

NAPOLEON O. CEDEÑO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, FIFTH DIVISION, RESPONDENTS,

G.R. Nos. 193020 & 193040-193042. November 08, 2017

Ponente: MARTIRES, J.

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MARTIRES, J.:

Through their separate petitions for review on certiorari,[1] petitioners seek the reversal and setting aside of the Decision[2] of the Sandiganbayan, Fifth Division (Sandiganbayan), in Criminal Case Nos. 24784 to 24789 promulgated on 25 November 2009, and Resolution[3] dated 15 July 2010, finding them guilty of Violation of Section 3(e) of Republic Act (R.A.) No. 3019.[4]

THE FACTS

On 22 October 1993, the Office of the Director, Regional Office (RO) No. XII of the Commission on Audit (COA) issued COA RO Order No. 93-58[5] creating a special audit team (team) that would audit the purchase of graders' desks (desks) covering the period 1 January 1992 to 30 June 1993 by the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City. The team was composed of State Auditor Nilo S. Romano (Romano), as team leader, with Mary Catherine A. Roda, Elsie K. Uy, Reynaldo T. Agan, and Allan V. Amorado, as members.

On 8 November 1993, the COA RO No. XII issued Office Order No. 93-58A extending the audit coverage of the team to 30 September 1993 in order to include recent purchases of the desks by the DECS, Region XII.

After the audit, the team came up with a report,[6] the pertinent portions of which read:

The audit included verification of pertinent records and documents of transactions pertaining to the procurement of graders' desks from January 1, 1992 to September 30, 1993. As the procured graders' desks were distributed to the different schools in Region XII including those in the Province of Lanao del Sur and the Province of Maguindanao, which is now under the Autonomous Region in Muslim Mindanao (ARMM), audit verification covered the nine (9) Schools Division Offices, namely:

1. Cotabato City Schools Division, Cotabato City;
2. Iligan City Schools Division, Iligan City;
3. Marawi City Schools Division, Marawi City;
4. Cotabato Schools Division, Kidapawan, Cotabato;
5. Lanao del Norte Schools Division, Tubod, Lanao Norte;
6. Lanao del Sur I Schools Division, Marawi City;
7. Lanao del Sur II Schools Division, Malabang, Lanao del Sur;

8. Sultan Kudarat Schools Division, Tacurong, Sultan Kudarat;

9. Maguindanao Schools Division, Salimbao, Sultan Kudarat.

X X X X

FINDING:

The Government was defrauded in the amount of P5,268,610.00 due to short delivery of 10,487 pieces of graders' desk purchased by the DECS Regional Office XII, Cotabato City, contrary to the provisions of Section 2, PD 1445 and Republic Act 3019, as amended.

X X X X

- Iligan City Schools Division - 1,823 pieces unaccounted for, with a total cost of P936,610.00.

X X X X

- Marawi City Schools Division - 2,051 pieces unaccounted for, with a total cost of P1,025,500.00.

X X X X

- Sultan Kudarat Schools Division - 6,613 pieces unaccounted for, with a total cost of P3,306,500.00.

In view; of these findings, the team executed a Joint Affidavit[7] which was filed, together with the report, before the Office of the Ombudsman, Mindanao (OMB-MIN). The joint affidavit, which was treated by the OMB--MIN as a complaint, was docketed as OMB-MIN-94-1105. The preliminary investigation thereafter proceeded against the following: Director IV Diamar P. Kadon (Dir., Kadon); Dir. Makil U. Pundaodaya (Pundaodaya); Financial and Management Officer Jose T. Navera (Navera); Administrative Officer Alimot L. Arumpac (Arumpac); Supply Officer III Rogelio M. de los Reyes (De los Reyes); Administrative Officer V Jose P. Lopez. Jr. (Lopez); Accountant III Daud M. Adiong (Adiong); Inspector Romeo F. Agustin (Agustin); Inspector Napoleon O. Cedeño (Cedeño); Auditor Solaiman M. Domato (Domato); Accountant III Tomas P. Villanueva (Villanueva); and Luis Dy (Dy), Michael A. de los Santos (De los Santos), and Lolita Sambili (Sambili), the proprietors of AAA Services Generales (AAA), Business International Wood Products (BIWP), and Niño Wood Products (NWP), respectively.

The OMB-MIN terminated the preliminary investigation with the filing before the Sandiganbayan of six Informations for violation of Sec. 3(e), R.A. No. 3019, viz:

CRIMINAL CASE NO. 24784

That on 23 March 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Diamar P. Kadon, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Solaiman M. Domato, Auditor; Rogelio M. de los Reyes, Supply Officer III; Napoleon O. Cedeño, Inspector/ICU; Romeo F. Agustin, Inspector/ICU; Jose T. Navera, Chief, Budget & Finance Division/Financial Management Officer; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Michael de los Santos, Proprietor of Business International Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give Business International Wood Products undue advantage and unwarranted benefits when accused Rogelio M. de los Reyes, Solaiman M. Domato, Romeo F. Agustin and Napoleon O. Cedeño made it appear in the Inspection Report that four thousand (4,000) pieces of graders desks were delivered by accused Michael de los Santos to the Sultan Kudarat Schools Division and to have been received

by them when the truth is none was actually delivered to and received by the recipient schools and despite knowledge of non-delivery accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92031124 dated March 23, 1992 and certified therein that the items were received in good condition; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Jose T. Navera recommended payment and Diamar P. Kadon approved full payment thereof in the gross amount of Two Million (P2,000,000.00) Pesos, thus, inflicting undue injury to the government in said amount.[8]

CRIMINAL CASE NO. 24785

That on 22 April 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Diamar P. Kadon, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Solaiman M. Domato, Auditor; Rogelio M. de los Reyes, Supply Officer III; Napoleon O. Cedeño, Inspector/ICU; Jose T. Navera, Chief, Budget & Finance Division/Financial Management Officer; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Michael de los Santos, proprietor of Business International Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give Business International Wood Products undue advantage and unwarranted benefits when accused Rogelio M. de los Reyes, Solaiman M. Domato, and Napoleon O. Cedeño made it appear in the Inspection Report that nine hundred fourteen (914) pieces of graders desks were delivered by accused Michael de los Santos to the Sultan Kudarat Schools Division and to have been received by them when the truth is none was actually delivered to and received by the recipient schools and despite knowledge of non-delivery accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92041526 dated April 22, 1992 and certified therein that the items were received in good condition; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Jose T. Navera recommended payment and Diamar P. Kadon approved full payment thereof in the gross amount of Four Hundred Fifty Seven Thousand, (P457,000.00) Pesos, thus, inflicting undue injury to the government in said amount.[9]

