

MAYOR FELIPE K. CONSTANTINO, PETITIONER, VS. HON. SANDIGANBAYAN (FIRST DIVISION) AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 140656 & 154482. September 13, 2007

Ponente: TINGA, J.

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TINGA, J.:

Before us are two (2) consolidated petitions, the determination of both rests ultimately on whether Felipe K. Constantino (Constantino), mayor of Malungon, Sarangani Province, was indeed guilty beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019 (R.A. No. 3019), otherwise known as The Anti-Graft and Corrupt Practices Act.

In G.R. No. 140656, Constantino filed a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, assailing the 15 November 1999 decision[1] and the 15 March 2000 resolution[2] of the Sandiganbayan (First Division) in Criminal Case No. 23433 finding him and his co-accused, petitioner Norberto N. Lindong (Lindong) guilty beyond reasonable doubt of violating Section 3(e) of R.A. No. 3019.

On the other hand, G.R. No. 154482 is a petition for certiorari with prayer for preliminary injunction under Rule 65 of the 1997 Rules of Civil Procedure, filed by Lindong questioning three (3) orders[3] of the Sandiganbayan (First Division) relative to the execution of judgment against him also in Criminal Case No. 23433.

The Antecedents

In an Information dated 31 July 1996, Constantino, in his capacity as mayor of Malungon, Sarangani Province, together with his co-accused Lindong, was charged with violation of Section 3 (e) of R.A. No. 3019 before the Sandiganbayan, to wit:

That on or about February 28, 1996, in Davao City, Philippines, and within the jurisdiction of this Honorable Court, accused Felipe K. Constantino, a public officer, being then the Mayor of the Municipality of Malungon, Sarangani Province, committing the crime herein-charged in relation to, while in the performance and taking advantage of his official functions, with evident bad faith, manifest partiality or through gross inexcusable negligence, and conspiring and confederating with accused Norberto N. Lindong, President and Chairman of the Board of the Norlovanian Corporation, Davao City, did then and there wil[l]fully, unlawfully and criminally enter into a Lease Agreement for the rental of various heavy equipments (sic) for a period of six (6) years for and in consideration of the sum of PESOS: TWO HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED ELEVEN and 11/100 (P257,111.11) per month or a total consideration of PESOS: EIGHTEEN MILLION FIVE HUNDRED ELEVEN THOUSAND NINE HUNDRED NINETY-NINE and 92/100 (P18,511,999.92) and a guaranty deposit of PESOS: ONE MILLION SEVEN HUNDRED EIGHTY THOUSAND (P1,780,000.00) contrary to the express mandate of Resolution No. 2, series of 1995, of the Municipal Planning and Development Council implementing Sangguniang Bayan Resolution No. 198, series of 1995 and Sangguniang Bayan Resolution No. 21 dated February 22, 1996 authorizing the Municipal Mayor

of Malungon to enter into an agreement for the purchase of heavy equipments (sic) on a five-year term basis for and in consideration of the amount of PESOS: TWO MILLION TWO HUNDRED THOUSAND (P2,200,000.00) per year or a total consideration of only PESOS: ELEVEN MILLION (P11,000,000.00), thus, giving said Norlovanian Corporation, which was fully paid for the Guaranty Deposit and was actually paid heavy equipment rentals for the period March 5 to May 6,

1996 in the aggregate sum of PESOS: TWO MILLION ONE HUNDRED SEVENTY-SEVEN THOUSAND NINETY and 91/100 (P2,177,090.91), unwarranted benefits and advantage and causing undue injury to the government.

CONTRARY TO LAW.[4]

Both accused pleaded not guilty to the charge. In the ensuing trial, the prosecution presented Nazario B. Tomanan (Tomanan), Commission on Audit (COA) Auditor III of the COA Regional Office No. XI. In rebuttal, it presented Benjamin C. Asgapo (Asgapo), councilor of Malungon, Sarangani Province and one of the complainants below. The prosecution sought to establish the facts as follows:

The Municipality of Malungon listed as one of its priority programs, the acquisition of a fleet of heavy equipment needed by the municipality in its development projects.[5] For this purpose, it appropriated an amount of P2.2 Million per annum for a period of five (5) years beginning in 1996 for the amortization of such purchase.[6] Pursuant thereto, the municipality conducted two (2) public biddings for suppliers of the required fleet of heavy equipment. Both attempts, however, failed. Hence, the Sangguniang Bayan instead passed Resolution No. 21 on 22 February 1996, authorizing petitioner Constantino to enter into a negotiated contract for the lease/purchase of the needed fleet of heavy equipment.[7]

On 28 February 1996, Constantino entered into a Lease Agreement[8] with Norlovanian Corporation, represented by Lindong. The agreement required, among others, the municipality to provide Norlovanian Corporation with a guaranty deposit. The following day, Lindong appeared before the Sangguniang Bayan to discuss the Lease Agreement. Not one of the members of the Sanggunian questioned the legality of the agreement.[9]

The seven (7) units of heavy equipment subject of the agreement were thus delivered to the municipality on 4 March 1996.[10] On 6 March 1996, the Municipality of Malungon paid Norlovanian Corporation a total amount of P2,177,090.91 representing the guaranty deposit as well as the rental for the period of 5 March 1996 to 5 April 1996 and partial rental for the period of 5 April 1996 to 6 May 1996.[11]

