

THIRD DIVISION

[G.R. Nos. 181999 & 182001-04, September 02, 2009]

OFELIA C. CAUNAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SANDIGANBAYAN, RESPONDENTS.

[G.R. NOS. 182020-24] JOEY P. MARQUEZ, PETITIONER, VS. THE SANDIGANBAYAN-FOURTH DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

At bar are consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court which assail the Decision^[1] dated August 30, 2007 and Resolution^[2] dated March 10, 2008 of the Sandiganbayan in Criminal Case Nos. 27944, 27946, 27952, 27953, & 27954, finding petitioners Joey P. Marquez (Marquez) and Ofelia C. Caunan (Caunan) guilty of violation of Section 3(g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Marquez and Caunan, along with four (4) other local government officials of Parañaque City^[3] and private individual Antonio Razo (Razo), were charged under five (5) Informations, to wit:

The Information in Criminal Case No. 27944 states:

That on January 11, 1996 or thereabout, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with the members of the aforesaid Committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget Officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with the accused private individual **ANTONIO RAZO**, the owner and proprietor of ZARO Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with said ZARO Trading, for the

purchase of 5,998 pieces of "walis ting-ting" at P25 per piece as per Disbursement Voucher No. 101-96-12-8629 in the total amount of ONE HUNDRED FORTY-NINE THOUSAND NINE HUNDRED FIFTY PESOS (P149,950.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only P11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of P14.00 per piece or a total overpriced amount of EIGHTY THREE THOUSAND NINE HUNDRED SEVENTY TWO PESOS (P83,972.00), thus, causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27946 states:

That on June 30, 1997 or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 23,334 pieces of "walis ting-ting" at P15.00 per piece as per Disbursement Voucher No. 101-98-02-447 in the total amount of THREE HUNDRED FIFTY THOUSAND TEN PESOS (P350,010.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only P11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of P4.00 per piece or a total overpriced amount of NINETY THREE THOUSAND THREE HUNDRED THIRTY SIX PESOS (P93,336.00), thus causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27952 states:

That [in] September 1997, or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together

with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 8,000 pieces of "walis ting-ting" at P15.00 per piece as per Disbursement Voucher No. 101-98-02-561 in the total amount of ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only P11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of P4.00 per piece or a total overpriced amount of THIRTY TWO THOUSAND PESOS (P32,000.00), thus causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27953 states:

That during the period from February 11, 1997 to February 20, 1997, or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advance of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 10,100 pieces of "walis ting-ting" on several occasions at P25.00 per piece without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on procurement and Public Bidding and which purchases are hereunder enumerated as follows:

<u>Date of Transaction</u>	<u>Voucher No.</u>	<u>Amount</u>	<u>Quantity</u>
February 20, 1997	101-97-04-1755	P 3,000.00	120 pcs.
February 12, 1997	101-97-04-1756	P100,000.00	4,000 pcs.
February 11, 1997	101-97-04-1759	P149,500.00	5,980 pcs.

in the total amount of TWO HUNDRED FIFTY TWO THOUSAND PESOS (P252,000.00), and which transactions were clearly overpriced as the actual cost per piece of the "walis ting-ting" was only P11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of P14.00 per piece or a total overpriced amount of ONE HUNDRED FORTY ONE THOUSAND FOUR HUNDRED PESOS (P141,400.00), thus, causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27954 states:

That during the period from October 15, 1996 to October 18, 1996 or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers **JOEY P. MARQUEZ**, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: **SILVESTRE DE LEON**, being then the City Treasurer, **MARILOU TANAEL**, the City Accountant (SG 26), **FLOCERFIDA M. BABIDA**, the City Budget officer (SG 26), **OFELIA C. CAUNAN**, the OIC General Services Office (SG 26) and **AILYN ROMEA**, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual **ANTONIO RAZO**, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 8,000 pieces of "walis ting-ting" on several occasions at P25.00 per piece without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on procurement and Public Bidding and which purchases are hereunder enumerated as follows:

<u>Date of Transaction</u>	<u>Voucher Number</u>	<u>Amount</u>	<u>Quantity</u>
October 15, 1996	101-96-11-7604	P 100,000.00	4,000 pcs.
October 18, 1996	101-96-11-7605	P 100,000.00	4,000 pcs.

in the total amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only P11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of P14.00 per piece or a total

overpriced amount of ONE HUNDRED TWELVE THOUSAND PESOS (P112,000.00), thus, causing damage and prejudice to the government in the aforesaid sum.^[4]

The five (5) Informations were filed based on the findings of the Commission on Audit (COA) Special Audit Team that there was overpricing in certain purchase transactions of Parañaque City. In March 1999, a Special Audit Team composed of Fatima Bermudez (Bermudez), Carolina Supsup, Gerry Estrada, and Yolando Atienza, by virtue of Local Government Audit Office Assignment Order No. 99-002, audited selected transactions of Parañaque City for the calendar years 1996 to 1998, including the *walis tingting* purchases.

In connection with the *walis tingting* purchases audit, the audit team gathered the following evidence:

1. Documents furnished by the Office of the City Mayor of Parañaque City upon request of the audit team;
2. Sample *walis tingting* with handle likewise submitted by the Office of the City Mayor of Parañaque City;
3. Samples of *walis tingting* without handle actually utilized by the street sweepers upon ocular inspection of the audit team;
4. Survey forms accomplished by the street sweepers containing questions on the *walis tingting*;
5. Evaluation by the Technical Services Department^[5] of the reasonableness of the *walis tingting* procurement compared to current prices thereof;
6. A separate canvass by the audit team on the prices of the *walis tingting*, including purchases thereof at various merchandising stores;^[6] and
7. Documents on the conduct and process of procurement of *walis tingting* by the neighboring city of Las Piñas.

Parenthetically, to ascertain the prevailing price of *walis tingting* for the years 1996 to 1998, the audit team made a canvass of the purchase prices of the different merchandise dealers of Parañaque City. All, however, were reluctant to provide the team with signed quotations of purchase prices for *walis tingting*. In addition, the audit team attempted to purchase *walis tingting* from the named suppliers of Parañaque City. Curiously, when the audit team went to the listed addresses of the suppliers, these were occupied by other business establishments. Thereafter, the audit team located, and purchased from, a lone supplier that sold *walis tingting*.

As previously adverted to, the audit team made a report which contained the following findings:

1. The purchase of *walis tingting* was undertaken without public bidding;