

## SECOND DIVISION

[ G.R. No. 205561, September 24, 2014 ]

**DIONISIO B. COLOMA, JR., PETITIONER, VS. HON.  
SANDIGANBAYAN (THIRD DIVISION) AND PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

Assailed in this petition for review on *certiorari* filed under Rule 45 of the Rules of Court are the May 17, 2012 Decision<sup>[1]</sup> and the January 11, 2013 Resolution<sup>[2]</sup> of the Sandiganbayan in SB-07-CRM-0020, which found petitioner, P/C Supt. Dionisio B. Coloma, Jr. (*Coloma*), guilty beyond reasonable doubt of the crime of violation of Section 3 (e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.<sup>[3]</sup>

#### **The Facts**

Coloma was the Director of the Philippine National Police Academy (*PNPA*) at the time of the alleged violation of R.A. No. 3019. On November 19, 1999, he was designated as Special Assistant and Action Officer to the Director, Logistics and Installation Services (*LIS*) of the Philippine Public Safety College (*PPSC*). Then PPSC President Ernesto B. Gimenez (*Gimenez*) assigned Coloma to assist in the search for a suitable construction site of the Philippine National Police Regional Training Site 9 Annex in Bongao, Tawi-Tawi (*RTS 9*).

After several site inspections in 2002, the PPSC team including Coloma chose a four-hectare lot planted with coconut trees and other fruit-bearing trees, formerly owned by one Juaini Bahad. The latter sold the property to the late Albia Lim, wife of the labor contractor, Engineer Rolando E. Lim (*Engr. Lim*).

After negotiations for the acquisition of a portion of the subject land, the Engineering Division of the PPSC, composed of Engineer Dosmedo G. Tabrilla (*Engr. Tabrilla*) and Engineer Jerome Vacnot (*Engr. Vacnot*), prepared the graphical layout plan for the construction of the following: a) fifty-capacity barracks; b) one (1) unit classroom; c) land development for the initial construction; and d) administration building. The layout was approved by Gimenez.

The funds for the construction of RTS 9 came from the Congressional Development Fund (CDF) of Tawi-Tawi Representative, Nur Jaafar. The same eventually formed part of PPSC's capital outlay. The approximate cost of the project construction was P5,727,278.59, but the said amount was not released in 1998. Thus, in 1999, the amount became "accounts payable" and were released to creditors, namely: New Alems Enterprise (the supplier for materials) in the amount of P4,199,994.50; and A.C. Lim Construction (labor supplier) in the amount of P1,800,005.50.

Thereafter, the construction of RTS 9 was commenced and supervised by Engr. Tabrilla as project engineer.

On August 1, 2001, Coloma was relieved by Atty. Ramsey Lapuz Ocampo (*Ocampo*), the successor of Gimenez as PPSC President. Coloma's designation as Special Assistant and Action Officer to the LIS-PPSC was terminated, and he was transferred to the Philippine National Training Institute (*PNPI*). He was likewise ordered to render a termination report relative to his participation and observation in the construction of RTS 9.

On October 10, 2001, Coloma submitted a report (*After Mission Report*) on the construction of the training facilities, stating, among others, that: the land development was 100% complete; the construction of the administration building was 90% accomplished; and the construction of the fifty-capacity barracks and classroom had just started and was expected to be completed by December 15, 2001. In the same report, Coloma allegedly attached the Deed of Donation signed by Juaini Bahad in favor of the PPSC.

Subsequently, Ocampo ordered an investigation and instructed SPO4 Gilbert Concepcion (*SPO4 Concepcion*) to conduct the same. Meanwhile, Engineers Tabarilla and Vacnot prepared the pertinent documents.

In his report, SPO4 Concepcion stated that his team conducted an ocular inspection and interviewed the supplier of materials and the Land Bank officials. They discovered the following irregularities: 1) the land development which Coloma reported to be 100% completed referred only to the exact site where the administration building and the one-unit classroom were erected; 2) only the administrative building with one-unit classroom was erected; 3) the construction of the 50-capacity barracks which Coloma reported to have been started was nowhere to be found; 4) the 50-capacity mess hall had also been erected; 5) the appropriate cost of the facilities constructed and the improvements made on the project was valued at around P3,150,000.00 only, contrary to what was reported by Coloma that the payment made for the project was P5,722,278.29; 6) the payment made by the contractor and the supplier of the construction materials was deposited at Land Bank Tawi-Tawi Branch under current accounts booked with Coloma as joint depositor; and 7) contrary to Coloma's After-Mission Report stating that the value of the property on which the training facilities were constructed was P 1,500,000.00, the value of the property per hectare was only P 9,730.00 as per a provincial ordinance of Tawi-Tawi fixing the schedule of fair market value of real properties.

