

## THIRD DIVISION

**[ G.R. Nos. 193020 & 193040-193042, November 08, 2017 ]**

**NAPOLEON O. CEDEÑO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE SANDIGANBAYAN, FIFTH DIVISION, RESPONDENTS,**

**[G.R. Nos. 193349-54]**

**MAKIL PUNDAODAYA, DAUD M. ADIONG, JOSE T. NAVERA AND ROGELIO DELOS REYES, PETITIONERS, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**MARTIRES, J.:**

Through their separate petitions for review on certiorari,<sup>[1]</sup> petitioners seek the reversal and setting aside of the Decision<sup>[2]</sup> of the Sandiganbayan, Fifth Division (*Sandiganbayan*), in Criminal Case Nos. 24784 to 24789 promulgated on 25 November 2009, and Resolution<sup>[3]</sup> dated 15 July 2010, finding them guilty of Violation of Section 3(e) of Republic Act (R.A.) No. 3019.<sup>[4]</sup>

### THE FACTS

On 22 October 1993, the Office of the Director, Regional Office (RO) No. XII of the Commission on Audit (COA) issued COA RO Order No. 93-58<sup>[5]</sup> creating a special audit team (*team*) that would audit the purchase of graders' desks (*desks*) covering the period 1 January 1992 to 30 June 1993 by the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City. The team was composed of State Auditor Nilo S. Romano (*Romano*), as team leader, with Mary Catherine A. Roda, Elsie K. Uy, Reynaldo T. Agan, and Allan V. Amorado, as members.

On 8 November 1993, the COA RO No. XII issued Office Order No. 93-58A extending the audit coverage of the team to 30 September 1993 in order to include recent purchases of the desks by the DECS, Region XII.

After the audit, the team came up with a report,<sup>[6]</sup> the pertinent portions of which read:

The audit included verification of pertinent records and documents of transactions pertaining to the procurement of graders' desks from January 1, 1992 to September 30, 1993. As the procured graders' desks were distributed to the different schools in Region XII including those in the Province of Lanao del Sur and the Province of Maguindanao, which is

now under the Autonomous Region in Muslim Mindanao (ARMM), audit verification covered the nine (9) Schools Division Offices, namely:

1. Cotabato City Schools Division, Cotabato City;
2. Iligan City Schools Division, Iligan City;
3. Marawi City Schools Division, Marawi City;
4. Cotabato Schools Division, Kidapawan, Cotabato;
5. Lanao del Norte Schools Division, Tubod, Lanao Norte;
6. Lanao del Sur I Schools Division, Marawi City;
7. Lanao del Sur II Schools Division, Malabang, Lanao del Sur;
8. Sultan Kudarat Schools Division, Tacurong, Sultan Kudarat;
9. Maguindanao Schools Division, Salimbao, Sultan Kudarat.

x x x x

#### FINDING:

The Government was defrauded in the amount of P5,268,610.00 due to short delivery of 10,487 pieces of graders' desk purchased by the DECS Regional Office XII, Cotabato City, contrary to the provisions of Section 2, PD 1445 and Republic Act 3019, as amended.

x x x x

- A. Iligan City Schools Division - 1,823 pieces unaccounted for, with a total cost of P936,610.00.

x x x x

- B. Marawi City Schools Division - 2,051 pieces unaccounted for, with a total cost of P1,025,500.00.

x x x x

- C. Sultan Kudarat Schools Division - 6,613 pieces unaccounted for, with a total cost of P3,306,500.00.

In view; of these findings, the team executed a Joint Affidavit<sup>[7]</sup> which was filed, together with the report, before the Office of the Ombudsman, Mindanao (OMB-MIN). The joint affidavit, which was treated by the OMB-MIN as a complaint, was docketed as OMB-MIN-94-1105. The preliminary investigation thereafter proceeded against the following: Director IV Diamar P. Kadon (*Dir., Kadon*); Dir. Makil U. Pundaodaya (*Pundaodaya*); Financial and Management Officer Jose T. Navera (*Navera*); Administrative Officer Alimot L. Arumpac (*Arumpac*); Supply Officer III Rogelio M. de los Reyes (*De los Reyes*); Administrative Officer V Jose P. Lopez. Jr.

(Lopez); Accountant III Daud M. Adiong (*Adiong*); Inspector Romeo F. Agustin (*Agustin*); Inspector Napoleon O. Cedeño (*Cedeño*); Auditor Solaiman M. Domato (*Damato*); Accountant III Tomas P. Villanueva (*Villanueva*); and Luis Dy (*Dy*), Michael A. de los Santos (*De los Santos*), and Lolita Sambili (*Sambili*), the proprietors of AAA Services Generales (AAA), Business International Wood Products (*BIWP*), and Niño Wood Products (*NWP*), respectively.

