

## FIRST DIVISION

[ G.R. No. 135294, November 20, 2000 ]

**ANDRES S. SAJUL, PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION), AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**KAPUNAN, J.:**

This is an appeal from the Decision of the Sandiganbayan (First Division) promulgated on July 31, 1998 finding petitioner Andres Sajul guilty beyond reasonable doubt of having violated Section 3 (g) of R.A. 3019 and imposing upon him the indeterminate prison term of six (6) years and one (1) day as minimum to ten (10) years as maximum with perpetual disqualification from holding public office.

The information reads as follows:

That on or about May, 1985, or immediately prior and subsequent thereto, in Quezon City, and within the jurisdiction of this Honorable Court, accused, a public officer, being then the Regional Director, Region V of the defunct Land Transportation Commission, did then and there, willfully, unlawfully enter into a manifestly and grossly disadvantageous transaction with a certain Cayetano Gacilo, c/o Bato-Bato Enterprises, by purchasing from the latter twenty three (23) units of fire extinguishers, which were found defective, valued at P2,500.00 per unit or a total amount of P57,500.00, when in truth and in fact, the actual, real and prevailing cost of the extinguishers of the same kind and quality at the time of purchase was only P1,500.00, a difference of P1,000.00 each per unit, or a total difference of P23,000.00, to the damage and prejudice of the Government.

CONTRARY TO LAW.

Manila, Philippines, 30 July 1992.<sup>[1]</sup>

Upon arraignment on August 13, 1993, petitioner pleaded "not guilty."

The prosecution presented the following witnesses: (1) Lilia de la Cruz Cadore - Regulation Officer II of the Land Transportation Office (LTO)-Southern Licensing Center; (2) Edna Ramos Garvida - Chief Transportation Regulation Officer of the LTO, NCR; (3) Sampaguita Sobredo Santos - COA Auditor, Resident Auditor of the Board Of Investment ; (4) Ana Marie Javellana - Chemist and a professor of Ateneo de Manila. The prosecution also submitted its Formal Offer of Exhibits dated February 17, 1995 constituting Exhibits A to JJ-5.

On the other hand, the defense presented: (1) Cayetano Bonuel Gacilo - a supplier of fire extinguisher and a radio commentator; and (2) the accused himself, Andres Solo Sajul. Exhibits 1 to 10 were also presented as its documentary proofs.<sup>[2]</sup>

This case against petitioner arose when Lilia Cadore who was the Acting Property Officer of the Land Transportation Commission- National Capital Region (LTC-NCR) from 1984 to 1988 was called by Director Andres Sajul to his office sometime in April, 1985. She was shown certain documents such as the Request to Issue Voucher (RIV), Purchase Order (PO), Certification, etc. She was told to sign the RIV and the PO for the purchase of the 23 units of fire extinguishers from Bato-Bato Enterprises. She refused to sign the request forms on the ground that the previous deliveries of Bato-Bato Enterprises were defective and the price exorbitant. She proposed/suggested to Director Sajul to subject the transaction to a public bidding or open canvass so they will be able to purchase the same at a lower price. Director Sajul, however, got mad and even slammed shut his attache case in front of her, uttering bad words such as "bullshit" and similar words. Cadore got out of the room and proceeded to the comfort room and cried. She reported the incident to Ms. Edna Garvida, the chief of Administrative Division. The matter was referred for consultation to the Regional Accountant, Resident Auditor, Asst. Regional Director and the Chief of Administrative Division and all the members thereof agreed that the transaction be subjected to public bidding and open canvass.

On May 8, 1985, she submitted a briefing memo to Director Andres Sajul where she put down into writing her objections to the purchase/payment of the 23 fire extinguishers from Bato-Bato Enterprises. She stated that the offer of Bato-Bato Enterprises was exorbitant as the office might be able to negotiate for a lesser offer for the same kind of product through public bidding such as the offer of Zodiac Trading.