CRIMINAL CASE NO. 24786

That in September 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Diamar P. Kadon, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Rogelio M. de los Reyes, Supply Officer III; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together With private individual Luis Dy, Proprietor of AAA Services Generales did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give AAA Services Generales undue advantage and unwarranted benefits when accused Rogelio M. de los Reyes made it appear in the Inspection Report that two thousand fifty--one (2,051) pieces of graders desks were delivered by accused Luis Dy to the Marawi City Schools Division and to have been received by him when the truth is none was actually delivered to and received by the recipient schools and despite knowledge of non-delivery, accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92093173 and certified therein that the items were received in good condition; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents

and Diamar P. Kadon approved full payment thereof in the gross amount of One Million Twenty Five Thousand Five Hundred (P1,025,500.00) Pesos, thus, inflicting undue injury to the government in said amount.[10]

CRIMINAL CASE NO. 24787

That on 14 December 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Makil U. Pundaodaya, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Solaiman M. Damato, Auditor; Rogelio M. de los Reyes, Supply Officer III and Napoleon O. Cedeño, Inspector/ICU; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Lolita Sambili, Proprietor of Niño Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give ino Wood Products undue advantage and unwarranted benefits when accused Solaiman M. Domato and Napoleon O. Cedeño made it appear in the Inspection Report that three thousand one hundred fourteen (3,114) pieces of graders desks were delivered by accused Lolita Sambili to the Iligan City Schools Division and to have been received by them when the truth is only three thousand sixty six (3,066) pieces of graders desks were delivered to and received by the recipient schools and despite knowledge of short delivery of forty eight (48) pieces of graders desks, accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92124698 dated December 14, 1992 and certified therein that the items were received in good condition despite the sub-standard quality; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Malik U. Pundaodaya approved full payment thereof in the gross amount of One Million Five Hundred Fifty Seven Thousand (P1,557,000.00) Pesos, thus, overpaying accused Lolita P. Sambili the amount of Twenty Four Thousand (P24,000.00) Pesos and inflicting undue injury to the government in said amount.[11]

CRIMINAL CASE NO. 24788

That on 14 December 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Makil U. Pundaodaya, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Jose T. Navera, Chief, Budget & Finance Division/Financial Management Officer; Solaiman M. Domato, Auditor and Rogelio M. de los Reyes, Supply Officer III; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Lolita Sambili, Proprietor of Niño Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give Niño Wood Products undue advantage and unwarranted benefits when accused Solaiman M. Domato made it appear in the Inspection Report that three thousand seven hundred seven (3,707) pieces of graders desks were delivered by accused Lolita Sambili to the Sultan Kudarat Schools Division and to have been received by him when the truth is only two thousand eight (2,008) pieces of graders desks were actually delivered to and received by the recipient schools and despite knowledge of short delivery of one thousand six hundred ninety-nine (1,699) pieces of graders desks, accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92124700 dated December 14, 1992 and certified therein that the items were received in good condition despite the substandard quality; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Jose T. Navera recommended payment and Makil U. Pundaodaya approved full

payment thereof in the gross amount of One Million Eight Hundred Fifty Three Thousand:Five Hundred (P1,853,500.00) Pesos, thus, overpaying Lolita P. Sambili the amount of Eight Hundred Forty Nine Thousand Five Hundred (P849,500.00) Pesos and inflicting undue injury to the government in said amount.[12]

CRIMINAL CASE NO. 24789

That in August 1993, or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Makil U. Pundaodaya, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Daud M. Adiong, Accountant III; Rogelio M. de los Reyes, Supply Officer III and Napoleon O. Cedeño, Inspector/ICU; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City and Tomas P. Villanueva, COA TAS I, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Luis Dy, Proprietor of AAA Services Generales, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give AAA Services Generales undue advantage and unwarranted benefits when accused Tomas P. Villanueva and Napoleon O. Cedeño made it appear in the Inspection Report that nine hundred sixty nine (969) pieces of graders desks were delivered by accused Luis Dy to the Iligan City Schools Division and to have been received by them when the truth is only three hundred thirty one (331) pieces of graders desks were actually delivered to and received by the recipient schools and despite knowledge of short delivery of six hundred thirty-eight (638) pieces of graders desks of substandard quality, accused Rogelio M. de los Reyes signed receipt of the graders desks in the delivery form attached to Disbursement Voucher No. 93082954 and accused Daud M. Adiong certified therein to the adequacy of funds and that the same is supported by documents and Makil U. Pundaodaya approved full payment thereof in the gross amount of Five Hundred Fifty Seven Thousand One Hundred Seventy Five (P557,175.00) Pesos, thus, overpaying accused Luis Dy the amount of Three Hundred Sixty Six Thousand Eight Hundred Fifty (P366,850.00) Pesos and inflicting undue injury to the government in said amount.[13]

The Version of the Prosecution

SA Romano testified that his team conducted an inspection and verification, and a review of the vouchers and supporting documents, and reported their findings in writing.[14]

Relevant to Crim. Case No. 24784, Romano identified Disbursement Voucher (DV) No. 92031124,[15] representing the partial payment of P1,780,000.00 for the 4,000 desks delivered by BIWP to Sultan Kudarat Schools Division. The Inspection Report (IR)[16] attached to the DV indicated a complete delivery of the desks by the BIWP, with Delos Reyes receiving the desks, and Agustin and Domato confirming that the items were delivered according to specification, quality, and quantity. Attached also to the DV was an undated BIWP Delivery Receipt (DR) No. 0212[17] showing that 4,000 desks were delivered to DECS Sultan Kudarat Schools Division. According to Romano, the DR should have been signed by the principal or the teachers of the recipient elementary schools because the contract between the DECS RO XII and the supplier was a door-to-door delivery of desks.[18] Based on the records and papers submitted by the DECS Sultan Kudarat Schools Division, there were no deliveries of the 4,000 desks to the different schools; thus, the government suffered damages in the amount of P1,780,000.00.[19]

For Crim. Case No. 24785, Romano presented DV No. 92041526[20] in the amount of P452,430.00, as payment for the 914 desks delivered by BIWP to Sultan Kudarat Schools Division. The BIWP DR No. 0213[21] showed that 914 desks were delivered to Sultan Kudarat. The IR[22] stated that the 914 desks were received by Delos Reyes, and inspected by Agustin and Domato. The team found out that there was no delivery by the BIWP because the 914 desks could not be located and there was no report from Sultan Kudarat Schools Division of the delivery;[23] thus, the government suffered damages in the amount of P457,000.00.[24]

