



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

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SECOND DIVISION

RODRIGO DERIQUITO
VILLANUEVA,

G.R. No. 218652

Petitioner,

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

FEB 23 2022

[Signature]

X-----X

DECISION

HERNANDO, J.:

It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of **public officers and private persons** alike which constitute graft or corrupt practices or which may lead thereto.¹

Before this Court is a petition for review on *certiorari*² filed by Rodrigo Deriquito Villanueva (petitioner) assailing the February 23, 2015 Decision³ and June 8, 2015 Resolution⁴ of the Sandiganbayan in Crim. Case No. SB-08-CRM-0381, which found petitioner and his co-accused guilty of violating Section 3

¹ Republic Act No. 3019, Section 1. Emphasis supplied.

² *Rollo*, pp. 3-76.

³ *Id.* at 79-112. Penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Efren N. De la Cruz and Rafael R. Lagos.

⁴ *Id.* at 113-125. Penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Efren N. De la Cruz and Rafael R. Lagos.

(e) of Republic Act No. (RA) 3019,⁵ as amended, otherwise known as the “Anti-Graft and Corrupt Practices Act.”

The accusatory portion of the Amended Information by which petitioner was charged reads:

That on or about January 15, 2001, and for some time prior or subsequent thereto, in the Municipality of Janiuay, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named accused FRANKIE H. LOCSIN, CARLOS C. MORENO, JR., RAMON T. TIRADOR, LUZVIMINDA P. FIGUEROA and RICARDO S. MINURTIO, all public officers, being then the Municipal Mayor, Municipal Accountant, Municipal Budget Officer, Municipal Treasurer and Representative of the Municipal Mayor in the Committee on Awards, respectively, all of the Municipality of Janiuay, Iloilo, in such capacity and committing the offense in relation to and in discharge of their official and administrative functions, conniving, confederating together and mutually helping with each other and with RODRIGO S. VILLANUEVA, President and General Manager of AM-Europharma Corporation, a private individual, with deliberate intent, manifest partiality and evident bad faith; did then and there willfully, unlawfully and criminally award the contract for the purchase of medicines and in fact bought such medicines in the amount of THIRTEEN MILLION ONE HUNDRED NINETY-ONE THOUSAND TWO HUNDRED TWENTY THREE (P13,191,223.00) PESOS, from AM-Europharma Corporation, notwithstanding the fact that on said date the accreditation of AM-Europharma Corporation was still suspended by the Department of Health (DOH), hence should have been disqualified to participate in the bidding, that AM-Europharma Corporation is owned and controlled by said accused Rodrigo S. Villanueva, who at the same time is the sole proprietor of Mallix Drug Center, a supplier who was awarded the contract for the supply of medicines in the amount of ONE MILLION SEVEN HUNDRED FORTY-FOUR THOUSAND NINE HUNDRED TWENTY-SIX PESOS (PHP1,744,926.00) in the same public bidding and that the public bidding was conducted without the presence of any provincial or municipal auditor or its (sic) duly authorized representative, thus accused public officers, in the course of the performance of their official/administrative functions, had given AM-Europharma Corporation/accused Rodrigo S. Villanueva, unwarranted benefit, advantage or preference in the discharge of their official/administrative functions to the detriment and prejudice of the other companies and public service.

CONTRARY TO LAW.⁶

Petitioner pleaded “not guilty” to the charge.⁷

The Factual Antecedents:

On December 19, 2000, the municipality of Janiuay, Iloilo, through Mayor Franklin A. Locsin (Mayor Locsin), representing the League of Municipalities of the Philippines (LMP), Iloilo Chapter,⁸ entered into a Memorandum of

⁵ Entitled “ANTI-GRAFT AND CORRUPT PRACTICES ACT.” Approved: August 17, 1960.

⁶ Records, Vol. I, pp. 261-264.

⁷ *Rollo*, p. 148.

⁸ As then President.

Agreement (MOA)⁹ with the Department of Health (DOH) Center for Health Development (CHD) for Western Visayas.¹⁰

The MOA was executed to implement the Rescue and Emergency Disaster Program of then Senator Vicente S. Sotto III, for the purchase of necessary and appropriate medicines, equipment, devices, and the likes, for emergency purposes, for distribution to the different municipalities of the province of Iloilo. Considering that Mayor Locsin was then the president of LMP-Iloilo Chapter, the execution and implementation of the MOA was coursed through the municipal government of Janiuay, by virtue of *Sangguniang Bayan* Resolution No. 318-2000.¹¹ DOH thus duly released the amount of ₱15,000,000.00 to the municipal government of Janiuay to carry out the program.¹²