In July, 1985, Cadore together with Edna Garvida took one unit of fire extinguisher and had it tested at the Ministry of Trade and Industry. The Director of the Product Standard Agency (PSA), Ignacio Salcedo Jr. referred them to the Philippine Institute of Pure and Applied Chemistry (PIPAC) which conducts tests for the PSA. Dr. Ana Maria Javellana, a Chemist and the Acting Director of the PIPAC certified the report "Analysis of Bromochlorodifluoromethane (BCF)" of the fire extinguisher brought to said office for testing. The report stated that the fire extinguisher being tested yielded- "No BCF found."<sup>[3]</sup>

For their refusal to act on the papers/documents and their bringing out of one unit of fire extinguisher for testing without authority, Cadore, as Property Officer and Garvida as Administrative Officer were relieved of their duties for two (2) weeks

by petitioner. They were reinstated to their positions by LTC Chairman Bienvenido Guerrero in a Memorandum addressed to Director Andres Sajul.<sup>[4]</sup>

For the defense, Cayetano Gacilo y Bonuel, the owner of Bato-Bato Enterprises and supplier of the fire extinguishers was presented in court. He testified that he transacted business with Director Andres Sajul sometime in 1985 regarding the 23 units of fire extinguishers purchased by the LTC from the Bato-Bato Enterprises. When he asked for the payment, he was informed by Director Sajul that one unit was taken to the PSA for testing. Upon learning this, he presented a complaint (protest) because the test/analysis was not made in the presence of the supplier, in violation of the Commission On Audit (COA) Rules and Regulations Series of 1979 which states:

What is subject to test or analysis sample is to be taken by the Property Inspection Report. The agency concerned shall request the presence of the dealer or his authorized representative during the sampling. The dealer or his authorized representative must sign the certificate of sampling. The property inspector shall not submit any sampling for analysis without the property accomplished certificate of sampling. No inspection or delivery shall be entertained unless the dealer submitted enough bid sample for the articles delivered.<sup>[5]</sup>

He admitted that initially, Director Sajul asked him to submit a quotation for the repair of 23 units of fire extinguishers. Upon examination, however, of the fire extinguishers at the Regional Office, he informed Director Sajul that they can no longer be repaired as the containers were already dilapidated. He submitted a proposal that the office can purchase new ones from him and a discount on a trade-in basis shall be given to the Regional Office for the dilapidated containers. His offer was accepted and the Purchase Order was prepared. He delivered the fire extinguishers after he received the POs.<sup>[6]</sup>

He testified further that then Minister Jose Dans, Jr. ordered the payment of the purchases after a Performance Quality Test was conducted on the grounds of the LTO Compound in the presence of LTO Officers, members of the fire brigade under Engr. Calingco and witnessed by a representative from the Fire Department of Quezon City and a representative from COA. Per actual demonstration during the Performance Quality Test, Messrs. Aragon and Mapa put up a fire and was kept burning for ten minutes. One unit was picked up at random from the pile of the fire extinguishers and this was used to extinguish the fire. He made a written report<sup>[7]</sup> on the matter because he was interested in collecting payment. At the time payment was made, Director Sajul was no longer connected with the office. He stated that he transacted business with the LTO since 1979 but this was the first time that the quality of his product was questioned. He stated that he learned the chemical complexities of fire extinguishers through the many years of experience. In fact, he boasts that his product, BCF Halogenated HydroCarbon, was the only one approved by the Bureau of Fire Protection.<sup>[8]</sup>

For his part, Andres Sajul testified<sup>[9]</sup> that with regard to the transaction in question, he met Cayetano Gacilo in Bicol when the latter was repairing the LTO building in that province. He was transferred to the National Capital Region Office because of a reshuffling of Regional Directors. He did not choose Bato-Bato Enterprises to supply the needed fire extinguishers for the Central Office but actually learned that it had been its supplier for some time now which won in a competitive bidding in 1982.

He averred that Lilia Cadores refused to sign the RIV and the PO because she had another supplier in mind. He relieved her of her post because of her refusal to sign the documents which was tantamount to insubordination. He did not conduct a bidding anymore because this was considered a negotiated contract. Before he retired from office, he had accomplished a Clearance dated May 10, 1988<sup>[10]</sup> to prove that he was cleared of all money and property accountabilities and certified to have no pending administrative/criminal case filed against him at his retirement.

