FIRST DIVISION

VENANCIO R. NAVA,
Petitioner,

- versus -

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.

G.R. No. 160211

Present:

PANGANIBAN, *CJ,* Chairperson,
YNARES-SANTIAGO,
AUSTRIA-MARTINEZ,
CALLEJO, SR., and
CHICO-NAZARIO, *JJ*

Promulgated:
August 28, 2006

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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[1][1] under Rule 65 of the Rules of Court, assailing the June 2, 2003 Decision[2][2] 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 pubic 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 ₱380,013.60 which it suffered by way of damages because of the unlawful act or omission committed by the herein accused Venancio Nava.
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> "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.
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> "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***."[3][3]

1[1] *Rollo*, pp. 3-66.

2[2] Id. at 68-88. Fourth Division. Penned by Justice Rodolfo G. Palattao and concurred in by Justices Gregory S. Ong (Division chair) and Ma. Cristina G. Cortez-Estrada (member).

3[3] Assailed Sandiganbayan Decision, pp. 19-20; *rollo*, pp. 86-87. (Emphases in the original)

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 ₱603,265.00 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 ₱380,013.60. 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]."[4][4]

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[5][5] 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 [₱603,265.00], Philippine currency, without the requisite public bidding and in violation of DECS Order No. 100,

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4[4] Id. at 9-11; id. at 76-78.

5[5] The case was docketed as Criminal Case No. 23627.

> Series of 1990, which transaction involved an overprice in the amount of ₱380,013.60 and thus, is manifestly and grossly disadvantageous to the government."[6][6]

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.[7][7] The recommendation was disapproved, however, by then Ombudsman Aniano A. Desierto.

6[6] Information dated March 17, 1997, p. 1; *rollo*, p. 145.

7[7] Order dated August 1, 1997; *rollo*, pp. 148-150.

Ruling of the Sandiganbayan

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

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.[9][9] In his defense, petitioner had argued that the said COA Circular was merely directory,

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8[8] On May 27, 1998, the case against Teodora Indin was dismissed upon Motion of the Ombudsman; in the Order dated December 4, 2000, the cases against Antonio S. Tan and Evelyn L. Miranda, the proprietor and authorized representative of D'Implacable Enterprise, were ordered dismissed for failure of the prosecution to establish the charge against them by any admissible and reliable proof.

Ajatil Jairal, Rosalinda Merka and Joseph Ventura were all acquitted by the Sandiganbayan.

9[9] Assailed Sandiganbayan Decision, p. 11; *rollo* p. 78.

not mandatory. Further, the purchases in question had been done in the interest of public service.[10][10]

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.[11][11]

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.[12][12]

10[10] Id. at 15; id. at 82.

11[11] Id. at 16; id. at 83. The Sandiganbayan ruled: "The evidence adduced by accused Superintendent Ajatil Jairal is very enlightening. It supports the collective claim of all the other superintendents who were unnecessarily dragged into the case because of the greed and evil mind of one man in the person of accused Venancio Nava. It was indeed Nava who brought them to this cruel situation. x x x."

12[12] Id. at 17; id. at 84.

In that meeting, the superintendents were given prepared documents like the Purchase Orders and vouchers, together with the justification.[13][13] 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.[14][14]

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

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13[13] Id.

14[14] This case was deemed submitted for decision on January 7, 2005, upon this Court's receipt of petitioner's Memorandum, signed by Atty. Jose Armand C. Arevalo. Received on December 7, 2004 was respondent's Memorandum, signed by Special Prosecutor Dennis M. Villa-Ignacio, Deputy Special Prosecutor Robert E. Kallos, acting Director, ASAB-OSP Pilarita T. Lapitan and Special Prosecution Officer II Cicero D. Jurado Jr.

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.

