BY: YSA
TIME: 9:36 AMREPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **04 December 2019** which reads as follows:

“G.R. Nos. 217064-65 (*Naomi Lourdes A. Herrera vs. Sandiganbayan*). — This resolves a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Resolution² (Assailed Resolution) dated February 10, 2015 issued by the Sandiganbayan in Criminal Cases No. 24337-24338.

Factual Antecedents

Criminal Cases No. 24337-24338 stem from a single transaction involving the procurement of typewriters for the province of Surigao del Sur.³ In Criminal Case No. 24338, Naomi Lourdes A. Herrera (petitioner), among others, was charged with Falsification of Public Document under Article 171 of the Revised Penal Code (RPC).⁴ The Information reads:

That on or about February 22, 1994, in Tandag, Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, pursuant to R.A. 7975, the above-named accused Leyminda R. Violan, a high ranking public officer, being then the Provincial Treasurer, Leondardo S. Calo, Anecito P. Ambray, Ma. Naomi L. Herrera and Marlene Quiñones, all low ranking public officers, being then Executive Assistant III, General Services Officer, Management and Audit Analyst IV and Budget Officer IV, respectively, all of the Provincial Government of Surigao del Sur, Tandag, Surigao del Sur, while in the performance of their official functions, thus, committing the offense in relation to their offices, with evident bad faith and manifest partiality, taking advantage of the position as members of the Committee on Awards, did then and there willfully, unlawfully and feloniously falsify Resolution No. 007 dated 22 February 1994 the Committee on Awards of the Provincial Government of (Phils.), Inc. of Manila were among the bidders when, in truth and in fact, as the

¹ *Rollo*, 16-49.

² Penned by Associate Justice Alexander G. Gesmundo (now member of the Court) and concurred in by Associate Justices Rolando B. Jurado and Ma. Theresa Dolores C. Gomez-Estoesta; *id.* at 52-57.

³ *Id.* at 80.

⁴ *Id.* at 81-82.

accused very well knew that only Family Part Center, Sunlight Marketing and Adelina Center participated during the bidding at 10:00 o'clock in the morning on 31 January 1994 for seven (7) Olympia typewriters.

CONTRARY TO LAW.⁵

The parties entered into the following stipulation of facts, among others:⁶

1. That at the time material to the cases, all accused were all public officers occupying the following positions, thus:

x x x x

e. Naomi Lourdes A. Herrera - Management Audit Analyst IV, Office of the Provincial Accountant

x x x x

2. That on January 31, 1994, a competitive bidding was conducted for the procurement of three (3) units of Olympia 24" Carriage typewriter and four (4) units of Olympia 18" Carriage typewriter, among others.
3. Participants of said bidding were Tandag General Hardware, Family Part Center, Sunlight Marketing and Adelina Center.

Ret. Justice Fernandez, counsel for accused Anecito P. Ambray, Clara M. Ambray, Leonardo S. Calo, Leyminda R. Violan and Higinio C. Llagono, admitted the proposal only insofar as Adelina Center is concerned while Atty. Suñga, counsel for petitioner, refused to admit the said proposal for lack of knowledge and for being irrelevant.

4. As a result of the bidding, the Committee on Awards resolved to award ther three (3) units of Olympia 24" Carriage typewriter and four (4) units of Olympia 18" Carriage typewriter, among others, to Adelina Center.

Ret. Justice Fernandez was not amenable to the phrase "resolved to award" and wanted to change the same "to recommend". Meanwhile, Atty. Suñga refused to make an admission.

5. That the aforesaid items, three (3) units of Olympia 24" Carriage typewriter and four (4) units of Olympia 18" Carriage typewriter, were not in fact awarded to Adelina Center, the Committee on Awards resorting, instead, to direct the purchase of the same items from New Datche Philippines Traders Corporation.

Ret. Justice Fernandez was amenable to the proposed stipulation but would like to add the phrase "for the reasons stated in Resolution No. 007 dated February 22, 1994" after the word "Corporation". Atty. Suñga refused to make an admission.

⁵ Id.

⁶ Id. at 81-85.

6. That the decision to procure the Olympia typewriters from the latter corporation was embodied in a Resolution No. 007 dated February 22, 1994.

Atty. Suñiga refused to make an admission.