The OMB-MIN terminated the preliminary investigation with the filing before the Sandiganbayan of six Informations for violation of Sec. 3(e), R.A. No. 3019, viz:

#### **CRIMINAL CASE NO. 24784**

That on 23 March 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Damar P. Kadon, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Solaiman M. Domato, Auditor; Rogelio M. de los Reyes, Supply Officer III; Napoleon O. Cedeño, Inspector/ICU; Romeo F. Agustin, Inspector/ICU; Jose T. Navera, Chief, Budget & Finance Division/Financial Management Officer; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Michael de los Santos, Proprietor of Business International Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give Business International Wood Products undue advantage and unwarranted benefits when accused Rogelio M. de los Reyes, Solaiman M. Domato, Romeo F. Agustin and Napoleon O. Cedeño made it appear in the Inspection Report that four thousand (4,000) pieces of graders desks were delivered by accused Michael de los Santos to the Sultan Kudarat Schools Division and to have been received by them when the truth is none was actually delivered to and received by the recipient schools and despite knowledge of non-delivery accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92031124 dated March 23, 1992 and certified therein that the items were received in good condition; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Jose T. Navera recommended payment and Damar P. Kadon approved full payment thereof in the gross amount of Two Million (P2,000,000.00) Pesos, thus, inflicting undue injury to the government in said amount.<sup>[8]</sup>

#### **CRIMINAL CASE NO. 24785**

That on 22 April 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Damar P. Kadon, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Solaiman M.

Domato, Auditor; Rogelio M. de los Reyes, Supply Officer III; Napoleon O. Cedeño, Inspector/ICU; Jose T. Navera, Chief, Budget & Finance Division/Financial Management Officer; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Michael de los Santos, proprietor of Business International Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give Business International Wood Products undue advantage and unwarranted benefits when accused Rogelio M. de los Reyes, Solaiman M. Domato, and Napoleon O. Cedeño made it appear in the Inspection Report that nine hundred fourteen (914) pieces of graders desks were delivered by accused Michael de los Santos to the Sultan Kudarat Schools Division and to have been received by them when the truth is none was actually delivered to and received by the recipient schools and despite knowledge of non-delivery accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92041526 dated April 22, 1992 and certified therein that the items were received in good condition; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Jose T. Navera recommended payment and Damar P. Kadon approved full payment thereof in the gross amount of Four Hundred Fifty Seven Thousand, (P457,000.00) Pesos, thus, inflicting undue injury to the government in said amount.<sup>[9]</sup>

### **CRIMINAL CASE NO. 24786**

That in September 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Damar P. Kadon, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Rogelio M. de los Reyes, Supply Officer III; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together With private individual Luis Dy, Proprietor of AAA Services Generales did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give AAA Services Generales undue advantage and unwarranted benefits when accused Rogelio M. de los Reyes made it appear in the Inspection Report that two thousand fifty-one (2,051) pieces of graders desks were delivered by accused Luis Dy to the Marawi City Schools Division and to have been received by him when the truth is none was actually delivered to and received by the recipient schools and despite knowledge of non-delivery, accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92093173 and certified therein that the items were received in good condition; Jose P. Lopez, Jr. certified that the expenses were

necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents and Diamar P. Kadon approved full payment thereof in the gross amount of One Million Twenty Five Thousand Five Hundred (P1,025,500.00) Pesos, thus, inflicting undue injury to the government in said amount.<sup>[10]</sup>

#### **CRIMINAL CASE NO. 24787**

That on 14 December 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Makil U. Pundaodaya, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Solaiman M. Damato, Auditor; Rogelio M. de los Reyes, Supply Officer III and Napoleon O. Cedeño, Inspector/ICU; all employees of the Department of Education, Culture and Sports (DECS), Region XII, Cotabato City, while in the performance of their duties, committing the offense in connection with their official functions and taking advantage of their respective official positions, conspiring, confederating and helping one another, together with private individual Lolita Sambili, Proprietor of Niño Wood Products, did then and there wilfully, unlawfully and criminally cause undue injury to the government and/or give ino Wood Products undue advantage and unwarranted benefits when accused Solaiman M. Domato and Napoleon O. Cedeño made it appear in the Inspection Report that three thousand one hundred fourteen (3,114) pieces of graders desks were delivered by accused Lolita Sambili to the Iligan City Schools Division and to have been received by them when the truth is only three thousand sixty six (3,066) pieces of graders desks were delivered to and received by the recipient schools and despite knowledge of short delivery of forty eight (48) pieces of graders desks, accused Rogelio M. de los Reyes requested/directed the preparation of Disbursement Voucher No. 92124698 dated December 14, 1992 and certified therein that the items were received in good condition despite the sub-standard quality; Jose P. Lopez, Jr. certified that the expenses were necessary, lawful and incurred under his direct supervision; Daud M. Adiong certified to the adequacy of funds and that the same is supported by documents; Malik U. Pundaodaya approved full payment thereof in the gross amount of One Million Five Hundred Fifty Seven Thousand (P1,557,000.00) Pesos, thus, overpaying accused Lolita P. Sambili the amount of Twenty Four Thousand (P24,000.00) Pesos and inflicting undue injury to the government in said amount.<sup>[11]</sup>

#### **CRIMINAL CASE NO. 24788**

That on 14 December 1992 or sometime prior or subsequent thereto, in the City of Cotabato, Philippines, and within the jurisdiction of this Honorable Court, accused Makil U. Pundaodaya, Director IV, a high ranking official with salary grade 28, the others being low ranking officers Jose P. Lopez, Jr., Administrative Officer V; Daud M. Adiong, Accountant III; Jose T. Navera, Chief, Budget & Finance Division/Financial