The Office of the Mayor of Janiuay caused the Invitation to Bid to be published in three local newspapers inviting all qualified and accredited medical suppliers of various medicines and medical supplies to participate in the bidding to be conducted on January 12, 2001 at the municipal hall of Janiuay. On January 4, 2001, another Invitation to Bid was issued by the Office of the Municipal Treasurer. Three companies allegedly responded to the invitation, namely: AM Europharma Corporation (Europharma), Mallix Drug Center (Mallix Drug), and Phil. Pharmawealth, Inc. (Pharmawealth). However, on January 12, 2001, the scheduled bidding was postponed to January 15, 2001 due to the provincial auditor's absence.¹³

On January 15, 2001, the opening of bids took place. The Committee on Awards (committee) composed of Municipal Accountant Carlos C. Moreno (Moreno), Municipal Budget Officer Ramon T. Tirador (Tirador), Municipal Treasurer Luzviminda P. Figueroa (Treasurer Figueroa), and Ricardo S. Minurtio (Minurtio), Mayor Locsin's representative, proceeded with the opening of the bids despite the absence yet again of the provincial auditor. The committee recommended the award of the contract to Europharma and Mallix Drug, in the amount of ₱13,191,223.00, and ₱1,744,926.00, respectively.¹⁴

Mayor Locsin approved¹⁵ the award to Europharma and Mallix Drug. Thereafter, purchase orders¹⁶ and certificates of acceptance,¹⁷ both dated January 16, 2001 were issued, and the medicines were immediately delivered to and received by Mayor Locsin on even date. The medicines were inspected by Supply Officer Gabriel M. Billena as to their quantities and specifications.¹⁸

⁹ *Rollo*, p. 95.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 96.

¹⁴ *Id.* at 96-97.

¹⁵ *Id.* at 86.

¹⁶ *Id.* at 85.

¹⁷ *Id.*

¹⁸ *Id.* at 86.

On the next day, January 17, 2001, the Municipality of Janiuay issued two checks in favor of Europharma and Mallix Drug as payment for the medicines, and official receipts were subsequently issued in favor of petitioner's companies.¹⁹ Meanwhile, the Bureau of Food and Drugs (BFAD) conducted a medical analysis on the delivered medicines by Europharma and Mallix Drug. The drug cotrimoxazole²⁰ worth ₱240,000.00 failed the test as embodied in the Result of Analysis of BFAD.²¹ It was only on October 16, 2001 that Mallix Drug delivered the replacement drugs which were found compliant under BFAD's standard. The medicines were subsequently distributed to the municipalities that were beneficiaries-members of the LMP in the province of Iloilo.²²

On post-audit, a Notice of Suspension and Notice of Disallowance²³ were issued by the provincial auditor, and Mayor Locsin and Treasurer Figueroa were ordered to submit a justification on the alleged failure of the municipality to: 1) notify the Office of the Provincial Auditor of the bidding; 2) require the winning bidder to submit a performance bond; 3) explain why Europharma and Mallix Drug were allowed to bid despite the fact that both companies were owned by petitioner; and 4) submit the list of the recipient municipalities with Requisition and Issue Vouchers (RIV). It was uncovered during the annual audit of the provincial auditor for the calendar year 2001 that both Europharma and Mallix Drug were owned by petitioner, and that Europharma had a suspended accreditation at the time of the bidding.²⁴

On June 28, 2002, Mayor Locsin and Treasurer Figueroa, through the committee, submitted their Reply-Letter²⁵ and interposed that the Office of the Provincial Auditor was duly notified of the January 15, 2001 bidding but the latter did not send any of its representatives on the scheduled date. As to the required performance bond, it was dispensed with since the supplies were already delivered within the 10-day period. Finally, it did not see any reason to disqualify Europharma and Mallix Drug since Europharma is a corporation with a distinct personality, while Mallix Drug is a sole proprietorship owned by petitioner.²⁶

Meanwhile, on May 29, 2002, the president of Pharmawealth, Dr. Ferjenel O. Biron (Dr. Biron), issued a press statement "So the Public May Know" disowning Pharmawealth's participation in the January 15, 2001 bidding. Dr. Biron likewise sent a letter²⁷ to Commission on Audit, Iloilo, confirming the disclaimer which led to the latter discovering that Europharma was 99% owned by petitioner.²⁸

¹⁹ Id. at 97.

²⁰ Also referred as "Contrimoxazole" in the records.

²¹ Id. at 86.

²² Id. at 98.

²³ Id. at 87.

²⁴ Id. at 97.

²⁵ Id. at 97-98.

²⁶ Id. at 98.

²⁷ Id.

²⁸ Id.

