

## SECOND DIVISION

[ G.R. No. 187268, September 04, 2013 ]

### JOVITO C. PLAMERAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### DECISION

##### PEREZ, J.:

This resolves the appeal interposed by petitioner Jovita 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 Decision<sup>[1]</sup> promulgated on 2 December 2008 by the Sandiganbayan in Criminal Case No. 26172 entitled *People of the Philippines v. Jovita 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(c) 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) years and ONE (1) month as minimum to TEN (10) years as maximum, and to suffer perpetual disqualification from public office.<sup>[2]</sup>

#### *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 P5,666,667.00.

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 P5,666,667.00 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 Desks<sup>[3]</sup> 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 Credit<sup>[4]</sup> in behalf of the Provincial School Board of Antique in the amount of P5,666,600.00 in favor of CKL Enterprises/Dela Cruz. Such application was approved by the LBP; thus, the issuance of Letter of Credit No. 97073/D<sup>[5]</sup> 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."

On 24 April 1997, the petitioner signed Sales Invoice No. 0220<sup>[6]</sup> and accepted LBP Draft No. DB97121.<sup>[7]</sup> 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 P5,666,600.00.

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,<sup>[8]</sup> 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,<sup>[9]</sup> 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,<sup>[10]</sup> 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,<sup>[11]</sup> 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. 99-5-3121<sup>[12]</sup> to compel CKL Enterprises to refund the amount of P5,666,600.00 with interests at the legal rate.

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 Resolution<sup>[13]</sup> 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 P2,697,168.00 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 P5,666,600.00 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.<sup>[14]</sup>

Consequently, an Information<sup>[15]</sup> 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 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 (P5,666,600.00), 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 (P73,360.00), Philippine Currency, and three thousand four hundred eight (3,408) armchairs, valued at TWO MILLION SIX HUNDRED NINETY- SEVEN ONE HUNDRED SIXTY-EIGHT PESOS (P2,697,168.00), 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.<sup>[16]</sup>

Prior to his arraignment, or on 16 August 2000, petitioner filed a Motion for Reinvestigation and/or Suspend Proceedings<sup>[17]</sup> 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,<sup>[18]</sup> 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.<sup>[19]</sup> However, upon review, the Office of the Ombudsman in its 18 July 2001 Memorandum,<sup>[20]</sup> 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.<sup>[21]</sup>

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 Mahandog, Atty. Eufrazio 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,<sup>[22]</sup> which the Sandiganbayan granted in its Resolution dated 30 August 2006.<sup>[23]</sup> However, in its Resolution dated 15 January 2007,<sup>[24]</sup> the Sandiganbayan denied the Demurrer to Evidence<sup>[25]</sup> filed by the petitioner. Likewise, the Motion for Reconsideration thereof was denied in the Sandiganbayan's Resolution of 12 April 2007.<sup>[26]</sup>

The petitioner thereby proceeded with the presentation of his testimonial and documentary evidence. Petitioner offered his testimony<sup>[27]</sup> and that of his two (2) witnesses, namely: Florante Moscoso (Moscoso), the former Head Executive Assistant<sup>[28]</sup> of petitioner, and Atty. Marciano G. Delson,<sup>[29]</sup> 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 P5,666,667.00, 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 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 draft<sup>[30]</sup> 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