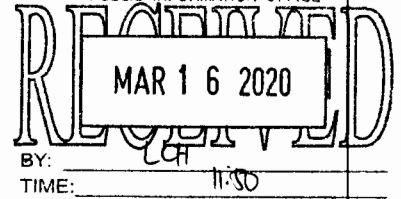




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated January 29, 2020 which reads as follows:

“G.R. No. 239877 – PEOPLE OF THE PHILIPPINES, petitioner, versus THE HONORABLE SANDIGANBAYAN (SPECIAL FIFTH DIVISION), LYD P. TUPAS, SANDRA C. BIONAT AND RAMIE S. SALCEDO, respondents.

Assailed in this Petition for *Certiorari*¹ under Rule 65 of the Rules of Court are the Resolutions dated February 20, 2018² and April 18, 2018³ of the Sandiganbayan (SB) which granted respondents’ demurrer to evidence and effectively dismissed Case No. SB-15-CRM-0144 for insufficiency of evidence and denied petitioner’s Motion for Reconsideration⁴ (MR), respectively.

The facts as summarized by the SB are as follows:

The controversy stemmed from a Contract for the Supply of Electric Energy (2007 Contract) entered into by the National Power Corporation (NPC) and the Province of Iloilo, as represented by its then duly elected Governor Niel D. Tupas, Sr. (Governor Tupas) in 2007. In the 2007 Contract, it was agreed upon by the parties that NPC would sell electricity in bulk to the Provincial Government of Iloilo for a period of four (4) years and three (3) months from September 26, 2007 to December 25, 2011. The obligation of NPC to supply bulk electricity was later assumed by Green Core Geothermal

¹ *Rollo*, pp. 9-40.

² *Id.* at 41-63. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega with Associate Justices Rafael R. Lagos and Lorifel L. Pahimna, concurring.

³ *Id.* at 65-67. Penned by Associate Justice Maria Theresa V. Mendoza-Arcega with Associate Justices Rafael R. Lagos and Maryann E. Corpus-Mañalac, concurring.

⁴ *Id.* at 69-75.

Inc. (Green Core), as NPC's successor-in-interest. The 2007 Contract provided for an increase of contracted energy in anticipation of the proposed construction of the Convention Center for the province. However, the construction of the Convention Center did not materialize after the Sangguniang Panlalawigan of Iloilo passed a Resolution which effectively withdrew the authority of then Governor Tupas to enter into a contract of loan with the Philippine Veterans Bank to finance the construction.⁵

Two years thereafter, or on December 21, 2009, then Governor Tupas sent a letter to Green Core requesting for the adjustment of the contracted energy stipulated in the 2007 Contract in view of the cancellation of the proposed construction of the Convention Center. Green Core, in its response, granted the request for adjustment which was to take effect only starting June 26, 2010. Consequently, the province was made to pay for the increased contracted energy for the four (4) billing periods from December 26, 2009 to April 25, 2010.⁶

On January 11, 2011, the Commission on Audit (COA) issued Notice of Disallowance No. 2011-02-(10), stating that the Provincial Government of Iloilo's payment to Green Core resulted to an excess of 1,084,814 KWH (unconsumed electricity) amounting to Four Million Seven Thousand One Hundred Eleven Pesos and Ninety-One Centavos (P4,007,111.91). Based on the said Notice of Disallowance, former Governor Tupas, and respondents Lyd P. Tupas (Tupas), Sandra C. Bionat (Bionat) and Ramie S. Salcedo (Salcedo) were charged before the SB with violation of Section 3(e) of Republic Act No. 3019, as amended, under an Information which reads as follows:

"That on 26 December 2009 to 25 April 2010, or sometime prior or subsequent thereto, in Iloilo City, Philippines, and within the jurisdiction of this Honorable Court, accused Niel D. Tupas, Sr., Lyd P. Tupas, Sandra C. Bionat and Ramie S. Salcedo, all public officers being the Provincial Governor, Provincial Accountant, Assistant Department Head of the Provincial Accountant, and Department Head of General Services, respectively, of the Iloilo Provincial Government (IPG), conspiring with one another, while in the performance of their official functions, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage, or preference to Green Core Geothermal, Inc., by allowing and causing the approval for payment of the *unconsumed* electricity bill of IPG for the billing period 26 December 2009 to 25 April 2010 amounting to Php4,007,111.91, which amount was indeed

⁵ Id. at 50.