Due to the irregularities that plagued the bidding, the matter was referred to the Office of the Ombudsman-Visayas for investigation. After preliminary investigation, the Office of the Ombudsman ultimately found probable cause to indict the municipal officers who conducted the bidding, including petitioner, for violation of Section 3 (e) of RA 3019.²⁹

Ruling of the Sandiganbayan

The Sandiganbayan rendered its Decision dated February 23, 2015,³⁰ disposing as follows:

WHEREFORE, judgment is hereby rendered finding accused **FRANKIE H. LOCSIN, CARLOS C. MORENO, JR., RAMON T. TIRADOR, LUZVIMINDA P. FIGUEROA, RICARDO S. MINURTIO and RODRIGO S. VILLANUEVA** ***GUILTY*** beyond reasonable doubt as charged in the Information and sentencing each of them to suffer the indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to proportionately pay the cost.

For failure of the prosecution to present evidence to establish damage or injury and/or the amount thereof suffered by the government as a result of the said procurement of medicines, no civil liability is assessed against the herein accused.

SO ORDERED.³¹

The Sandiganbayan found that all the accused conspired with each other and were guilty of violation of Section 3(e) of RA 3019 for awarding the contracts for the purchase of medicines to the business entities of petitioner, Europharma, and Mallix Drug, with deliberate intent, manifest partiality and evident bad faith, thereby giving petitioner unwarranted benefit, advantage, or preference. The signatures of the committee members' in the Minutes of Meeting, the undue haste in the delivery of the medical supplies, and the speed by which the payments were made, even without the required 10% performance bond, and the irregularities found in the qualification and accreditation of Europharma and Mallix Drug, reveal the manifest partiality and evident bad faith of the public officials charged and that of the petitioner.³² As regards petitioner, the Sandiganbayan found him to have conspired with the accused public officials in the perpetuation of the crime charged based on his conduct prior, during, and after the bidding that took place.³³

²⁹ Id. at 99.

³⁰ Id. at 79-112.

³¹ Id. at 111.

³² Id. at 109-110.

³³ Id.

All the accused moved for the reconsideration of the Sandiganbayan's ruling but the same was denied in its June 8, 2015 Resolution.³⁴ Thus, petitioner filed this petition for review on *certiorari*³⁵ raising the following -

Issues

I.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN CONVICTING THE ACCUSED FOR SUPPOSED VIOLATIONS NOT STATED UNDER THE FATALLY AMENDED INFORMATION DATED 7 JANUARY 2009.

II.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN CONVICTING THE ACCUSED UNDER COA CIRCULAR NO. 92-386, WHEN IT IS NOT A PENAL LAW.

III.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN FINDING THAT ACCUSED MEMBERS OF THE COMMITTEE ON AWARDS RAILROADED THE PROCUREMENT OF THE SUBJECT MEDICINES, WHEN SAID ACCUSED ACTED ONLY IN ACCORDANCE WITH ITS NATURE AS AN EMERGENCY PROCUREMENT.

IV.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN DISREGARDING SECTION 368 OF R.A. 7160 WHICH ALLOWS EMERGENCY PURCHASES WITHOUT PUBLIC BIDDING.

V.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED WHEN IT DISREGARDED THE STATUTORY PERSONALITY OF THE LEAGUE OF MUNICIPALITIES OF THE PROVINCE OF ILOILO WHEN IT RULED THAT THE ACCUSED PUBLIC OFFICERS ACTED IN DISCHARGE OF THEIR DUTIES AS MUNICIPAL OFFICERS.

VI.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED IN ACCEPTING PHIL. PHARMAWEALTH'S FLIMSY DENIAL OF PARTICIPATION IN THE SUBJECT BIDDING WHEN AT LEAST THREE DOCUMENTS--- ONE, WHICH COULD ONLY HAVE ORIGINATED FROM PHIL. PHARMAWEALTH, ITS DOH BFAD LICENSE TO OPERATE - BELIED SUCH DENIAL.

VII.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED WHEN IT FAULTED ACCUSED PUBLIC OFFICERS FOR CONSIDERING AM EUROPHARMA AS A QUALIFIED BIDDER, WHEN AM EUROPHARMA'S RENEWAL OF LTO WAS UNDER PROCESS AND IT HAD NOT LOST ANY OF THE QUALIFICATIONS AS A DRUG MANUFACTURER.

³⁴ Id. at 113-125.

³⁵ Id. at 3-76.

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VIII.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED WHEN IT INSISTED ON DOH ACCREDITATION AS A REQUIREMENT FOR LOCAL GOVERNMENT PROCUREMENTS FOR MEDICINES WHEN NO LEGAL BASIS SUPPORTS SUCH REQUIREMENT.

IX.

THE HONORABLE SANDIGANBAYAN ERRED WHEN IT PIERCED THE VEIL OR CORPORATE FICTION IN RULING THAT AM-EUROPHARMA CORPORATION AND MALLIX DRUG CENTER SHOULD HAVE BEEN CONSIDERED JUST ONE BIDDER.

X.

