

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 176546 **September 25, 2009**

FELICITAS P. ONG, Petitioner,

vs.

THE PEOPLE OF THE PHILIPPINES, Respondent.

DECISION

YNARES-SANTIAGO, J.:

Assailed in this petition for review is the Decision¹ of the Sandiganbayan dated November 13, 2006 in Criminal Case No. 24416, finding petitioner Felicitas P. Ong guilty beyond reasonable doubt of violation of Sec. 3 (e) of Republic Act No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*. Also assailed is the Resolution² dated February 2, 2007 denying the motion for reconsideration.

On August 12, 1996 petitioner in her capacity as Mayor of Angadanan, Isabela, bought³ an Isuzu dump truck⁴ for P750,000.00 from Josephine Ching for the use of the municipality.

On March 26, 1997, a letter-complaint⁵ was filed against petitioner by her successor, Mayor Diosdado Siquian⁶ and several other Sangguniang Bayan members⁷ before the Office of the Ombudsman, accusing her of malversation of public funds and property in connection with several alleged irregularities committed during her term as Mayor of Angadanan, including the purchase of the dump truck for being grossly overpriced.

On August 14, 1997, Graft Investigation Officer I Germain G. Lim found no probable cause to hold petitioner liable for the charges. Upon reconsideration however, she was indicted for violation of Sec. 3 (e) of RA No. 3019, as amended, with respect to the acquisition of the dump truck.

The Information⁸ reads:

That on or about August 1996, or sometime prior or subsequent thereto in the Municipality of Angadanan, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Felicitas P. Ong, a public official, being the Municipal Mayor of Angadanan, Isabela, taking advantage of her official position and committing the offense in relation to her office, acting with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously cause injury to the Municipality of

Angadanan by causing and approving, without public bidding, the acquisition of an Isuzu dump truck with Plate Number T-BBB-206 from J.C. Trucking in the amount of SEVEN HUNDRED FIFTY THOUSAND PESOS (P750,000.00) when the same or similar type of dump truck could have been bought at a much lower price of not more than FIVE HUNDRED THOUSAND PESOS (P500,000.00), to the damage and prejudice of the Municipality of Angadanan in the amount of TWO HUNDRED AND FIFTY THOUSAND PESOS (P250,000.00).

CONTRARY TO LAW.

On January 12, 1999, petitioner was arraigned and entered a plea of "Not guilty."⁹

During trial, Ramon De Guzman Sevilla, Sales Manager of Christian Motor Sales in Cabanatuan City, Nueva Ecija, testified that the cost of a ten wheeler-front drive, military type Isuzu dump truck ranges from P190,000.00-P490,000.00.¹⁰

Sangguniang Bayan members and complainants Ruben P. Lappay and Mirasol P. Lappay both testified that the dump truck was bought without conducting a public bidding or a resolution by the Sangguniang Bayan; that the truck was merely reconditioned and not brand new as can be seen from its deplorable condition, worn tires and old battery;¹¹ and that a subsequent canvass of other suppliers showed that better quality dump trucks cost no more than P500,000.00.¹²

In her defense, petitioner testified that in 1996, the municipality appropriated the amount of P1,000,000.00 for the purchase of a dump truck;¹³ that pursuant to said appropriation, the subject vehicle was purchased on August 12, 1996 for P750,000.00 through a negotiated purchase from Josephine Ching of J.C. Trucking; that the public bidding and prior Sangguniang Bayan resolution were dispensed with pursuant to Commission on Audit (COA) Resolution Nos. 95-244¹⁴ and 95-244-A¹⁵ which do not require the conduct of a public bidding on any negotiated purchase in amounts not exceeding P10,000,000.00;¹⁶ that the truck was not in disrepair as the same was inspected by the Regional Engineer from COA who declared it fit and in good running condition;¹⁷ and that the purchase was allowed by COA because it did not issue a notice of disallowance.¹⁸

On November 13, 2006, the Sandiganbayan rendered its Decision finding petitioner guilty beyond reasonable doubt of violation of Sec. 3 (e) of RA No. 3019. The dispositive portion thereof reads:

WHEREFORE, the Court finds accused Felicitas P. Ong, GUILTY beyond reasonable doubt, for violation of Sec. 3 (e) of RA No. 3019, and is hereby sentenced to suffer the penalty of:

- (A) Imprisonment of, after applying the Indeterminate Sentence Law, six years and one month as minimum, up to ten years, as maximum; and
- (B) Perpetual disqualification from Public Office.

