

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JESUS LORETIZO NIEVES, G.R. Nos. 237432-33
Petitioner,

Present:

LEONEN, J., *Chairperson,*
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., *JJ.*

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent. April 28, 2021

X- - - - - Mrs. DC Bata - - - - - X

RESOLUTION

INTING, J.:

This resolves the Petition¹ for Review on *Certiorari* filed by Jesus Loretizo Nieves (petitioner) pursuant to Rule 45 of the Rules of Court assailing the Decision² dated November 17, 2017 and the Resolution³ dated February 9, 2018 of the Sandiganbayan First Division. The assailed Decision found petitioner guilty in SB-15-CRM-0073 for violation of Section 3(e) of Republic Act No. (RA) 3019 and in SB-15-CRM-0076 for Falsification of Public Document under Article 171 of the Revised Penal Code (RPC). The assailed Resolution denied his subsequent Motion for Reconsideration.⁴

¹ *Rollo*, pp. 10-37.

² *Id.* at 40-65; penned by Associate Justice Edgardo M. Caldoná with Associate Justices Efren N. De La Cruz and Geraldine Faith A. Econg, concurring.

³ *Id.* at 66-73.

⁴ *Id.* at 74-94.

The Antecedents

The Information in Criminal Case No. SB-15-CRM-0073 states:

That on April 11, 2006 or sometime prior or subsequent thereto in Pagadian City, Zamboanga del Sur and within the jurisdiction of this Honorable Court; accused Jesus Loretizo Nieves, being then the Regional Director (SG 28) of the Department of Education (DepEd), Regional Office No. IX (RO 9), Zamboanga City and concurrent Head of Procuring Entity and approving official of DepEd RO 9's Bids and Awards Committee (BAC), while in the performance of his administrative and official functions; acting with manifest partiality, evident bad faith and gross inexcusable negligence; did then and there willfully, unlawfully, and criminally give unwarranted benefits, advantage and preference to Felta Multi-Media, Inc. (Felta) by falsifying the BAC Resolution dated April 11, 2006 and forging the signatures of Harpi A. Sali, BAC Vice Chairman, Virginia C. Amiruddin, Member, and Pilar J. Rico, Member, to make it appear that the BAC recommended direct contracting as the mode of procurement of IT package materials worth FOUR MILLION SEVEN HUNDRED SEVENTY-SIX THOUSAND SEVEN HUNDRED EIGHTY-SIX PHILIPPINE PESOS (P4,776,786.00) from Felta in violation of the requirement of public bidding under Republic Act No. 9184; causing the release to Felta of P4,776,786.00 in public funds as payment; to the damage and injury of the government in the aforementioned amount.

CONTRARY TO LAW.⁵

The accusatory portion of the Information in Criminal Case No. SB-15-CRM-0076 reads:

That on April 11, 2006 or sometime prior or subsequent thereto in Pagadian City, Zamboanga del Sur and within the jurisdiction of this Honorable Court; accused Jesus Loretizo Nieves, being then the Regional Director (SG 28) of the Department of Education (DepEd), Regional Office No. IX (RO 9), Zamboanga City; committing the offense in relation to office and taking advantage of his position as the Head of Procuring Entity and approving official of the Bids and Awards Committee (BAC), DepEd RO 9; did then and there willfully, unlawfully and feloniously falsify the BAC Resolution dated April 11, 2006 by making it appear that the BAC recommended direct contracting as the mode of procurement of IT package materials worth P4,776,786.00 from Felta Multi-Media, Inc. when in truth and in fact, he knew that no such Resolution existed; and by forging the signatures of Harpi A. Sali, BAC Vice-Chairman, Virginia C.

⁵ As culled from the Decision dated November 17, 2017 of the Sandiganbayan, *id.* at 41.

Amiruddin, Member, and Pilar J. Rico, Member on said Resolution; thereby perverting the truth in violation of the legal obligation to disclose the truth inherent in the Government Procurement Reform Act.

