

G.R. Nos. 224720-23 (RICHARD T. MARTEL, ALLAN C. PUTONG, ABEL A. GUIÑARES, VICTORIA G. MIER, and EDGAR C. GAN, *petitioners*, v. PEOPLE OF THE PHILIPPINES, *respondent*.); G.R. Nos. 224765-68 (BENJAMIN P. BAUTISTA, JR., *petitioner*, v. PEOPLE OF THE PHILIPPINES, *respondent*.)

Promulgated: *Lina-Li R. Papa. Gombi*

February 2, 2021

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### CONCURRING OPINION

**PERALTA, C.J.:**

I concur with the *ponencia*.

Petitioners should be acquitted of the crimes charged on the ground that the prosecution failed to prove beyond reasonable doubt all the elements of Section 3(e) of Republic Act (R.A.) No. 3019.<sup>1</sup>

The consistent pronouncements of the Court in criminal cases is that evidence adduced must be closely examined under the lens of strict judicial scrutiny. This flows from the constitutionally-enshrined principle of presumption of innocence which places on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged. Short of these constitutional mandate and statutory safeguard — that a person is presumed innocent until the contrary is proved — the Court is left without discretion and is duty bound to render a judgment of acquittal.<sup>2</sup>

The assailed Sandiganbayan ruling, dated February 24, 2016, in Criminal Case Nos. SB-12-CRM-0241 to SB-12-CRM-0244 found petitioners Benjamin P. Bautista, Jr. (*Bautista*), Richard T. Martel (*Martel*), Allan C. Putong (*Putong*), Abel A. Guiñares (*Guiñares*), Victoria G. Mier (*Mier*) and Edgar C. Gan (*Gan*) guilty of violating Section 3(e) of R.A. No. 3019 for which they were sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, for each of the four (4) cases, with perpetual disqualification from holding office, for their involvement in the procurement of five (5) motor vehicles for the use of the Governor and Vice-Governor of Davao del Sur which did not go through competitive bidding.<sup>3</sup>

<sup>1</sup> Also known as the *Anti-Graft and Corrupt Practices Act*.

<sup>2</sup> *Miranda v. Sandiganbayan, et al.*, 815 Phil. 123, 154 (2017).

<sup>3</sup> *Rollo* (G.R. Nos. 224765-68, Vol. I), pp. 101-102.

The Sandiganbayan held that petitioners erred in relying on Section 371 of the Local Government Code (*LGC*), which provides for the direct purchase of goods from exclusive distributors. It specifically found Bautista and Putong guilty for acting with manifest partiality when they identified the particular brands of the subject vehicles in the Purchase Requests (*PRs*), while Martel, Guiñares, Mier and Gan were convicted due to their gross negligence as Bids and Awards Committee (*BAC*) members in arriving at the conclusion that the direct purchase of the subject vehicles was justified.

The elements of Sec. 3(e) are the following: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.<sup>4</sup>

While there is no question about the presence of the first two elements in this case, we join the *ponencia* in finding that the prosecution failed to sufficiently establish the remaining elements of the offense.

***Absence of manifest partiality,  
evident bad faith or  
gross inexcusable negligence***

Invoking Sec. 371 of the *LGC* and Section 54 of Commission on Audit (*COA*) Circular No. 92-386, petitioners assert that their act of specifying the brands of the subject motor vehicles does not constitute manifest partiality as they were merely descriptive of the specifications, performance and overall value of the vehicles<sup>5</sup> and the brands specified by the requisitioners in the *PRs* form part of the technical specifications that would fill and satisfy the needs of the requisitioners.<sup>6</sup>

While they erred in relying on said provision, given that it applies to call for bids, such error does not rise to the level of criminality which R.A. No. 3019 seeks to punish. Such mistake is not tantamount to manifest partiality, evident bad faith, or gross inexcusable negligence as contemplated under R.A. No. 3019 that would make petitioners liable under Sec. 3(e) thereof.

<sup>4</sup> *Felipe B. Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, G.R. No. 238014, June 15, 2020.

<sup>5</sup> *Rollo* (G.R. No. 224765-68, Vol. 1), pp. 32-39.

<sup>6</sup> *Rollo* (G.R. No. 224720-23, Vol. 1), p. 155.

The Anti-Graft law is clearly distinct from R.A. No. 9184,<sup>7</sup> or the LGC, and they have distinct requisites for violation. A violation of one does not *ipso facto* result in the violation of the others.<sup>8</sup> To rule otherwise would violate the basic tenets of due process.