To prove the allegations in Crim. Case No. 24786, Romano identified DV No. 92093173[25] in the amount of P1,025,500.00 as payment for the 2,051 desks delivered by AAA to the Marawi City Schools Division.[26] There were two Memorandums of Receipt for Equipment, Semi-Expendable and

Non-Expendable Property (MR)[27] which evinced that a total of 2,051 desks were delivered to the Marawi City Schools Division; hence, there was a violation of the agreement for a door-to-door delivery of the desks to recipient schools. The undated IR[28] indicated that Delos Reyes received the 1,000 steel graders' desks delivered by AAA to Marawi City Schools Division, and that the items were inspected by Cedeño and Domato. The team found out that there was no delivery nor inspection of the 1,000 desks because there was no report from the auditor and supply officer of the Marawi City Schools Division about the desks.[29] The records furnished by the Marawi City Schools Division to the team proved that no desks were distributed to the different schools, thereby causing damages to the government in the amount of P1,025,500.00.[30]

Anent Crim. Case No. 24287, Soriano presented DV No. 92124698[31] dated 14 December 1992, in the amount of 1,230,030.00 as payment for the desks delivered by NWP to the Iligan City Schools Division. The IR[32] attached to the DV indicated that the desks were received by Delos Reyes and inspected by Cedeño and Domato. An MR,[33] dated 23 November 1992, which was one of the several MRs attached to DV 92124698, indicated that 96 desks were received from Pundaodaya by Milner A Pancho, "In-Charge" of Mainit Elementary School. Upon inspection, the team found out that only 48 desks were delivered by NWP to Mainit Elementary School, which was confirmed by the Certificate of Validation and Inspection stating that only 48 desks were actually received by Pancho. The NWP DR No. 0047[34] showed that 3,114 desks were delivered in bulk to the Division of Iligan despite the agreement for door-to-door delivery to the identified school recipients. For Iligan City, the combination scheme was adopted, i.e., the desks were delivered to the division office, and the others to the recipient elementary schools. With regard to Sultan Kudarat and Marawi City, the deliveries were made in bulk to the division offices and received by the division superintendents.[35]

One MR,[36] dated 23 November 1992, for 48 desks, was signed by the principal of Carbide Village Elementary School, proving that only 48 desks were delivered. Sixteen other MRs[37] indicated deliveries to schools. Because there were only 48 instead of 96 desks that should have been delivered to Mainit Elementary School, the government was unduly damaged in the amount equivalent to what was paid for the undelivered 48 desks.[38]

In Criminal Case No. 24788, Soriano identified the 14 December 1992 DV No. 92124700,[39] in the amount of P1,853,500.00, as payment for the 3,707 desks delivered by NWP to the Sultan Kudarat Schools Division. After a review of the MRs submitted by the division superintendent, the team found that out of 3,707 desks only 2,008 were delivered; thus, a shortage of 1,699 desks which caused damages to the government in the amount of P849,500.00.[40] The MR,[41] dated 1 December 1992, for the receipt of the 3,707 desks was signed by Sabandaya Balabagan, the Schools Division Superintendent, which proved that there was a delivery in bulk to the division office instead of a door-to-door delivery to recipient schools. The door-to-door delivery would have been advantageous to the government because it would have saved it the expense in delivering the desks to the various schools.[42]

Relative to Crim. Case No. 24789, Soriano presented DV No. 93082954,[43] in the amount of P557,175.00, which represented the final payment to AAA for the desks delivered to the Iligan City Division. Attached to the DV was the 29 July 1993 Charge Invoice No. 0056[44] indicating the delivery of 969 steel combination desks. The team found out that the delivery was short of 638 desks causing damages to the government in the amount of P366,950.00.[45]

The Version of the Defense

To prove their innocence, Kadon and Dy presented Elbert Paragoso, the manager and part-owner of AAA. Paragoso claimed that Dy was sick at the time of the assailed transactions and was unable to attend to his business; thus, he was requested by Dy to manage AAA. Paragoso personally supervised the delivery of the desks to the recipient schools. AAA delivered the desks and the corresponding DRs were returned to the company duly signed by the personnel of the recipient schools. There were no complaints from the DECS after AAA delivered the desks to the recipient schools and even subsequent to the company's receipt of payment from the DECS RO XII. Paragoso came to know of the DECS Regional Directors (RDs) of Cotabato City only when AAA was being sued. He was not informed that COA had inspected and had counted the desks delivered by AAA. The RDs and Dy requested the COA for a recount of the desks, but their request was denied.[46]

To fortify his defense, Kadon testified that he assumed office as RD of Region XII only on 14 April 1992. It was only towards the latter part that he participated in the assailed transactions with AAA. He followed the standard procedure in signing the check to pay AAA, i.e., after the goods are delivered by the supplier, these are inspected by the Inspection Committee; if the goods are in order, the IR and the Acceptance Report are prepared and thereafter submitted to the accountant for payment; the check is forwarded to his office but only if the documents are in order and already signed by the concerned officials.

For DV 92093173,[47] Kadon claimed that all the mandatory enclosures were attached to the original DV when this was presented for his signature. If he had doubts, he would usually have the signatures and the documents authenticated; thus, it would have taken time before he signed the documents as he first needed to establish whether everything was in order. Only when all the documents had been submitted and the subordinate officials had signed on the documents did he affix his signature on the DV and the check. He was the last person to sign the DV and the check.[48]

All the papers pertinent to these transactions were also submitted to the COA for pre-audit. These were stamped "pre-audited" confirming that the COA found the papers in order, thus, the supplier could already be paid. As standard procedure, the papers were again submitted to the auditor's office for post-audit. He did not receive any notice of disallowance from the COA and was informed of the charges against him only when he received a subpoena from the Sandiganbayan.[49]

On his part, Lopez testified that he was neither investigated nor furnished by the team of its report on the audit of the desks. He saw a copy of the report only when he came back to Region XII after his station in Region IX. In the same complaint[50] filed before the Presidential Commission Against Graft And Corruption (PCAGC), he requested[51] a recount of the desks and verification of the documents, but this was denied by the Commission.[52] He averred that he had neither defrauded the government in the amount of P5 million nor were there shortages in the delivery of the desks. He did not receive any complaint from the resident auditor regarding shortages in the delivery of the desks. Nevertheless, the desks would surely not look the same as when these were delivered two years ago.[53]

Navera stated that he knew Lopez and Delos Reyes, being his co-workers, but denied that they were his friends. He met them when he was assigned in Cotabato City. He did not see the DV 92031124[54] and that it was Budget Officer Jessica Lazo (Lazo) who signed on top of his printed name in its box 4. For DV 92041526,[55] it was not he but Lazo who signed in box 4. Likewise, he did not sign DV No. 92093173[56] but there appeared below his printed name Lazo's initials. He signed DV No. 92124698 but only after Adiong had signed in box 4 and had certified as to the availability of funds.[57]