Upon this discovery, SPO4 Concepcion made the Final Investigation Report, which was eventually endorsed to the Department of Interior and Local Government (*DILG*), and forwarded to the Office of the Ombudsman (*Ombudsman*) for appropriate action.

On September 15, 2006, Coloma was indicted in the Information filed with the Sandiganbayan and docketed as Criminal Case No. SB-07-CRM-0020. The Information reads:

That sometime between June 2001 to October 2001, or immediately prior or subsequent thereto, in Bongao, Tawi-Tawi, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a high-ranking public official with the rank of a Police Chief Superintendent, Salary Grade 27, being then a member of the Philippine National Police (PNP), committing the offense in relation to office and with grave abuse thereof, did then and there willfully, unlawfully and criminally in his capacity as then Director, PNPA, tasked to implement and oversee the construction of the building facilities of RTS 9 Annex, in Bongao, Tawi-Tawi, cause[d] undue injury to Philippine Public Safety College, a state college, in the amount of more or less Two Million five Hundred Thousand Pesos (P2,500,000.00) through evident bad faith by making it appear that the said project with the budget of *P5,727,278.59* was completed or almost completed as stated in his Memorandum dated October 10, 2001, when upon ocular inspection conducted in June 2002, the *fifty-capacity barracks* which was part of the project was not completed, and that the actual cost of the facilities actually constructed is only *Three Million One Hundred Eight Thousand Pesos (P3,180,000.00)*, to the damage and prejudice of the Philippine Public Safety College in particular and the government in general.

Upon arraignment, Coloma entered a plea of "not guilty." After which, trial ensued. The prosecution presented testimonial evidence, *inter alia*, through the following witnesses:

- a) SPO4 Concepcion testified as to the results of his investigation.
- b) Jimena Piga (*Piga*), Accountant III of the PPSC, testified that the nature of RTS 9 was an expenditure and capital outlay. She recounted that the gross amount disbursed for the project was P6,000,000.00 while the net amounted to P5,727,010.00. She said that they did not issue checks for external creditors such as New Alems Enterprises and A.C. Lim Construction. Hence, such creditors were required to open a savings account with a Land Bank branch.
- c) Engr. Vacnot, as Project Evaluation Officer I of the PPSC, testified that he was verbally instructed to conduct an inspection of the subject project. Upon investigation, he noted that a standard two-unit classroom, an administration building and land development had already been constructed, but the 50-capacity barracks had not yet been built. He also gave a detailed estimate of the administration cost of the works he found at the site. According to Engr. Vacnot, the administration building approximately cost P11,280,000.00, while the standard two-unit classroom and its comfort rooms approximately cost P1,800,000.00.
- d) Architect Peter Razon Viduya (*Viduya*) testified as the overall supervisor for infrastructure projects and chief of the investigation division of the LIS from 1999 to August 2001. He said that during a meeting with Coloma, it was discussed that the lot to be donated to the PPSC was owned by the wife of the labor contractor. When the documents were ready, they agreed that a bank account in the name of the labor contractor

or supplier be opened with the assistance of a representative of the PPSC and Coloma. Eventually, the passbook for the said account would be surrendered to Piga for safekeeping. On cross-examination, Viduya averred that after the bidding, the project was awarded to New Alems for materials and Engr. Lim for labor work. After having prepared a program of construction of RTS 9, he was relieved from his position.

- e) Engr. Tabrilla testified that he was designated as acting director of the LIS from August 2001 to 2004. As such, he administered and managed the infrastructure development of the PPSC. He said that after they went to the project site in Bongao, he accompanied Coloma and Engr. Lim to a Land Bank branch where both opened a joint checking account. Coloma then issued a check worth P500,000.00 in favor of Engr. Lim, intended for the mobilization expenses of the project. Engr. Tabrilla claimed to have advised Coloma not to issue the check because the instruction of the PPSC President was only to open a savings account for the supplier and labor contractor. Engr. Tabrilla asserted that the PPSC lost control not only over the implementation of the project but over the funds thereof, when Coloma opened the said checking account, and kept the checkbook in his custody. The latter likewise failed to give the contact numbers of the suppliers and contractors to the PPSC.