Accused filed a Motion to Dismiss on the ground that the facts alleged in the Informations do not constitute the offenses charged therein, but the same was denied. Thereafter, trial of the cases ensued.⁷

Insofar as petitioner is concerned, she testified that:

She is a retired government employee. Prior to her retirement, she was employed at the Provincial Accountant's Office at the Province of Surigao del Sur as Management and Audit Analyst. She was at the same time designated as In-Charge of the Administrative Division of the Provincial Accountant's Office. As such, her duties include, among others, representing her immediate boss, the then Acting Provincial Accountant, Mrs. [Gracia] Coletto ("Mrs. Coletto"), whenever she went on leave official leave of absence. (As representative of Mrs. Coletto, she is authorized to sign whatever documents that need to be signed and to attend conferences. Her authority to act for and in behalf of Mrs. Coletto was by virtue of an office order).⁸

On February 22, 1994, she attended the meeting of the Bids and Awards Committee (BAC) for the procurement of typewriter units for the province since Mrs. Coletto, who was the regular member of the BAC, was then on official leave. During the meeting, they were informed by Anecito Ambray that during the opening of the bids, only two submitted their quotation, with Adelina Center being the lowest bidder, thus, there was a need to look for one or more bidders. He likewise informed them that there was already another bidder, New Datche Philippines Traders Corporation and he showed them a certification that the latter is the sole distributor of Olympia typewriters. He also told them that New Datche Philippines Traders Corporation gives warranties for their products. The members also discussed that some offices of the provincial government had complaints that the typewriters previously delivered by Adelina Center were defective. After their discussion, the BAC agreed to award the contract to New Datche Philippines Traders Corporation and a resolution was prepared to reduce BAC's decision into writing.⁹

She signed the resolution one or two days after the meeting when the same was routed to their office for signature. She stated that she signed the resolution in good faith.¹⁰ Because she relied on the knowledge and experience of the regular members and assumed that everything was in order.

⁷ Id. at 86.

⁸ Id. at 95.

⁹ Id. at 95-96.

¹⁰ Id. at 96.

Herrera also testified that Anecito Ambray told her of the BAC meeting few days before 22 February 1994 but she was not informed of the agenda, and only that she would have to attend the same. It was the first and only instance that she participated in the BAC meeting. She did not meet or discuss with any of the members regarding the procurement of the typewriters prior to the meeting. She does not know personally any person connected with either New Datche Philippines Traders Corporation, Adelina Center or Sunlight Marketing.¹¹ Neither did she have previous dealings with the said companies. x x x

Ruling of the Sandiganbayan

On October 23, 2014, the Sandiganbayan rendered a Decision in Criminal Case No. 24338 finding petitioner guilty beyond reasonable doubt of Falsification of Public Document under Article 171 of the RTC and sentenced her, among others, to suffer the penalty of imprisonment of six (6) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum and perpetual disqualification from public office. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the Court holds that:

In Criminal Case No. 24337 for violation of Section 3(e) of R.A. 3019, accused CLARA M. AMBAY, ANECITO P. AMBRAY, LEONARDO S. CALO and HIGINO C. LLAGUNO, are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. The cash bond in this case that they posted for provisional liberty may now be withdrawn by them or their representative upon presentation of the original receipt evidencing payment thereof, subject to the usual accounting and auditing procedures of the Court. The Hold Departure Order issued by the Court on 5 November 1997 in this case is hereby lifted and set aside.

In Criminal Case No. 24338 for violation of Article 171[,] paragraph 2 of the Revised Penal Code, the Court finds the accused ANECITO P. AMBRAY, LEONARDO S. CALO, NAOMI L. HERRERA AND MARLENE B. QUINONES **GUILTY** beyond reasonable doubt of Falsification of Public Document defined under Article 171 of the Revised Penal Code and sentences each of them to suffer the penalty of imprisonment of six (6) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum in the absence of any mitigating and aggravating circumstance in accordance with the provisions of the Indeterminate Sentence Law and to suffer perpetual disqualification from public office.

Insofar as LEYMINDA R. VIOLAN is concerned, since she is still at large up to the present, let the case be **ARCHIVED** and let an alias warrant of arrest issue against her.

¹¹ Id.

SO ORDERED.¹²

Petitioner filed a motion for reconsideration of the foregoing decision, but the same was denied in the Assailed Resolution.

Hence, present recourse.

Petitioner argued that: (1) it was not part of her duties to vote and decide on bidding matters during BAC meetings as she was just a mere substitute for her superior who was the one solely authorized under the Commission on Audit Rules to bind her office;¹³ (2) she was not a regular member of the BAC;¹⁴ (3) her temporary designation as a mere representative did not confer her any authority to sign BAC-related document; and (4) she acted in complete and utter good faith and was not motivated whatsoever by any bad faith or sense of manifest partiality when she affixed her signature to Resolution No. 007.¹⁵

The Issue

As raised by petitioner, the lone issue for the resolution of the Court is whether or not the Sandiganbayan erroneously convicted petitioner of the crime of Falsification of Public Document under Article 171 of the RPC.