Thereafter, on 18 April 1996, the Sangguniang Bayan unanimously passed Resolution No. 38[12] requesting petitioner to operate the newly acquired fleet of heavy equipment. The municipality subsequently utilized the fleet.[13]

However, only five (5) days later, or on 23 April 1996, Sanggunian members Benjamin C. Asgapo, Rafael J. Suson, Sr. (Suson), Leo G. Ingay (Ingay), Pablo V. Octavio (Octavio) and Wilfredo P. Espinosa (Espinosa), and Vice Mayor Primitiva L. Espinosa (Vice Mayor Espinosa) filed a formal complaint against petitioners Constantino and Lindong for violation of R.A. No. 3019.

On 6 June 1996, the Sangguniang Bayan passed Resolution No. 47, urging the municipality to "stop all forms of unauthorized payment/expenditure relative to the illegally acquired pool of heavy equipment by the Municipality of Malungon." [14]

In particular, Tomanan testified that he was directed by the COA Regional Office XI to conduct a special and comprehensive audit of the municipality of Malungon for the period of 1 May 1995 to 31 May 1996[15] in view of a complaint filed by certain officials therein. In January 1997, Tomanan submitted his report detailing the

following adverse findings relative to the purchase of the subject fleet of heavy equipment: (a) the lease/purchase contract was disadvantageous to the municipal government because of the rigid terms and conditions therein required of the municipality before the latter could acquire ownership over the pool of heavy equipment; (b) Norlovanian Corporation had no proof of ownership of the fleet of equipment as the audit revealed that title to the equipment was in the name of Lindong; (c) the lease/purchase procedure violated Sections 27 and 28 of the Rules and Regulations on Supply and Property Management in Local Governments;^[16] and (d) the lease/purchase procedure utilized by the municipality was uneconomical and resulted to a wastage of P9,658,000.00 of government funds.^[17]

Asgapo, on the other hand, testified that he was present during the 29 February 1996 meeting where Lindong appeared before the Sanggunian. The witness asserted that the lease contract was never concurred in by the municipal council as required by Resolution No. 21. He admitted, however, that neither was there any resolution passed opposing, objecting to or rejecting the lease contract. Moreover, Asgapo alleged that at the time he first obtained a copy of the lease contract from the municipal treasurer on 6 March 1996, he did not see the Undertaking dated 28 February 1996^[18] attached or annexed thereto. He was only able to get a copy of the latter document about three (3) or four (4) days thereafter, following an inquiry with the provincial auditor.^[19]

The defense presented Lindong as its sole witness. According to Lindong, after negotiations between himself and petitioner Constantino, together with some members of the Sanggunian, the parties agreed to a lease/purchase scheme in accordance with the mandate of Resolution No. 21. They agreed that since the municipality did not have sufficient funds to buy the fleet of heavy equipment outright at P8.9 Million, the latter would purchase the subject equipment on installment basis but with allowance for Norlovanian Corporation to recover some incremental cost. Thus, on the very same day, 28 February 1996, Lindong as representative of Norlovanian Corporation and Constantino as representative of the municipality entered into the lease/purchase agreement. They contemporaneously executed the Lease Agreement and Undertaking in the presence of the members of the Sanggunian who accompanied the mayor.^[20]

Lindong further testified that he attended the municipal council meeting on 29 February 1996 to provide the members thereof with a copy of the lease contract and to explain the transaction. Moreover, he explained that notwithstanding the fact that the main agreement was captioned only as a "Lease Agreement," the same being a standard pre-printed form of his corporation, the intent of the parties was to enter into a lease/purchase agreement. Hence, he clarified that the Undertaking he executed bound him to convey ownership over the fleet of heavy equipment to the municipality upon the full payment thereof.^[21]

Finally, Lindong averred that more than two (2) months after he delivered the fleet of equipment to the municipality, he received a Certificate of Concurrence dated 9 May 1996 issued by Nemesio Liray, Chairman of the Committee of Finance of the Sangguniang Bayan, certifying that the Lease Agreement was concurred in by the members of the Committee on 29 February 1996. Likewise, he received a Certification dated 17 May 1996 from the Pre-Qualification, Bids and Awards Committee of the Municipality of Malungon, that the members thereof approved, concurred in and signed the contract of lease between the municipality and Norlovanian Corporation.^[22]

Finding that the prosecution had proven beyond reasonable doubt the guilt of Constantino and Lindong of the offense as charged, the Sandiganbayan rendered the assailed decision sentencing them both, thus:

WHEREFORE, judgment is hereby rendered finding accused FELIPE K. CONSTANTINO and NORBERTO N. LINDONG GUILTY beyond reasonable doubt of the crime of violation of Section 3 (e) of R.A. No. 3019, otherwise known as "The Anti-Graft and Corrupt Practices Act," and said accused are hereby sentenced, as follows:

- (a) to suffer an indeterminate sentence of imprisonment for a period of six (6) years and one (1) month as minimum to twelve (12) years and one (1) month as maximum;
- (b) to suffer perpetual disqualification from public office;
- (c) to jointly and severally indemnify the Municipality of Malungon, Province of Sarangani the sum of Two Million One Hundred Seventy-Seven Thousand [sic] and 91/1000 [sic] Pesos (P2,177,090.91), representing the amount actually paid to Norlovanian Corporation, with interest at the legal rate computed from March 6, 1996 until fully paid; and
- (d) to pay the costs of suit.