Accused is hereby ordered to RETURN to the Municipality of Angadanan the amount of P250,000.00.

SO ORDERED.¹⁹

The Sandiganbayan found that as Mayor of Angadanan, there is no dispute that petitioner was a public officer discharging administrative and official functions; that there is no merit to petitioner's claim that the purchase of the dump truck without public bidding was justified by COA Resolution Nos. 95-244 and 95-244-A; and that the prosecution was able to prove that had petitioner observed the proper procurement procedure, the municipality could have acquired a dump truck similar to, if not better than that which she bought, for a much lesser price.

Hence, this appeal where petitioner contends that the Sandiganbayan erred in finding her guilty of violation of Section 3 (e) of RA No. 3019. In particular, petitioner denies causing injury or giving anybody any unwarranted benefits, advantage or preference in the discharge of her official or administrative functions, or that she is guilty of any manifest partiality, evident bad faith or gross negligence.

We are not persuaded.

It is a well-entrenched rule that factual findings of the Sandiganbayan are conclusive upon the Supreme Court except where: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts and the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.²⁰ None of the above exceptions obtains in this case.

Section 3 (e) of RA No. 3019, as amended, 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 employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The following essential elements must be present:

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. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.²¹

We find that all the elements of the offense charged have been duly established beyond reasonable doubt. Petitioner, being then the Mayor of Angadanan, Isabela is a public officer discharging administrative and official functions. The act of purchasing the subject truck without the requisite public bidding and authority from the Sangguniang Bayan displays gross and inexcusable negligence. Undue injury was caused to the Government because said truck could have been purchased at a much lower price.

The contention that the acquisition through a *negotiated purchase* was valid the same being pursuant to COA Resolution Nos. 95-244 and 95-244-A, is untenable. Petitioner's reliance on said COA Resolutions is misplaced. COA Resolution No. 95-244 as amended by Resolution No. 95-244-A states that there is no necessity of prescribing the limit of purchases not subject to public bidding since Executive Order No. 301²² authorizes the heads of an agency with the approval of the Department Heads to enter into a *negotiated purchase* as long as the same is advantageous to the government.

Both resolutions are implementing guidelines which must be read and applied in conjunction with Title VI,²³ Book II, of Republic Act No. 7160 otherwise known as the Local Government Code of 1991. Section 356 thereof states the general rule that the acquisition of supplies by the local government units shall be through competitive bidding. The only instances when public bidding requirements can be dispensed with are provided under Section 366, to wit:

Section 366. Procurement without Public Bidding. - Procurement of supplies may be made without the benefit of public bidding under any of the following modes:

Negotiated purchase;

negotiated purchase is further qualified by Section 369 thereof which states:

Section 369. Negotiated Purchase.- (a) In cases where public biddings have failed for two (2) consecutive times and no suppliers have qualified to participate or win in the biddings, local government units may, through the local chief executive concerned, undertake the procurement of supplies by negotiated purchase, regardless of amount, without public bidding: provided, however, that the contract covering the negotiated purchase shall be approved by the Sanggunian concerned x x x.

Thus, a local chief executive could only resort to a *negotiated purchase* under Section 366 of RA No. 7160 and COA Resolution Nos. 95-244 and 95-244-A, if the following two requisites are present: (1) public biddings have failed for at least two consecutive times and; (2) no suppliers have qualified to participate or win in the biddings.