THE HONORABLE SANDIGANBAYAN SERIOUSLY ERRED WHEN IT FOUND CONSPIRACY BASED ON CIRCUMSTANTIAL EVIDENCE, THAT ARE CAPABLE OF EXCULPATORY INTERPRETATION UNDER THE EQUIPOISE DOCTRINE.³⁶

Our Ruling

The petition is denied.

It is a settled rule that this Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence all over again. In petitions for review under Rule 45, the discretionary appellate jurisdiction of the Court is limited only to questions of law.³⁷

The Sandiganbayan, the special anti-graft appellate collegial court, has jurisdiction over criminal and civil cases involving graft and corrupt practices and other offenses committed by public officers and employees, including those in government-owned or government-controlled corporations.³⁸ Considering that the anti-graft court has already evaluated the evidence presented in light of the charges posed, its factual findings in the disposition of graft cases are conclusive upon this Court.

The general rule nonetheless is not set in stone as to not admit chiseled exceptions. Indeed, jurisprudence instructs on the exceptions to the general rule, *viz.*: (1) where the conclusion is a finding grounded entirely on speculation, surmises, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) where the findings of fact of the Sandiganbayan are premised on the absence of evidence and are contradicted by evidence on record.³⁹ Conversely, the well-entrenched doctrine, constantly strengthened and invigorated by judicial pronouncements, is that exceptions must be alleged, substantiated, and proved by the parties so this Court may

³⁶ *Rollo*, p. 10-11.

³⁷ *Dela Cruz v. People*, G.R. No. 236807, January 12, 2021.

³⁸ Article XI, Section 4, 1987 Constitution in relation to Article XIII, Section 5, 1973 Constitution.

³⁹ *Cedeño v. People*, 820 Phil. 575, 601 (2017), citing *Uyboco v. People*, 749 Phil. 987, 992 (2014).

evaluate and review the facts of the case.⁴⁰

The various issues presented by the petitioner indirectly and unjustifiably require this Court to review once again the factual matters of the case, a function which is outside the province of this Court.⁴¹ Hence, this Court will only address issues involving questions of law that will ultimately answer the crux of the case, *i.e.*, whether or not the petitioner was correctly found guilty under Section 3 (e) of RA 3019.

Charge under Sec. 3 (e) of RA 3019 may be hinged from acts also penalized under other provisions of law, and when the acts or omissions complained of as constituting the offense are alleged in the Information, conviction is proper.

Sec. 6 Rule 110 of the Rules of Court states;

Section 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information. (6a) (Emphasis Ours)

Meanwhile, Section 3(e) of RA 3019 provides:

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 x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x (Emphasis Ours)⁴²

⁴⁰ *Id.*, citing *Pascual v. Burgos*, 776 Phil. 167, 169 (2016).

⁴¹ *Rollo*, pp. 10-11.

⁴² Republic Act No. 3019, Section 3(e).

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The elements of violation of Section 3(e) of RA 3019 are: (a) the accused must be a public officer discharging administrative, judicial, or official functions; (b) he/she must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (c) his/her action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁴³

The allegations⁴⁴ mentioned in the Amended Information consist of averments of “evident bad faith” and “manifest partiality” in giving “unwarranted benefit” to the petitioner in conspiracy with the public officers, to wit::

[n]otwithstanding the fact that on said date the accreditation of AM-Europharma Corporation was still suspended by the Department of Health (DOH), hence should have been disqualified to participate in the bidding, that AM-Europharma Corporation is owned and controlled by said accused Rodrigo S. Villanueva, who at the same time is the sole proprietor of Mallix Drug Center, a supplier who was awarded the contract for the supply of medicines x x x.⁴⁵

Thus, the parameters set by the rules were fulfilled. The assailed Decision is clear that petitioner was found to have violated Section 3(e) of RA 3019, specifying the instances of his connivance in order to obtain unwarranted benefits, and was consequently unduly awarded the contracts for the purchase of medicines.⁴⁶

Thus, this Court fully agrees with the Sandiganbayan as to its finding that the petitioner, when he allowed himself to be arraigned and proceeded to trial after entering his plea under the Amended Information, is now estopped from claiming, after his conviction, that the Amended Information is “vague,” and that he was deprived of his constitutional right to be informed of the nature and cause of the accusations against him.⁴⁷ The fact that petitioner was able to mount a defense belie his allegations.

The assailed Decision also cited the provisions of the then prevailing Circular No. 92-386⁴⁸ of the Commission on Audit on the instances when public bidding is a failure,⁴⁹ viz.:

Section 95- *When Public Bidding Deemed a Failure* - For purposes of these rules and regulations, public bidding(s) is deemed to have failed under any of the following circumstances:

⁴³ Supra note 37, citing *Marzan v. People*, G.R. No. 201942, February 12, 2020.

⁴⁴ *Rollo*, pp. 79-80.

⁴⁵ Records, Vol. I, pp. 261-264.

