Provincial School Board. This can be proved by his failure to present even a single witness from the members of the Board whom he consulted as he claimed.

The same thing can be said about the act of petitioner in signing the sales invoice and the bank draft knowing that such documents would cause the withdrawal by CKL Enterprises/Dela Cruz of the corresponding amount covered by the Irrevocable Domestic Letter of Credit. A Letter of Credit in itself, is not a prohibited form of payment. It is simply a promise to pay.

⁴⁹ *Albert v. Sandiganbayan*, id. at 290, citing *Sistoza v. Desierto*, supra note 46 at 132.

⁵⁰ Section 27, Rule 5 of COA Circular No. 92-386, otherwise known as the “Rules and Regulations on Supply and Property Management in the Local Governments.”

⁵¹ TSN, 15 January 2008, p. 20.

Banks issue Letters of Credit as a way to ensure sellers that they will get paid as long as they do what they've agreed to do.⁵² The problem arises when the money or fund covered by the Letter of Credit is withdrawn irregularly, such as in this case at bench. It must be noted that any withdrawal with the LBP must be accompanied by the appropriate document evidencing deliveries. In signing the draft and sales invoice, petitioner made it possible for CKL Enterprises/Dela Cruz to withdraw the entire ₱5,666,600.00 without any delivery of the items.

As the records would bear, the CKL Enterprises Invoice dated 16 April 1997, contains the signature of the accused as customer. Above the customer's signature is the phrase: "Received and accepted the above items in good condition." The significance of the customer's signature on the invoice is that it initiates the process of releasing the payment to the seller. This is all that the LBP needs in order to release the money allotted for the purchase. Unfortunately, despite receipt of payment, it was almost a year after when delivery of the items was made on a piece meal basis – some of which were even defective.

This Court, therefore, is not persuaded that petitioner deserves to be exonerated. On the contrary, evidence of undue injury caused to the Province of Antique and giving of unwarranted benefit, advantage or preference to CKL Enterprises/Dela Cruz committed through gross inexcusable negligence was beyond reasonable doubt, proven.

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated 2 December 2008 of the Sandiganbayan in Criminal Case No. 26172 is **AFFIRMED**.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

⁵²

About.com. Banking/Loans, How Letters of Credit Work by Justin Pritchard.

WE CONCUR:



ANTONIO T. CARPIO

Associate Justice
Chairperson



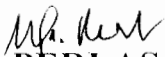
ARTURO D. BRION

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



ESTELA M. PERLAS-BERNABE

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.

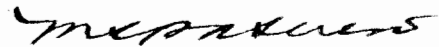


ANTONIO T. CARPIO

Associate Justice
Second Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were 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