SO ORDERED.[23]

The Sandiganbayan held that neither manifest partiality nor evident bad faith attended the commission of the offense. However, it found that petitioner Constantino caused undue injury to the Municipality of Malungon through his gross inexcusable negligence in executing only a lease agreement over the fleet of heavy equipment. Anent Lindong, the graft court upheld his culpability as co-conspirator of Constantino despite its finding that the latter violated the anti-graft law through negligence only. The Sandiganbayan ratiocinated that since the law violated is a special law, proof that he intended to commit the particular offense was not essential, as it otherwise would have been for a felony punishable by the Revised Penal Code. The Sandiganbayan ruled that it was sufficient for the prosecution to have proven, as it did, that Lindong allowed or failed to prevent Constantino from entering into an agreement which was clearly contrary to law. Thus, even if petitioner was found guilty of causing undue injury to the municipality through gross inexcusable negligence, the anti-graft court concluded that his co-conspirator could likewise be held liable.[24]

It appears that during trial, both accused were represented by the same counsel. However, after judgment was rendered against them, Constantino and Lindong filed separate appeals to the Supreme Court which have taken disparate routes. On 25 April 2006, during the pendency of his present appeal, Constantino passed away.[25]

Lindong himself likewise filed a petition for review on certiorari, docketed as G.R. No. 142379, to seek a reversal of the Sandiganbayan decision finding him guilty as Constantino's co-conspirator. On 10 July 2000, this Court denied Lindong's petition for failure to state the material date of receipt of the assailed decision of the Sandiganbayan. His subsequent attempts for reconsideration proved futile. On 25 July 2001, the Court issued the Entry of Judgment in the case.

Thereafter, the Sandiganbayan (First Division) issued three (3) orders relative to the execution of judgment against Lindong, all of which are assailed by the latter, in his petition for certiorari in G.R. No. 154482, for having been issued with grave abuse of discretion. The Sandiganbayan issued on 16 May 2002 the first challenged order which directed petitioner Lindong to appear before it in person for the execution of judgment. On 6 June 2002, the respondent court issued a resolution, the second assailed order herein, denying Lindong's urgent motion to defer execution of judgment. The third assailed order, a resolution issued on 3 July 2002, directed the issuance of a bench warrant against petitioner Lindong and the confiscation of his cash bond for provisional liberty pending appeal, and required him to surrender his person to the court and explain why judgment should not be rendered against the cash bond.

With the demise of Constantino during the pendency of his appeal, the same should normally be regarded as moot and academic following the norm that the death of the accused marks the extinction of his criminal liability.[26] However, the present two petitions are so intertwined that the absolution of Constantino is ultimately determinative of the absolution of Lindong. Indeed, the exoneration of Constantino will necessarily signify the

injustice of carrying out the penalty imposed on Lindong. Thus, the Court in this instance has to ascertain the merits of Constantino's appeal to prevent a developing miscarriage of justice against Lindong.

The "moot and academic" principle is not a magica formula that can automatically dissuade the courts in resolving a case. Courts will decide cases, otherwise moot and academic, if: First, there is a grave violation of the Constitution;^[27] Second, the exceptional character of the situation and the paramount public interest is involved;^[28] Third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public;^[29] and Fourth, the case is capable of repetition yet evading review.^[30] In the instant case, the exceptional character of the appeals of Constantino and Lindong in relation to each other, as well as the higher interest of justice, requires that the Court determine the merits of the petition and not dismiss the same outright on the ground of mootness.

The Ruling of the Court

G.R. No. 140656

Petitioner Constantino impugned his conviction and asserted that the Sandiganbayan erred in convicting him based on its finding that he violated Resolution No. 21 by entering into a "Lease Agreement" with the Norlovanian Corporation and for his failure to sign the accompanying "Undertaking." Likewise, he argued that the evidence adduced by the prosecution was insufficient to overcome the constitutional presumption of innocence in his favor. Finally, Constantino contended that it was error for the Sandiganbayan to disregard the findings of the Supreme Court en banc in the earlier case of Constantino v. Hon. Ombudsman Desierto.^[31]

Constantino's petition would have been granted and he would have been absolved of criminal liability had he been still alive today. This is why it is so.

Section 3(e) of R.A. No. 3019 provides:

SEC. 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.