CONTRARY TO LAW.⁶

Arraigned thereon, petitioner entered a plea of not guilty in each offense charged.⁷

Version of the Prosecution

In the 2007 Annual Audit Report (AAR) of the Department of Education, Regional Office No. IX (DepEd-RO IX), the Commission on Audit (COA) found that DepEd-RO IX released public funds amounting to ₱99,579,141.00 which were not documented and recorded in its books of account. Out of the amount, ₱48,678,355.00 and ₱46,124,000.00 were paid to Exquisite Enterprises and Aphrodite Builders, respectively, which, upon investigation, were found to be non-existing entities. The additional ₱4,776,786.00, the subject of the present criminal charges was paid to Felta-Multi Media, Inc. (Felta) for the procurement of IT packages and materials. This was also not included in the DepEd-RO IX's books of account.⁸

Records show that on August 9, 2007, the Department of Budget and Management (DBM) released to DepEd-RO IX the amount of ₱4,776,786.00 under Advice of Notice of Cash Allotment Issued No. 325002-6. However, the audit revealed that the receipt of the funds from the DBM as well as the payment thereof to Felta were not recorded in the books of account of the department.⁹ Due to this irregularity, the team of auditors issued Audit Observation Memorandum No. 2008-005(07) dated February 14, 2008. Per the petitioner, while the cash allotment was intended to cover payment of account payable to an external creditor, it was not recorded as account payable due to the absence of documents; and that accordingly, the accounting division had no basis to take up such fund or the disbursement thereof.¹⁰

⁶ *Id.* at 41-42.

⁷ *Id.* at 42.

⁸ *Id.* at 44 and 159.

⁹ *Id.* at 45-46.

¹⁰ *Id.* at 46.

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On April 11, 2008, the audit team issued a Notice of Suspension No. 08-002-10 (07). It suspended in audit the payment of ₱4,776,786.00 to Felta due to the non-recording of the notice of cash allotment received and for failing to record its disbursement. In issuing the notice of suspension, the audit team took note of the non-submission of the disbursement voucher and the necessary supporting documents relative thereto.¹¹

In his verified answer, petitioner averred that the transaction has undergone the required budgeting and accounting examinations. He pointed out that there was no legal impediment to prevent him from releasing the funds to the creditor. To prove his point, he submitted the following documents: (a) Obligation Request No. 07-07-094; (b) Delivery Receipt No. 19134 dated July 20, 2007 with Invoice 3787; (c) Delivery Receipt No. 19135 dated July 20, 2007; (d) Delivery Receipt No. 19136 dated July 20, 2007; (e) Purchase Request reiterating the purpose of distribution under the Priority Development Assistance Fund (PDAF) of Congressman Gerry A. Salapudin as requested by the Supply Officer; (f) Bids and Awards Committee Resolution dated April 11, 2006; (g) Purchase Order, Requisition Slip, Inspection and Acceptance Slip dated July 16, 2007 signed by the Supply Officer and the Inspection Officer; (h) Advice of NCA Issued No. 325002-6 (Fund 101) dated August 9, 2007; and (i) Advice to Debit Account. He cited the Bids and Awards (BAC) Resolution dated April 11, 2006 allegedly exempting the PDAF from prior public bidding requirement. He averred that all the transactions under such category should not be covered by RA 9184 or the Government Procurement Reform Act.¹²

The state auditors found petitioner's defense without legal basis as neither RA 9184 nor its Implementing Rules and Regulations provided that the PDAF of congressmen is exempted from the requirement of prior bidding in government procurement. In addition, they stressed that there was an outstanding moratorium on the purchase of reference materials pursuant to DepEd Order No. 38 dated June 7, 2007 which reiterated DECS Order No. 25 issued in 1999. Petitioner also failed to submit the distribution list of computers as received by the actual recipients which makes the physical delivery, existence, and receipt thereof doubtful. On October 14, 2008, the team of auditors issued a

¹¹ *Id.* at 46.

¹² *Id.* at 46-47.

Notice of Disallowance No. 08-002-101 (07) effectively disallowing in audit the transaction in question.¹³

Upon investigation of the Office of the Ombudsman, the genuineness and due execution of the BAC Resolution dated April 11, 2006 was questioned when the concerned signatories denied any participation thereto. The signatories: Pilar J. Rico (Pilar), Harpi A. Sali (Harpi), and Virginia C. Amirrudin (Virginia) executed separate affidavits and position papers with their daily time records and genuine specimen of their signatures to prove that they were in Zamboanga City when the Resolution was supposedly adopted by the BAC members in Pagadian City.¹⁴

Virginia, Chief of the Alternative System Division and retiree of the DepEd-RO IX, testified that the BAC Resolution dated April 11, 2006 was falsified because the BAC members did not meet on such date to deliberate or pass any resolution. She asserted that the signatures appearing thereon were forged.¹⁵

Further, Pilar, Chief of the Secondary Education Division of DepEd-RO IX, narrated that she was a member of the BAC of DepEd-RO IX. She clarified that the BAC did not meet and deliberate on April 11, 2006 for the issuance of any resolution. She also did not sign the BAC Resolution in question.¹⁶

Witness Harpi testified that he was the Chief Administrative Officer and BAC Vice-Chairman of DepEd-RO IX. He stated that on April 11, 2006, the BAC of DepEd-RO IX did not meet in Pagadian City because some members were in different places at that time. He was in Zamboanga City attending to his official functions. He maintained that the signature appearing on the subject BAC Resolution does not belong to him.¹⁷

¹³ *Id.* at 47-48.