"XI. Whether the public respondent committed grave abuse of discretion amounting to a lack of or excess of jurisdiction in convicting the petitioner in the absence of proof beyond reasonable doubt."[15][15]

All these issues basically refer to the question of whether the Sandiganbayan committed reversible errors (not grave abuse of discretion) in finding petitioner guilty beyond reasonable doubt of violation of Section 3(g), Republic Act No. 3019.

The Court's Ruling

The Petition has no merit.

Procedural Issue:
Propriety of Certiorari

15[15] Petitioner's Memorandum, pp. 6-8.

At the outset, it must be stressed that to contest the Sandiganbayan's Decision and Resolution on June 2, 2003 and September 29, 2003, respectively, petitioner should have filed a petition for review on certiorari under Rule 45, not the present Petition for Certiorari under Rule 65. Section 7 of Presidential Decree No. 1606,[16][16] as amended by Republic Act No. 8249,[17][17] provides that "[d]ecisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court." Section 1 of Rule 45 of the Rules of Court likewise provides that "[a] party desiring to appeal by certiorari from a judgment or final order or resolution of the x x x Sandiganbayan x x x whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth."

Basic is the principle that when Rule 45 is available, recourse under Rule 65 cannot be allowed either as an add-on or as a substitute for appeal.[18][18] The special civil action for certiorari is not and cannot be a substitute for an appeal, when the latter remedy is available.[19][19]

16[16] Presidential Decree No. 1606 (1978), Sec. 7. "Revising Presidential Decree No. 1486 Creating a Special Court to be Known as 'Sandiganbayan' and for Other Purposes."

17[17] Republic Act No. 8249 (1997), Sec. 5. "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Therefor, and for Other Purposes."

18[18] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, GR No. 160966, October 11, 2005.

19[19] *Chua v. Santos*, 440 SCRA 365, October 18, 2004.

This Court has consistently ruled that a petition for certiorari under Rule 65 lies only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.[20][20] A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment and the acts of the lower court or agency or as in this case, the Sandiganbayan.[21][21] Since the assailed Decision and Resolution were dispositions on the merits, and the Sandiganbayan had no remaining issue to resolve, an appeal would have been the plain, speedy and adequate remedy for petitioner.

To be sure, the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[22][22] For this procedural lapse, the Petition should have been dismissed outright. Nonetheless, inasmuch as it was filed within the 15-day period provided under Rule 45, the Court treated it as a petition for review (not certiorari) under Rule 45 in order to accord substantial justice to the parties. Thus, it was given due course and the Court required the parties to file their Memoranda.

Main Issue:
Sufficiency of Evidence

20[20] *People v. Sandiganbayan*, 449 SCRA 205, January 21, 2005; *Rosete v. CA*, 393 Phil. 593, August 29, 2000; *Bernardo v. CA*, 275 SCRA 413, July 14, 1997. *See also* RULES OF COURT, Rule 65, Sec. 1.

21[21] *Nautica Canning Corp. v. Yumul*, GR No. 164588, October 19, 2005.

22[22] *People v. Sandiganbayan*, supra note 20.

Petitioner argues that the Sandiganbayan erred in convicting him, because the pieces of evidence to support the charges were not convincing. Specifically, he submits the following detailed argumentation:

> "1. the Special Audit Report was fraudulent, incomplete, irregular, inaccurate, illicit and suppressed evidence in favor of the Petitioner;
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> "2. there was no competent evidence to determine the overprice as none of the samples secured by the audit team from the Division of Davao del Sur were canvassed or purchased by the audit team;
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> "3. the allegedly overpriced items did not exceed the amount set by the Department of Budget and Management;
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> "4. the decision in an administrative investigation were selectively lifted out of context;
>
> "5. the administrative findings that Petitioner was justified in undertaking a negotiated purchase, that there was no overpricing, and that the purchases did not violate DECS Order No. 100 were disregarded;
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> "6. Exhibit '8', the contents of which are fictitious, was admitted in evidence and given probative value;
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> "7. The suppliers who benefited from the transactions were acquitted, along with the other accused who directly participated in the questioned transactions; and
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> "8. The self-serving and perjury-ridden statements of co-accused Jairal were given credence despite documentary and testimonial evidence to the contrary." [23][23]

Petitioner further avers that the findings of fact in the Decision dated October 21, 1996 in DECS Administrative Case No. XI-91-088[24][24] denied any overpricing and justified the

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[23][23] Petitioner's Memorandum, pp. 8-9.