In order to be liable for violating the law, the following elements must concur: (1) the accused is a public officer or a private person charged in conspiracy with the former; (2) he or she causes undue injury to any party, whether the government or a private party; (3) the said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public positions; (4) such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.^[32]

There are two (2) modes of committing the offense, thus: (1) the public officer caused any undue injury to any party, including the government; or (2) the public officer gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.^[33] An accused may be charged under either mode^[34] or under both should both modes concur.^[35]

Additionally, Section 3(e) poses the standard of manifest partiality, evident bad faith or gross inexcusable negligence before liability can be had under the provision. Manifest partiality is characterized by a clear, notorious or plain inclination or predilection to favor one side rather than the other.[36] Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.[37] Gross inexcusable negligence is defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.[38] Mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable.[39]

As discussed previously, the Sandiganbayan held that manifest partiality could not be rightfully imputed to Constantino.[40] The prosecution did not present proof that he was actuated with malice or fraud sufficient to meet the requirement of proof beyond reasonable doubt.[41] However, the respondent court found that Constantino's act of entering into a purportedly pure lease agreement instead of a lease/purchase agreement was a flagrant violation of Resolution No. 21. In view of the rigid terms of the subject contract to which Constantino assented, coupled by his failure to secure the concurrence of the Sangguniang Bayan before entering into the agreement, the Sandiganbayan found that his conduct constituted gross inexcusable negligence.[42] Likewise, the anti-graft court ruled that Constantino's acts resulted in undue injury to the Municipality of Malungon.[43] Notably, in the course of trial, the prosecution admitted that it had no proof that unwarranted benefits and advantage had been given to Norlovanian Corporation.[44]

Undoubtedly, the standard of culpability imposed by Section 3 of R.A. No. 3019 is quite high which, in this case, was not hurdled by the evidence presented against Constantino. Verily, the prosecution failed to satisfy the requisite proof to demonstrate Constantino's guilt beyond reasonable doubt. While Constantino should have exercised more prudence when he transacted with Norlovanian Corporation, he could not however be held liable for "gross inexcusable negligence" as contemplated in R.A. No. 3019. Indeed, in the earlier case of *Constantino v. Desierto*,[45] the Court had already made an express finding that petitioner Constantino did not violate the mandate of Resolution No. 21 but instead merely carried out its directive.

That case was a special civil action for certiorari filed by Constantino to seek the invalidation of the resolution of the Ombudsman finding him guilty of grave misconduct prejudicial to the best interest of the service and/or gross neglect of duty, and on that account, dismissing him from service. The controversy arose from the same transaction entered into between Constantino and Norlovanian Corporation and involved the same subject matter as in the case at bar. The administrative complaint was initiated through a letter-complaint and joint affidavit signed by Vice Mayor Espinosa and to it was appended a certification signed by the Vice Mayor and Councilors Suson, Ingay, Asgapo, Espinosa and Octavio.

In exonerating Constantino from the administrative charges, the Court found that the evidence against him was inadequate to warrant his dismissal from service on the grounds of grave misconduct, conduct prejudicial to the best interest of the service and gross neglect of duty. More particularly, we made the following pronouncements:

The explicit terms of Resolution No. 21, Series of 1996 clearly authorized Mayor Constantino to "lease/purchase one (1) fleet of heavy equipment" composed of seven (7) generally described units, through a "negotiated contract." That resolution, as observed at the outset, contained no parameters as of rate of rental, period of lease, purchase price. Pursuant thereto, Mayor Constantino, representing the Municipality of Malungon, and Norberto Lindong, representing the Norlovanian Corporation, executed two written instruments of the same date and occasion, viz.:

One — an agreement (on a standard printed form) dated February 28, 1996 for the lease by the corporation to the municipality of heavy equipment of the number and description required by Resolution no. 21, and

Two — an undertaking for the subsequent conveyance and transfer of ownership of the equipment to the municipality at the end of the term of the lease.

That the Members of the Sangguniang Bayan knew of this "lease/purchase" is evident from Resolution No. 38, Series of 1996 unanimously enacted by them shortly after delivery of the equipment. In that resolution they (1) declared that "the Municipal Government ** has just acquired its fleet of heavy equipment leased/purchased from the Norlovanian Corporation," and (2) requested Mayor Constantino "to operate the newly acquired heavy equipment ** leased/purchase from the Norlovanian Corporation." The Resolution is consistent with the allegations of Mayor Constantino — which in any event are not denied by the Councilors or Vice-Mayor Espinosa — that:

1) the equipment was delivered to the Municipality by Norlovanian Corporation on February 28, 1996 and duly inspected by Councilors Guilley, Ruñez, Nallos and Liray, as well as the Municipal Engineer and the Municipal Treasurer;

2) prior to the delivery of the units, the Vice Mayor and other Members of the Sangguniang Bayan had opportunity to read the "Lease Agreement" as well as the "Undertaking" but then raised no objections thereto;

3) neither did they raise any objections (a) at the session of the Municipal Council on February 29, 1996, when Norberto Lindong explained the terms of the "negotiated contract" of "lease/purchase," or (b) at the time that the units were delivered and inspected by designated municipal officials.

Now, it is germane to advert to the deplorable inaccuracies in the Joint Affidavit of private respondents (P.L. Espinosa, Suson, Sr., Ingay, W. P. Espinosa, Octavio, Asgapo) submitted as part of their complaint in the Ombudsman's Office. The affidavit contains a clearly distorted version of Resolution No. 21 of February 22, 1996. In that document of the affiants described Resolution No. 21 as authorizing Mayor Constantino "to purchase and acquire ** heavy equipments (sic) to be paid within five (5) years at the yearly amortization of P2.2 million **." This is a misleading reading of Resolution No. 21. As the most cursory perusal of that resolution at once discloses, what the Mayor was thereby empowered to do was "to enter into a negotiated contract" in the Municipality's behalf with "interested parties," in line with the expressed wish of the Municipality to "lease/purchase one (1) fleet of heavy equipment ***" —not simply to "purchase and acquire" said equipment (as complainant Councilors aver). Neither does Resolution No. 21 state (contrary to complainant's description of it) that the price shall be "paid within five (5) years at the yearly amortization of P2.2 million **;" indeed, as already above stressed, the resolution is completely silent as regards any terms and conditions of the "negotiated contract" that the Mayor was assigned to execute in the town's behalf. Such obvious distortions cannot but erode the complainant councilors' credibility and bona fides.

It is also relevant to draw attention to the flagrantly inaccurate statements and inferences about the Mayor's "negotiated contract" regarding the heavy equipment, contained in Resolution No. 47 approved only by four (4) Members of the Municipal Council at its session of June 6, 1996 (the four (4) being Councilors Octavio, Espinosa, Asgapo and Ingay). That Resolution No. 47, it will be recalled, stopped all "rental payment/expenditures relative to the pool of heavy equipment of the Norlovanian Company." The stoppage was based on prior resolutions of the Council — allegedly setting down the terms under which the heavy equipment should be acquired, and which terms were supposedly violated by the Mayor. but — unaccountably and again indicative of bad faith, if not malice, on the part of private respondents — Resolution No. 47 made absolutely no reference to two (2) resolution which on their face justify the Mayor's contract with Norlovanian Corporation, to wit: (1) Resolution No. 21 which, having been enacted after the cited resolutions, must be deemed to have superseded them, and which, to repeat, motivated and constitutes the justification for the lease-purchase agreement entered into by the Mayor and Norlovanian Corporation, and (2) Resolution No. 38 in which the Councilors not only expressly acknowledged that "the municipal government ** (had) just

acquired its fleet of heavy equipment leased/purchased from the Norlovanian Corporation," but also "requested ** (the) Mayor ** to operate the newly acquired heavy equipment of the municipality leased/purchased from the Norlovanian Corporation."

In light of the forego[i]ng facts, which appear to the Court to be quite apparent on the record, it is difficult to perceive how the Office of the Ombudsman could have arrived at a conclusion of any wrongdoing by the Mayor in relation to the transaction in question. It is difficult to see how the transaction between the Mayor and Norlovanian Corporation — entered into pursuant to Resolution No. 21 — and tacitly accepted and approved by the town Council through its Resolution No. 38 — could be deemed an infringement of the same Resolution No. 21. In truth, an examination of the pertinent writings (the resolution, the two (2) instruments constituting the negotiated contract, and the certificate of delivery) unavoidably confirms their integrity and congruity. It is in fine, difficult to see how those pertinent written instrument, could establish a *prima facie* case to warrant the preventive suspension of Mayor Constantino. A person with the most elementary grasp of the English language would, from merely scanning those material documents, at once realize that the Mayor had done nothing but carry out the expressed wishes of the Sangguniang Bayan.

x x x x

The investigator also opined that Resolution No. 21 should be interpreted in light of other official documents, executed a year earlier. He [Graft Prosecutor Buena] does not explain why he did not adopt the more obvious construction of Resolution No. 21 indicated by the elementary doctrine that it is within the power and prerogative of the town council to repeal its prior acts, either expressly, or by the passage of essentially inconsistent resolutions. When the town council passed Resolution No. 21 without any mention whatever of those prior official documents respecting the acquisition to heavy equipment, the evident intention was to supersede them and to have such acquisition governed solely by Resolution No. 21. This conclusion is strongly supported by the fact that the Sanggunian expressly admitted — in the Second Whereas Clause of its Resolution No. 21 — that there had been a "failure of bidders to submit bids despite of two biddings ... public announcement" [sic] — the two biddings being obviously related to said earlier official acts of the town council. The conclusion is further bolstered by the fact that the Council (with full awareness of said "negotiated contract,") and of the delivery of equipment thereunder, had requested the Mayor to put the equipment into operation for the town projects. The Court is thus satisfied that it was in fact the Council's intention, which it expressed in clear language, to confer on the Mayor ample discretion to execute a "negotiated contract" with any interested party, without regard to any official acts of the Council prior to Resolution No. 21.

It is also difficult to see why the patent inaccuracies in the affidavit-complaint and Resolution No. 47 were ignored — as difficult to understand how the execution of two writings to embody one contract of "lease/purchase" could be regarded as fatally defective, and even indicative of a criminal conspiracy, or why said two writings should be interpreted in such a way as to magnify their seeming inconsistencies. The fundamental and familiar legal principle — which the Office of the Ombudsman ignored — is that it is perfectly legitimate for a bilateral contract to be embodied in two or more separate writings, and that in such an event the writings should be read and interpreted together in such a way as to eliminate seeming inconsistencies and render the parties' intention effectual.

The statement in the appealed Resolution — as to the absence of prior consent of the Council to the "negotiated contract" executed by Mayor Constantino and Norlovanian Corporation — flies in the teeth of the evidence; there is un rebutted proof that the heavy equipment delivered to the Municipality pursuant to the contract, was inspected by designated councilors and municipal officers; that shortly thereafter, the negotiated contract — composed of two documents — was explained and discussed at the session of the town Council of February 29, 1996; and that afterwards the Council requested Mayor Constantino to put the equipment into operation. (Emphasis supplied)[46]

Although the instant case involves a criminal charge whereas Constantino involved an administrative charge, still

the findings in the latter case are binding herein because the same set of facts are the subject of both cases. What is decisive is that the issues already litigated in a final and executory judgment preclude— by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," —the re-litigation of the same issue in another action.[47] It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them.[48] The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision continues to be binding between the same parties as long as the facts on which the decision was predicated continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since such issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment.[49]

It may be true that the basis of administrative liability differs from criminal liability as the purpose of administrative proceedings on the one hand is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime.[50] However, the dismissal by the Court of the administrative case against Constantino based on the same subject matter and after examining the same crucial evidence operates to dismiss the criminal case because of the precise finding that the act from which liability is anchored does not exist.

It is likewise clear from the decision of the Court in Constantino that the level of proof required in administrative cases which is substantial evidence was not mustered therein. The same evidence is again before the Court in connection with the appeal in the criminal case. Ineluctably, the same evidence cannot with greater reason satisfy the higher standard in criminal cases such as the present case which is evidence beyond reasonable doubt.

The elementary principle is that it is perfectly legitimate for a bilateral contract to be embodied in two or more separate writings, and that in such an event the writings should be read and interpreted together in such a way as to eliminate seeming inconsistencies and render the intention of the parties effectual.[51] In construing a written contract, the reason behind and the circumstances surrounding its execution are of paramount importance to place the interpreter in the situation occupied by the parties concerned at the time the writing was executed.[52] Construction of the terms of a contract, which would amount to impairment or loss of right, is not favored. Conservation and preservation, not waiver, abandonment or forfeiture of a right, is the rule.[53] In case of doubts in contracts, the same should be settled in favor of the greatest reciprocity of interests.[54]

G.R. No. 154482

Lindong ascribes grave abuse of discretion on the part of respondent court in issuing the challenged orders. He argues that the Sandiganbayan erred in not holding in abeyance the execution of judgment against him in light of the pending petition for review by his co-accused before this Court of the same decision for which he was convicted. Should the decision be set aside by the Supreme Court, petitioner Lindong contends, he will be benefited to the extent that there can no longer be any judgment to legally execute against both himself and Constantino.

The virtual acquittal of Constantino inevitably puts a welcome end to the tribulations of Lindong. Thus, we grant the petition.

One of the essential elements for violating Section 3(e) of R.A. No. 3019 is that the respondent is a public officer discharging administrative, judicial or official functions, or that he or she is a private individual in conspiracy with such public officer. In the instant case, the essential acquittal of Constantino, as presaged in G.R. No. 140656 and presented in the disquisition, renders an absence in the critical requisite of a public officer with whom

Lindong, the private individual, allegedly conspired to commit the crime charged.

Hence, we now have before us an incongruous situation where execution of judgment has been entered against a private person accused with conspiring with a public officer for violation of the anti-graft law, but at the same time said public officer would unequivocally be entitled to exoneration had he not died in the meantime. Yet, it is utterly illogical to absolve Constantino who entered into the contract on behalf of the government and send the private person to prison.

The case of *Marcos v. Sandiganbayan* (1st Division)[55] is instructive. Here, the Court granted the motion for reconsideration filed by former First Lady Imelda Marcos and acquitted her of the charge of violating Section 3(g) of R.A. No. 3019. Her acquittal was based on the finding that she signed the subject lease agreement not as a public officer, but as a private person. Thus, the Court found that the first element of the offense, i.e., that the accused is a public officer, was lacking. However, the acquittal of the former First Lady was taken in conjunction with the acquittal of the public officer with whom she was accused.[56]

The case of *Go v. The Fifth Division, Sandiganbayan, et al.*[57] further elucidates the matter as illustrated in *Marcos*, to wit:

x x x [T]he acquittal of the former First Lady should be taken in the context of the Court's Decision dated January 29, 1998, in *Dans, Jr. v. People*, which the former First Lady sought to reconsider and, finding merit in her motion, gave rise to the Court's Resolution in *Marcos*. In *Dans*, the Information filed against the former First Lady and Jose P. Dans, Jr., then Minister of Transportation and Communications, for violation of Section 3(g) of R.A. No. 3019, alleged that they were both public officers and, conspiring with each other, entered into the subject lease agreement covering the LRTA property with the PGHFI, a private entity, under terms and conditions manifestly and grossly disadvantageous to the government.

The Court in its original decision affirmed the former First Lady's conviction for violation of Section 3(g) of R.A. No. 3019 but acquitted her co-accused, Dans, Jr., of the said offense. As stated earlier, upon the former First Lady's motion for reconsideration, the Court reversed her conviction in its Resolution in *Marcos*.