¹⁴ *Id.* at 48-49.

¹⁵ *Id.* at 49.

¹⁶ *Id.* at 49-50.

¹⁷ *Id.* at 49.

Meanwhile, Amelia P. Torralba, Chief of the Elementary Division and BAC Chairman of DepEd-RO IX, likewise denied the information in the subject BAC Resolution as she was on leave that day.¹⁸

Dahlia A. Paragas, Head of the Public Affairs Unit at DepEd-RO IX, alleged that she is the incumbent Head of the BAC Secretariat of DepEd-RO IX. Based on her verification of the official file, there was no BAC Resolution or minutes of any BAC meeting purportedly held on April 11, 2006.¹⁹

State Auditor IV Mydee C. Mandin of the COA alleged that she conducted an audit of the financial transactions of DepEd-RO IX in 2007. This includes the payment to Felta of ₱4,776,786.00 for the purchase of IT package materials without the benefit of a public bidding. She stated that the transaction was not recorded in the books of accounts of DepEd-RO IX.²⁰

Finally, then COA Regional Director, Visitacion Mendoza, explained that the audit supervision she provided to the audit team of DepEd-RO IX in 2007 to 2008 pertained to the transactions of the department with Felta.²¹

Version of the Defense

Petitioner insisted that he did not falsify the BAC Resolution dated April 11, 2006. According to him, the document was brought to his office by Supply Officer, Crisologo Singson, and was already signed by the members of the BAC. He did not and could not have forged the signatures therein because he was not familiar with the members' signatures.²² After signing the BAC Resolution, his office submitted the documents to the DBM for the release of the Special Allotment and Release Order (SARO). Later, the DBM issued the SARO and the release order. Upon receiving the COA audit report that the transaction was not legal and not allowable, he sent copies thereof to the Finance Department of the DepEd-RO IX and asked its Accountant and the

¹⁸ *Id.* at 50.

¹⁹ *Id.*

²⁰ *Id.* at 45.

²¹ *Id.* at 165.

²² *Id.* at 50-51.

Cashier to respond thereto.²³ Soon after, the COA sent a notice of suspension requiring him either to submit more supporting documents or return the money disbursed. Again, he referred the notice to the Accountant and Cashier of his office.²⁴

Ruling of the Sandiganbayan

On November 17, 2017, the Sandiganbayan found petitioner guilty beyond reasonable doubt of violation Section 3(e) of RA 3019 and Falsification of Public Document under Article 171 of the RPC. It held that petitioner was a public officer during the period material to the case and that he was the officer-in-charge of the DepEd-RO IX from October 2005 until his appointment as Regional Director on May 3, 2006. Thus, he was with the knowledge that at the time of subject transaction, there was an outstanding ban regarding the procurement of IT packages and materials. It explained that despite the prohibition, petitioner proceeded in approving the documents for their acquisition.²⁵ It elucidated that petitioner acted with evident bad faith for his blatant defiance of an outstanding official directive which caused the government to suffer damages in the amount of ₱4,776,786.00.²⁶

Anent the charge of falsification, the prosecution witnesses already denied holding a meeting for the purpose of adopting the subject resolution. The Sandiganbayan held that the BAC Resolution could not have benefited anybody except petitioner, who had admittedly approved it notwithstanding the prohibition.²⁷ The Sandiganbayan held as follows:

WHEREFORE, in light of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. SB-15-CRM-0073, accused Jesus Loretizo Nieves is found GUILTY beyond reasonable doubt of the crime of violation of Section 3(e) of R.A. No. 3019 and, pursuant to Section 9 thereof, is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, up to ten (10) years, as maximum, with perpetual disqualification from holding public office. The

²³ *Id.* at 51.

²⁴ *Id.*

²⁵ *Id.* at 55.

²⁶ *Id.* at 57.

²⁷ *Id.* at 60-61.

accused is ordered to pay to the DepEd Region IX the amount of P4,776,786.00 as and by way of actual damages.

