

THIRD DIVISION

G.R. No. 259467 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee, v. MAGDALENA K. LUPOYON, CLARK CHATONGNA NGAYA, EDMUNDO CHALLIIS SIDCHAYAO, FERNANDO YACAM-MA CABLOG, ALBERT T. MARAFO, and DANILO RABINA LUCAS, Accused-appellants.

Promulgated:

November 11, 2024

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CONCURRING OPINION

CAGUIOA, J.:

I fully concur with the *ponencia* in acquitting accused-appellants Magdalena K. Lupoyon, Clark Chatongna Ngaya, Edmundo Challiis Sidchayao, Fernando Yacam-Ma Cablog, Albert T. Marafo, and Danilo Rabina Lucas (collectively, accused-appellants) for violation of Section 3(e) of Republic Act No. 3019,¹ as amended for failure to prove their guilt beyond reasonable doubt.

I submit this Concurring Opinion to underscore once again that a violation of procurement law does not, by itself, constitute a violation of Section 3(e) of Republic Act No. 3019.

Brief review of the facts

Accused-appellants, former municipal officials of the Barlig Local Government Unit (LGU) (then mayor, vice-mayor, municipal treasurer, municipal engineer, and members of the Sangguniang Bayan), were charged with violation of Section 3(e) of Republic Act No. 3019 in two separate Informations: one concerning a pathway project and the other an open gymnasium project. The Informations alleged that accused-appellants conspired and, through evident bad faith or gross inexcusable negligence, willfully, unlawfully, and criminally caused undue injury to the LGU by undertaking these projects without the requisite public bidding.

In the 1990s, broadcasting companies GMA Network, Inc. (GMA) and ABS-CBN Broadcasting Corporation (ABS-CBN) had set up relay antennae on Mount Amuyao with the consent of the Balangao community in Barlig, Mountain Province. In exchange, GMA donated PHP 144,760.00 in 2007 for a pathway project, while ABS-CBN contributed PHP 3 million in 2009 for an open gym project (collectively, projects). These funds were deposited into the

¹ Anti-Graft and Corrupt Practices Act, approved August 17, 1960.



LGU's trust fund account in the Land Bank of the Philippines (LBP). However, the LGU implemented both projects without public bidding, purportedly to save on contractor profits and taxes and to use local labor, some of whom were willing to work without pay.²

The LGU launched the pathway project in June 2009, using Balangao residents for labor, with officials handling payments directly. For the open gym project, the LGU transferred funds from ABS-CBN's donation and part of GMA's donation into a Philippine National Bank (PNB) account, contending that these private donations were beyond the audit jurisdiction of the Commission on Audit (COA). The funds were then utilized without following procurement processes.³

COA discovered the fund transfers and the absence of public bidding, and issued a Notice of Suspension for failure to follow procurement procedures and for questionable transfers of donations outside the trust account. Subsequently, a Notice of Disallowance was issued due to the LGU's failure to provide the necessary payroll, work program, accomplishment report, and inspection report on the completed work.⁴

Accused-appellants justified the lack of public bidding as a means to maximize project funds. They also claim that no harm was done to the LGU as the completed projects benefited the community.⁵

The Sandiganbayan found then mayor and municipal treasurer guilty of two counts of violation of Section 3(e) of Republic Act No. 3019 for their roles in the projects. The rest of accused-appellants were found guilty of the same offense for their involvement in the gym project. The Sandiganbayan ruled that the absence of public bidding caused undue injury to the government by denying the LGU the opportunity to implement the projects at the most advantageous cost. The Sandiganbayan also noted that the lack of public bidding led to unwarranted benefits for suppliers. Essentially, the Sandiganbayan found evidence of manifest partiality, evident bad faith, and gross inexcusable negligence in accused-appellants' actions, including transferring donations outside the LGU's trust fund and failing to provide justifiable reasons for bypassing public bidding.⁶

The *ponencia* reverses and rules that accused-appellants should be acquitted of the charges against them.⁷

As stated at the outset, I fully concur with the ruling of the *ponencia*.

² *Ponencia*, pp. 1–2.

³ *Id.* at 2–4.

⁴ *Id.* at 4–5.

⁵ *Id.* at 7–9.

⁶ *Id.* at 9–11.

⁷ *Id.* at 24.



The elements of manifest partiality and giving any private party unwarranted benefits, advantage, or preference were not alleged in the Informations

The elements of the crime of violation of Section 3(e) of Republic Act No. 3019 are the following: (1) the offender is a public officer discharging administrative, judicial, or official functions; (2) that he or she acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) in the discharge of his or her functions, his or her action caused any undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference.⁸

While the prosecution established the first element, namely, that accused-appellants were public officers of the LGU performing official functions, it failed to prove the presence of the second and third elements beyond reasonable doubt.

