SPECIAL FIRST DIVISION

G.R. Nos. 243029-30 – TITO S. SARION, *petitioner*, ***versus*** **PEOPLE OF THE PHILIPPINES,** *respondent*

Promulgated:

AUG 2 2 2022

x - x

DISSENTING OPINION

CAGUIOA, *J.*:

The Resolution[1] denies the Motion for Reconsideration[2] (MR) filed by petitioner Tito S. Sarion (petitioner), thereby affirming the March 18, 2021 Decision[3] (main Decision) of the Court, which affirmed the Decision[4] dated September 29, 2017, and Resolution[5] dated November 8, 2018, of the Sandiganbayan in SB-11-CRM-0256 to 0257, convicting petitioner of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) and of violating Section 3(e) of Republic Act (R.A.) No. 3019.

To recall, this case arose from a *Contract Agreement* entered into on December 29, 2003 by herein petitioner, in his capacity as Municipal Mayor for the Municipal Government of Daet, Camarines Norte, and Mr. Billy Aceron (Aceron), General Manager of Markbilt Construction (Markbilt), represented by his attorney-in-fact, Architect Romeo B. Itturalde (Architect Itturalde). The agreement was for the Phase II construction of the Daet Public Market for the amount of ₱71,499,875.29, which was to be completed within a period of 365 calendar days.[6]

On November 27, 2008, Zenaida Baluca (complainant), a resident of Daet, Camarines Norte, filed a complaint against petitioner before the Deputy Ombudsman for Luzon.[7] The complainant charged petitioner with violation of Section 3(e) of R.A. No. 3019 relative to the payment of contract price escalation in the Daet Public Market (Phase II) Project.[8] After investigation, Graft Investigation and Prosecution officer Judy Anne Doctor-Escalona found merit in the complaint and charged petitioner with violation of Section 3(e) of R.A. No. 3019, and Malversation of Public Funds, in two separate Informations.[9] After trial, the Third Division of the Sandiganbayan rendered

---

1 *Ponencia*, pp. 1-10.
2 *Rollo*, pp. 762-790.
3 Id. at 709-733. Penned by Associate Justice Samuel H. Gaerlan with Associate Justices Rosmari D. Carandang and Rodil V. Zalameda, concurring while Associate Justice Alfredo Benjamin S. Caguioa with Dissenting Opinion joined by Chief Justice Diosdado M. Peralta.
4 Id. at 95-119b. Penned by Associate Justice Sarah Jane T. Fernandez with Presiding Justice and Chairperson Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez, concurring.
5 Id. at 121-130.
6 Id. at 709-710.
7 Id. at 712.
8 Id.
9 Id.

on September 29, 2017 its Decision finding petitioner guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds.[10]

The main Decision affirmed the Sandiganbayan's Decision and found petitioner guilty of the crimes charged.

In affirming the conviction of petitioner for the crime of Malversation of Public Funds, the Court ruled that the prosecution was able to prove all of the elements of said crime:[11] (1) that petitioner is a public officer, being the then elected Municipal Mayor of Daet and that the funds involved are public in character, as they belong to the Municipality of Daet;[12] (2) that, by reason of his office, he is an accountable officer based on Section 340 of the Local Government Code, as well as Presidential Decree No. 1445 or the Government Auditing Code of the Philippines;[13] (3) that the disbursement or release of funds had petitioner's approval as Mayor; and that payment in favor of Markbilt was released only after petitioner's signature in the disbursement voucher and the corresponding Landbank check;[14] and (4) agreeing with the Sandiganbayan, that petitioner was guilty of gross inexcusable negligence when he permitted Markbilt to receive partial payment of price escalation despite not being entitled thereto.[15]

On the other hand, in affirming petitioner's conviction for violation of Section 3(e) of R.A. No. 3019, the Court again anchored this on the finding that petitioner is guilty of gross inexcusable negligence "amounting to bad faith."[16] The Court justified its ruling on the following: (1) petitioner was remiss in his duty when he failed to exercise diligence in ensuring compliance with basic requirements demanded by the laws, rules, and regulations in the disbursement of public funds;[17] (2) as the signatory to the *Contract Agreement* with Markbilt, he is presumed to know the contents thereof;[18] thus (3) upon receipt of Markbilt's demand for price escalation, petitioner should have first verified the propriety of the said claim and whether the said claim satisfied the requirements of applicable laws.[19]

In denying petitioner's MR, the *ponencia* maintains that:

First, there is no violation of petitioner's right to information as there is indeed an absence of appropriation, as alleged in the Information, not with respect to the entire project, but specifically for the payment of price escalation.[20]

---

10 Id. at 713-714.
11 Id. at 738.
12 Id.
13 Id.
14 Id. at 738-739.
15 Id. at 739.
16 Id.
17 Id.
18 Id.
19 Id.
20 *Ponencia*, p. 4.

