

## FIRST DIVISION

[ G.R. NO. 160211, August 28, 2006 ]

**VENANCIO R. NAVA, PETITIONER, VS. THE HONORABLE JUSTICES RODOLFO G. PALATTAO, GREGORY S. ONG, AND MA. CRISTINA G. CORTEZ-ESTRADA AS MEMBERS OF THE SANDIGANBAYAN'S FOURTH DIVISION, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

#### PANGANIBAN, CJ:

A meticulous review of the records and the evidence establishes the guilt of the accused beyond reasonable doubt. Clearly, the prosecution was able to prove all the elements of the crime charged. Hence, the conviction of petitioner is inevitable.

#### The Case

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, assailing the June 2, 2003 Decision<sup>[2]</sup> and September 29, 2003 Resolution of the Sandiganbayan in Criminal Case No. 23627. The dispositive portion of the challenged Decision reads:

"WHEREFORE, premises considered, judgment is hereby rendered convicting accused VENANCIO NAVA Y RODRIGUEZ of the crime of violation of the Anti-Graft and Corrupt Practices Act particularly Section 3(g) thereof, or entering on behalf of government in any contract or transaction manifestly and grossly disadvantageous to the same whether or not the public officer profited or will profit thereby. In the absence of any aggravating or mitigating circumstances, applying the Indeterminate Sentence Law, accused is hereby sentenced to suffer the penalty of imprisonment of six (6) years, and one (1) day as minimum to twelve (12) years and one (1) day as maximum and to suffer perpetual disqualification from public office. Accused Nava is further ordered to pay the government the amount of P380,013.60 which it suffered by way of damages because of the unlawful act or omission committed by the herein accused Venancio Nava.

"From the narration of facts, there hardly appears any circumstance that would suggest the existence of conspiracy among the other accused in the commission of the crime.

"Thus in the absence of conspiracy in the commission of the crime complained of and as the herein other accused only acted upon the orders of accused Venancio Nava, in the absence of any criminal intent on their part to violate the law, the acts of the remaining accused are not

considered corrupt practices committed in the performance of their duties as public officers and consequently, accused AJATIL JAIRAL Y PONGCA, ROSALINDA MERKA Y GUANZON & JOSEPH VENTURA Y ABAD are hereby considered innocent of the crime charged and are hereby **acquitted**."<sup>[3]</sup>

The assailed Resolution dated September 29, 2003, denied reconsideration.

### **The Facts**

The Sandiganbayan narrated the facts of this case as follows:

"The complaint involving the herein accused was initiated by the COA, Region XI, Davao City, which resulted from an audit conducted by a team which was created by the COA Regional Office per COA Regional Assignment Order No. 91-74 dated January 8, 1991. The objective of the team [was] to conduct an audit of the 9.36 million allotment which was released in 1990 by the DECS, Region XI to its Division Offices.

"In the Audit Report, the amount of P603,265.00 was shown to have been released to the DECS Division of Davao del Sur for distribution to the newly nationalized high schools located within the region. Through the initiative of accused Venancio Nava, a meeting was called among his seven (7) schools division superintendents whom he persuaded to use the money or allotment for the purchase of Science Laboratory Tools and Devices (SLTD). In other words, instead of referring the allotment to the one hundred fifty-five (155) heads of the nationalized high schools for the improvement of their facilities, accused Nava succeeded in persuading his seven (7) schools division superintendents to use the allotment for the purchase of science education facilities for the calendar year 1990.

"In the purchase of the school materials, the law provides that the same shall be done through a public bidding pursuant to Circular No. 85-55, series of 1985. But in the instant case, evidence shows that accused Nava persuaded his seven (7) schools division superintendents to ignore the circular as allegedly time was of the essence in making the purchases and if not done before the calendar year 1990, the funds allotted will revert back to the general fund.

"In the hurried purchase of SLTD's, the provision on the conduct of a public bidding was not followed. Instead the purchase was done through negotiation. Evidence shows that the items were purchased from Joven's Trading, a business establishment with principal address at Tayug, Pangasinan; D'[I]mplacable Enterprise with principal business address at 115 West Capitol Drive, Pasig, Metro Manila and from Evelyn Miranda of 1242 Oroqueta Street, Sta. Cruz, Manila. As disclosed by the audit report, the prices of the [SLTDs] as purchased from the above-named sellers exceeded the prevailing market price ranging from 56% to 1,175% based on the mathematical computation done by the COA audit team. The report concluded that the government lost P380,013.60. That the injury to the government as quantified was the result of the non-

observance by the accused of the COA rules on public bidding and DECS Order No. 100 suspending the purchases of [SLTDs]."<sup>[4]</sup>

The Commission on Audit (COA) Report recommended the filing of criminal and administrative charges against the persons liable, including petitioner, before the Office of the Ombudsman-Mindanao.

Petitioner was subsequently charged in an Information<sup>[5]</sup> filed on April 8, 1997, worded as follows:

"That on or about the period between November to December 1990, and for sometime prior or subsequent thereto, in Digos, Davao Del Sur and/or Davao City, Philippines and within the jurisdiction of this Honorable Court, the accused Venancio R. Nava (DECS-Region XI Director) and Ajatil Jairal (Division Superintendent, DECS, Davao del Sur), both high[-]ranking officials and Rosalinda Merka, and Teodora Indin (Administrative Officer and Assistant Division Superintendent, respectively of DECS-Division of Davao Del Sur), all low ranking officials, while in the discharge of their respective official functions, committing the offense in relation to their office and with grave abuse [of] authority, conniving and confederating with one another, did then and there willfully, unlawfully and feloniously enter, on behalf of the government, into transactions with D'Implacable Enterprise and Joven's Trading, respectively, represented by accused Antonio S. Tan and Evelyn Miranda and Joseph Ventura for the purchase of Science Laboratory Tools and Devices (SLTD) intended for use by the public high schools in the area amounting to [P603,265.00], Philippine currency, without the requisite public bidding and in violation of DECS Order No. 100, Series of 1990, which transaction involved an overprice in the amount of P380,013.60 and thus, is manifestly and grossly disadvantageous to the government."<sup>[6]</sup>

Special Prosecution Officer II Evelyn T. Lucero-Agcaoili recommended the dismissal of the foregoing Information on the ground, among others, that there was no probable cause. She argued that only estimates were made to show the discrepancy of prices instead of a comparative listing on an item to item basis.<sup>[7]</sup> The recommendation was disapproved, however, by then Ombudsman Aniano A. Desierto.

### **Ruling of the Sandiganbayan**

After due trial, only petitioner was convicted, while all the other accused were acquitted.<sup>[8]</sup>

Petitioner was found guilty of violating Section 3(g) of the Anti-Graft and Corrupt Practices Act, or entering on behalf of the government any contract or transaction manifestly and grossly disadvantageous to the latter, whether or not the public officer profited or would profit thereby.

The Sandiganbayan (SBN) said that, in the purchase of the Science Laboratory Tools and Devices (SLTDs), petitioner had not conducted a public bidding in accordance with COA Circular No. 85-55A. As a result, the prices of the SLTDs, as purchased, exceeded the prevailing market price from 56 percent to 1,175 percent, based on

the mathematical computations of the COA team.<sup>[9]</sup> In his defense, petitioner had argued that the said COA Circular was merely directory, not mandatory. Further, the purchases in question had been done in the interest of public service.<sup>[10]</sup>

The Sandiganbayan did not give credence to the foregoing defenses raised by petitioner. On the contrary, it found the evidence adduced by petitioner's co-accused, Superintendent Ajatil Jairal, to be "enlightening," manifesting an intricate web of deceit spun by petitioner and involving all the other superintendents in the process.<sup>[11]</sup>

The graft court did not accept the claim of petitioner that he signed the checks only after the other signatories had already signed them. The evidence showed that blank Philippine National Bank (PNB) checks had been received by Nila E. Chavez, a clerk in the regional office, for petitioner's signature. The Sandiganbayan opined that the evidence amply supported Jairal's testimony that the questioned transactions had emanated from the regional office, as in fact, all the documents pertinent to the transaction had already been prepared and signed by petitioner when the meeting with the superintendents was called sometime in August 1990.<sup>[12]</sup>

In that meeting, the superintendents were given prepared documents like the Purchase Orders and vouchers, together with the justification.<sup>[13]</sup> This circumstance prompted Jairal to conduct his own canvass. The Sandiganbayan held that this act was suggestive of the good faith of Jairal, thereby negating any claim of conspiracy with the other co-accused and, in particular, petitioner.

In its assailed Resolution, the SBN denied petitioner's Motion for Reconsideration. It held that the series of acts culminating in the questioned transactions constituted violations of Department of Education, Culture and Sports (DECS) Order No. 100; and COA Circular No. 85-55A. Those acts, ruled the SBN, sufficiently established that the contract or transaction entered into was manifestly or grossly disadvantageous to the government.

Hence, this Petition.<sup>[14]</sup>

### **The Issues**

Petitioner raises the following issues for our consideration:

"I. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in upholding the findings of the Special Audit Team that irregularly conducted the audit beyond the authorized period and which team falsified the Special Audit Report.

"II Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in upholding the findings in the special audit report where the Special Audit Team egregiously failed to comply with the minimum standards set by the Supreme Court and adopted by the Commission on Audit in violation of petitioner's right to due process, and which report suppressed evidence favorable to the petitioner.

"III. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in upholding the findings in the Special Audit Report considering that none of the allegedly overpriced items were canvassed or purchased by the Special Audit Team such that there is no competent evidence from which to determine that there was an overprice and that the transaction was manifestly and grossly disadvantageous to the government.

"IV. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in finding that there was an overprice where none of the prices of the questioned items exceeded the amount set by the Department of Budget and Management.

"V. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in selectively considering the findings in the decision in Administrative Case No. XI-91-088 and failing to consider the findings thereon that petitioner was justified in undertaking a negotiated purchase and that there was no overpricing.

"VI. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in selectively considering the findings of XI-91-088 and failing to consider the findings thereon that petitioner was justified in undertaking a negotiated purchase, there was no overpricing, and that the purchases did not violate DECS Order No. 100.

"VII. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in failing to absolve the petitioner where conspiracy was not proven and the suppliers who benefited from the alleged overpricing were acquitted.

"VIII. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in admitting in evidence and giving probative value to Exhibit "8" the existence and contents of which are fictitious.

"IX. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in giving credence to the self-serving and perjurious testimony of co-accused Ajatil Jairal that the questioned transactions emanated from the regional office [in spite] of the documentary evidence and the testimony of the accused supplier which prove that the transaction emanated from the division office of Digos headed by co-accused Ajatil Jairal.

"X. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in finding that the petitioner entered into a transaction that was manifestly and grossly disadvantageous to the government where the evidence clearly established that the questioned transactions were entered into by the division office of Digos through co-accused Ajatil Jairal.