Navera admitted that he signed DV 92124700[58] and that the IR[59] was signed by Delos Reyes, Cedeño, and Domato. The IR showed that the items were delivered according to the specification, quantity, and quality

specified in the contract. DV 93082954[60] was signed by Lazo.[61]

On his part, Delos Reyes testified that he was the Supply Officer of DECS Region XII and had the duty, among others, to receive and account for the desks procured by the RO. He met Kadon, Cedeño, Navera, Lopez, Pundaodaya, Delos Santos, Adiong, and Dy when he was assigned to RO XII. He neither saw the team's report nor was he aware of the creation of the team. His signature on the IR[62] confirmed that he received the desks before the inspection. Appearing also on the IR were the signatures of Domato and Agustin. He signed the IR[63] dated 31 March 1992, and so did Domato and Agustin. He also affixed his signature on an undated IR[64] which was also signed by Cedeño and Domato. He did not know the owner of AAA.[65]

In his defense, Pundaodaya confirmed that he submitted before the PCAGC and the Office of the Ombudsman his counter-affidavit relative to the complaints on the purchase of the desks by DECS RO XII.[66]

When called to the witness stand, Adiong admitted that he submitted his counter-affidavit to the Office of the Ombudsman.[67]

In his defense, Cedeño testified that he had neither encountered any short deliveries in the course of his inspection nor did he receive a complaint regarding the deliveries of the desks. The transactions were already consummated by Pundaodaya when Kadon was reshuffled to Region XII. The inspection team was composed of himself, the supply officer, and the resident auditor.[68]

He confirmed that DV Nos. 92031124,[69] 92041526,[70] 92093173,[71] 92124698,[72] and 92124700[73] were genuine documents that had no erasures.[74]

In testifying for his defense, Dy stated that he did not know Lopez, Adiong, De los Reyes, Villanueva, and Cedeño. He denied the charges against him in Crim. Case Nos. 24786 and 24789 because it was Paragoso, his industrial partner, who had personal knowledge of the subject transactions.[75]

In rebuttal, the prosecution called again to the witness stand Romano who identified the team's reply-affidavit[76] to Agustin's counter-affidavit.[77]

The Ruling of the Sandiganbayan

On 25 November 2009, the Sandiganbayan rendered its decision resolving the cases as follows:

WHEREFORE, in the light of all the foregoing, the Court hereby renders its judgment, to wit:

In Criminal Case No. 24784, the Court finds the accused DIAMAR P. KADON, JOSE P. LOPEZ, JR., DAUD M. ADIONG, SOLAIMAN M. DOMATO, ROGELIO M. DELOS REYES, Napoleon O. Cedeño, JOSE T. NAVERA, and MICHAEL A. DELOS SANTOS, GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Department of Education Culture and Sports (now Department of Education) or the government jointly or severally in the amount of Two Million Pesos (P2,000,000.00).

In Criminal Case No. 24785, the Court finds the accused DIAMAR P. KADON, JOSE P. LOPEZ, JR., DAUD M. ADIONG, SOLAIMAN M. DOMATO, ROGELIO M. DELOS REYES, Napoleon O. Cedeño, JOSE T. NAVERA, and MICHAEL A. DELOS SANTOS, GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Department of Education Culture and Sports (now Department of Education) or the government

jointly or severally in the amount of Four Hundred Fifty Seven Thousand Pesos (P457,000.00).

In Criminal Case No. 24786, the Court finds the accused DIAMAR P. KADON, JOSE P. LOPEZ, JR., DAUD M. ADIONG, ROGELIO M. DELOS REYES, and LUIS DY, GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Department of Education Culture and Sports (now Department of Education) or the government jointly or severally in the amount of One Million Twenty Five Thousand Five Hundred Pesos (P1,025,500.00).

In Criminal Case No. 24787, the Court finds the accused MAKIL U. PUNDAODAYA, JOSE P. LOPEZ, JR., DAUD M. ADIONG, SOLAIMAN M. DOMATO, ROGELIO M. DELOS REYES, Napoleon O. Cedeño, and LOLITA SAMBILI, GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Department of Education Culture and Sports (now Department of Education) or the government jointly or severally in the amount of Twenty Four Thousand pesos (P24,000.00).

In Criminal Case No. 24788, the Court finds the accused MAKIL U. PUNDAODAYA, JOSE P. LOPEZ, JR., DAUD M. ADIONG, SOLAIMAN M. DOMATO, ROGELIO M. DELOS REYES, JOSE T. NAVERA, and LOUTA SAMBILI GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Department of Education Culture and Sports (now Department of Education) or the government jointly or severally in the amount of Eight Hundred Forty Nine Thousand Five Hundred Pesos (P849,500.00).

In Criminal Case No. 24789, the Court finds the accused MAKIL U. PUNDAODAYA, DAUD M. ADIONG, ROGELIO M. DELOS REYES, Napoleon O. Cedeño, and LUIS DY, GUILTY beyond reasonable doubt of the offense of violation of Section 3(e) of Republic Act No. 3019, and after applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances, hereby sentences each of them to suffer the penalty of imprisonment ranging from six (6) years and one (1) month as minimum to ten (10) years as maximum, and to indemnify the Department of Education Culture and Sports (now Department of Education) or the government jointly or severally in the amount of Three Hundred Sixty Six Thousand Eight Hundred Fifty (P366,850.00).[78]

Kadonm,[79] Dy, Pundaodaya, Adiong,[80] and Cedeño[81] moved for a reconsideration of the decision of the Sandiganbayan. On 15 July 2010, the Sandiganbayan[82] resolved the motions for reconsideration as follows:

WHEREFORE, in light of all the foregoing, the Motions for Reconsideration each filed by the accused Diamar P. Kadon and Luis Dy are hereby GRANTED. Accused Kadon is ACQUITTED in Criminal Cases Nos. 24784, 24785 and 24786 and accused Dy is ACQUITTED in Criminal Cases Nos. 24786 and 24789 on reasonable doubt.

The Motion for Reconsideration filed by accused Napoleon Cedeño in Criminal Cases Nos. 24784, 24785, 24787, and 24789 is hereby DENIED; and the Motion for Reconsideration jointly filed through counsel by the accused Diamar Kadon in Criminal Cases Nos. 24784, 24785, and 24786; Luis Dy in Criminal Case Nos. 24786, and 24789; Makil Pundaodaya in Criminal Cases Nos. 24787, 24788, and 24789; Daud Adiong in Criminal Cases Nos. 24784-89; and Napoleon Cedeño in Criminal Cases Nos. 24784, 24785, 24787, and 24789 is likewise DENIED insofar as it concerns the accused Pundaodaya, Adiong and Cedeño for lack of

merit.