In addition, the prosecution presented various documentary evidence.<sup>[4]</sup>

In defense, Coloma testified that as director and chief executive officer of the PNPA, he was in charge of the organization, administration and operations of the academy. As Special Assistant to the Director of LIS, he was tasked to help look for at least three locations for a training center. He found sites in Maguindanao, Cebu and Tawi-Tawi. Together with Gimenez and Viduya, the site in Bongao, Tawi-Tawi, was selected as it was near the airport, and power and water sources. The Engineering Division of the LIS with Engr. Tabrilla as project engineer prepared the building plans to estimate the cost of the project. They then searched for a labor contractor and supplier. Coloma maintained that he had nothing to do with the construction of RTS 9. He had, on one occasion, accompanied Engr. Tabrilla upon the instruction of Gimenez, to confer with the labor contractor Engr. Lim as regards the construction of the facilities. Before he was relieved from the PPSC, he was directed to conduct inspection of the ongoing construction in Bongao. After the said inspection, he rendered his After Mission Report.

On cross-examination, Coloma reiterated that he had nothing to do with the construction of the project because he was not the contractor and by the time he executed his After-Mission Report, he had already been relieved from his position at the PPSC. He was able to read the report submitted by SPO4 Concepcion when a case was already filed against him with the Ombudsman.

Engr. Lim likewise took the witness stand. He testified that he was a businessman engaged in a construction business for about 15 years at the time of the controversy. Among his projects was the RTS 9. However, he only participated therein as a labor contractor who provided labor services for the construction of the

project. He said that the project started in the middle of 2001 and was finished by 2002, based on the two sets of plans prepared by the PPSC Engineering Division, one of which was for the administration building, and the other for a long building with 281 classrooms. He recalled that Engr. Tabrilla was in Tawi-Tawi. The project took more than a year to finish, and when nobody from the PPSC wanted to accept the project, he was forced to maintain the building for more than two years. The project had been completed and was being occupied by the Philippine Marines. He stated that it was the project engineer who looked out for the condition of the construction project.

### **The Sandiganbayan's Ruling**

On May 17, 2012, the Sandiganbayan rendered the assailed decision finding Coloma guilty as charged. It found that all the essential elements of the crime of violation of Section 3(e) of R.A. No. 3019 were present in the case. Coloma, irrefutably a public officer at the time of the disputed transactions, acted with evident bad faith in his transactions concerning RTS 9. The testimonies of SPO4 Concepcion and Engr. Vacnot yielded that upon inspection, "not even a trace of any excavation for the foundation of the 50-capacity barracks was seen at the training site," contrary to Coloma's claim that construction thereof had started. Not only did Coloma assert that the construction of the other buildings had begun when it had not, but he also failed to comply with the project program which clearly specified a 50-capacity barracks. Further, by making himself a signatory to the current bank account and presenting a cost estimate significantly higher than that submitted by Engr. Vacnot, Coloma caused undue injury to the PPSC when the latter lost control of the funds for RTS 9, because only the authorized signatories could enter into transactions with regard to the project.

For his conviction, Coloma was sentenced to suffer imprisonment ranging from six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and perpetual disqualification to hold public office.

Aggrieved, Coloma moved for reconsideration, insisting that prosecution witness, Engr. Vacnot, failed to present factual and legal basis on how he came up with the amount of P3,180,000.00 as actual cost for the project. Coloma pointed out that Engr. Vacnot did not refer to any agency estimate on the price difference between that of the RTS 9 suppliers, as against what other suppliers could have provided, thus, failing to establish that there was overpricing in the conduct of the project. Further, Coloma stressed that he did not act in bad faith by being one of the signatories of the current accounts for the creditors of PPSC because he simply followed the order of then PPSC President Gimenez. He was not guilty either of misrepresentation when he stated that the project was almost complete because his report merely embodied his latest factual observation. Coloma likewise invoked the January 18, 2008 Resolution<sup>[5]</sup> by the Fifth Division of the Sandiganbayan, which granted the prosecution's motion to withdraw the Information in SB-07-CRM-0022, <sup>[6]</sup> on the ground of absence of proof of a specific injury or actual damage suffered by PPSC when Coloma allowed himself to be one of the signatories in the subject accounts.

In the challenged resolution denying Coloma's motion for reconsideration, the Sandiganbayan stated that the other cases pending with the court had no bearing in