⁶ Id. at 50-51.

received by Green Core Geothermal, Inc., thereby causing undue injury to the government in the said amount.

“CONTRARY TO LAW.”⁷

Governor Tupas was charged for approving the payment of electric bills to Green Core, while respondents Tupas, Bionat and Salcedo were charged for having affixed their respective signatures in the Disbursement Voucher due Green Core in their respective capacities as heads of various departments of the Provincial Government of Iloilo.⁸

Respondents Tupas, Bionat and Salcedo pleaded not guilty to the crime charged. The case against Governor Tupas was dismissed after the court was informed of the latter’s death.⁹

Trial ensued. After the prosecution rested its case, Tupas, Bionat and Salcedo separately filed a motion for leave to file a demurrer to evidence, which the SB granted on September 20, 2017. Tupas, Bionat and Salcedo, through counsel, respectively filed their Demurrers to Evidence on October 13, 2017, October 17, 2017 and October 18, 2017.¹⁰

SB Ruling

The SB granted respondents’ demurrers to evidence and dismissed the case against them for insufficiency of evidence.¹¹

The SB found that the prosecution failed to prove manifest partiality, evident bad faith and ill motive on the part of respondents. The SB ratiocinated as follows:

As applied in the present case, the Court is convinced that manifest partiality was not present in the case. **The evidence adduced by the prosecution did not prove that the accused favor one party who is similarly situated with other parties, in fact, there was only one recipient or beneficiary of the disbursement voucher approved and signed by the accused which is Green Core.**

⁷ Id. at 42.

⁸ Id. at 51.

⁹ Id. at 42.

¹⁰ Id. at 41.

¹¹ Id. at 63.

As to evident bad faith, the Court is of the belief that none of the accused acted in evident bad faith considering that the whole process of facilitating the release of the disbursement voucher followed the usual process of the province and there was nothing irregular or it did not pass an extra-ordinary process. It followed its natural course and was duly accomplished in accordance with the prescribed procedure. The regularity of the process was affirmed by the testimony of [the prosecution witness], stating among others that the subject electric bills were paid by the province based on a valid contract x x x[.]

X X X X

Moreover, in the same testimony x x x the absence of evident bad faith can be deduced from the fact that the payment made by the province was received by the rightful payee, Green Core. The prosecution was not able to present any evidence that would lead to the conclusion that any of the accused profited or benefitted from the processing of the payment of the electric bills.

X X X X

[Also], **there was no evidence that accused were moved by ill-will or fraudulent purpose to consummate the offense charged.** As testified to by the prosecution witnesses, the processing of the Disbursement Vouchers were departmentalized and each of the signatories relied on the documentations attached to the same, as well as the Certification of Availability of funds and the approval of the Governor. There was also no evidence that the accused devised a scheme to unduly favor Green Core because it is clear from the evidence presented that the payment was based on a valid contract (2007 contract).

Second, the allegation of the conspiracy between the accused in the instant case has no leg to stand on because the disbursement of the public funds would not have been possible if not for the participation of all the public officers, whose signatures were affixed on the Obligation Request and Disbursement Vouchers. Despite such fact, not all signatories were indicted for the crime charged, specifically, the Budget Officer, Antonio Moralla, who certified on the appropriation for the subject billing periods, another is Elena Lim, who is the Provincial Budget Officer. The said circumstances belie the presence of conspiracy because every signature affixed both on the Obligation Request and Disbursement Voucher was neither superior nor inferior over the other because all of them were essential and necessary for the release of the payment due to Green Core, and if for the sake of argument, conspiracy exists, all of them should be responsible for the offense charged, which did not happen in this case.