2. In Criminal Case No. SB-15-CRM-0076 accused Jesus Loretizo Nieves is found GUILTY beyond reasonable doubt of the crime of Falsification of Public Document under Article 171 of the Revised Penal Code and is hereby sentenced to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, with the accessories thereof and to pay a fine of Two Thousand Pesos (P2,000.00).

SO ORDERED.²⁸

Petitioner filed a Motion for Reconsideration,²⁹ but the Sandiganbayan denied it on February 9, 2018 for lack of merit.³⁰

The Sandiganbayan reiterated that a person in possession of a falsified document and who makes use of it is presumed to be the author or forger thereof. Petitioner in this case used the falsified BAC Resolution to secure funds from the DBM. While none of the prosecution witnesses saw him forge their signatures, case laws allow courts to rely on circumstantial evidence in cases of forgery considering that the prosecution would not always have the means to obtain direct evidence of a clandestine act.³¹

Withal, there was no basis to veer away from the required public bidding as no valid justification existed to invoke the exceptions under which the alternative mode of procurement may be done. Notably, the receipt of funds from the DBM and the payment thereof to Felta were not recorded in DepEd-RO IX's books of account. They were only stumbled upon in the course of audit which led to the introduction by petitioner of a falsified resolution in his bid to evade responsibility.³²

Unperturbed, petitioner filed this petition for review.

²⁸ *Id.* at 63-64.

²⁹ *Id.* at 74-94.

³⁰ *Id.* at 66-73.

³¹ *Id.* at 68-69.

³² *Id.* at 71.

Issues

I.

WHETHER THE SANDIGANBAYAN GRAVELY ERRED WHEN IT RULED THAT PETITIONER ACTED WITH EVIDENT BAD FAITH, MANIFEST PARTIALITY, AND/OR GROSS INEXCUSABLE NEGLIGENCE IN THE PURCHASE OF ITS MATERIALS FROM FELTA MULTIMEDIA, INC.

II.

WHETHER THE SANDIGANBAYAN GRAVELY ERRED WHEN IT RULED THAT PETITIONER WAS THE FORGER OF THE BAC RESOLUTION DATED APRIL 11, 2006.

x x x x

IV.

WHETHER THE EVIDENCE SUBMITTED IS SUFFICIENT TO SUPPORT A CONVICTION OF PETITIONER BEYOND REASONABLE DOUBT FOR THE CRIMES FOR WHICH HE STANDS CHARGED.³³

*The Court's Ruling**Violation of Section 3(e) of RA 3019*

Well settled is the rule that the Court's jurisdiction over decisions of the Sandiganbayan is limited to questions of law. Hence, its factual findings are conclusive upon the Court absent any of the recognized exceptions, which are not extant in this case.³⁴

Moreover, after a judicious review of the case, the Court is convinced that the Sandiganbayan correctly convicted petitioner of violating Section 3(e) of RA 3019 which reads:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing

³³ *Id.* at 16-17.

³⁴ *Carlet v. People*, G.R. Nos. 235111-246 (Notice), January 8, 2018.

law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of violation of Section 3(e) of RA 3019 are: (1) that the accused is a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (2) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.³⁵

The elements have been sufficiently established by the prosecution.

First, petitioner was indisputably a public officer at the time of the commission of the offense, discharging his administrative and official functions as the Regional Director of DepEd-RO IX, Zamboanga City.

Second, he acted with manifest partiality and evident bad faith in the procurement of Felta's products due to the absence of a competitive bidding as well as his defiance of the DepEd's moratorium on the purchase of IT packages. The Sandiganbayan explained:

Besides, the accused cannot successfully seek refuge under the above provisions of the procurement law and justify the acquisition of the subject instructional materials because he was precisely precluded from doing so pursuant to the directive of the DepEd national head office. Therefore, *there cannot be any dispute that the accused acted with evident bad faith for his blatant defiance of an outstanding official directive which caused the government to suffer damages in the amount of P4,776,786.00. What made the matter worse is the fact*

³⁵ *Ferrer, Jr. v. People*, G.R. No. 240209, June 10, 2019.

that the accused has not been able to come up with any reliable proof to show that the procured items had at all been delivered. The three (3) Delivery Receipts Nos. 19134, 19135 and 19136 all dated July 20, 2007 which the accused mentioned in his verified answer to the notice of suspension were never produced during trial, much less formally offered, which thus precludes the court from treating them as evidence. Neither did the defense present any of the supposed beneficiaries of the said items to debunk the findings in the audit report which negate that delivery of the same has ever been made.