The cash bonds posted by the accused Kadon and Dy for their provisional liberty are hereby CANCELLED and ordered released to the said accused, subject to the usual accounting and auditing procedures. The Hold Departure Order issued against them is hereby LIFTED and set aside.[83]

ISSUES

In beseeching the Court that the decision rendered by the Sandiganbayan be reversed and set aside, Cedeño submitted the following issues in G.R. Nos. 193020, and 193040-193042:

I.

THE HONORABLE SANDIGANBAYAN COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE COA AUDIT REPORT AS WELL AS THE UNCONTROVERTED AND SELF-SERVING TESTIMONY OF NILO S. ROMANO ARE SUFFICIENT TO CONVICT THE PETITIONER DESPITE THE ABSENCE OF POSITIVE EVIDENCE POINTING TO HIS ACTIVE AND KNOWING PARTICIPATION IN THE TRANSACTION, CONTRARY TO THE SUPREME COURT DOCTRINE LAID DOWN IN ARIAS V. SANDIGANBAYAN.

II.

THE HONORABLE SANDIGANBAYAN MISTAKENLY APPRECIATED THE FACTS WHEN IT RULED THAT PETITIONER ACCOMPLISHED FALSE INSPECTION REPORTS WHEN THE RECORDS BEAR THAT THE PURPORTED REPORTS DO NOT EVEN BEAR HIS SIGNATURE AND NO WITNESS EVER TESTIFIED ON THE DETAILS OF HIS ALLEGED PARTICIPATION IN THE PREPARATION THEREOF.[84]

In G.R. Nos. 193349-54, Pundaodaya, Adiong, Navera, and Delos Reyes presented the following issues in support of their plea that the assailed decision of the Sandiganbayan be set aside and that they be acquitted of the charges against them, to wit:

I.

THE SANDIGANBAYAN MANIFESTLY ERRED IN NOT ACQUITTING PETITIONERS TOGETHER WITH THEIR CO-ACCUSED DIAMAR P. KADON AND LUIS DY CONSIDERING THAT THE FACTS UPON WHICH THE RESOLUTION IS BASED ARE THE SAME IF NOT COMMON FOR ALL ACCUSED.

II.

THE SANDIGANBAYAN MANIFESTLY ERRED IN HOLDING ACCUSED LIABLE FOR ALLEGED GHOST DELIVERIES WHEREAS, IN TRUTH AND IN FACT, THE DELIVERIES WERE ACTUALLY MADE.

III.

THE SANDIGANBAYAN MANIFESTLY ERRED IN NOT ACQUITTING PETITIONERS TOGETHER WITH THEIR CO-ACCUSED DIAMAR P. KADON AND LUIS DY CONSIDERING THAT THE FACTS AND EVIDENCE ON RECORD CLEARLY POINT TO THE INNOCENCE OF PETITIONERS.[85]

THE RULING OF THE COURT

The petitions must be denied.

The decision of the Sandiganbayan was already final as to Navera and Delos Reyes.

Records are bereft of any showing that Navera and Delos Reyes moved for a reconsideration of the decision of the Sandiganbayan promulgated on 25 November 2009. It must be noted that the subject matters of the 15 July 2010 resolution of the Sandiganbayan were only the following: Kadon's motion for reconsideration;^[86] Kadon, Dy, Pundaodaya, Adiong, and Cedeño's motion for reconsideration;^[87] Dy's motion for reconsideration;^[88] and Cedeño's motion for reconsideration.^[89]

Presidential Decree (PD) No. 1606,^[90] as amended by R.A. No. 8249,^[91] provides as follows:

Section 7. Form, Finality and Enforcement of Decisions. - All decisions and final orders determining the merits of a case or finally disposing of the action or proceedings of the Sandiganbayan shall contain complete findings of the facts and the law on which they are based, on all issues properly raised before it and necessary in deciding the case.

A petition for reconsideration of any final order or decision may be filed within fifteen (15) days from promulgation or notice of the final order on judgment, and such motion for reconsideration shall be decided within thirty (30) days from submission thereon.

Decisions and final orders of the Sandiganbyan 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. Whenever, in any case decided by the Sandiganbayan, the penalty of reclusion perpetua, life imprisonment or death is imposed, the decision shall be appealable to the Supreme Court in the manner prescribed in the Rules of Court. (emphasis supplied)

On the one hand, Sec. 2, Rule 45 of the Rules of Court reads:

Section 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition. (emphasis supplied)

Definite from these quoted provisions is that an accused has only fifteen days from promulgation or notice of judgment within which to file before the Sandiganbayan a motion for reconsideration or to file before this Court a petition under Rule 45 of the Rules of Court. Considering that Navera and Delos Reyes did not seek a reconsideration of the Sandiganbayan's decision, their recourse would have been to file a petition for review on certiorari within fifteen days from 25 November 2009, or until 10 December 2009. Therefore, insofar as Navera and Delos Reyes are concerned, their petition, submitted to this Court only on 27 August 2010, was filed way beyond the 15-day reglementary period. Navera and Delos Reyes' right to appeal had long prescribed, thus, the decision is no longer open to an appeal.

The petition under Rule 45 of the Rules of Court relates to questions of law.

A petition pursuant to Sec. 1, Rule 45 of the 1997 Rules of Civil Procedure pertains to questions of law and not to factual issues, thus:

SECTION 1. Filing of Petition with Supreme Court. A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts 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. (emphasis supplied)

The Court has been consistent in differentiating a question of law from a question of fact, viz:

A question of law arises when there is a doubt as to what the law is on a certain state of facts, while there is a

question of fact when doubt arises as to the truth or falsity of the alleged facts. For a question to be a question of law, it must not involve an examination of the probative value of the evidence presented by the litigants. The resolution of the issue must rest solely on what the law provides on the given set of facts and circumstances. Once it is clear that the issue invites a review of the evidence presented, the question is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[92]

The general rule is that the Court is not a trier of facts, and it is not its function to examine, review or evaluate the evidence all over again.[93] Issues raised before the Court on whether the prosecution's evidence proved the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was properly accorded the accused, whether there was sufficient evidence to support a charge of conspiracy, or whether the defense of good faith was correctly appreciated are all, in varying degrees, questions of fact.[94] A reading of the issues raised by the petitioners will readily show that these are questions of fact in which its resolution would involve a scrutiny of the evidence introduced before the Sandiganbayan.

The general rule nonetheless is not set in stone as to not admit chiseled exceptions. Indeed, accruing jurisprudence instructs on the exceptions to the general rule, viz: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) where the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.[95] Conversely, the well-entrenched doctrine, constantly strengthened and invigorated by judicial pronouncements, is that exceptions must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case.[96]

The Court finds that the petitions are bereft of any persuasive showing as to the presence of any of the above circumstances to warrant a factual re-evaluation of the cases. The petitioners had obviously fumbled in their task of substantiating their petitions so as to fall within the jurisprudentially recognized exceptions to the rule. But even if the Court were to stretch the concept of these exceptions to the snapping point and examine the records again, the only indisputable conclusion that could be drawn from the proceedings before the Sandiganbayan was that the anti-graft court had not erred in finding the petitioners guilty beyond reasonable doubt of the charges against them.

G.R. Nos. 193020, and 193040-193042

Cedeño was charged and found guilty in Crim. Case Nos. 24784, 24785, 24787, and 24789 for having signed the IRs attached to the corresponding DVs. In propounding the proposition that he had not conspired with his co-accused and that there was no positive evidence proving his participation in the anomalous transactions, he averred that he did not sign the IRs pertinent to Crim. Case Nos. 24784 and 24785, and that Romano did not identify him as a signatory to the transactions in Crim. Case Nos. 24787 and 24789.[97]

a. Crim. Case Nos. 24784 and 24785

The records show that only the IRs attached to the DVs pertinent to Crim. Case Nos. 24786 to 24789 bore the signature of Cedeño. There is therefore colorable truth to his assertion that he did not sign the IRs for Crim. Case Nos. 24784 and 24785. This fact notwithstanding, the Court could not find that his liability had lessened based solely on the trifling excuse that his signature did not appear in the IRs: for Crim. Case Nos. 24784 and 24785.

It must be noted that Cedeño had admitted that he was a member of the inspectorate team composed of himself,

the COA resident auditor, and the supply officer. He acknowledged that the function of the inspectorate team was to inspect and confirm the deliveries made by the supplier to the designated areas. He claimed that the subject vouchers, which had passed through his office and the other offices, were genuine since they bore no erasures or falsification.

The IRs for Crim. Case Nos. 24784 and 24785 were signed by Reyes, Domato, and Agustin in their respective capacities as supply officer, auditor, and inspector. Obviously, Agustin should not have signed the IRs pertinent to these two cases considering that, by Cedeño's testimony, it was he (Cedeño) who was part of the inspectorate team. Cedeño failed to offer any explanation why Agustin signed the IR or as to the circumstances that would justify Agustin signing on his behalf.

Cedeño cannot feign ignorance by saying he was not aware that the IRs in Crim. Case Nos. 24784 and 24785 were signed by Agustin. The DVs for these cases, as confirmed by Cedeño, were genuine and had passed through his office for his signature. Taking into account the fact that the IR was one of the required attachments to a DV, it can easily be deduced that Cedeño had gone through the IR as this appears to be the only document that should have been signed by him. The fact that the IR was signed by Agustin and not by him should have pricked his curiosity and prompted inquiry, yet Cedeño ignored this and allowed the processing of payment to the supplier thereby conforming to the findings of Agustin, Delos Reyes, and Domato that the items delivered were in accordance with the specification, quality, and quantity required. Surely, Cedeño even acknowledged that had he not signed the IRs, the suppliers would not have been paid.[98]

b. Crim. Case Nos. 24787 and 24789

There is no issue that the IRs for Crim. Case Nos. 24787 and 24789 were signed by Cedeño. The pretentious defense offered by Cedeño that his signature was not identified by Romano during the latter's testimony fails to convince. There was no need for Romano to enumerate each and every signatory to the documents in these cases and state with particularity in what capacity the signatories affixed their signatures in order that the Sandiganbayan may hold the signatories liable for their crimes. For sure, a completely different declaration might have been arrived at where there was a persuasive and credible explanation from Cedeño that his signature had been forged or that someone, without his knowledge and authority, had signed on his behalf. Nothing from the records, however, yielded even the slightest indication that the signature of Cedeño in the subject IRs had been forged or that someone had signed for him. It must be noted that Cedeño never asserted that the signatures appearing on the IRs were not his, thus confirming that he was the one who had affixed his signature on the documents.

Equally important is that the Court can easily discern from the IRs what matters Cedeño was certifying to when he affixed his signature on the documents. To stress, he did not deny his signatures on the subject IRs which plainly, prove that he had acted as the inspector of the inspectorate team; and he,, together with the supply officer and the concerned resident auditor, had certified that the items were delivered according to specification, quality, and quantity indicated in the contract, notwithstanding the fact that there were short deliveries.

To challenge the ruling of the Sandiganbayan that he conspired with his co-accused, Cedeño invoked the principles laid down by the Court in *Magsuci v. Sandiganbayan*[99] and *Albert v. Gangan*.[100]

Cedeño failed to consider that the factual milieu of the cases on which he based his claim were entirely dissimilar from his case. In *Magsuci* and *Albert*, both petitioners were heads of their offices, i.e., Magsuci was the Regional Director of the Bureau of Fisheries and Aquatic Resources (BFAR) RO X, while: Albert was the President of the National Home Mortgage Finance Corporation (NHMFC).

In Magsuci, the petitioner had just assumed office as BFAR RD when he read the accomplishment report and the certification on the construction of a 40-ton ice making plant, including a 150-ton ice storage and 350-ton cold storilge facility in Surigao City. He then directed the issuance of the DV to pay the contractor, Dexter Corporation (Dexter), and the preparation of the checks. He signed the DV and the checks which, together with all the attachments, were forwarded to the BFAR Central Office. It was found out later that there was no such installation and construction of a 40-ton ice making plant; hence, the petitioner and the general manager of Dexter were charged and were subsequently found guilty by the Sandiganbayan of the complex crime of estafa through falsification of public documents.

In Albert, the COA found the petitioner as one of those personally liable for the amount of P36,796,711.55, which represented the loan proceeds for a project. COA anchored the liability of the petitioner on the grounds that he was the final approving authority of the assailed transaction, and that the officers and employees who processed the same were directly under his supervision.

In finding the petitions of both Magsuci and Albert meritorious, the Court took into account the absence of conspiracy: for Magsuci, it was the fact that the actions he had taken were the functions he had to discharge in relation to his office and that there was no intimation that he had knowledge of the irregularities committed by his co-accused. In the case of Albert, his guilt as a conspirator was not established beyond reasonable doubt. Moreover, the Court found applicable the established rule that an officer who signs or initials a voucher as it is going the rounds does not necessarily mean that the said person was part of a conspiracy in an illegal scheme. To buttress its ruling as to the absence of conspiracy, the Court cited in Albert its earlier declaration in Pareño v. Sandiganbayan,[101] viz:

It is rather apparent that under the Sandiganbayan's decision, a department secretary, bureau chief, commission chairman, agency head, department head or chief of office would be equally culpable for every crime arising from any transactions or held guilty of conspiracy simply because he was the last of a long line of officials or employees who acted upon or affixed his signature to a transaction. We cannot allow this because guilt must be premised on a more knowing personal, and deliberate participation of each individual who is charged with others as part of a conspiracy. There must be more convincing proof which in this case is wanting.

Noteworthy, in both Magsuci and Albert, the Court reiterated its ruling in Arias v. Sandiganbayan,[102] viz:

We would be setting a bad precedent if a head of office plagued by all too common problems - dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence - is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

x x x x

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. 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. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger

offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.

It must be emphasized that Arias involved the culpability of a final approving authority on the basis of criminal conspiracy,[103] or where, in the performance of his official duties, the head of an office is being held to answer for his act of relying on the acts of his subordinate.[104] To the point of being repetitive, Cedeño was the appointed inspector of the office and was a member of the inspectorate team. The very name and function of his office render necessary his inspection of the items in these transactions. Indeed, the phrase "Inspected by" before his name in the IR confirm that, before he affixed his signature, he had personally inspected the items and had found them to be in accordance with the specification, quality, and quantity as stated in the contract. The mandate of his office undoubtedly required no less, i.e., that he should have personally inspected the items that were purchased by DECS RO XII before he affixed his signature on the IR.

G.R. Nos. 193349-193354

Pundaodaya and Adiong aver that because the factual circumstances prevailing in these cases were the same as with Kadon and Dy, who were both acquitted by the Sandiganbayan upon their seeking a reconsideration of its decision, they (Pundaodaya and Adiong) should likewise be found innocent of the charges against them.[105]

In resolving the motion for reconsideration of Kadon, the Sandiganbayan appreciated the fact that Kadon had just transferred to Region XII and that his participation was only towards the latter part of the assailed transactions. Kadon did not have any opportunity to be in cahoots with co-accused because of the little time he had from the date of his assumption of duty in Region XII to the time he signed the DVs. More importantly, in a related case[106] involving these transactions before the Office of the President, the Executive Secretary found basis for the reduction of the penalty imposed on Kadon, from suspension from office to three (3) months without pay, on account of the factual finding that "x x x, as shown in the documents appended to his motion, (Kadon) called and held meetings with responsible DECS officials of the region to discuss and take up matters covered by the papers ready for his signature." [107]

As regards Dy who was impleaded in Crim. Case Nos. 24786 and 24789, the Sandiganbayan found that, other than being the owner of AAA, no proof was presented that he had participated in or had knowledge of the subject transactions. On the other hand, Paragoso admitted that, as manager of AAA, he was the one who signed the contracts with DECS and who received the payments for AAA's account.[108]

Significantly, the present petition, which is but a reiteration of the motion for reconsideration of Pundaodaya, Adiong, Kadon, Dy, and Cendeno, was found by the Sandiganbayan to have been argued merely for Kadon and Dy.[109] The Court sees no differently. Indeed, an assiduous reading of the testimonies of Kadon, Dy, and Paragoso which were quoted in the petition fails to convince that Pundaodaya and Adiong were similarly situated as Kadon and Dy.

The guilt of the petitioners had been proven beyond reasonable doubt.

Pundaodaya, Adiong, and Cedeño were charged with violation of Sec. 3(e) of R.A. No. 3019, the elements of which are as follows:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
- 3) That his action caused undue injury to any party, including the government, or giving any private party

unwarranted benefits, advantage or preference in the discharge of his functions.[110]

The first element is not at issue in any of these cases. On the second and third elements, the Sandiganbayan held that the petitioners "displayed evident bad faith in the exercise of their functions and at the same time extended unwarranted benefits or partiality to the private persons who owned the business establishments with whom they entered into contract." [111]

Records will reveal that the findings of the team had not been successfully refuted by Pundaodaya, Adiong, and Cedeño. There were but bare claims by the petitioners that they had performed their duties by reviewing the documents, and that the suppliers had made complete deliveries of the desks.

Jurisprudence instructs that bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.[112]

We quote Zoleta -

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy does not need to be proven by direct evidence and may be inferred from the conduct before, during, and after the commission of the crime - indicative of a joint purpose, concerted action, and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, as shown by an overt act leading to the crime committed. It may be deduced from the mode and manner of the commission of the crime.[113]

The word unwarranted means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. Advantage means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.[114]

It is clear in these cases that there was no justification or adequate reason for Pundaodaya, Adiong, Cedeño, and the other accused public officers to process the full payment for the desks. The truth that Pundaodaya, Adiong, Cedeño, and their co-accused were able to have the DVs processed through the execution of documents, i.e., IRs, MRs, and DRs, to evidence full deliveries of the desks despite the nonexistent and short deliveries, clearly prove that they had acted in bad faith in the discharge of their duties in order to attain a common purpose, i.e., to extend undue advantage and unwarranted benefits to the suppliers, causing great disadvantage and injury to the government.

WHEREFORE, the petitions are DENIED. The 25 November 2009 Decision and 15 July 2010 Resolution of the Sandiganbayan in Crim. Case Nos. 24784 to 24789 are hereby AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Bersamin, Leonen, and Jardeleza,[*] JJ., concur.

December 8, 2017

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on November 8, 2017 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled cases, the original of which was received by this Office on December 8, 2017 at 2:05

p.m.

Very truly yours,

WILFREDO V. LAPITAN

Division Clerk of Court

By:

(SGD)

MISAEAL DOMINGO C. BATTUNG III

Deputy Division Clerk of Court

[*] Additional member per Raffle dated 4 October 2017.

[1] Rollo (G.R. Nos. 193020, and 193040-193042), pp. 12-33; Rollo (G.R. Nos. 193349-54), pp. 3-54.

[2] Id. at 34-88; penned by Associate Justice Roland B. Jurado, and concurred in by Presiding Justice/Ma. Cristina G. Cortez-Estrada and Associate Justice Napoleon E. Inoturan.

[3] Id. at 90-101; penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Alexander G. Gesmundo (now a member of this Court) and Napoleon E. Inoturan.

[4] Entitled "Anti-Graft And Corrupt Practices Act."