On cross examination of [the prosecution witness], he confirmed that there was an appropriation for the subject billing period since the Obligation Request was signed by the Budget Officer, Antonio Moralla, and Elena Lim, the Provincial Budget Officer. x x x

x x x x

Taken together, the evidence of the prosecution does not meet the moral certainty in order to establish that the accused conspired with one another to commit the offense charged.

The Court is also of the belief that the third mode stated in the second element of the offense charged is also wanting. The burden of proving gross inexcusable negligence on the part of the accused was not accomplished by the prosecution. The law expressly states that to constitute gross inexcusable negligence, mere omission of duties is not sufficient, as the same should be characterized by want of even the slightest care or that the breach of duty must be flagrant or devious. **The absence of inexcusable negligence may be inferred from the fact that the signatories of the Obligation Request and the Disbursement Vouchers in favor of Green Core were processed accordingly. To reiterate, it was processed based on the documents endorsed, which were in order and lawful, as testified to by the prosecution witness. Most importantly, the regularity of the transactions was evident as it was based on a contract (2007 contract) entered into by the province with NAPOCOR, which was also supported by the fact that the *Sanggunian* made an appropriation for the same.** A careful examination of the evidence presented shows that the accused public officers only performed their duties as heads of their respective departments, in deference to the duties under the law and in compliance with the terms of the agreement under a valid and demandable contract.

In fine, absent the element of manifest impartiality and evident bad faith, not to mention want of inexcusable negligence on the part of the accused, the graft case against them cannot prosper.

In the present case, no act or conduct on the part of the accused was established that would tend to show that they have acted with manifest partiality, evident bad faith or gross inexcusable negligence in the performance of their functions, as public officers, relative to the release of the payment for the electricity bills for the subject periods. Moreover, no documentary or testimonial evidence linking the accused to the allegedly fraudulent excessive disbursement of funds is appreciated in view of the fact that there are no indicia of ill-will, evident bad faith, manifest partiality or inexcusable negligence in the dispensation of their duties by the accused.

The fact that the accused were signatories of the Obligation Request and the Disbursement Voucher taken singly, cannot prove that they acted in bad faith. The presumption of law being in favor of good faith, it was incumbent upon the prosecution to prove bad faith and, in this instant case, the prosecution failed.¹² (Emphasis supplied)

Petitioner filed an MR which was denied by the SB in a Resolution dated April 18, 2018.

Hence, this petition.

Issue

Whether the SB committed grave abuse of discretion in granting respondents' demurrers to evidence.

The Court's Ruling

The petition lacks merit.

In an order granting a demurrer to evidence, the trial court finds the evidence adduced by the prosecution insufficient to warrant a conviction beyond reasonable doubt. This results in the dismissal of the case on the merits, which is tantamount to an acquittal. Thus, a dismissal of a criminal case by the grant of demurrer to evidence is final and unappealable, for to do so would place the accused in double jeopardy.¹³

The right of the accused against double jeopardy is protected by no less than the Constitution. In *People v. Court of Appeals*,¹⁴ the Court explained the rationale behind the double jeopardy rule, to wit:

x x x The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes. As succinctly observed in *Green v. United States*,¹⁵ "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby

¹² Id. at 53-62.

¹³ *People v. Sandiganbayan (Fourth Div.)*, 488 Phil. 293, 309 (2004).

¹⁴ 468 Phil. 1 (2004).