Even if it will be conceded for the nonce that accused did not have a clear apprehension of what he was then doing, it behooves upon him somehow to have exercised reasonable degree of caution and sound judgment before stamping his approval on the official documents. It should be stressed that the amount involved is not insignificant thus, it should not have been too much to make prior consultations with other concerned officials if only to ensure that the prospective transaction would be devoid of any irregularity. However, the accused clearly failed to exercise any modicum of precaution and appeared to have callously disregarded the pernicious consequence of his action. At the very least then, his act can be characterized as constitutive of gross inexcusable negligence.³⁶ (Italics supplied.)

Third, in an attempt to absolve himself from criminal liability, petitioner maintains that the lack of public bidding alone did not constitute evident bad faith, especially in the absence of proof beyond reasonable doubt that the government suffered undue injury from the transaction with Felta.³⁷ Section 50 of RA 9184 provides for the conditions under which a resort to direct contracting may be made. Specifically, direct contracting may be resorted to in case of procurement of goods of proprietary nature as in this case.³⁸

Petitioner is mistaken.

Sections 4 and 10 of RA 9184 reads:

SECTION 4. *Scope and Application.* — This act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by **all** branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive

³⁶ *Kollo*, pp. 57-58.

³⁷ *Id.* at 194.

³⁸ *Id.* at 196.

agreement affecting the subject matter of this Act to which the Philippine government is signatory shall be observed.

SECTION 10. *Competitive Bidding*. — **All** Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. (Emphasis and underscoring supplied.)

It is explicit from the law that all procurement by all branches and instrumentalities of the government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units shall be done through competitive bidding, except those provided under Article XVI of the law. Obviously, the law covers procurement by the DepEd, a department under the Executive Branch. Basic is the rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.³⁹

Besides, to justify resort to any of the alternative methods of procurement, the following conditions must exist: (1) there is prior approval of the Head of the Procuring Entity on the use of alternative methods of procurement, as recommended by the BAC; (2) the conditions required by law for the use of alternative methods are present; and (3) the method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.⁴⁰

Aside from the bare assertion that the transaction in question involves the procurement of goods of proprietary nature, petitioner miserably failed to prove the other conditions. There was no allegation that direct contracting was justified by the advantageous price for the government. Worse, there is no legitimate BAC Resolution allowing the use of the alternative methods of procurement inasmuch as the DepEd

³⁹ *Sabio v. Sandiganbayan*, G.R. Nos. 233853-54, July 15, 2019, citing *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 250 (2005) and *Philippine National Bank v. Garcia, Jr.*, 437 Phil. 289, 291 (2002).

⁴⁰ Section 50 of Republic Act No. 9184 provides:

SECTION 50. *Direct Contracting*. — Direct Contracting may be resorted to only in any of the following conditions:

- (a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, *i.e.* when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- (b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,
- (c) Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

already issued an earlier order imposing a ban on the purchase of research materials.

Lastly, case law teaches us that “there are two ways by which a public official violates Section 3(e) of RA 3019 in the performance of his functions, to wit: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. An accused may be charged under either mode or both. The disjunctive term ‘or’ connotes that either act qualifies as a violation of the law. In other words, the presence of one would suffice for conviction.”⁴¹

The Information charged petitioner with violation of Section 3(e) of RA 3019 when, through his actions characterized by manifest partiality, Felta was given unwarranted benefit, advantage, and preference. Under this mode, damage is not required.⁴² 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. On the other hand, “preference” signifies priority or higher evaluation or desirability; choice or estimation above another.⁴³ Thus:

x x x it should be noted that there are two ways by which Section 3(e) of RA 3019 may be violated — the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage, or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. The use of the disjunctive “or” connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

x x x Under the second mode, damage is not required.⁴⁴ (Emphasis and underscoring omitted.)

In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions. Lamentably

⁴¹ *People v. Naciongayo*, G.R. No. 243897, June 8, 2020, citing *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 231-232 (2014).

⁴² *Sison v. People*, 628 Phil. 573, 585 (2010).