The “manifest partiality” contemplated by R.A. No. 3019 is a clear, notorious, or plain inclination or predilection to favor one side or person rather another.<sup>9</sup> “Partiality” was further defined as “bias” which excites a disposition to see and report matters as they are wished for rather than as they are.”<sup>10</sup>

Mere allegation that petitioners accorded preferential treatment in favor of the companies concerned is not sufficient to prove guilt for violation of Sec. 3(e). If it were so, then we would be letting suppositions based on mere presumptions constitute proof of guilt, which is constitutionally impermissible.<sup>11</sup>

There is also no “gross inexcusable negligence” in this case, which, defined, is that negligence characterized by want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>12</sup> Unlike manifest bias which is committed by *dolo*, gross inexcusable negligence is committed by *culpa*, or performed with imprudence, negligence, lack of foresight or skill.<sup>13</sup>

Petitioners explained that they honestly believed that their resort to direct purchase was proper. Direct purchase of supplies of foreign origin from exclusive Philippine agents or distributors is allowed under Section 371 of the LGC, subject only to certain conditions.<sup>14</sup> Prior to the transactions subject of the present case, the Provincial Government already acquired seven vehicles<sup>15</sup> through direct purchase and at no instance were these purchases questioned or became subject of disallowance by the COA despite being furnished copies of documents pertinent to the transactions. Petitioners sought the advice of the COA Auditor on the resort to direct purchase and since no adverse finding was issued by the COA on these previous direct purchases, they assumed that direct purchase for the vehicles subject of the present case were also in order.<sup>16</sup>

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<sup>7</sup> The Government Procurement Reform Act.

<sup>8</sup> *Felipe B. Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, *supra* note 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Simeon Gabriel Rivera, et al. v. People*, G.R. No. 228154, October 16, 2019.

<sup>11</sup> *Id.*

<sup>12</sup> *Felipe B. Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, *supra* note 4.

<sup>13</sup> *Office of the Ombudsman v. Venancio G. Santidad*, G.R. Nos. 207154 & 222046, December 5, 2019.

<sup>14</sup> a) that the Philippine distributor has no subdealers selling at lower prices; and (b) that no suitable substitutes or substantially the same quality are available at lower prices.

<sup>15</sup> These vehicles are: Mitsubishi Strada Pick-up, Mitsubishi Adventure, Toyota Revo, and Isuzu Frontier Pick-up.

<sup>16</sup> *Rollo* (G.R. No. 224765-68), Vol. I, p. 98.

In view of these circumstances, it cannot be said that petitioners acted with brazen and flagrant negligence that would merit conviction under Sec. 3(e) of R.A. No. 3019.

The Court has made clear that, for there to be a violation of Sec. 3 (e), based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must also be shown that the accused acted with evident bad faith, manifest partiality or gross inexcusable negligence and that the violation of the procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference.<sup>17</sup>

***Absence of unwarranted benefits,  
advantage or preference***

To hold a person liable for violation of Section 3(e) of R.A. No. 3019, it is required that the act constituting the offense consists of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.<sup>18</sup> Petitioners are charged under the second mode.

For one to be found guilty for giving unwarranted benefits, advantage or preference, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions. By “unwarranted” we mean one that is lacking adequate or official support, unjustified, unauthorized or without justification or adequate reason. “Advantage” meanwhile means a more favorable or improved position or condition, benefit, profit or gain of any kind, or benefit from some course of action. Finally, “preference” signifies priority or higher evaluation or desirability, choice or estimation above another.

Here, the Court finds no sufficient evidence to prove that the concerned companies received unwarranted benefits, advantage or preference. There was no showing, not even allegation, that the subject vehicles were overpriced and that some form of pecuniary benefit inured to any of the petitioners. The Sandiganbayan itself noted in the assailed Decision that “there is no proof of injury to the government.”<sup>19</sup> Prior to the transactions subject of the herein cases, the procurement of the local government’s vehicles was done through direct purchases, without any notice of defect or irregularity from the concerned agencies. This gives credence to petitioners’ claim that they

<sup>17</sup> *Felipe B. Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, supra note 4.

<sup>18</sup> *Ambil, Jr. v. Sandiganbayan, et al.*, 669 Phil 32, 53 (2011).

<sup>19</sup> *Rollo* (G.R. Nos. 224765-68, Vol. I), p. 101.

honestly, and in good faith, believed in the regularity of the transactions undertaken.

Bad faith is never presumed.<sup>20</sup> And in criminal cases, the accused enjoys the presumption of innocence. Indeed, one is entitled to an acquittal unless his/her guilt is shown beyond reasonable doubt. The proof of guilt must amount to a moral certainty that the accused committed the crime and should be punished. Thus, an acquittal is called for whenever the State fails to establish an accused's guilt beyond reasonable doubt.<sup>21</sup>

As we declared in *Jose Tapales Villarosa v. People*:<sup>22</sup>


[A]n accused has in his/her favor the presumption of innocence which the Bill of Rights guarantees. Unless his/her guilt is shown beyond reasonable doubt, he/she must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution, which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.

As the evidence presented by the prosecution in this case failed to pass the test of moral certainty required to warrant petitioners' conviction, such failure of the prosecution to overcome petitioners' right to be presumed innocent entitles them to an acquittal.

Based on these premises, I vote to **GRANT** the petition.



**DIOSDADO M. PERALTA**  
Chief Justice

Certified True  
  
**ANNA-LI R. PAPAN**  
Deputy Clerk of Court En Banc  
OCC En Banc, Supreme Court

<sup>20</sup> *Mahilum v. Spouses Ilano*, 761 Phil. 334, 353 (2015).

<sup>21</sup> *Simeon Gabriel Rivera, et al. v. People, supra* note 10.

<sup>22</sup> G.R. Nos. 233155-63, June 23, 2020.