It can be gleaned from the entire context of *Marcos* and *Dans* that the reversal of the former First Lady's conviction was based on the fact that it was later held that she signed the subject lease agreement as a private person, not a public officer. However, this acquittal should also be taken in conjunction with the fact that the public officer with whom she had supposedly conspired, her co-accused Dans, had earlier been acquitted. In other words, the element that the accused is a public officer, was totally wanting in the former First Lady's case because Dans, the public officer with whom she had allegedly conspired in committing Section 3(g) of R.A. No. 3019, had already been acquitted. Obviously, the former First Lady could not be convicted, on her own as a private person, of the same offense. (Emphasis supplied)

It is therefore apparent that in light of the prevailing milieu in the instant case, we cannot sustain the execution of judgment against Lindong. The reversal of the decision of the Sandiganbayan in Criminal Case No. 23433 makes it legally absurd to execute any such judgment against him.

Moreover, Rule 122, Section 11(a) of the Revised Rules of Criminal Procedure operates in his favor. The Rule provides:

SEC. 11. Effect of appeal by any of several accused.—

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Although the rule states that a favorable judgment shall benefit those who did not appeal, we have held that a literal interpretation of the phrase "did not appeal" will not give justice to the purpose of the provision. It should

be read in its entirety and should not be myopically construed so as to defeat its reason, i.e., to benefit an accused who did not join in the appeal of his co-accused in case where the appellate judgment is favorable.[58]

In fact, the Court has at various times applied the foregoing provision without regard to the filing or non-filing of an appeal by a co-accused, so long as the judgment was favorable to him. In such cases, the co-accused already withdrew his appeal,[59] failed to file an appellant's brief,[60] or filed a notice of appeal with the trial court but eventually withdrew the same.[61] Even more, in these cases, all the accused appealed from the judgment of conviction but for one reason or another, their conviction had already become final and executory. Nevertheless, the Court still applied to them the favorable judgment in favor of their co-accused.[62] Therefore, we cannot find a reason to treat Lindong differently, especially so in this case where the public officer accused of violating the anti-graft law has been acquitted, and the appeal by Lindong was dismissed on a technicality.

WHEREFORE, the petition in G.R. No. 140656, although meritorious, is DENIED on the ground of mootness. The petition in G.R. No. 154482 is GRANTED. The challenged orders of the

Sandiganbayan in Criminal Case No. 23433 are NULLIFIED and SET ASIDE. The Sandiganbayan is permanently enjoined from executing said orders.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, G.R. No. 140656, pp. 38-65. Penned by Associate Justice Gregory S. Ong and concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Catalino R. Castañeda, Jr.

[2] Sandiganbayan Records, Vol. II, pp. 94-109.

[3] Rollo, G.R. No. 154482, pp. 13, 17-18.

[4] Sandiganbayan Records, Vol. II, pp. 1-3.

[5] Municipality of Malungon Resolution No. 2, Series of 1995. See Exhibit "A."

[6] Municipality of Malungon Resolution No. 198, Series of 1995. See Exhibit "B." See also Certification, Exhibit "C."

[7] Sandiganbayan Records, Vol. II, pp. 68-69.

[8] Id. at 70-75.

[9] Rollo, G.R. No. 140656, pp. 75-80. See Exhibit "F." TSN, 15 January 1998, pp. 19-20.

[10] Folder of Exhibits; Delivery and Acceptance, Exhibit "G;" and Disbursement Voucher, Exhibit "I".

[11] Folder 9, Exhibits; Check No. 001310, Exhibit "I."

[12] Rollo, G.R. No. 140656, pp. 82-83.

[13] Sandiganbayan Records, pp. 77-78.

[14] Rollo, G.R. No. 140656, pp. 84-85.

[15] Folder of Exhibits, Report on the Comprehensive Audit of the Financial Transactions of the Municipality of

Malungon, Province of Sarangani, Exhibits "K."

[16] Section 27. Public Bidding as the Primary Mode of Procurement.— Except as otherwise provided herein, acquisition of supplies or property by local government units shall be through competitive bidding.

Section 28. Other Modes of Procurement. — Local government units may make procurement of their supply and property requirements without public bidding and through any of the following modes applicable in the circumstances, as provided hereunder:

- personal canvass of responsible merchants;
- emergency purchase;
- negotiated purchase;
- direct purchase from manufacturers or exclusive distributors;
- purchase from government entities.

x x x x

[17] TSN, 28 October 1997, pp. 13-16, 26-44.

[18] Folder of Exhibits, Undertaking, Exhibit "J."

[19] TSN, 15 January 1998, pp. 8, 13-20, 26-28.

[20] TSN, 30 October 1997, pp. 8-19.

[21] Id. at 27-31.

[22] Id. at 34-35, 47-49.

[23] Rollo, G.R. No. 140656, p. 64.

[24] Id. at 62-64.

[25] Id. at 193-194. See Notice of Death of Petitioner.

[26] REVISED PENAL CODE, Article 89 (1).

[27] David v. Macapagal-Arroyo, G.R. No. 171396, 3 May 2006, 489 SCRA 160, 213-214, citing Province of Batangas v. Romulo, G.R. No. 152774, May 27, 2004, 429 SCRA 736.

[28] Id. at 214, citing Lacson v. Perez, G.R. No. 147780, May 10, 2001, 357 SCRA 756.

[29] Id. at 214-215.