¹⁵ 355 US 184, 187-188 (1957).

subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.”¹⁶

However, like any other rule, the aforesaid rule is not absolute. Jurisprudence has held, by way of exception, that double jeopardy will not attach in situations where the prosecution was denied the opportunity to present its case, or where the trial was a sham, thus rendering the assailed judgment void.¹⁷ In these exceptional cases, the Court has clearly held that the burden is on the petitioner to clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.¹⁸

Thus, in *Galman v. Sandiganbayan*,¹⁹ the judgment of acquittal was remanded to the trial court after the Court found that trial was a mockery – a sham. The Court found that the then President had stage-managed in and from Malacañang Palace a scripted and predetermined manner of handling and disposing of the case, and that the prosecution and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist, and which not only prevented the prosecution to fully ventilate its position and to offer all the evidences which it could have otherwise presented, but also predetermined the final outcome of the case of total absolution of all the accused from all criminal and civil liability.²⁰

In other cases, the Court ruled that there is no double jeopardy (1) where the order of dismissal was issued at the time when the case was not yet ready for adjudication;²¹ or (2) where the prosecution was deprived of its opportunity to formally offer its evidence;²² or (3) where the trial court prematurely terminated the presentation of the prosecution’s evidence;²³ or preemptively dismissed the case.²⁴ In all these instances, the rule on double jeopardy was held not to apply because the prosecution was deprived of its right to due process.

¹⁶ Supra note 14, at 13.

¹⁷ *Samvicente v. People*, 441 Phil. 139, 147 (2002).

¹⁸ *People v. Atienza*, 688 Phil. 122, 135 (2012).

¹⁹ 228 Phil. 42 (1986).

²⁰ Id. at 70-71.

²¹ *Paulin v. Gimenez*, 291 Phil. 401, 410 (1993), citing *People v. Pamittan*, 140 Phil. 489, 491 (1969).

²² Id., citing *People v. Judge Bocar*, 222 Phil. 468, 471 (1985); See also *People v. Uy*, 508 Phil. 637, 650 (2005).

²³ Id. at 411, citing *Saldana v. Court of Appeals*, 268 Phil. 424, 426 (1990).

²⁴ Id., citing *People v. Albano*, 246 Phil. 530, 543 (1988).

None of the foregoing exceptions is present in this case. In fact, the petition does not even allege that the prosecution was deprived of due process or that there was a mistrial of the case. This is because the prosecution in this case was never denied its day in court. Records show that the prosecution participated in all the proceedings below and was given adequate opportunity to present its evidence and prove respondents' guilt. However, the SB found that the pieces of evidence presented by the prosecution were insufficient to sustain a conviction. The prosecution fell short of proving, beyond reasonable doubt, the elements of the crime charged, especially the manifest partiality, evident bad faith or gross inexcusable negligence on the part of respondents. On the contrary, the evidence of the prosecution affirmed that the release of the Disbursement Voucher was duly accomplished in accordance with the prescribed procedure and that the subject electric bills were paid by the Province of Iloilo based on a valid contract and a Resolution approved by the Sangguniang Panlalawigan.²⁵

Again, it bears to emphasize that petitioner, as the one questioning the acquittal, has the burden of clearly establishing that its appeal fell within the narrow confines of jurisprudential exceptions.²⁶ Here, petitioner failed to discharge this burden.

Moreover, even assuming that the SB had incorrectly overlooked the evidence against respondents, it only committed an error of judgment, and not one of jurisdiction.²⁷ For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctable through the special civil action of *certiorari*.²⁸

All told, the Court finds no grave abuse of discretion on the part of the SB so as to warrant the reversal of the assailed Resolutions.

WHEREFORE, premises considered, the instant petition for *certiorari* is hereby **DISMISSED**.

²⁵ *Rollo*, pp. 53-62.

²⁶ *Bangayan, Jr. v. Bangayan*, 675 Phil. 656, 667-668 (2011).

²⁷ *Id.* at 669.

²⁸ *Mandagan v. Jose M. Valero Corp.*, G.R. No. 215118, June 19, 2019, accessed at <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65314>>.

SO ORDERED.”

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

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