⁴⁶ *Rollo*, pp. 99-111.

⁴⁷ *Id.* at 16-19.

⁴⁸ Amended by RA 9184 or The Government Procurement Reform Act.

⁴⁹ *Rollo*, p. 103.

- a. When no or only one qualified bid is received on or before the schedule date of the opening of bids; or
- b. When all the bids submitted are defective and/or non-complying bids or not responsive to the terms, conditions and specifications of the tender documents.⁵⁰

The citation is a direct reference to how petitioner and his co-accused public officers violated Section 3(e) of RA 3019. The accused public officers' noncompliance with the COA Circular, and their willful omission to declare that the bidding that took place was a "failed bidding" were badges of "manifest partiality" and "giving of unwarranted benefits" to the petitioner, whose acquiescence to the award constituted the offense charged.

The prosecution satisfactorily established that there was a failure of bidding, since at the time of the public bidding on January 15, 2001, the accreditation of Europharma and Pharmawealth were still suspended by the DOH as shown by the November 23, 2000 letter⁵¹ and September 29, 2000 Memorandum⁵² of DOH Undersecretary Ma. Margarita M. Galon.⁵³ Consequently, only Mallix Drug is supposedly qualified. Although, petitioner averred that such accreditation was not relevant to the bidding, he recognized that Europharma's accreditation was non-existent at the time of the bidding since the accreditation was issued only on January 17, 2001.⁵⁴

Petitioner cannot take refuge on the claim that the transactions were under "Emergency Purchase" and thus a competitive bidding may be dispensed with.⁵⁵ Clearly the transaction could not be characterized as under an "emergency purchase" since the requisites of Section 368 of the Local Government Code of 1991 were not present.⁵⁶ Otherwise, the public officers would have dispensed

⁵⁰ See *rollo*, p. 103.

⁵¹ *Rollo*, p. 103.

⁵² *Id.*

⁵³ *Id.* at 102-103.

⁵⁴ *Id.* at 94.

⁵⁵ *Id.* at 23-30.

⁵⁶ **Section 368. *Emergency Purchase.*** - In cases of emergency where the need for the supplies is exceptionally urgent or absolutely indispensable and only to prevent imminent danger to, or loss of, life or property, local government units may, through the local chief executive concerned, make emergency purchases or place repair orders, regardless of amount, without public bidding. Delivery of purchase orders or utilization of repair orders pursuant to this Section shall be made within ten (10) days after placement of the same. Immediately after the emergency purchase or repair order is made, the chief of office or department making the emergency purchase or repair order shall draw a regular requisition to cover the same which shall contain the following:

(a) A complete description of the supplies acquired or the work done or to be performed;

(b) By whom furnished or executed;

(c) Date of placing the order and the date and time of delivery or execution;

(d) The unit price and the total contract price;

(e) A brief and concise explanation of the circumstances why procurement was of such urgency that the same could not be done through the regular course without involving danger to, or loss of, life or property;

(f) A certification of the provincial or city general services or the municipal or barangay treasurer, as the case may be, to the effect that the price paid or contracted for was the lowest at the time of procurement; and

(g) A certification of the local budget officer as to the existence of appropriations for the purpose, the local accountant as to the obligation of the amount involved, and the local treasurer as to the

altogether the steps for a competitive bidding and would not have issued Invitations to Bid.

The third element of RA 3019 refers to two separate acts - either act qualifies as a violation.

In his desperate attempt to escape conviction, petitioner manifests that there was no damage or actual injury on the part of the Government or any of its instrumentalities, and as such he was not liable under RA 3019.⁵⁷

We disagree.

The *third* element of Section 3(e) of RA 3019 consists of when the accused's action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

In *Cabrera v. People*,⁵⁸ this Court elucidated on the two separate acts under the third element of Section 3(e) of RA 3019, thus:

The *third* element refers to **two (2) separate acts** that qualify as a violation of Section 3(e) of R.A. No. 3019. **An accused may be charged with the commission of either or both. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019.**

The *first* punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be “some reasonable basis by which the court can measure it.” Aside from this, the loss or damage must be substantial. It must be “more than necessary, excessive, improper or illegal.”

The second punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or quantum of damage is not thus essential. It is sufficient that the accused has given “unjustified favor or benefit to another.” (Emphasis Ours; citations omitted)

Following the above, We quote with approval the conclusion of the Sandiganbayan, to *wit*:

availability of funds. The goods or services procured under this Section must be utilized or availed of within fifteen (15) days from the date of delivery or availability.

Without prejudice to criminal prosecution under applicable laws, the local chief executive, the head of department, or the chief of office making the procurement shall be administratively liable for any violation of this Section and shall be a ground for suspension or dismissal from service.

⁵⁷ Id. at 29-30.

⁵⁸ G.R. No. 191611-14, July 29, 2019.

