

THIRD DIVISION

[G.R. Nos. 237432-33, April 28, 2021]

**JESUS LORETIZO NIEVES, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

R E S O L U T I O N

INTING, J.:

This resolves the Petition^[1] for Review on *Certiorari* filed by Jesus Loretizo Nieves (petitioner) pursuant to Rule 45 of the Rules of Court assailing the Decision^[2] dated November 17, 2017 and the Resolution^[3] 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]

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. 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 P99,579,141.00 which were not documented and recorded in its books of account. Out of the amount, P48,678,355.00 and P46,124,000.00 were paid to Exquisite Enterprises and Aphrodite Builders, respectively, which, upon investigation, were found to be non-existing entities. The additional P4,776,786.00, 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 P4,776,786.00 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]

On April 11, 2008, the audit team issued a Notice of Suspension No. 08-002-10 (07). It suspended in audit the payment of P4,776,786.00 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 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]

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 P4,776,786.00 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 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 P4,776,786.00.^[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 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 correctional, 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