⁴³ *Id.*

⁴⁴ *People v. Sandiganbayan (Seventh Division)*, G.R. No. 240621, July 24, 2019, citing *Ampil v. Ombudsman*, 715 Phil. 733, 758-759 (2013).

for petitioner, he did just that. The fact that he failed to observe the requirements of RA 9184, not to mention the moratorium imposed by the DepEd, proves that unwarranted benefit, advantage or preference was given to the winning supplier, Felta. To stress, the IT packages were procured without the benefit of a fair system in determining the best possible price for the government. Felta was able to profit from the transaction absent any showing that its prices were the most beneficial to the government. For that, petitioner must now face the consequences of his acts.⁴⁵

Petitioner is likewise guilty of Falsification

Petitioner was also charged with the crime of Falsification of Public documents punishable under Article 171 of the RPC, *viz.*:

ART. 171. Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister. — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;
2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

X X X X

4. Making untruthful statements in a narration of facts;
5. Altering true dates;

X X X X

The elements of falsification under the aforesaid provision are as follows: (1) the offender is a public officer, employee, or a notary public; (2) the offender takes advantage of his or her official position; and (3) the offender falsifies a document by committing any of the acts of falsification under Article 171 of the RPC.⁴⁶

The first element is undisputed. As to the second element, an offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official

⁴⁵ *Sison v. People*, *supra* note 42 at 586.

⁴⁶ *Torres v. Court of Appeals*, G.R. No. 241164, August 14, 2019, citing *Dr. Malabanan v. Sandiganbayan*, 815 Phil. 183, 196 (2017).

custody of the document which he falsifies.⁴⁷ As the Regional Director of DepEd RO-IX, Zamboanga City, petitioner is likewise the head of the procuring entity for the BAC of DepEd-RO IX and is in charge of approving all the BAC Resolutions to be carried out in the procurement. He was therefore duty bound to intervene in the preparation of the documents pertaining to the transaction in dispute.

As to the third element, the BAC Resolution dated April 11, 2006 appears to have been signed by Harpi, Pilar, and Virginia. It was made to appear that on such date, at around 9:00 a.m., they intervened and met as BAC members at the DepEd-RO IX in Pagadian City, Zamboanga City. It was also made to appear that they recommended to petitioner the use of the alternative methods of procurement for the IT packages which shall be distributed to some local schools. However, as stated by the witnesses and affirmed by the Sandiganbayan, there is no truth to these circumstances.

Jurisprudence is replete with pronouncements that direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. In crimes involving the falsification of a public document, in particular, it is possible that secrecy and other surreptitious means may have been employed by the perpetrator precisely to conceal the true nature of a document he claims to be legitimate. Under the circumstances, it is only logical and proper for the prosecution to resort to the presentation of circumstantial evidence in the absence of direct evidence to establish the guilt of the accused.⁴⁸

Finally, it was established that petitioner used the falsified BAC Resolution in order to secure funds from the DBM to pay its external creditors as evidenced by the list of due and demandable accounts payable-external creditor and the advice/authority to debit account. Significantly, not only was the receipt of the funds not recorded, the transaction in question was not included in the department's books of account. Petitioner initially denied the availability of documents relative to the subject transaction to justify the failure of his office to record the receipt and disbursement of ₱4,776,786.00. It was only after having received a subsequent notice of suspension for his unsatisfactory explanation that petitioner suddenly came up with documents purportedly supporting his transaction with Felta. To the Court's mind,

⁴⁷ *Id.*, citing *Fullero v. People*, 559 Phil. 524, 539 (2007).

⁴⁸ *Id.*

the submission of the documents was a mere afterthought and a last ditch effort by petitioner to evade accountability under the law.

WHEREFORE, the petition is **DENIED**. The Decision dated November 17, 2017 and the Resolution dated February 9, 2018 of the Sandiganbayan, First Division, in SB-15-CRM-0073 and SB-15-CRM-0076 are **AFFIRMED**.

SO ORDERED.

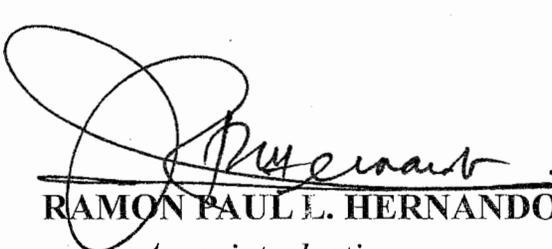


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



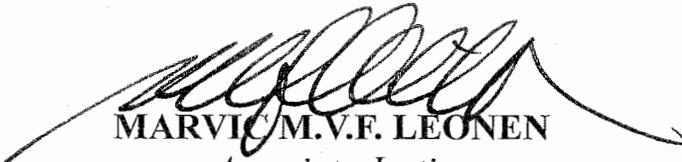
EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