The second element refers to the modes by which the offense may be committed, namely, manifest partiality, evident bad faith, and gross inexcusable negligence. As for the third element, there are two ways by which a public official violates Section 3(e) of Republic Act No. 3019 in the performance of his or her functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference.⁹

In *Villarosa v. People*¹⁰ (*Villarosa*), the Court held that an allegation of only one modality without mention of the others necessarily means the exclusion of those not mentioned. The prosecution in *Villarosa* failed to prove evident bad faith, which was the only modality alleged in the Information. The Court held that convicting therein public officer based on a separate modality—gross inexcusable negligence—would violate the accused’s constitutional right to be informed of the nature and cause of the accusation against him or her, as it introduced a basis for guilt not specified in the Information.

This case follows the same principle. Here, the two Informations did not allege manifest partiality. Neither did they allege that accused-appellants gave any private party unwarranted benefits, advantage or preference. As such, it was improper for the Sandiganbayan to convict accused-appellants of granting unwarranted benefits when this was not specifically alleged in the Informations. Fundamental principles of due process demand that an accused

⁸ *Libunao v. People*, G.R. Nos. 214336-37, February 15, 2022 [Per J. Lopez, J., First Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

⁹ *Cabrera v. Sandiganbayan*, 484 Phil. 350 (2004) [Per J. Callejo, Sr., *En Banc*].

¹⁰ 875 Phil. 270, 308 (2020) [Per C.J. Peralta, *En Banc*].



must only answer to the offense as charged. Adhering to *Villarosa*, the conviction should be limited to the acts specifically alleged, and where evidence fails to meet the threshold for the alleged act, acquittal is warranted.

At any rate, as correctly pointed out in the *ponencia*, the prosecution offered no evidence to support a claim of unwarranted benefits.¹¹ There is nothing which shows that accused-appellants gave unjustified favor or benefit to another. The prosecution's case predominantly revolved around the absence of public bidding and certain supporting documents. Even the witnesses from COA focused on these deficiencies without providing evidence that linked these issues to any unwarranted benefits to another.¹²

*The prosecution failed to establish
evident bad faith*

Evident bad faith “does not simply connote bad judgment or negligence” but of having a “palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.” Simply put, it partakes of the nature of fraud.¹³

The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. It is not enough that the accused violated a provision of law or that the provision of law violated is clear, unmistakable, and elementary. To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.¹⁴

Applying the foregoing, while there may have been violations of the pertinent laws and rules on procurement, there is reasonable doubt that accused-appellants consciously and intentionally did so in order to commit fraud, to purposely commit a crime, or to gain profit for themselves so as to amount to fraud. Their primary goal was to maximize the utility of donated funds to complete the projects in a way they believed would most benefit the community. They chose to bypass public bidding with the idea that they could reduce contractor costs and facilitate local labor use, some of whom were willing to work without pay. Moreover, accused-appellants believed that the donated funds were private in nature and therefore not subject to government procurement laws. Their view, though legally flawed, was done without intent to deceive the government.

Accused-appellants' actions do not reflect a conscious disregard of their sworn duty, nor do they suggest undue personal gain or benefit.

¹¹ *Ponencia*, pp. 17–18.

¹² *See id.*

¹³ *Martel v. People*, 895 Phil. 270, 297 (2021) [Per J. Caguioa, *En Banc*].

¹⁴ *Id.*



Although their decision was mistaken, it does not rise to the level of evident bad faith, which requires a fraudulent design established beyond reasonable doubt.

The prosecution failed to establish gross inexcusable negligence

Gross inexcusable negligence under Section 3(e) of Republic Act No. 3019, a culpable felony, does not require fraudulent intent or ill will.¹⁵ It is defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.¹⁶

In this regard, I reiterate my Concurring Opinion in *Libunao v. People*¹⁷ that for cases where the crime was committed through the modality of gross negligence, it is enough that the actions, or inaction, of the accused resulted in ultimately causing undue injury or giving unwarranted benefits. It is well to clarify, however, that the negligence must be so gross—as the jurisprudential definition puts it, “with conscious indifference to consequences insofar as other persons may be affected”—that the negligence would rise to the level of willfulness to *cause* undue injury or *give* unwarranted benefits.¹⁸

Here, accused-appellants did not exhibit the level of carelessness or disregard required to constitute gross inexcusable negligence under Section 3(e) of Republic Act No. 3019. On the contrary, they were attentive to the projects’ completion and sought to maximize community resources. Accused-appellants believed that bypassing public bidding would allow for more efficient use of the funds, an approach that, while misguided, shows an effort to fulfill their duties rather than a total indifference to them.