The Sandiganbayan correctly ruled that by procuring the subject truck through a *negotiated purchase* without public bidding, petitioner failed to comply with the above stated procedure. Indeed, as the local chief executive, petitioner is not only expected to know the proper procedure in the procurement of supplies, she is also duty bound to follow the same and her failure to discharge this duty constitutes gross and inexcusable negligence.

Price quotations obtained from several suppliers²⁴ as well as the testimonies of Ramon de Guzman Sevilla, Ruben Lappay and Mirasol Lappay proved that the dump truck purchased by petitioner was over-priced. Hence, had petitioner observed the proper procurement procedure, the municipality of Angadanan could have acquired a dump truck similar to, if not better than the one originally bought, at a much lower price of not more than P500,000.00. Without doubt, petitioner's negligence caused undue injury to the government while at the same time gave unwarranted benefits to Josephine Ching.

The penalty for violation of Section 3(e) of RA 3019 is "imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office."²⁵ Under the Indeterminate Sentence Law, if the offense is punished by special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.²⁶

In view of the circumstances obtaining in the instant case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

WHEREFORE, the petition is DENIED. The Decision of the Sandiganbayan dated November 13, 2006 finding petitioner Felicitas P. Ong guilty beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. 3019 and sentencing her to suffer the penalty of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from holding public office and with order to return the amount of P250,000.00, is AFFIRMED.

SO ORDERED.

CONSUELO YNARES-SANTIAGO

Associate Justice

WE CONCUR:

MINITA V. CHICO-NAZARIO

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

ATTESTATION

I attest 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.

CONSUELO YNARES-SANTIAGO

Associate Justice

Chairperson, Third Division

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.

CONSUELO YNARES-SANTIAGO

Acting Chief Justice

Footnotes

¹ *Rollo*, pp. 83-94; penned by Associate Justice Norberto Y. Galdez and concurred in by Associate Justices Godofredo L. Legaspi and Efren N. Dela Cruz.

² *Id.* at 109-111.

³ Records, pp. 42-43; as evidenced by a Deed of Absolute Sale of a Motor Vehicle.

⁴ With Plate No. T-BBB-206.

⁵ Records, pp. 10-11.

⁶ Also referred to as Diosdado *Sitiang* in the TSN.

⁷ Raymundo T. Paggao, Mirasol P. Lappay, Maximiano J. Marayag, Jr., Alexandro B. Ayudan, Ruben P. Lappay and Gilbert D. Lopez.

⁸ Records, pp. 81-82; Information dated November 21, 1997.

⁹ *Id.* at 107; per Certificate of Arraignment dated January 12, 1999.

¹⁰ TSN, September 19, 2003, pp. 7-8; 10.

¹¹ TSN, January 20, 2005, pp. 7-9.

¹² TSN, May 11, 2005, pp. 11-19.

¹³ TSN, November 8, 2005, p. 23.

¹⁴ Adopted May 18, 1995 and entitled "Revocation of Paragraph 4.1 (a) of COA Circular No. 85-55A dated September 8, 1985 prescribing the limit of ₱50,000.00 for purchases subjected to public bidding."

¹⁵ Adopted on September 7, 1995 and entitled *Amendment of COA Resolution No. 95-244*.

¹⁶ TSN, November 8, 2005, pp. 7-8, 25.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 15.

¹⁹ *Rollo*, p. 93.

²⁰ *Suller v. Sandiganbayan*, G.R. No. 153686, July 22, 2003, 407 SCRA 201, 208.

²¹ *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009.

²² Approved on July 26, 1987; provides exceptions to the bidding requirement and authorizes negotiated purchase in exceptional cases.

²³ Property and Supply Management in the Local Government Units.

²⁴ Records, pp. 99-101; Annexes '10', '11' and '12' from Tagumpay Motorworks, Del Rosario Motorworks and Dasig Morotworks.

²⁵ REPUBLIC ACT No. 3019, Sec. 9.

²⁶ *Nacaytuna v. People of the Philippines*, G.R. No. 171144, November 24, 2006, 508 SCRA 128,135.