[24][24] *Rollo*, pp. 287-305.

negotiated purchases in lieu of a public bidding.[25][25] Since there was no overpricing and since he was justified in undertaking the negotiated purchase, petitioner submits that he cannot be convicted of violating Section 3(g) of Republic Act No. 3019.

Validity of Audit

The principal evidence presented during trial was the COA Special Audit Report (COA Report). The COA is the agency specifically given the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of fund and property owned by or pertaining to the government.[26][26] It has the exclusive authority to define the scope of its audit and examination and to establish the required techniques and methods.[27][27]

Thus, COA's findings are accorded not only respect but also finality, when they are not tainted with grave abuse of discretion.[28][28] Only upon a clear showing of grave abuse of discretion may the courts set aside decisions of government agencies entrusted with the regulation of activities coming under their special technical knowledge and training.[29][29] In this case, the SBN correctly accorded credence to the COA Report. As will be shown later, the

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25[25] Petitioner's Memorandum p. 54.

26[26] CONSTITUTION, Art. IX-D, Sec. 2(1).

27[27] CONSTITUTION, Art. IX-D, Sec. 2(2).

28[28] *Cuerdo v. Commission on Audit*, 166 SCRA 657, October 27, 1988.

29[29] *Villanueva v. Commission on Audit*, 453 SCRA 782, March 18, 2005; *Olaguer v. Domingo*, 359 SCRA 78, June 20, 2001.

Report can withstand legal scrutiny.

Initially, petitioner faults the audit team for conducting the investigation beyond the twenty-one day period stated in the COA Regional Office Assignment Order No. 91-174 dated January 8, 1991. But this delay by itself did not destroy the credibility of the Report. Neither was it sufficient to constitute fraud or indicate bad faith on the part of the audit team. Indeed, in the conduct of an audit, the length of time the actual examination occurs is dependent upon the documents involved. If the documents are voluminous, then it necessarily follows that more time would be needed.[30][30] What is important is that the findings of the audit should be sufficiently supported by evidence.

Petitioner also imputes fraud to the audit team for making "it appear that the items released by the Division Office of Davao Del Sur on 21 February 1991 were compared with and became the basis for the purchase of exactly the same items on 20 February 1991."[31][31]

The discrepancy regarding the date when the samples were taken and the date of the purchase of the same items for comparison was not very material. The discrepancy *per se* did not constitute fraud in the absence of ill motive. We agree with respondents in their claim of clerical inadvertence. We accept their explanation that the wrong date was written by the supplier concerned when the items were bought for comparison. Anyway, the logical sequence of events was clearly indicated in the COA Report:

30[30] Respondent's memorandum, p. 19; *rollo*, p. 446.

31[31] Petitioner's Memorandum, p. 15.

"1.5.1. Obtained samples of each laboratory tools and devices purchased by the Division of Davao del Sur, Memorandum Receipts covering all the samples were issued by the agency to the audit team and are marked as Exhibits 1.2 and 3 of this Report."

"1.5.2. Bought and presented these samples to reputable business establishments in Davao City like Mercury Drug Store, Berovan Marketing Incorporated and [A]llied Medical Equipment and Supply Corporation (AMESCO) where these items are also available, for price verification.