[30] Id. at 215, citing Albaña v. Commission on Elections, G.R. No. 163302, July 23, 2004, 435 SCRA 98; Acop v. Guingona, Jr., G.R. No. 134855, July 2, 2002, 383 SCRA 577; Sanlakas v. Executive Secretary, G.R. No. 159085, February 3, 2004, 421 SCRA 656.

[31] 351 Phil. 896 (1998).

[32] Villanueva v. Ople, G.R. No. 165125, 18 November 2005, citing Peralta v. Desierto, GR No. 153152, 19 October 2005, 473 SCRA 322; Garcia-Rueda v. Amor, 365 SCRA 456, 20 September 2001.

[33] Republic v. Desierto, G.R. No. 131397, 31 January 2006, 481 SCRA 153, 159, citing Bautista v. Sandiganbayan, 387 Phil. 872, 881

- [34] Id., citing *Pilapil v. Sandiganbayan*, G.R. No. 101978, 7 April 1993, 221 SCRA 349 and *Diaz v. Sandiganbayan*, 219 SCRA 675.
- [35] Id., citing *Pareno v. Sandiganbayan*, G.R. No. 107110-20 & 108037-39, 17 April 1996, 256 SCRA 242.
- [36] *Reyes v. Atienza*, G.R. No. 152243, 23 September 2005, 470 SCRA 670, 683 citing *Marcelo v. Sandiganbayan*, G.R. No. 69983, 14 May 1990, 185 SCRA 346.
- [37] Id., citing *Marcelo v. Sandiganbayan*, id., and *Mendiola v. People*, G.R. Nos. 89983-84, 6 March 1992, 207 SCRA 85.
- [38] Id., citing *Fernando v. Sandiganbayan*, G.R. Nos. 96182-83, 19 August 1992, 212 SCRA 680.
- [39] *Sistoza v. Desierto*, 437 Phil. 117, 130 (2002).
- [40] *Rollo*, G.R. No. 140656, p. 57.
- [41] Id. at 58.
- [42] Id. at 59-60.
- [43] Id. at 61-62.
- [44] *TSN*, 28 October 1997, p. 11.
- [45] *Supra* note 31.
- [46] *Supra* note 31, at 909-914.
- [47] *Martillano v. Court of Appeals*, G.R. No. 148277, 29 June 2004, 433 SCRA 195, 204-205; *De Villa v. Jacob*, G.R. No. L-29420, 14 November 1988, 167 SCRA 303. See also *Negros Navigation Co., Inc. v. Court of Appeals*, 346 Phil. 551 (1997); citing *J.M. Tuason & Corp. v. Mariano*, 85 SCRA 644 (1978), *Woulfe v. Associated Realities Corporation*, 130 N.J. Eq. 519, 23 A. 2d 399 (1942), *State ex rel. Tollinger v. Gill*, 75 Ohio App., 62 N.E. 2d 760 (1944), *Heisler v. Thomas Colliery Co.*, 274 Pa. 452, 118 A. 394 (1922), *Manogahela Street Ry. Co. v. Philadelphia Co.*, 350 Pa. 603, 39 A. 2d 909 (1944) and *In re Burt's Estate*, 353 Pa. 217, 4 A. 2d 670 (1945).
- [48] Id. at 205. See also *Kabankalan Catholic College v. Kabankalan Catholic College Union-PACIWU-TUCP*, G.R. No. 157320, 28 June 2005, 461 ACRA 481 and *Hufana v. Genato*, 417 Phil. 709 (2001).
- [49] Id. See also *Miranda v. C.A.*, 225 Phil. 261 (1986) and *Sta. Romana v. PCI Band, et al.* 203 Phil. 709 (1982).
- [50] *Valencia v. Sandiganbayan*, G.R. No. 141336, 29 June 2004, 433 SCRA 88, 99, citing *Caña v. Gebusion*, A.M. No. P-98-1284, 30 March 2000, 329 SCRA 132, 145.
- [51] *Golden Diamond, Inc. v. Court of Appeals*, 388 Phil. 404, 415 (2000).
- [52] *Agas v. Sabico*, G.R. No. 156447, 26 April 2005, 457 SCRA 263, 276, citing *Ridjo Tape & Chemical Corporation v. Court of Appeals*, G.R. No. 131436, 31 May 2000, 332 SCRA 605.
- [53] Id.
- [54] *PNCC v. Mars Construction Enterprises, Inc.*, 382 Phil. 510, 519 (2000).
- [55] 357 Phil. 762 (1998).
- [56] *Dans, Jr. v. People*, 349 Phil. 434.

[57] G.R. No. 172602, 13 April 2007.

[58] *Lim v. Court of Appeals*, , G.R. No. 147524, 20 June 2006, 491 SCRA 385, 393.

[59] *People v. Artellero*, 395 Phil. 876, 889 (2000); See also *People v. De Lara*, 389 Phil. 756 (2000).

[60] *People v. Arondain*, 418 Phil. 354 (2001).

[61] *People v. Escano*, 402 Phil. 730 (2001).

[62] *Lim v. Court of Appeals*, *supra*. See also *People v. Artellero*, *supra*; *People v. Arondain*, *supra*; *People v. De Lara*, *supra*; *People v. Escano*, *supra*.

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