

SECOND DIVISION

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

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

[G.R. NO. 154482]

**NORBERTO N. LINDONG, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

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

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

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

The Antecedents

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

That on or about February 28, 1996, in Davao City, Philippines, and within the jurisdiction of this Honorable Court, accused **Felipe K. Constantino**, a public officer, being then the Mayor of the Municipality of Malungon, Sarangani Province, committing the crime herein-charged in relation to, while in the performance and taking advantage of his official functions, with evident bad faith, manifest partiality or through gross

inexcusable negligence, and conspiring and confederating with accused Norberto N. Lindong, President and Chairman of the Board of the Norlovanian Corporation, Davao City, did then and there wilfully, unlawfully and criminally enter into a Lease Agreement for the rental of various heavy equipments (sic) for a period of six (6) years for and in consideration of the sum of **PESOS: TWO HUNDRED FIFTY-SEVEN THOUSAND ONE HUNDRED ELEVEN and 11/100 (P257,111.11) per month or a total consideration of PESOS: EIGHTEEN MILLION FIVE HUNDRED ELEVEN THOUSAND NINE HUNDRED NINETY-NINE and 92/100 (P18,511,999.92) and a guaranty deposit of PESOS: ONE MILLION SEVEN HUNDRED EIGHTY THOUSAND (P1,780,000.00)** contrary to the express mandate of Resolution No. 2, series of 1995, of the Municipal Planning and Development Council implementing Sangguniang Bayan Resolution No. 198, series of 1995 and Sangguniang Bayan Resolution No. 21 dated February 22, 1996 authorizing the Municipal Mayor of Malungon to enter into an agreement for the purchase of heavy equipments (sic) on a five-year term basis for and in consideration of the amount of **PESOS: TWO MILLION TWO HUNDRED THOUSAND (P2,200,000.00)** per year or a total consideration of only PESOS: **ELEVEN MILLION (P11,000,000.00)**, thus, giving said Norlovanian Corporation, which was fully paid for the Guaranty Deposit and was actually paid heavy equipment rentals for the period March 5 to May 6,

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

CONTRARY TO LAW.^[4]

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

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

On 28 February 1996, Constantino entered into a *Lease Agreement*^[8] with Norlovanian Corporation, represented by Lindong. The agreement required, among others, the municipality to provide Norlovanian Corporation with a guaranty deposit. The following day, Lindong appeared before the *Sangguniang Bayan* to discuss the

Lease Agreement. Not one of the members of the *Sanggunian* questioned the legality of the agreement.^[9]

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

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

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

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

In particular, Tomanan testified that he was directed by the COA Regional Office XI to conduct a special and comprehensive audit of the municipality of Malungon for the period of 1 May 1995 to 31 May 1996^[15] in view of a complaint filed by certain officials therein. In January 1997, Tomanan submitted his report detailing the following adverse findings relative to the purchase of the subject fleet of heavy equipment: (a) the lease/purchase contract was disadvantageous to the municipal government because of the rigid terms and conditions therein required of the municipality before the latter could acquire ownership over the pool of heavy equipment; (b) Norlovanian Corporation had no proof of ownership of the fleet of equipment as the audit revealed that title to the equipment was in the name of Lindong; (c) the lease/purchase procedure violated Sections 27 and 28 of the Rules and Regulations on Supply and Property Management in Local Governments;^[16] and (d) the lease/purchase procedure utilized by the municipality was uneconomical and resulted to a wastage of P9,658,000.00 of government funds.^[17]

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

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

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

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

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

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

(a) to suffer an indeterminate sentence of imprisonment for a period of six (6) years and one (1) month as minimum to twelve (12) years and one (1) month as maximum;

(b) to suffer perpetual disqualification from public office;

(c) to jointly and severally indemnify the Municipality of Malungon, Province of Sarangani the sum of Two Million One Hundred Seventy-Seven Thousand [sic] and 91/1000 [sic] Pesos (P2,177,090.91),

representing the amount actually paid to Norlovanian Corporation, with interest at the legal rate computed from March 6, 1996 until fully paid; and

(d) to pay the costs of suit.

SO ORDERED.^[23]

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

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

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

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

With the demise of Constantino during the pendency of his appeal, the same should normally be regarded as moot and academic following the norm that the death of