Additionally, the projects were completed within budget, and they personally managed payments to laborers to control costs. These actions suggest that they exercised some level of care in overseeing the funds. This does not meet the threshold for gross inexcusable negligence, which implies a disregard so severe that it borders on willful neglect.

The transfer of funds from the LBP to a PNB account reflects a misunderstanding of legal and audit requirements. Accused-appellants contend that, as private donations, these funds were beyond the audit

¹⁵ *Id.* at 305.

¹⁶ *Fonacier v. Sandiganbayun*, 308 Phil. 660, 693–694 (1994) [Per J. Vitug, *En Banc*].

¹⁷ *Supra* note 8.

¹⁸ J. Caguioa, Concurring Opinion in *Libunao v. People*, *id.*



jurisdiction of COA. Although this interpretation was mistaken, it does not amount to a conscious disregard for duty. They were attempting to protect and manage the funds, not to evade oversight in a way that would harm the LGU. Settled is the rule that mistakes, no matter how patently clear, committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.¹⁹

Furthermore, the fact that accused-appellants were aware of the bidding process yet proceeded without it does not imply “conscious indifference to consequences in so far as other persons may be affected.” If accused-appellants had acted with gross inexcusable negligence, the projects would likely exhibit signs of undue injury or unwarranted benefits resulting directly from their actions. The lack of any adverse outcome suggests, instead, a procedural lapse and a simple error in judgment.

More importantly, the Informations charged accused-appellants with having acted “willfully, unlawfully and criminally,” which presupposes a deliberate intent to violate the law. A finding of gross inexcusable negligence is inconsistent with a willful or deliberate intent. As the Court clarified in *Yapyuco v. Sandiganbayan*,²⁰ “[i]n criminal negligence, the injury caused to another should be unintentional, it being the incident of another act performed without malice,” and “that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence”²¹ which is a form of negligence.

To stress, the charge against accused-appellants cannot logically rest on both a finding of evident bad faith and gross inexcusable negligence, as these are mutually exclusive concepts. Evident bad faith and manifest partiality are acts committed through *dolo*, while gross inexcusable negligence is committed by means of *culpa*.²² In intentional felonies, the act or omission of the offender is *malicious*. However, in culpable felonies, the act or omission of the offender *need not be malicious*. The wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.²³

Given the wording of the Informations, which presupposes deliberate conduct, accused-appellants cannot be convicted based on gross inexcusable negligence. The language of the Informations suggests that the prosecution intended to prove an intentional violation of duty, which would require showing that accused-appellants acted with a conscious and deliberate disregard for the law. Gross inexcusable negligence, however, is a separate standard that does not involve fraudulent intent or ill will.

¹⁹ *Martel v. People*, *supra* note 13, at 298.

²⁰ 689 Phil 75, 123 (2012) [Per J. Peralta, Third Division].

²¹ *Id.*

²² *Martel v. People*, *supra* note 13, at 304–305.

²³ *Calimutan v. People*, 517 Phil 272 (2006) [Per J. Chico-Nazario, First Division].



The prosecution was not able to prove beyond reasonable doubt the element of causing undue injury to the LGU

In *Tio v. People*,²⁴ the Court explained that undue injury in the context of Section 3(e) of Republic Act No. 3019 has been treated as having a meaning akin to the civil law concept of actual damage. Unlike in actions for torts, undue injury in Section 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. Thus, it is required that the undue injury be specified, quantified, and proven to the point of moral certainty.

I completely agree with the *ponencia* that undue injury to the LGU was not proven beyond reasonable doubt.

First, as astutely pointed out in the *ponencia*, there is no evidence to show that the projects could have been completed at a lower cost through public bidding.²⁵ Indeed, public or open competitive bidding ensures transparency, efficiency, and equitable treatment,²⁶ but this principle alone does not establish that costs would have been lower if accused-appellants had followed the procurement process. Without any comparative bid or analysis to show that other contractors could have offered a more economical or efficient option, any alleged injury to the government is speculative. Mere allegation without proof would not suffice to prove their guilt for violation of Section 3(e) of Republic Act No. 3019.²⁷ The completion of the projects within the donated amounts further undercuts the claim that the government suffered any actual financial loss.

To illustrate, in a case where the Court upheld the finding of causing undue injury to the government, such as in *Ong v. People*,²⁸ the prosecution was able to provide testimonies and comparative price quotations which demonstrated that the dump truck purchased was significantly overpriced. Had the proper procurement process been followed, the municipality of Angadanan could have acquired a dump truck similar to, if not better than the one originally bought, thus highlighting both the financial loss to the government and the unwarranted benefit to the supplier. Without similar evidence in the present case as to specific price quotations showing that the projects could have been completed at a much lower cost, it is impossible to

²⁴ 894 Phil. 192, 219 (2021) [Per C.J. Peralta, First Division].