"1.5.3. Available items which were exactly the same as the samples presented were purchased from AMESCO and Berovan Marketing Incorporated, the business establishments which quoted the lowest prices. Official receipts were issued by the AMESCO and Berovan Marketing Incorporated which are hereto marked as Exhibits 4,5,6 and 7 respectively."[32][32]

The COA team then tabulated the results as follows:[33][33]

Item	Purchased Unit Cost	Recanvassed Price + 10% Allow.	Difference	% of Over-pricing	Quantity Purchased	Total Amount of Overpricing
Flask Brush made of Nylon	₱112.20	₱8.80	₱103.40	1,175%	400	₱41,360.00
Test Tube Glass Pyrex (18x50 mm)	22.36	14.30	8.06	56%	350	2,821.00
Graduated Cylinder Pyrex (100ml)	713.00	159.50	553.50	347%	324	179,334.00
Glass Spirit Burner (alcohol lamp)	163.50	38.50	125.00	325%	144	18,000.00
Spring Balance (12.5kg)Germany	551.00	93.50	457.50	489%	102	46,665.00
Iron Wire Gauge	16.20	9.90	6.30	64%	47	296.10
Bunsen Burner	701.00	90.75	610.25	672%	150	91,537.50
					Total	₱380,013.60

What is glaring is the discrepancy in prices. The tabulated figures are supported by

32[32] COA Report, pp. 6-7; *rollo*, pp. 99-100.

33[33] Id. at 8; id. at 101.

Exhibits "E-1," "E-2," "E-3," and "E-4," the Official Receipts evidencing the equipment purchased by the audit team for purposes of comparison with those procured by petitioner.[34][34] The authenticity of these Exhibits is not disputed by petitioner. As the SBN stated in its Decision, the fact of overpricing -- as reflected in the aforementioned exhibits -- was testified to or identified by Laura S. Soriano, team leader of the audit team.[35][35] It is hornbook doctrine that the findings of the trial court are accorded great weight, since it was able to observe the demeanor of witnesses firsthand and up close.[36][36] In the absence of contrary evidence, these findings are conclusive on this Court.

It was therefore incumbent on petitioner to prove that the audit team or any of its members thereof was so motivated by ill feelings against him that it came up with a fraudulent report. Since he was not able to show any evidence to this end, his contention as to the irregularity of the audit due to the discrepancy of the dates involved must necessarily fail.

An audit is conducted to determine whether the amounts allotted for certain expenditures were spent wisely, in keeping with official guidelines and regulations. It is not a witch hunt to terrorize accountable public officials. The presumption is always that official duty has been regularly performed[37][37] -- both on the part of those involved with the expense allotment being audited and on the part of the audit team -- unless there is evidence to the contrary.

34[34] *Rollo*, pp. 230-233.
35[35] Assailed Sandiganbayan Decision, p. 12; *rollo*, p. 79.
36[36] See *People v. Baao*, 142 SCRA 476, July 7, 1986.
37[37] See *Remolona v. Civil Service Commission*, 362 SCRA 304, August 2, 2001.

Due Process

Petitioner likewise invokes *Arriola v. Commission on Audit*[38][38] to support his claim that his right to due process was violated. In that case, this Court ruled that the disallowance made by the COA was not sufficiently supported by evidence, as it was based on undocumented claims. Moreover, in *Arriola,* the documents that were used as basis of the COA Decision were not shown to petitioners, despite their repeated demands to see them. They were denied access to the actual canvass sheets or price quotations from accredited suppliers.

As the present petitioner pointed out in his Memorandum, the foregoing jurisprudence became the basis for the COA to issue Memorandum Order No. 97-012 dated March 31, 1997, which states:

> "3.2 To firm up the findings to a reliable degree of certainty, initial findings of overpricing based on market price indicators mentioned in pa. 2.1 above have to be supported with canvass sheet and/or price quotations indicating:
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> a) the identities of the suppliers or sellers;
> b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency;
> c) the specifications of the items which should match those involved in the finding of overpricing;
> d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction"

Petitioner's reliance on *Arriola* is misplaced. *First*, that Decision, more so, the COA

38[38] 202 SCRA 147, September 30, 1991.

Memorandum Order that was issued pursuant to the former, was promulgated after the period when the audit in the present case was conducted. Neither *Arriola* nor the COA Memorandum Order can be given any retroactive effect.

Second and more important, the circumstances in *Arriola* are different from those in the present case. In the earlier case, the COA merely referred to a cost comparison made by the engineer of COA-Technical Services Office (TSO), based on unit costs furnished by the Price Monitoring Division of the COA-TSO. The COA even refused to show the canvass sheets to the petitioners, explaining that the source document was confidential.

In the present case, the audit team examined several documents before they arrived at their conclusion that the subject transactions were grossly disadvantageous to the government. These documents were included in the Formal Offer of Evidence submitted to the Sandiganbayan.[39[39]] Petitioner was likewise presented an opportunity to controvert the findings of the audit team during the exit conference held at the end of the audit, but he failed to do so.[40[40]]

Further, the fact that only three canvass sheets/price quotations were presented by the audit team does not bolster petitioner's claim that his right to due process was violated. To be sure, there is no rule stating that all price canvass sheets must be presented. It is enough that those that are made the basis of comparison be submitted for scrutiny to the parties being

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39[39] *See* Formal Offer of Evidence, referring to Exhibits "A" – "E-7"; *rollo*, pp. 152-236.

40[40] Respondent's Memorandum, p. 24; *rollo*, p. 451.

audited. Indubitably, these documents were properly submitted and testified to by the principal prosecution witness, Laura Soriano. Moreover, petitioner had ample opportunity to controvert them.

Public Bidding

Petitioner oscillates between denying that he was responsible for the procurement of the questioned SLTDs, on the one hand; and, on the other, stating that the negotiated purchase was justifiable under the circumstances.

On his disavowal of responsibility for the questioned procurement, he claims that the transactions emanated from the Division Office of Digos headed by Jairal.[41[41]] However, in the administrative case[42[42]] filed against petitioner before the DECS, it was established that he "gave the go signal"[43[43]] that prompted the division superintendents to procure the SLTDs through negotiated purchase. This fact is not disputed by petitioner, who quotes the same DECS Decision in stating that his "acts were justifiable under the circumstances then obtaining at that time and for reasons of efficient and prompt distribution of the SLTDs to the high schools."[44[44]]

In justifying the negotiated purchase without public bidding, petitioner claims that "any

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41[41] Petitioner's Memorandum, pp. 72-82.
42[42] DECS Administrative Case No. XI-91-088, October 21, 1996 (r*ollo*, pp. 287-305).
43[43] Id. at 290.
44[44] Petitioner's Memorandum, p. 55.

delay in the enrichment of the minds of the public high school students of Davao del Sur is detrimental and antithetical to public service."[45][45] Although this reasoning is quite laudable, there was nothing presented to substantiate it.

Executive Order No. 301 states the general rule that no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities may be renewed or entered into without public bidding. The rule however, is not without exceptions. Specifically, negotiated contracts may be entered into under any of the following circumstances:

> "a. Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;
> "b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;
> "c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;
> "d. Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;
> "e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned;
> "f. Whenever the purchase is made from an agency of the government."[46][46]

National Center for Mental Health v. Commission on Audit[47][47] upheld the validity of the

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45[45] Id. at 57.

46[46] Executive Order No. 301 (1987), Sec. 1.

negotiated contracts for the renovation and the improvement of the National Center for Mental Health. In that case, petitioners were able to show that the long overdue need to renovate the Center "made it compelling to fast track what had been felt to be essential in providing due and proper treatment and care for the center's patients."[48][48]

47[47] 265 SCRA 390, December 6, 1996.

48[48] Id. at 404, per Vitug, *J*.