Second, petitioner may still be convicted of the crime of Malversation of Public Funds and for violation of Section 3(e) of R.A. No. 3019 on account of his approval of the disbursement voucher without first referring the matter to the National Economic and Development Authority (NEDA) for the determination of the existence of extraordinary circumstances and securing the approval of the Government Procurement Policy Board (GPPB). The *ponencia* further rules that while it is true that non-compliance with these requirements under Section 61 of R.A. No. 9184 is not penalized under the Act, the inaction may, however, constitute a different offense. In fine, the imposition of penalty is not on account of R.A. No. 9184, but of his acts that translate into violation of R.A. No. 3019 and the RPC.[21]

To these points, I respectfully maintain my dissent.

First, I emphasize anew that the Information for violation of Section 3(e) of R.A. No. 3019 alleges that petitioner approved the disbursement "in the **absence** of certificate of availability of funds [(CAFs)]."[22] However, the Sandiganbayan found ***as a fact*** that there were indeed CAFs, ruling only that there was an **irregularity** in the CAF.[23] However, in spite of the Sandiganbayan's ruling that it cannot find petitioner culpable for the alleged irregularity in the CAF since "the Information alleges the absence of, not the infirmity in, the [CAF],"[24] the *ponencia* still insists that it is the absence of certification as to the availability of or source of funds pertaining specifically to the payment of price escalation, that rendered the clause void and the subsequent approval by petitioner of the disbursement voucher invalid. It is this irregularity, according to the *ponente*, which rendered the payment in favor of Markbilt illegal.[25]

However, the foregoing ruling violates petitioner's right, as an accused, to be properly informed of the charges against him.[26] As correctly pointed out by petitioner, he cannot be found guilty for an *irregularity* in the CAFs because this violates his right to be informed of the accusation against him under Section 14(1), Article III of the 1987 Constitution since the Information merely alleged the *absence* of CAFs, and *not irregularity*.[27] Stated differently, petitioner prepared for trial to prove, as he did, that there was a CAF. To convict him now on the reasoning that the CAF was "*irregular*" unduly deprived him the opportunity to directly traverse this.

More importantly, even the finding that there was an "irregularity" is wrong — ***it is completely belied by the evidence***. This finding of "irregularity" in the CAF is based on the belief that "[t]here was no appropriation to pay for the contract price escalation."[28] The Sandiganbayan,

---

21 Id. at 6.
22 *Rollo*, p. 712; emphasis supplied.
23 Id. at 47-48, 112.
24 Id. at 112.
25 Id. at 723-724.
26 Id. at 47.
27 Id.
28 Id. at 112.

as well as the *ponencia*, holds that Appropriation Ordinance No. 01[29] contained no appropriation for the payment of ₱1,000,000.00 to Markbilt.[30] At the point of being repetitive, this is just plain error.

The plain language of Supplemental Budget No. 1[31] belies this factual finding. To recall, Resolution No. 063 approved Supplemental Budget No. 1 for CY[32] 2008 for the Municipality of Daet. It was this Supplemental Budget No. 1 that was approved in Appropriation Ordinance No. 01.[33] Stated simply, **Appropriation Ordinance No. 01 approved each and every proposed item in Supplemental Budget No. 1, *including the payment of ₱1,000,000.00 for the price escalation claim of Markbilt*.**[34] As correctly shown by petitioner:

> The title of Resolution No. 063 is revealing as to what was approved by the Sangguniang Bayan, that is, **Supplemental Budget No. 1**, which contained an appropriation of P1,000,000.00 to partially pay Markbilt Construction's claim for price escalation –
>
> > Resolution Approving the **Supplemental Budget No. 01 for CY 2008** for the Municipality of Daet Appropriating the Amount of Six Million Eight Hundred Twenty Two Thousand Eighty Eight Pesos (P6,822,088.00) for Various Municipal Projects/Expenditures under the General Fund Proper and for Special Account (Market) – Construction of Public Market Amounting to Four Million Four Hundred Thousand Pesos (P4,400,000.00) with a Total Amount of Eleven Million Two Hundred Twenty Two Thousand Eighty Eight Pesos (P11,222,088.00).[35]
>
> Likewise, it is apparent in the title of Appropriation Ordinance No. 01 as to what was approved by the Sangguniang Bayan:
>
> > An Ordinance Approving the **Supplemental Budget No. 01 for CY 2008** for the Municipality of Daet Appropriating the Amount of Six Million Eight Hundred Twenty Two Thousand Eighty Eight Pesos (P6,822,088.00) for Various Municipal Projects/Expenditures under the General Fund Proper and for Special Account (Market) – Construction of Public Market Amounting to Four Million Four Hundred Thousand Pesos (P4,400,00.00) with a Total Amount of Eleven Million Two Hundred Twenty Two Thousand Eighty Eight Pesos (P11,222,088.00).[36]
>
> The portion of Appropriation Ordinance No. 01, which appropriated the amount of P4,400,000.00 as "Special Account (Market) Construction of Market" exactly corresponded to the appropriated items in that portion of Supplemental Budget No. 1 sub-marked as **Exhibit 21-Q-1**, which to repeat had these components:

---

29 Spelled "Appropriation Ordinance No. 1" in some parts of the *rollo*.
30 *Ponencia*, pp. 4-5.
31 *Rollo*, p. 49.
32 Calendar Year.
33 *Rollo*, p. 50.
34 Id. at 51.
35 Id. at 23-24.
36 Id. at 24.

Subsidy to Special Account – Market

Construction of Market 1,500,000.00

Price Escalation 1,000,000.00

Improvement/Repair Market 1,900,000.00[37]

These appropriated items would add up to **P4,400,000.00**, which is Exhibit **9-A-1** of the prosecution.

A cursory examination of Supplemental Budget No. 1 would show that the proposed appropriations therein were all approved and adopted in Appropriation Ordinance No. 01, as shown by the fact that Supplemental Budget No. 1 proposed a total appropriation of P11,222,088.00, which was the same approved amount in Appropriation Ordinance No. 01.

In other words, Appropriation Ordinance No. 01 approved each and every proposed item in Supplemental Budget No. 01, including the payment of P1,000,000.00 for the price escalation claim of Markbilt Construction.[38] (Emphasis and underscoring in the original)

In other words, contrary to the findings of the Sandiganbayan and the *ponencia*, *there was a valid appropriation to pay for the contract price escalation*.

Second, on the alleged non-compliance with Section 61 of R.A. No. 9184, the evidence shows that: (1) the alleged non-compliance with Section 61 of R.A. No. 9184 did not pertain to petitioner; and (2) even assuming that compliance with Section 61 of R.A. No. 9184 pertained to petitioner, R.A. No. 9184 does not penalize the alleged irregularity.[39]

As correctly pointed out by petitioner, in the Notice of Disallowance[40] with ND No. 2010-001-101 (2008) dated March 17, 2010, the obligation to secure the documents required under Section 61 of R.A. No. 9184 did not pertain to petitioner, but to Architect Itturalde for Aceron. This is, in turn, fully corroborated by the admission of prosecution witnesses Jesus R. Reblora, Jr. and Lourdes G. Cribe (Cribe) that the obligation to submit the required documents in compliance with Section 61 of R.A. No. 9184 did not pertain to petitioner, but to Architect Itturalde for Aceron.[41] Cribe, who was the Commission on Audit State Auditor V and Supervising Auditor who issued the Notice of Disallowance, likewise admitted that the failure to submit the required documents in compliance with Section 61 of R.A. No. 9184 did not appear in the line pertaining to petitioner.[42]

Moreover, even assuming that compliance with Section 61 of R.A. No. 9184 pertained to him, said law does not actually penalize the alleged