Ruling of the Court

The petition is not impressed with merit.

It is a basic tenet that the appellate jurisdiction of the Court over decisions and final orders of the Sandiganbayan is limited only to questions of law.¹⁶ It does not review the factual findings of the Sandiganbayan that are generally conclusive upon the Court.¹⁷

Question of law exists “when a doubt or a difference arises as to what the law is on a certain state of facts, and the question does not call for an examination of the probative value of the evidence presented by the parties-litigants.”¹⁸ Meanwhile, question of fact emerges “when the query necessarily solicits calibration of the whole evidence considering mostly the credibility of witnesses, existence and relevance of specific surrounding circumstances, their relation to each other and to the whole, and probabilities of the situation.”¹⁹

¹² Id. at 109.

¹³ Id. at 27-28.

¹⁴ Id. at 30-32.

¹⁵ Id. at 34-43.

¹⁶ *Zoleta v. Sandiganbayan*, 765 Phil: 39, 52 (2015).

¹⁷ Id.

¹⁸ *Adlawan v. People*, G.R. No. 197645, April 4, 2018.

¹⁹ Id.

In this case, petitioner primarily argued that since she was not a regular member of the BAC as she was merely a substitute of her superior, the acts of the BAC in the questioned transaction involving the procurement of typewriters should not be imputed to her. She thus seeks a re-evaluation of the findings of the Sandiganbayan as the nature and scope of her official duties as a government employee, particularly as a Management and Audit Analyst IV. She beseeches the Court to determine for itself that her functions exclude attending and participating in BAC meetings.

The Court, however, finds no reason to deviate from the factual findings of the Sandiganbayan as to her authority to attend and participate in the February 22, 1994 meeting involving the procurement of the typewriters. Putting premium on the admissions of petitioner during her testimony, among others, the Sandiganbayan aptly concluded that she was clothed with the authority to participate in the deliberations of the BAC with respect to the procurement of the typewrites. It was also fittingly observed that the fact that petitioner participated in the deliberations of the BAC in her official functions show that they intervened in preparing Resolution No. 007. By signing the same, she certified that its contents are true and correct.

At any rate, it is our considered view that the Sandiganbayan correctly convicted petitioner of the Falsification of Public Document under Article 171 (2) of the RPC.

In Falsification of Public Document under Article 171(2), the prosecution must prove the existence of the following elements: (1) that the offender is a public officer, employee, or notary public; (2) that he takes advantage of his official position; (3) that he falsifies a document by causing it to appear that persons have participated in any act or proceeding; and (4) that such person/s did not in fact so participate in the proceeding.²⁰

All the foregoing elements were extant in this case.

First, based on the stipulation of facts entered into by the parties, petitioner was a public officer at the time material to the case. Specifically, she was a Management and Audit Analyst IV.

Second, petitioner took advantage of her official position. An offender is said to have taken advantage of his official position in the falsification of a document if he had the duty to make or prepare or otherwise intervene in the preparation of the document or he had official custody of the document.²¹ Here, petitioner participated in the deliberations of the BAC and Resolution No. 007 for the procurement of typewriters. Clearly, she took part in preparing Resolution No. 007.

²⁰ *Constantino v. People*, G.R. No. 225696, April 8, 2019.

²¹ *Malabanan v. Sandiganbayan*, 815 Phil. 183, 200 (2017).

Third, it appears on Resolution No. 007 that New Datche Philippines Traders Corporation of Cebu City and Olympia Business Machinea Co. (Phils) of Manila were among the bidders for the procurement of the typewriters.

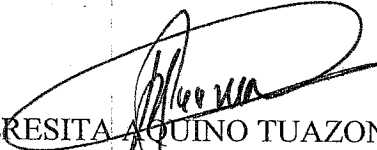
Last, contrary to what was stated in Resolution No. 007, the prosecution was able to establish during trial that New Datche Philippines Traders Corporation of Cebu City and Olympia Business Machinea Co. (Phils) of Manila did not in fact so participate in the bidding.

All told, to the mind of the Court, the Assailed Resolution by the Sandiganbayan is supported by factual and legal bases.

WHEREFORE, the petition is **DISMISSED**. The assailed Resolution dated February 10, 2015 issued by the Sandiganbayan in Criminal Cases No. 24337-24338 is **AFFIRMED**.

SO ORDERED." (Bernabe, *J.*, on official business; Zalameda, *J.*, on official leave)

Very truly yours,


TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *urh 12/20*

26 DEC 2019

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