On July 31, 1998, the Sandiganbayan rendered the assailed decision with the following dispositive portion:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ANDRES SAJUL y SOLO **Guilty** beyond reasonable doubt of having violated Section 3 paragraph G of R.A. 3019 and hereby imposes upon him, in the absence of any mitigating or aggravating circumstance, pursuant to Section 9 thereof and Indeterminate prison term of SIX (6) YEARS and ONE (1) DAY as minimum to TEN (10) YEARS as maximum with perpetual disqualification from holding public office, and to pay the cost.

The facts from which the civil liability might arise not being indubitable there is no pronouncement as to the same.

His bailbond is ordered canceled.

SO ORDERED.<sup>[11]</sup>

Petitioner comes to this Court asserting that :

1. THERE IS ABSOLUTELY NO EVIDENCE THAT ACCUSED PERSONALLY BENEFITED FROM THE PURCHASE OF THE 23 FIRE EXTINGUISHERS IN QUESTION;
2. THE BELATED ZODIAC OFFER OF A LOWER PRICE DID NOT NECESSARILY MAKE THE PRICE OF THE QUESTIONED FIRE EXTINGUISHERS EXORBITANT, AND CANNOT BE A LEGAL OR FAIR BASIS MUCH LESS A DEPENDABLE AND COMPETENT EVIDENCE OF OVERPRICING.
3. THAT THE FIRE EXTINGUISHERS IN QUESTION DID NOT CONTAIN "BCF" DID NOT MEAN THAT THE SAME

WERE NOT GOOD FIRE EXTINGUISHERS AND THAT THE SALE THEREOF TO THE GOVERNMENT WAS NECESSARILY "MANIFESTLY AND GROSSLY DISADVANTAGEOUS" TO THE GOVERNMENT.

4. THE SUPPLIER IN THE INSTANT CASE HAS NEVER CLAIMED THAT THE FIRE EXTINGUISHERS THAT HE DELIVERED TO THE LAND TRANSPORTATION OFFICE (LTO-NCR), AS INDICATED IN THE PURCHASE ORDER (PO), CONTAINED "BCF," AN IMPORTED COMPONENT OF A FIRE EXTINGUISHER, ALTHOUGH HE CLAIMED THAT HIS FIRE EXTINGUISHERS CALLED THE "BCF HALOGENATED HYDRO CARBON," A LOCAL FORMULATION, WHICH WAS WHAT HE HAD BEEN SELLING AND DELIVERING TO THE VARIOUS LTO OFFICES SINCE 1982 AFTER WINNING A COMPETITIVE BIDDING IN THAT YEAR, ARE MUCH BETTER;

5. THAT THE SALE WAS A DIRECT PURCHASE OR NEGOTIATED CONTRACT SO THERE WAS ADMITTEDLY NO BIDDING; HOWEVER, THE PETITIONER AS REGIONAL DIRECTOR WAS AUTHORIZED TO ENTER INTO A NEGOTIATED CONTRACT TO PURCHASE THE SAME. (EXHIBIT "9-B").

6. THAT THERE WAS NO BIDDING DID NOT MAKE THE PURCHASE OF THE QUESTIONED FIRE EXTINGUISHERS "MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT."

7. THE REQUIREMENT UNDER SECTION 3 (G) OF REPUBLIC ACT 3019 THAT THE ACCUSED MUST HAVE ENTERED INTO A "MANIFESTLY AND GROSSLY DISADVANTAGEOUS" CONTRACT, HAS NOT BEEN SATISFIED BY THE PROSECUTION.