²⁵ *Ponencia*, pp. 20–21.

²⁶ *See* Executive Order No. 302 (1996), sec. 3.

²⁷ *People v. Adana*, G.R. No. 250445, March 29, 2022 [Per J. Inting, First Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

²⁸ 616 Phil 829 (2009) [Per J. Ynares-Santiago, Third Division].



definitively conclude that the Barlig LGU suffered actual loss or damage from the lack of public bidding.

Second, the projects were funded through donations from GMA and ABS-CBN, which were intended specifically for the improvement of the Barlig community. The projects were completed as planned and are currently being used by the community,²⁹ fulfilling the intended purpose of the donated funds. This fact significantly weakens any claim of undue injury to the government because the funds were used exactly as envisioned by the donors, and there is no evidence of diversion, misuse, or failure to complete the projects. In effect, the community—and by extension, the government—received the benefit for which the funds were allocated.

Third, to reiterate, accused-appellants opted to manage the projects themselves to avoid contractor fees, taxes, and additional costs that might arise through third-party contractors. By directly engaging local labor, accused-appellants aimed to stretch the limited funds further. No evidence was presented that the costs were inflated, that the local workers were overpaid, or that excessive expenses were incurred. On the contrary, their approach was intended to save money by using local resources, which suggests an effort to protect the funds rather than cause financial harm.

Finally, although the funds from GMA and ABS-CBN were deposited into the LGU's trust fund and later transferred to another account—which accused-appellants mistakenly believed was beyond COA's audit jurisdiction—there is no evidence that the funds were diverted for any unintended or unauthorized uses. Both donations were used exclusively for the projects as earmarked, and there was no indication that the funds were siphoned off for personal gain or unrelated expenses. This further supports the absence of undue injury because the funds ultimately achieved their intended purpose.

The lack of competitive public bidding, by itself, does not constitute actual damage, and there is no specific or quantifiable evidence that accused-appellants' actions led to any financial harm. The projects were completed, community resources were maximized, and the donated funds fulfilled their intended purpose. Consequently, without evidence of actual damage to the government, accused-appellants cannot be held liable for causing undue injury to the government under Section 3(e) of Republic Act No. 3019.

In sum, without proof beyond reasonable doubt of the second and third elements of a violation of Section 3(e) of Republic Act No. 3019, the mere fact that accused-appellants breached the applicable procurement laws will not result in their conviction of such crime. Instead, for failure of the prosecution to establish that accused-appellants acted with evident bad faith or gross inexcusable negligence and that the violation of the procurement laws

²⁹ Ponencia, pp. 20–21.



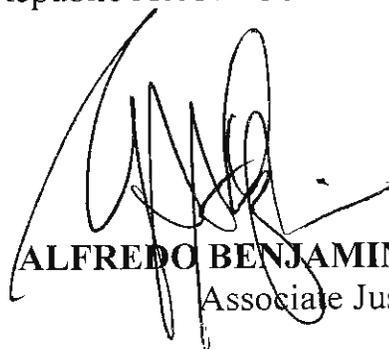
caused undue injury to the government, the decision of the Sandiganbayan should be overturned.

As a final word, to construe every misstep in procurement as a criminal act under Section 3(e) of Republic Act No. 3019 would be to disregard the necessary distinction between administrative and criminal liability. Republic Act No. 3019, crafted specifically to combat graft and corrupt practices, requires more than just a violation of procurement laws for a successful prosecution under Section 3(e). To convict an accused based on a violation of procurement laws, the prosecution must prove beyond reasonable doubt that: (1) the violation 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.

The Judiciary must be cautious in its approach to criminalize every procurement error, lest we discourage public servants from making good faith decisions. The specter of criminal prosecution should not loom over every public official. Republic Act No. 3019 was never intended as a blanket penal provision for every procurement deviation. Its essence lies in safeguarding against acts motivated by **fraudulent and corrupt intent**, which must be clearly established to ensure that Republic Act No. 3019 serves as a deterrent to acts of graft without overreaching to penalize every procedural flaw in public administration.

In preserving this balance, the Court upholds not only the letter of Republic Act No. 3019 but its true spirit: to protect the public from corruption while ensuring that public servants can fulfill their responsibilities without an undue threat of criminal liability for every procedural misstep.

ACCORDINGLY, I vote to **ACQUIT** accused-appellants of the crime of violation of Section 3(e) of Republic Act No. 3019.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice