

THIRD DIVISION

[G.R. Nos. 233280-92, September 18, 2019]

**PEOPLE OF THE PHILIPPINES, PETITIONER, V. HON.
SANDIGANBAYAN (SECOND DIVISION) AND FELICIDAD B.
ZURBANO, RESPONDENTS.**

DECISION

PERALTA, J.:

In this Petition for *Certiorari* under Rule 65 of the Rules of Court, the State, as petitioner, seeks to annul and set aside the Resolution^[1] of the Sandiganbayan dated February 21, 2017, which granted respondent Felicidad Zurbano's Motion for Reconsideration and Supplemental Motion for Reconsideration, and reversed and set aside the Decision^[2] dated April 12, 2016 finding her guilty beyond reasonable doubt for violation of Section 3(h) of Republic Act (R.A.) No. 3019, and Resolution^[3] dated June 15, 2017, which denied petitioner's Very Urgent Motion for Reconsideration dated March 8, 2017.

Respondent was indicted for thirteen (13) counts of violation of Section 3(h) of R.A. No. 3019 before the Sandiganbayan. When arraigned upon Informations that contain similar allegations of violation of the said law with difference only with regard to Purchase Order Number and date of issue for each count, respondent entered a negative plea. In a Joint Stipulation of Facts submitted before the court *a quo* on February 26, 2007, the parties stipulated on the following facts:

1. At all times material to the case, accused Felicidad Brillon Zurbano was a public officer, a CESO IV, being then the Provincial Director of TESDA-CAVITE, holding office at Trece Martires City, Cavite;
2. On January 2, 2003, accused Felicidad B. Zurbano assumed the Provincial Directorship of TESDA-CAVITE by virtue of the Central Office-directed rotation of Provincial Directors nationwide replacing Provincial Director Remedios Flestado who was re-assigned to TESDA-Rizal;
3. At all times material to the case and during the term of the accused as Provincial Director of TESDA-Cavite, Arnold S. Campos, Lleonor C. Hulguin, Julita Osia, Wilfredo Bathan, Eva Defiesta, Lorena P. Lim, and Rizal Bautista were permanent employees of TESDA-Cavite;
4. At all times material to the case, the Isuzu Highlander with plate number SFU-969, was under Memorandum Receipt to the accused with Mr. Arnold Campos as the official driver thereof;
5. Two (2) weeks after her assumption to the Provincial Directorship, or on January 15, 2003, the accused by virtue of an Office Order designated Arnold Campos as canvasser for their office on top of other additional

functions contained in the subject office order without any additional compensation;

6. At all times material to the case, Lleonor Hulguin was with an item of Financial Analyst and among her functions were the preparation of purchase orders, disbursement vouchers and checks for payment to the suppliers of their office materials and technical supplies;

7. During the period covering March to October 2003, Julita Osia, Eva Defiesta and Rizal Bautista in their capacity as Bids and Awards Committee (BAC) members, recommended the award to supply materials to CDZ Enterprises resulting in the issuance of the thirteen (13) purchase orders subject matter of the instant cases;

8. At all times material to the case, the office supplies and materials of TESDA-CAVITE were being obtained from different suppliers such as D.M. Austria Trading, Mark Karl Trading and CDZ Enterprises, among others;

9. At all times material to the case, TESDA-CAVITE had at least thirteen (13) Purchase Orders (PO) from CDZ Enterprises respecting its office and technical supplies;

10. Ms. Nieves B. Cabigan is a sister of the accused Felicidad B. Zurbano, Ms. [Cabigan] is the sole proprietor of CDZ Enterprises per Department of Trade and Industry (DTI) records;

11. On March 17, 2005, the TESDA Provincial Office and Training Center of Trece Martires City was burned by fire including all of its records and documents.

12. On September 20, 2004, accused filed an Administrative case against Arnold Campos, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman which later referred the same to the Civil Service Commission now pending and docketed as Disciplinary Case No. D-04-0183 for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

13. On September 30, 2004, accused filed administrative cases against Julita U. Osia, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman which decided to suspend her for one (1) month without pay for simple misconduct. Accused also filed a criminal case for malversation against Julita U. Osia before the Office of the Ombudsman.