Likewise, in *Pacifico C. Velasco vs. Sandiganbayan*, the Supreme Court explained that there are two (2) ways by which a public official violates Section 3 (e) of RA 3019 in the performance of his 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. The accused may be charged *under either way or under both*. The term **“unwarranted”** has been defined lacking adequate or official support; unjustified; unauthorized (Webster, Third New International Dictionary, p. 2514); or without justification or adequate reason (*Philadelphia Newspapers, Inc. v. U.S. Dept. of Justice*, C.D. Pa., 405 F. Supp. 8, 12, cited in *Words and Phrase*, Permanent Edition, Vol. 43-A 1978, Cumulative Annual Pocket Part, p. 19). **“Advantage”** means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. **“Preference”** signifies priority or higher evaluation or desirability; choice or estimation above another. And in *Alvarez v. People*, the Supreme Court held that the use of disjunctive word **“or”** connotes that either act or (a) **“causing any undue injury to any party, including the government,”** and (b) **“giving any private party any unwarranted benefits, advantage or preference,”** qualifies as a violation of Section 3(e) of RA 3019, as amended. The use of the disjunctive **“or”** connotes that the modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

The presence of the first element is not disputed. Admittedly, on the date alleged in the information, the herein accused Frankie H. Locsin, Carlos C. Moreno, Jr., Ramon T. Tirador, Luzviminda P. Figueroa, and Ricardo S. Minutio are public officials by virtue of their respective positions as Municipal Mayor, Municipal Accountant, Municipal Budget Officer, Municipal Treasurer and Municipal Environment and Natural Resources Officer and Representatives of the Municipal Mayor in the Committee on Awards of the municipality of Janiway, Iloilo. Accused Rodrigo D. Villanueva, although a private person, is charged as a conspirator of the aforesaid public officials.

In this regard, the herein accused public officials are charged with evident bad faith and manifest partiality when they, in conspiracy with accused private person Rodrigo D. Villanueva, President and General Manager of AM Europharma and also the sole proprietor of Mallix Drug, awarded the contract for the purchase of medicines to, and in fact bought such medicines from, AM Europharma in the total amount of PhP13,191,223.00 and Mallix Drug in the amount of PhP1,744,926.00, notwithstanding that, on the date of public bidding on January 15, 2001, the accreditation of AM Europharma was still suspended by the DOH, and hence, should have been disqualified to participate in the bidding, and despite the fact that said companies/bidders were owned and controlled by accused Rodrigo D. Villanueva, thereby giving unto AM Europharma/accused Rodrigo D. Villanueva unwarranted benefit, advantage or preference in the discharge of their official administrative functions.

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After going over the records of the case, the Court finds, and so holds that herein accused members of the municipal Committee on Awards of Janiuay, Iloilo, acted with evident bad faith and manifest partiality when they awarded the contract for the purchase of medicines to, and in fact bought said medicines in the amount of PhP13,191,223.00, from AM Europharma, a corporation owned and controlled by accused Rodrigo Villanueva, who is the sole proprietor of the other winning bidder Mallix Drug, notwithstanding the fact that AM Europharma should have been disqualified to participate in the bidding because its supplier's accreditation was still suspended by the DOH, and thereby giving to AM Europharma/accused Rodrigo Villanueva unwarranted benefit, advantage or preference in the discharge of their official/administrative functions to the detriment of the government.⁵⁹ (Emphasis Ours; citations omitted)

Indubitably, the Sandiganbayan did not err in finding petitioner liable under Sec. 3(e) of RA 3019 notwithstanding the absence of actual damage or injury to the government or its instrumentalities.

Private individuals can be liable together with public officials if conspiracy is proven; piercing of fiction of corporate veil is allowed if juridical entities are used by private individuals as vehicles to commit illegal acts.

Petitioner is misguided on his stand that he cannot be convicted under Section 3(e) of RA 3019 since he is a doctor and a businessman by profession, and not a public official.⁶⁰ The issue on liability of private individuals under Section 3(e) of RA 3019 has long been settled.

In *People v. Go*,⁶¹ this Court has reiterated a private person's liability on graft and corrupt practices, to wit:

At the outset, it bears to reiterate the settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto. This is the controlling doctrine as enunciated by this Court in previous cases, among which is a case involving herein private respondent.⁶² (Emphasis Ours; citations omitted)

It is rare, if not impossible, to find direct evidence of conspiracy. As such, guides to determine its existence are in place. Here, petitioner's participation in the bidding and his acceptance of the bid award, despite the overwhelming

⁵⁹ *Rollo*, pp. 100-102.

⁶⁰ *Rollo*, p. 194.

⁶¹ 730 Phil. 362-377 (2014).