This justification was likewise accepted in *Baylon v. Ombudsman*[49][49] in which we recognized that the purchases were made in response to an emergency brought about by the shortage in the blood supply available to the public. The shortage was a matter recognized and addressed by then Secretary of Health Juan M. Flavier, who attested that "he directed the NKTI [National Kidney and Transplant Institute] to do something about the situation and immediately fast-track the implementation of the Voluntary Blood Donation Program of the government in order to prevent further deaths owing to the lack of blood."[50][50]

Unfortunately for petitioner, there was no showing of any immediate and compelling justification for dispensing with the requirement of public bidding. We cannot accept his unsubstantiated reasoning that a public bidding would unnecessarily delay the purchase of the SLTDs. Not only would he have to prove that indeed there would be a delay but, more important, he would have to show how a public bidding would be detrimental and antithetical to public service.

As the COA Report aptly states, the law on public bidding is not an empty formality. It aims to secure the lowest possible price and obtain the best bargain for the government. It is based on the principle that under ordinary circumstances, fair competition in the market tends to lower prices and eliminate favoritism.[51][51]

In this case, the DECS Division Office of Davao del Sur failed to conduct public bidding on

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49[49] 372 SCRA 437, December 14, 2001.

50[50] Id. at 453, per Pardo, *J*.

51[51] COA Report p. 10, r*ollo* p. 103.

the subject transactions. The procurement of laboratory tools and devices was consummated with only the following documents to compensate for the absence of a public bidding:

> "1.13.a Price lists furnished by the Supply Coordination Office
> 1.13.b. Price lists furnished by the Procurement Services of the Department of Budget and Management
> 1.13.c. Price lists of Esteem Enterprises"[52][52]

The COA Report states that the Division Office merely relied on the above documents as basis for concluding that the prices offered by D'Implacable Enterprises and Joven's Trading were reasonable. But as found by the COA, reliance on the foregoing supporting documents was completely without merit on the following grounds:

> "a. The Supply Coordination Office was already dissolved or abolished at the time when the transactions were consummated, thus, it is illogical for the management to consider the price lists furnished by the Supply Coordination Office.
>
> "b. The indorsement letter made by the Procurement Services of the Department of Budget and Management containing the price lists specifically mentions Griffin and George brands, made in England. However, the management did not procure these brands of [SLTDs].
>
> "c. The price lists furnished by the Esteem Enterprises does not deserve the scantest consideration, since there is no law or regulation specifically mentioning that the price lists of the Esteem Enterprises will be used as basis for buying [SLTDs]."[53][53]

Granting *arguendo* that petitioner did not have a hand in the procurement and that the transactions emanated from the Division Office of Davao del Sur, we still find him liable as the

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52[52] Id. at 10-11; id. at 103-104.
53[53] Id. at 11-12; id. at 104-105.

final approving authority. In fact, Exhibit "B-2" -- Purchase Order No. 90-024, amounting to ₱231,012 and dated December 17, 1990 -- was recommended by Jairal and approved by petitioner.[54][54] This exhibit was part of the evidence adduced in the Sandiganbayan to prove that the purchase of the SLTDs was consummated and duly paid by the DECS without any proof of public bidding.

Although this Court has previously ruled[55][55] that all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations, it is not unreasonable to expect petitioner to exercise the necessary diligence in making sure at the very least, that the proper formalities in the questioned transaction were observed -- that a public bidding was conducted. This step does not entail delving into intricate details of product quality, complete delivery or fair and accurate pricing.

Unlike other minute requirements in government procurement, compliance or non-compliance with the rules on public bidding is readily apparent; and the approving authority can easily call the attention of the subordinates concerned. To rule otherwise would be to render meaningless the accountability of high-ranking public officials and to reduce their approving authority to nothing more than a mere rubber stamp. The process of approval is not a ministerial duty of approving authorities to sign every document that comes across their desks, and then point to their subordinates as the parties responsible if something goes awry.

54[54] Formal Offer of Evidence, pp. 2-3; *rollo*, pp. 153-154.

55[55] *Arias v. Sandiganbayan*, 180 SCRA 309, December 19, 1989.

Suspension of Purchases

Obviously working against petitioner is DECS Order No. 100 dated September 3, 1990 which states thus:

> "In view of the Government's call for economy measures coupled with the deficiency in allotments intended for the payment of salary standardization, retirement benefits, bonus and other priority items, the procurement of reference and supplementary materials, tools and devices equipment, furniture, including land acquisition and land improvement shall be suspended for CY 1990. However, the following items shall be exempted from the said suspension:
>
> a) textbooks published by the Instructional Materials Corporation and its commercial edition;
> b) elementary school desks and tablet arm chairs[.]"

As the COA Report succinctly states, the Administrative Order is explicit in its provisions that *tools* and *devices* were among the items whose procurement was suspended by the DECS for the year 1990.

Petitioner claims that in the administrative case against him, there was no mention of a violation of DECS Order No. 100.[56][56] He alleges that the purchases of SLTDs by the division superintendents were entered into and perfected on July 1, 1990; that is, more than two (2) months before the issuance of DECS Order No. 100. He also alleged that the Sub-Allotment Advice (SAA) to the DECS Regional Office No. XI in the amount of ₱9.36M -- out of which ₱603,265.00 was used for the procurement of the questioned SLTDs -- had been released by the DECS Central Office in August 1990, a month before the issuance of DECS Order No. 100.

The Court notes that these arguments are mere assertions bereft of any proof. There was no evidence presented to prove that the SAA was issued prior to the effectivity of DECS Order No. 100. On the other hand, the COA Report states that the DECS Division of Davao del Sur received the following Letters of Advice of Allotments (LAA):[57][57]

"LAA NO.	AMOUNT	DATE OF LAA
DO CO471-774-90	₱141,956.00	October 24, 1990
DO-CO471-797-90	₱161,309.00	November 16, 1990
DO-CO471-1007-90	₱300,000.00	December 14, 1990"

The foregoing LAAs were attached as annexes[58][58] to the COA Report and were presented during trial in the Sandiganbayan.[59][59]

56[56] Petitioner's Memorandum, p. 58.
57[57] COA Report, p. 14; *rollo*, p. 107.
58[58] *Rollo*, pp. 162-164 and 221-224.
59[59] Exhibits "A", "A-1", "A-2"; Formal Offer of Evidence, p. 1; *rollo*, p. 152.

Also, Schools Division Superintendent Jairal had sent a letter to petitioner, requesting favorable consideration of a forthcoming release of funding for the different barangay and municipal high schools. The letter was dated October 16, 1990,[60[60]] and was made well within the effectivity of the DECS Order. In that letter, Jairal mentioned the receipt by his office of DECS Order No. 100, albeit wrongly interpreting it as suspending only the purchases of reference books, supplementary readers, and so on, but allegedly silent on the purchase of laboratory supplies and materials.[61[61]]

Finally, the SLTDs were purchased within the covered period of DECS Order No. 100, as evidenced by the following relevant documents adduced by the COA audit team, among others:

1) Disbursement Voucher dated November 27, 1990 for the payment of various laboratory supplies and materials by DECS, Davao del Sur in the amount of ₱303,29.40[62[62]]
2) Official Receipt No. 455 dated January 7, 1991 amounting to ₱68,424.00 issued by Joven's Trading[63[63]]
3) Report of Inspection dated November 26, 1990 signed by Jacinta Villareal and Felicisimo Canoy[64[64]]
4) Sales Invoice No. 044 dated November 26, 1990 issued by Joven's Trading in favor of DECS amounting to ₱303,259.40[65[65]]
5) Certificate of Acceptance dated November 27, 1990 signed by Felicismo Canoy[66[66]]
6) Purchase Order No. 90-021 in favor of Joven's Trading dated November 26, 1990 recommended for approval by Ajatil Jairal[67[67]]
7) Official Receipt No. 92356 dated January 7, 1991 issued by D'Implacable

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60[60] *Rollo*, p. 236.
61[61] Id.
62[62] Exhibit "C"; *rollo*, p. 154.
63[63] Exhibit "C-4"; id. at 155.
64[64] Exhibit "C-5"; id.
65[65] Exhibit "C-6"; id.
66[66] Exhibit "C-7"; id.
67[67] Exhibit "C-8"; id.