14. On September 30, 2004, accused filed administrative and criminal cases against Petra A. Ferrer, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman. The Deputy Ombudsman for Luzon resolved to indict her for Malversation of Public Funds. However, with respect to the administrative case, the Ombudsman deferred to TESDA's jurisdiction.

15. On September 30, 2004, accused filed administrative and criminal cases against Lleonor C. Hulguin, but with no action taken by the Director

General of TESDA, the complaints were filed before the Office of the Deputy Ombudsman for Luzon.^[4]

Petitioner presented two (2) witnesses to prove its theory that respondent took advantage of her official position as TESDA-Cavite Provincial Director by willfully, unlawfully and feloniously had an indirect financial or pecuniary interest in the thirteen (13) contracts entered into by her office with CDZ Enterprises, which was owned by her sister, Nieves Brillo Cabigan.

First to testify was Arnold Subia Campos, who worked as driver and later on designated as canvasser, on top of other additional functions, without additional compensation by virtue of an Office Order issued by the respondent.

Campos detailed the procurement procedure adopted at TESDA-Cavite in the following manner: purchase requests from the end-user agency of the supplies and materials were submitted to their office and forwarded to the Administrator and Provincial Director for their signatures. After these requests were brought back to him, he would then prepare three (3) canvass forms containing the needed supplies and materials which were encoded in each canvass form to be signed by the respondent. After being signed by the respondent, only two of these canvass forms were circulated to possible suppliers, while the remaining canvass form was retained by the respondent.

Upon respondent's instructions, Campos would give back to respondent Zurbano the two (2) canvass forms which contained the prices and quotations submitted by the bidder supplier. After one to three days, respondent would give to him three canvass forms, including the one that retained with her, which already have prices and quotation from CDZ Enterprises that have the lowest bids as compared to the other two suppliers. Respondent Zurbano would then prepare the abstract of canvass and call on the Bids and Awards Committee (BAC), which would recommend the winning supplier. Campos would, thereafter, receive the Purchase Order prepared by the respondent.

As the designated driver of the respondent, Campos knew personally that the respondent used the TESDA-Cavite service vehicle to deliver the supplies from CDZ Enterprises to their office. He was the one who unloaded the supplies and materials from their service vehicle and brought them to the office of the respondent. He also testified that he acted as payment collector for CDZ Enterprises. Upon orders of the respondent, Campos followed up on the checks of CDZ Enterprises with the Financial Analyst of TESDA-Cavite and turned over these checks, including the vouchers, to the respondent.

Petitioner's last witness was Julita Osia, who was the Senior TESD Specialist of TESDA-Cavite and also a BAC member. She testified that she and the other members of the BAC were tasked to evaluate the bid documents, specifically, the canvass forms and abstract of canvass which they received from Campos. These documents were already completely prepared and they had nothing more to do except to sign them. After affixing their signatures thereon, the documents were returned to Campos, who was waiting for further instructions from the respondent.

Osia admitted that part of Campos' duty was to prepare the Abstract of Canvass and that the duty of the BAC members was limited to the evaluation of said documents and affixing their signatures upon finding that the entries were true and correct.

After the petitioner rested its case, respondent filed a Motion with Leave of Court to File Demurrer which was granted by the Sandiganbayan in its Order dated July 10, 2009. Respondent's Demurrer to Evidence, which was grounded on the prosecution's failure to establish and prove all the elements of violation of Section 3(h) of R.A. 3019, was subsequently denied by the Sandiganbayan in its Resolution dated January 12, 2011. The motion for reconsideration filed by respondent was, likewise, denied by the court *a quo* in its Resolution dated June 27, 2011.

Respondent Zurbano took the witness stand and testified on her defense. She alleged that when she assumed office in TESDA-Cavite in January 2003, there was no turn-over of properties, accountabilities and responsibilities because her predecessor, Director Remedios Flestado was also assigned to TESDA-Rizal. She averred that there were three (3) operating units, *i.e.*, the TESDA Provincial Office and two Provincial Training Centers located in Trece Martires City and in Rosario, Cavite. She had nine staff members at the Provincial Office who included Arnold Campos. Upon her assumption as TESDA-Cavite Provincial Director, respondent Zurbano called for a staff meeting in order to know them and their responsibilities, and to know their issues and concerns. She also held regular meetings to facilitate the updating of programs and activities of the Field Operating Units.