⁶² *Id.* at 369.

deficiencies in the bidding process, which he must be familiar with considering his record as a supplier of medicines, demonstrated his conspiracy with his co-accused public officers. Additionally, the following acts evidently bolster his connivance with them, thus: 1) failure of petitioner's business entities to submit their Declaration of Business Interests, thereby concealing the composition of the companies; 2) authorizing the spouses Antonio H. Gasapos and Luz M. Sarmiento-Gasapos to act as representatives of his company in clear disregard of *arms-length* dealing in bids; 3) failure to post the required performance bond and the immediate delivery of medicines, just a day after the award, suggest a pre-arranged and predetermined outcome of the bid; and, lastly 4) immediate processing and acceptance of payment.⁶³

Petitioner's actuations revealed his joint purpose, concerted action, and concurrence of sentiments with his co-accused public officials in-charge of conducting a flawed bidding to unjustifiably favor his business entities.

The relevant findings of the Sandiganbayan in the matter is hereto quoted, to wit:

It is true that there is no law that prohibits his companies/corporations from participating in one and the same bidding under the principle that they are clothed with personalities separate from the person/s composing them, **however, since accused Rodrigo Villanueva used the said companies as means or vehicles for the circumvention of statutes governing procurement of government supplies through competitive bidding by combining his companies in the bidding, not only to get the desired price but also in order to assure that one or both of them can get the award, such act should not be countenanced as the very purpose of a public and competitive bidding (which is to give the public/government the best possible advantage/bargain or secure the lowest possible price and curtail favoritism in the award of government contract) would be defeated.** Undoubtedly, this objective of competitive bidding cannot be obtained if the **only** two (2) competing bidders are owned and controlled by one and the same person.

x x x x

It is settled that there is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. **Conspiracy need not to be proved by direct evidence and may be inferred from the conduct of the accused before, during, and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all.** Conspiracy is present when one occurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was committed.

x x x x

With respect to the accused private person, namely accused Rodrigo Villanueva the owner of the AM Europharma and Mallix Drug, the Court

⁶³ Rollo, p. 110.

also finds that he conspired with accused public officials Frankie H. Locsin, Carlos C. Moreno, Ramon T. Tirador, Luzviminda P. Figueroa and Ricardo Minurtio in the consummation of the subject procurement because of the fact that his companies accepted and encashed the checks as payments for the procured medicines which readily shows that he concurred in the criminal designs of the said accused public officials. While it may be true that there is no direct evidence linking him to conspiracy with the said accused public officials, the Court considers the conduct of accused Rodrigo Villanueva in authorizing the spouses Antonio H. Gasapos and Luz M. Sarmiento-Gazapos as his companies' representatives in the subject public bidding, and immediately on the following day after the award or on January 16, 2001, he caused his companies to deliver the procured medicines, and thereafter, on January 17, 2001, caused the encashment of the checks in payment thereof, indicative of a joint purpose, concerted action and concurrence of sentiments. Undeniably, by permitting his two (2) companies to participate in the subject public bidding, and immediately thereafter, became the recipient of the proceeds of the said procured medicines, clearly indicate [accused] Rodrigo Villanueva's concurrence to the conspiracy and thereby giving him unwarranted benefit, advantage, and preference.⁶⁴ (Emphasis Ours; citations omitted)

Notably, petitioner was not only the general manager and the owner of the 99% capital stock of Europharma⁶⁵ but also the sole proprietor of Mallix Drug.⁶⁶ The corporate documents⁶⁷ of the entities reveal petitioner's ownership and almost absolute control over Europharma. Meanwhile, Mallix Drug has no juridical personality separate and distinct from petitioner, it being a sole proprietorship, and its business activities bind him.⁶⁸ The foregoing thus display that the two "companies" owned by petitioner which participated in the defective bidding were "alter egos" of each other and of petitioner's. The relevant portion of the petitioner's testimony is enlightening, to wit:

PROS. SANTOS:

Q. And you mentioned, sir, that your Provincial Agent or Sales Agent in this case is Ms. Luz Gazapos?

A: Yes, ma'am.

Q: She is also the one that represented AM Europharma during that bidding?

A: Yes, ma'am.

Q: And Mrs. Gazapos is the married name, am I correct?

A: Yes.

CHAIRPERSON:

Let us clarify, Mrs. Gazapos was representing both Europharma and Mallix?

⁶⁴ Id. at. 108-110.

⁶⁵ Id. at 88.

⁶⁶ Id. at 94.

⁶⁷ See Exhibits "LL"- Cover Sheet and 2000 & 2001 GIS of Europharma; "MM" -Amended Articles of Incorporation; "NN"- Certificate of Increase of Capital Stock; "JJ-1" and "JJ-2"Bidders' Tender of Europharma and Mallix Drugs; and "Y" SEC Evaluation Report.

⁶⁸ See *Dela Cruz v. People*, supra note 37.