8. THE PROSECUTION MISERABLY FAILED TO PROVE THE GUILT OF THE ACCUSED/PETITIONER OF THE CRIME CHARGED AGAINST HIM BEYOND REASONABLE DOUBT.<sup>[12]</sup>

Section 3 (g) of Republic Act No. 3019, otherwise known as the Anti-graft and Corrupt Practices Act under which petitioner was charged reads as follows:

Section 3. *Corrupt practices of public officers* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(g) Entering on behalf of the government into any contract or transaction, manifestly and grossly disadvantageous to the same whether or not the public officer profited or will profit thereby.

x x x

To sustain a conviction , it must be established that:

- (a) the accused is a public officer;
- (b) that he entered into a contract or transaction on behalf of the government; and,
- (c) that such contract or transaction is grossly and manifestly disadvantageous to the government.<sup>[13]</sup>

It is undisputed that petitioner, being then the Regional Director of Land Transportation Commission (now LTO) was a public officer at that time he entered into the subject negotiated contract for the purchase of 23 fire extinguishers for the use of the Central Office in LTO with Bato-Bato Enterprises. Whether or not the contract or transaction was grossly and manifestly injurious or disadvantageous to the government is the threshold question.

The culpability of the petitioner was proven as the Sandiganbayan found that (1) the fire extinguishers purchased from Bato-Bato Enterprises did not contain the chemical component BCF allegedly contrary to its product description; (2) the price was exorbitant; and (3) petitioner did not comply with the usual standard procedure in the procurement of supplies, to the prejudice of the government.

In finding that the subject fire extinguishers did not contain the component BCF, the Sandiganbayan relied on the "Analysis of Bromochlorodifluoromethane" as certified by Dr. Ana Maria Javellana, Acting Institute Director of the Philippine Institute of Pure and Applied Chemistry. Considering that no BCF was found, the Sandiganbayan concluded that the fire extinguishers supplied by the petitioner, were defective and thus, prejudicial to the government.

The report of the PIPAC reads as follows:

Code	Description	Results
85-097	Cardel, ABC All purpose	The sample was found to contain approximately 8% carbon dioxide 74% water and 18%

	Fire Extinguisher 25 lbs. capacity	unknown components which we did not try to identify. No BCF was found.
85-101	Cardel, ABC All purpose Fire Extinguisher 25 lbs. capacity	The sample was found to contain 0. 3% carbon dioxide and the rest is water.  No BCF was found.

PSA Code	Sample Description	Headspace Component Co2 H2O Unknown Components		
85-098	Cardel ABC All purpose Fire Extinguisher 25 lbs.	38	30	32
85-99	Cardel ABC All purpose Fire Extinguisher 25 lbs.	8	51	41
85-100	Cardel ABC All purpose Fire Extinguisher 25 lbs.	1	53	46
We do not try to identify the unknown component. No BCF was found.  xxx. <sup>[14]</sup>				

BCF is a chemical compound found in fire extinguishers. It does not contain oxygen; hence, it can put out fire.<sup>[15]</sup> While it is true that the subject fire extinguishers did not contain BCF, the report of the PIPAC does not, however, preclude the presence of other chemical components that can effectively put out fire. When called to the witness stand, Dr. Javellana clarified that the test conducted by the PIPAC was to determine only the presence of the BCF in the fire extinguishers because that was the request of the job order. The other components of the fire extinguishers were no longer identified as this was not requested. The only advantage which can be taken from a BCF component in the fire extinguishers is that it causes less damage to the property. We quote the pertinent portion of Dr. Javellana's testimony which is quite revealing:

PJ GARCHITORENA

Q So you did not identify anymore what other components.  
A We do it Your Honor, we analyzed, as per requested our job order was to analyze for BCF.  
Q That is what you look for.  
A That is what we look for Your Honor, we were not asked to analyze for other components.  
Q So you were not asked to break up the chemical composition of the fire extinguisher.  
A No, Your Honor.  
xxx.

AJ BALAJADIA

Q Now, this BCF you said that its function in fire extinguisher is that it excludes oxygen and in the process extinguishes fire. Now, are there other chemicals which function in the same way or more or less in the same way as the BCF.  
A I imagine carbon dioxide will do the same thing Your Honor.  
Q So it is possible that the components which were not identified could also function in the same way or in a similar way as the BCF.  
A I imagine so but I am not an expert in the fire extinguisher Your Honor.  
xxx.

PJ GARCHITORENA

Q So we now go back to carbon dioxide and BCF. In other words, you have no statement as to whether or not the other items you examined contain other chemicals which would be effective fire extinguishers.  
A Yes, Your Honor.  
Q So that there could have been carbon dioxide.  
A Yes, Your Honor.  
Q It could be effective to a certain degree for fire extinguishers but that you would know about it on the basis of your tests.  
A Carbon dioxide, we can see carbon dioxide, sir.  
Q There was.  
A In some of the cylinders, Your Honor.  
Q Is there any quantity of carbon dioxide that is necessary in any volume so that it will become an effective fire extinguisher.  
A To the best of what I know Your Honor, you has (sic) to have a sufficient volume "3-e" that

- excludes oxygen on all together to extinguish the flame and if not enough then the fire will continue.
- Q In relation to volume, do you know what percentage must be the carbon dioxide to be effective.
- A No, Your Honor.
- Q Is there a difference between utilization of carbon dioxide insofar as fires are concerned.
- A For general fires or household fires probably not but where you don't want your materials to get wet BCF has no water so it is safer, you have a better chance recovering the damages.
- xxx.<sup>[16]</sup>

Contrary to the respondent court's findings and conclusion, the supplier, Cayetano B. Gacilo admitted in open court that his fire extinguisher does not really contain the chemical component BCF but described its component as BCF Type only. He does not deny such fact and never pretended or represented that his fire extinguishers contained the BCF component. He averred that his fire extinguishers were BCF Type Halogenated HydroCarbon as stipulated in the Purchase Order Forms. He was actually surprised why his fire extinguisher was compared to the imported ones which contained BCF when his fire extinguishers were locally manufactured and contained a chemical component that was similar but as effective as the BCF. He testified, to wit:

ATTY. ABALOS

- Q Now in this Exhibit 3 Mr. witness, the component that was supposed to be tested was the presence of bromo chlorede fluoremethane or BCF. What is the relation of this chemical component to the units that you delivered to the LTO subject of this case.

WITNESS

- A Ma'am, this is an analysis of BROMOCHLORODI FLUOREMETHANE fire extinguisher. This is an imported fire extinguisher. This is not local. What was delivered by me as indicated in the P.O. is a locally manufactured fire extinguisher, BCF type HALOGENATED HYDRO CARBON. I do not know why they have to analyze an imported one when this is not the one being purchased.

ATTY. ABALOS

- Q Now Mr. witness, as reflected in the disbursement voucher and the Purchase Order, can you describe the fire extinguisher that you have delivered?
- A It is halogenated hydrocarbon BCF type, not bromo chlorodi fluouremethane. The bromo chlorodi fluoremethane is an imported fire extinguisher.
- xxx<sup>[17]</sup>.

The fact that the fire extinguishers supplied by Bato-Bato Enterprises did not contain the BCF does not in itself mean that the contract entered into was manifestly injurious to the government. It must be noted that a Performance Quality Test was conducted on the grounds of the LTO in the presence of several officials before payment was made on the purchases. A fire was built and kept burning for ten (10) minutes. After which, one fire extinguisher was randomly picked from among the other fire extinguishers delivered by Bato-Bato Enterprises and this was able to successfully put out the fire. The report reads as follows:

13 December 1985

Honorable Buenaventura J. Guerrero  
Chairman, Land Transportation Commission  
East Avenue, Quezon City

Thru: The Executive Director

Sir:

This is in connection with the performance quality test conducted this date of December 13, 1985 of the fire extinguisher I delivered and accepted by the LTC-NCR as prescribed by the Action Executive Director Col. Conrado K. Tolentino.

In compliance with the prescribed procedures set for the aforesaid test, the following personnels (sic) can bear witnessed (sic) to the events as follows:

1. Mr. Rogelio Aragon and Mr. Rogelio Hapa of the Electrical Section of G.S.D. who prepared the required fire to be extinguished.
2. Mr. Florente Agno of the G.S.D. who supervised the testing as representative of the LTC Fire Marshall Brigade under Negro. Mariano Calingo.
3. Mr. Fernando Hesita of the Fire Department of Quezon City and Mr. Elmer Sadicon of the COA witnessed the performance demonstration.