[5] Exhibit Folder, Exh. "A" inclusive.

[6] Id. Exh. "3."

[7] Id. Exh. "A-4."

[8] Records, Vol. II, pp. 1-3.

[9] Id. at 4-6.

[10] Id. at 7-9.

[11] Id. at 10-12.

[12] Id. at 13-15.

- [13] Id. at 16-18.
- [14] TSN, 30 October 2000, pp. 3-4.
- [15] Exhibit Folder, Exh. "B."
- [16] Id. Exh. "C."
- [17] Id. Exh. "D."
- [18] TSN, 30 October 2000, pp. 7-9.
- [19] TSN, 7 March 2001, pp. 12-13.
- [20] Exhibit Folder, Exh. "E."
- [21] Id. Exh. "F."
- [22] Id. Exh. "G."
- [23] TSN, 30 October 2000, pp. 10-14.
- [24] TSN, 7 March 2001, pp. 13-16.
- [25] Exhibit Folder, Exh. "H."
- [26] Id. Exh. "H-1."
- [27] Id. Exh. "J."
- [28] Id. Exh. "L."
- [29] TSN, 30 October 2000, pp. 14-18.
- [30] TSN, 7 March 2001, pp. 16-17.
- [31] Exhibit Folder, Exh. "M."
- [32] Id. Exh. "N."
- [33] Id. Exh. "P."
- [34] Id. Exh. "O."
- [35] TSN, 30 October 2000, pp. 19-24.
- [36] Exhibit Folder, Exh. "S."
- [37] Id. Exhs. "T" to "HH."
- [38] TSN, 30 October 2000, pp. 24-27.
- [39] Exhibit Folder, Exh. "KK."
- [40] Rollo, (G.R. Nos. 193020, and 193040-193042) p. 51.
- [41] Exhibit Folder, Exh. "PP."
- [42] TSN, 7 March 2001, pp. 6-8.
- [43] Exhibit Folder, Exh. "QQ."

- [44] Id. Exh. "RR."
- [45] TSN, 7 March 2001, pp. 18-19.
- [46] TSN, 18 February 2004, pp. 5-9.
- [47] Exhibit Folder, Exh. "H."
- [48] TSN, 21 June 2004, pp. 16-18.
- [49] Id. at 23-24.
- [50] Docketed as PCAGC-ADM-94-0137-A.
- [51] Exhibit Folder, Exh. "1-B."
- [52] Id. Exh. "1."
- [53] TSN, 27 October 2004, pp.7, 10, 14, 16, 20-22, and 24-25.
- [54] Exhibit Folder, Exh. "B."
- [55] Id. Exh. "E."
- [56] Exhibit Folder, Exh. "H."
- [57] TSN, 28 October 2004, pp. 6-13.
- [58] Exhibit Folder, Exh. "KK."
- [59] Id. Exh. "LL."
- [60] Id. Exh. "QQ."
- [61] TSN, 28 October 2004, pp. 15-18.
- [62] Exhibit Folder, Exh. "C."
- [63] Id. Exh. "G."
- [64] Id. Exh. "L."
- [65] TSN, 15 March 2005, pp. 20-21.
- [66] TSN, 8 March 2006, pp. 6-9.
- [67] Id. at 39-43.
- [68] TSN, 18 July 2006, pp. 8-13.
- [69] Exhibit Folder, Exh. "B."
- [70] Id. Exh. "E."
- [71] Id. Exh. "H."
- [72] Id. Exh. "M."
- [73] Id. Exh. "KK."
- [74] TSN, 18 July 2006, pp. 14-20.

[75] TSN, 29 July 2008, pp. 3-9.

[76] Exhibit Folder, Exh. "MMM."

[77] TSN, 18 December 2007, pp. 7-12.

[78] Rollo (G.R. Nos. 193020, and 193040-193042), pp. 85-87.

[79] Records, Vol. VII, pp. 93-114.

[80] Id. at 202-225. A separate motion for reconsideration was filed by Kadon, Dy, Pundaodaya, Adiong, and Cedeño.

[81] Id. at 260-269.

[82] Rollo (G.R. Nos. 193020, and 193040-193042), pp. 89-101; penned by Associate Justice Roland B. Jurado, and concurred in by Associate Justices Alexander G. Gesmundo (now a member of this Court) and Napoleon E. Inoturan.

[83] Id. at 100-101.

[84] Id. at 22.

[85] Rollo (G.R. Nos. 193349-54), p. 13.

[86] Records, Vol. VII, pp.93-125.

[87] Id. at 127-174.

[88] Id. at 202-225.

[89] Id. at 260-269.

[90] Entitled "Revising Presidential decree No. 1486 Creating A Special Court To be Known As 'Sandiganbayan' Andfor Other Purposes," dated 10 December 1978.

[91] Entitled "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," dated 5 February 1997.

[92] *Agustin-Se v. Office of the President*, G.R. No. 207355, 3 February 2016, 783 SCRA 213, 227.

[93] *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015).

[94] *Jaca v. People*, 702 Phil. 210, 238 (2013).

[95] *Uyboco v. People*, 749 Phil. 987, 992 (2014).

[96] *Pascual v. Burgos*, G.R. No. 171722, 11 January 2016, 778 SCRA 189, 191.

[97] Rollo, pp. 25-26.

[98] TSN, 17 October 2006, p. 9

[99] 310 Phil. 14-21 (1995).

[100] 406 Phil. 231-247 (2001).

[101] 326 Phil. 255, 286-287 (1996).

- [102] 259 Phil. 794, 801-802 (1989).
- [103] *Tubola v. Sandiganbayan, et al.*, 663 Phil. 1, 12 (2011).
- [104] *Jaca v. People*, Supra note 94 at 259.
- [105] (G.R. Nos. 193349-54), p. 14.
- [106] O.P. case No. 00-C-9022 (PCAGC-ADM-94-0137) for Gross Neglect of Duty.
- [107] *Rollo* (G.R. Nos. 193349-54), pp. 117-118.
- [108] *Id.* at 118-119.
- [109] Footnote 2 of the Resolution.
- [110] *Caunan v. People*, G.R. No. 183529, 24 February 2016, 784 SCRA 693, 701.
- [111] *Rollo* (G.R. No. 193020, and 193040-193042), p. 75.
- [112] *Coloma v. Sandiganbayan*, 744 Phil. 214, 229 (2014).
- [113] *Zoleta v. The Honorable Sandiganbayan (Fourth Division)*, 765 Phil. 39, 56 (2015).
- [114] *Ampil v. The Hon. Office of the Ombudsman*, 715 Phil. 733, 759 (2013).

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