Enterprises amounting to ₱231,012.00[68][68]

8) Purchase Order No. 90-024 dated December 17, 1990 recommended for approval by Ajatil Jairal and approved Director Venancio Nava amounting to ₱231,012.00."[69][69]

The confluence of the foregoing circumstances indubitably establishes that petitioner indeed wantonly disregarded regulations. Additionally, DECS Order No. 100 negates his claim that the negotiated transaction -- done instead of a public bidding -- was justified. If that Order suspended the acquisition of tools and devices, then there was all the more reason for making purchases by public bidding. Since the buying of tools and devices was specifically suspended, petitioner cannot argue that the purchases were done in the interest of public service.

Proof of Guilt

To sustain a conviction under Section 3(g) of Republic Act No. 3019, it must be clearly proven that 1) the accused is a public officer; 2) the public officer entered into a contract or transaction on behalf of the government; and 3) the contract or transaction was grossly and manifestly disadvantageous to the government.[70][70]

From the foregoing, it is clear that the Sandiganbayan did not err in ruling that the evidence presented warranted a verdict of conviction. Petitioner is a public officer, who approved the transactions on behalf of the government, which thereby suffered a substantial

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68[68] Exhibit "B-3"; id. at 153.

69[69] Exhibit "B2"; id.

70[70] See *Morales v. People*, 385 SCRA 259, July 26, 2002.

loss. The discrepancy between the prices of the SLTDs purchased by the DECS and the samples purchased by the COA audit team clearly established such undue injury. Indeed, the discrepancy was grossly and manifestly disadvantageous to the government.

We must emphasize however, that the lack of a public bidding and the violation of an administrative order do not by themselves satisfy the third element of Republic Act No. 3019, Section 3(g); namely, that the contract or transaction entered into was manifestly and grossly disadvantageous to the government, as seems to be stated in the Resolution of the Sandiganbayan denying the Motion for Reconsideration.[71][71] Lack of public bidding alone does not result in a manifest and gross disadvantage. Indeed, the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. Nevertheless, the law requires that the disadvantage must be manifest and gross. Penal laws are strictly construed against the government.[72][72]

If the accused is to be sent to jail, it must be because there is solid evidence to pin that person down, not because of the omission of a procedural matter alone. Indeed, all the elements of a violation of Section 3(g) of Republic Act No. 3019 should be established to prove the culpability of the accused. In this case, there is a clear showing that all the elements of the offense are present. Thus, there can be no other conclusion other than conviction.

71[71] Assailed Resolution dated September 29, 2003, p. 3; *rollo*, p. 142.

72[72] *Centeno v. Villalon-Pornillos*, 236 SCRA 197, September 1, 1994.

We note, however, that petitioner was sentenced to suffer the penalty of six (6) years and one (1) day as minimum to twelve (12) years and one (1) day as maximum. Under Section 9 of Republic Act 3019, petitioner should be punished with imprisonment of not less than six (6) years and **one (1) month** nor more than fifteen years. Thus, we adjust the minimum penalty imposed on petitioner in accordance with the law.

WHEREFORE, the Petition is ***DENIED.*** The assailed Decision and Resolution are ***AFFIRMED,*** with the ***MODIFICATION*** that the minimum sentence imposed shall be six (6) years and one (1) month, not six (6) years and one (1) day. Costs against petitioner.

SO ORDERED.

ARTEMIO V. PANGANIBAN
Chief Justice
Chairperson, First Division

W E C O N C U R:

CONSUELO YNARES-SANTIAGO **MA. ALICIA AUSTRIA-MARTINEZ**
Associate Justice Associate Justice

ROMEO J. CALLEJO, SR. **MINITA V. CHICO-NAZARIO**
Associate Justice Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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.

ARTEMIO V. PANGANIBAN
Chief Justice