Respondent Zurbano asserted that it was former Provincial Director Remedios Flestado who appointed the members of the BAC which examined and reviewed the bids submitted by the suppliers, and selected and recommended to the Provincial Director the lowest responsive bid. The signing authority of the Provincial Director was for transactions up to P500,000.00, while transactions above P500,000.00 belonged to the Regional Director.

According to respondent Zurbano, her involvement in the procurement process was only in the approval of the Purchase Request, the signing of the canvass form and the Purchase Order, and that she had no participation in the other steps undertaken by the procurement officer, the BAC and the Financial Analyst. She denied that she retained one canvass form that would stay with her for 2 to 3 days and which would be returned to Campos already filled up. She asserted that she signed only one canvass form for every Purchase Order, since it may be faxed or reproduced by those suppliers requesting for quotations.

Zurbano disclaimed Campos' testimony that she was using the TESDA-Cavite service vehicle to deliver the supplies from CDZ Enterprises to their office. She stated that she was informed of the arrangement between her sister and Mr. Campos who offered to bring the supplies to TESDA-Cavite through the said service vehicle. She allege that the supplies that were procured could either be delivered by the supplier or picked up by TESDA-Cavite and were brought to a place agreed upon with the inspector for inspection by the designated TESDA-Cavite personnel.

Respondent Zurbano testified that her sister was invited to join the procurement process and that the latter submitted documents regarding her company and forwarded quotations to the canvasser, who accepted them. She cited the price quotation of CDZ Enterprises for certain supplies and materials which were lower than those submitted by other suppliers.

Respondent Zurbano admitted that CDZ Enterprises only became an accredited supplier in TESDA-Cavite when she became its Provincial Director and CDZ

Enterprises never participated in any public bidding because the procurement involved small items which could be done through canvass.

The defense also presented Asuncion Mercado Ordon and Rowena Villena Bacos. Ms. Ordon represented herself as the Supervising Technical Education and Skills Development (TESD) Specialist at TESDA-Cavite and testified on her duties at TESDA-Cavite.

Ms. Bacos, on the other hand, testified that the staff of the Provincial Office led the move to oust the respondent during a meeting attended by other TESDA-Cavite operating units. The staff of TESDA-Cavite prepared a complaint against respondent and filed it before the Director General of the TESDA, which was, however, later on retracted after the latter talked with them.

Ms. Bacos confirmed respondent's testimony that there was only one canvass form that was prepared by Mr. Campos and submitted to the respondent for signature and that these forms were logged in her logbook. She testified that the delivered supplies were inspected by the Inspector Officer and were stored in the storage room in TESDA-Cavite. She added that she had no way of knowing what happened to the canvass form once it came out from the office of the respondent after signing it until it came back to their office as attachment to the Purchase Order.

After the respondent terminated the presentation of her evidence and formally rested her case, the prosecution opted not to adduce rebuttal evidence. Both parties complied with the Sandiganbayan's directive to file their respective memorandum.

On April 12, 2016, the Sandiganbayan rendered its Decision finding respondent Zurbano guilty beyond reasonable doubt of thirteen counts of violation of Section 3(h) of R.A. No. 3019, as amended, and sentenced her to the indeterminate penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to twelve (12) years, as maximum, with the accessory penalty of disqualification from holding any public office.

On May 3, 2016, respondent Zurbano filed a Motion for Reconsideration and followed it up with a Supplemental Motion for Reconsideration on June 27, 2016. On July 18, 2016, the prosecution filed its Comment/Opposition which drew a Motion to Admit Attached Reply and Reply separately filed by the respondent on August 23, 2016 and August 25, 2016, respectively.

In its Resolution dated February 21, 2017, the Sandiganbayan granted respondent's Motion for Reconsideration and Supplemental Motion for Reconsideration and, accordingly, acquitted the respondent of the offense charged. The Sandiganbayan ratiocinated the reversal in its previous decision based on the following disquisitions and conclusion:

However, a review of the records of this case shows that the prosecution was not able to sufficiently prove the second element of the crime. In its *Decision*, this Court applied the case of *Republic vs. Tuvera, et al.*, where the Supreme Court held that the fact that the principal stockholder of Twin Peaks was the son of accused Presidential Executive Assistant Juan Tuvera establishes the latter's indirect pecuniary interest in the transaction he appears to have intervened in. However, it is important to note that the Supreme Court also mentioned that kinship alone may not