---

37 Exhibit 21-Q-1, id. at 49.
38 *Rollo*, pp. 50-51.
39 Id. at 52.
40 Exhibit 20, id.
41 *Rollo*, pp. 53-54.
42 Id.

irregularity.[43] R.A. No. 9184 does not contain a penal clause for not securing a GPPB and a NEDA clearance before payment of price escalation.[44]

In this relation, the Court held in *Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*,[45] that violations of procurement laws do not *ipso facto* give rise to violation of R.A. No. 3019:

> More importantly, it must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. **Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 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.** x x x.[46] (Emphasis supplied)

Thus, in the recent case of *Martel v. People*,[47] the Court ruled that in order to successfully prosecute the accused under Section 3(e) of R.A. No. 3019 based on a violation of procurement laws, the prosecution must prove *beyond reasonable doubt* that: (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

However, in the instant case, the Sandiganbayan conceded that petitioner did not act with evident bad faith or manifest partiality. Also, as discussed in my Dissenting Opinion on the main Decision, the prosecution failed to prove that petitioner acted with gross inexcusable negligence. Thus, the second element is absent.

Further, as I stated in my Concurring Opinion in *Villarosa v. People*,[48] an accused should not be punished with imprisonment for violations of non-penal laws. Again, R.A. No. 9184 and R.A. No. 3019 are distinct laws with distinct requisites for their violation. A violation of one does not *ipso facto* result in a violation of the other.[49] Thus, even assuming that petitioner committed a violation of some provisions of R.A. No. 9184, he cannot and should not be convicted under R.A. No. 3019 without proof beyond reasonable doubt that the elements of a violation of R.A. No. 3019 are all present.

The *ponencia* restates in the MR Resolution that a simple consultation and/or verification could have alerted petitioner of the fact that Markbilt's

---

43 Id. at 54.
44 Id.
45 G.R. No. 238014, June 15, 2020, 938 SCRA 17.
46 Id. at 29.
47 G.R. Nos. 224720-23 & 224765-68, February 2, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67194>.
48 G.R. Nos. 233155-63, June 23, 2020, 939 SCRA 502, 596.
49 *Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*, supra note 45, at 30.

claim for price escalation was not supported by a separate funding at the time it was made, and of the requirements that must be complied with under Section 61 of R.A. No. 9184, before any approval and payment of price escalation can be made. Petitioner's failure to observe sufficient diligence under the circumstances coupled by and resulting to violation of the law and rules relating to disbursement of public funds amount to gross inexcusable negligence.[50]

This is egregious error. With all due respect, under the factual milieu of this case, the evidence shows that petitioner did exercise the required diligence. The fault ascribed to him by the *ponencia* simply does not exist.

The fact remains that Municipal Legal Officer Edmundo Deveza II (Legal Officer Deveza) gave his legal opinion that the demand of Markbilt should be paid. For petitioner to be labelled as negligent for not "direct[ing] municipal officials [to direct municipal officers] to inquire on"[51] Markbilt's demands "prior to release of"[52] Legal Officer Deveza's opinion is, with respect, nonsensical. Again, the fact is that Legal Officer Deveza gave his imprimatur to the payment.

In this regard, contrary to the *ponencia's* stand, petitioner's reliance on *Arias v. Sandiganbayan*[53] is very *apropos*:

> We would be setting a bad precedent if a head of office plagued by all too common problems □ dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence □ is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.
>
> x x x x
>
> **We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations.** If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters,

---

50 *Ponencia*, p. 8.
51 *Rollo*, p. 730.
52 Id.
53 259 Phil. 794 (1989).

memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.[54] (Emphasis and underscoring supplied; italics in the original)

Likewise, in *Sistoza v. Desierto*,[55] the Court held:

There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, <u>if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates</u>. x x x[56] (Emphasis and underscoring supplied)

Thus, there being no "irregularity" in the CAF, or any other patent irregularity in the transaction that had gone through the proper procedure as certified by the officers concerned before petitioner signed the disbursement voucher, as well as the fact that petitioner relied on a legal opinion, it is erroneous to insist that petitioner is guilty of gross inexcusable negligence, more so that he acted in bad faith.

All in all, the records of this case compel me to maintain my dissent. I accordingly vote that petitioner be acquitted of the crimes charged. Any other disposition would be an injustice.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

---

54 Id. at 801-802.
55 437 Phil. 117 (2002).
56 Id. at 120-121.