Witness: To my knowledge, your Honor, I think there is another individual that should represent Europharma and Mallix Drug.

CHAIRPERSON:

Should represent. But who was actually representing during that time?

WITNESS: Well, I am not sure who is at this moment, your Honor.

CHAIRPERSON:

I thought you were the proprietor of Mallix and now you are not sure?

WITNESS: But I was just informed that bidding will be held in a certain province and I told them okay you prepare the necessary documents for the bidding and that's what they did. I just signed the documents for submission to the bidding areas, your Honor, after we read from the newspapers. Most probably they knew about it because it's supposed to be published in the newspapers and a lot of bidders will be joining the bidding. So, we opted probably to join the two companies.

CHAIRPERSON:

Did you not mention that you allowed Mallix and AM Europharma to have greater chance of winning?

WITNESS:

Most probably, your Honor.

CHAIRPERSON:

You mentioned that earlier.

WITNESS:

Most probably, your Honor, it would be better.

CHAIRPERSON:

And both entities were represented by a single agent?

WITNESS:

I am not very sure. Most probably your Honor

x x x x

PROS. SANTOS

Q: Sir, do you know a certain Antonio Gazapos, Jr.?

A: Antonio Gazapos is the husband of Luz Gazapos.

x x x x

Q: By the way, sir, how long have you known Antonio Gazapos?

A: Well, as the husband of Luz, we usually meet sometimes but he is not a regular employee of Mallix.

Q: And for clarification, sir, you mentioned a while ago that Mrs. Luz Gazapos is the representative of AM Europharma, Did I hear you correct, sir?

A: Right. That's right, ma'am.

Q: And did you see the Bidder's Tender, sir, that were submitted in connection with this bidding?

A: No.

Q: But you are sure, sir, that Mrs. Luz Gazapos is your representative in AM Europharma not Mallix Drug Center?

- A: That's right.
- Q: Sir, of course, sir you have authorized Mrs. Luz Gazapos to enter in your behalf? You have authorized her, sir?
- A: I think so, ma'am.
- Q: How did you authorize her, sir, is it in writing?
- A: Actually, she is an employee of Europharma.
- Q: Employee of Europharma. And you will agree with me sir that both AM Europharma and Mallix Drug Center were awarded the purchase of these medicines in these cases, you will agree with me?
- A: I think so, ma'am.⁶⁹

Clearly, petitioner's attempt to use the corporate fiction of Europharma as a shield from liability is not proper. Remarkably, when the corporate fiction is used as a means of perpetuating fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of monopoly, or generally the perpetration of knavery or crime, such as in this case, the veil with which the law covers and isolates the corporation will be lifted to allow for its consideration merely as an aggregation of individuals.⁷⁰

Hence, this Court concurs in the disposition of the Sandiganbayan in piercing the veil of Europharma's corporate fiction. In any case, even if this Court disallows the piercing of the corporate veil of Europharma, petitioner would still be held liable because his defense of denial was self-serving and cannot be taken in his favor. Moreover, considering too that petitioner is the sole proprietor of Mallix Drug, its liabilities are his and the participation of Mallix Drug in the flawed bidding is evidence against him.

All told, the question of whether petitioner acted in conspiracy with his co-accused public officials is a factual question which is beyond the purview of this Court's discretionary appellate jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Nevertheless, we reviewed the records again and find that indeed, the Sandiganbayan correctly found that petitioner acted in connivance with his co-accused public officials by participating in the flawed bidding resulting to unwarranted benefits and advantages to his favor, in stark violation of Section 3(e) of RA 3019.⁷¹

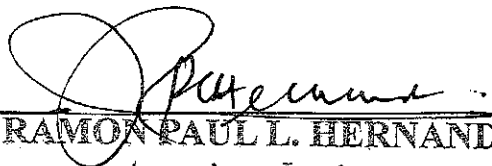
WHEREFORE, the petition for review on *certiorari* is hereby **DENIED**. The February 23, 2015 Decision and June 8, 2015 Resolution of the Sandiganbayan in Crim. Case No. SB-08-CRM-0381, which found petitioner **Rodrigo Deriquito Villanueva GUILTY** of violating Section 3 (e) of Republic Act No. 3019, are hereby **AFFIRMED**.

⁶⁹ TSN, September 2013, pp. 28-34.


⁷⁰ *Reynoso, IV v. CA*, 399 Phil. 38, 50 (2000).


⁷¹ *Supra* note 58.

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

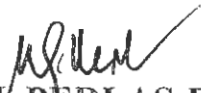

RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

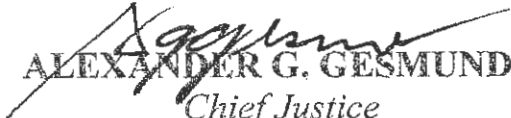
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ALEXANDER G. GESMUNDO
Chief Justice

