



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

N O T I C E

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **30 March 2022** which reads as follows:*

“G.R. No. 231548 (*Commo. Francisco L. Tolín and Cdr. Manuel R. Tuason vs. People of the Philippines*).— This resolves the Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assailing the Decision² dated January 12, 2017 and Resolution³ dated May 9, 2017 of the Sandiganbayan in Criminal Case No. SB-11-CRM-0431.⁴ In the assailed Decision, petitioners Francisco L. Tolín (Tolin) and Manuel R. Tuason (Tuason) were found guilty beyond reasonable doubt for violation of Section 3 (e) of Republic Act No. 3019 (RA 3019).⁵

This case stemmed from a special audit conducted by the Commission on Audit (COA) on selected transactions of the Philippine Navy (PN) from 1991 to June 1992.⁶ The audit team found that the PN purchased medicines through the emergency mode of procurement without canvassing from other suppliers⁷ and collectively, there was an overpricing in the amount of Php 2.9 Million.⁸

¹ *Rollo*, pp. 7-23.

² Id. at 24-83. The Decision was penned by Associate Justice Efren N. De La Cruz with the concurrence of Associate Justices Michael Frederick L. Musngi and Reynaldo P. Cruz.

³ Id. at 107-118. Penned by Associate Justice Efren N. De La Cruz with the concurrence of Associate Justices Michael Frederick L. Musngi and Reynaldo P. Cruz.

⁴ Id. at 81.

⁵ Entitled “Anti-Graft and Corrupt Practices Act,” approved on August 17, 1960.

⁶ Id. at 52.

⁷ Id. at 53.

⁸ Id. at 38.

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Petitioners Tolin and Tuason (collectively, petitioners) were among the 12 officers of the PN charged by COA before the Office of the Ombudsman for violation of Sections 3 (g) and 3 (e) of RA 3019 in separate *Informations* docketed as SB-11-CRM-0425⁹ and SB-11-CRM-0431,¹⁰ respectively, for conspiring with one another and private individuals by entering into contracts disadvantageous to the Government; and willfully causing undue injury to the Government and giving unwarranted benefits to certain suppliers, by certifying the existence of an emergency and approving the emergency purchase of certain medicines. Petitioners were acquitted of violation of Section 3 (g) of RA 3019 in Criminal Case No. SB-11-CRM-0425 but were convicted of violation of Section 3 (e) of RA 3019 in Criminal Case No. SB-11-CRM-0431. Thus, this instant appeal by *certiorari* is limited to petitioners' conviction for violation of Section 3 (e) of RA 3019, the accusatory portion of which reads:

Criminal Case No. SB-11-CRM-0431

That on or about 25 February 1992, or sometime prior or subsequent thereto, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, **COMMO. FRANCISCO L. TOLIN, CDR. MANUEL RUASON a.k.a CDR. MANUEL R. TUASON**, all public officers, being then members of the Philippine Navy, Armed Forces of the Philippines (AFP), taking advantage of their official positions and committing the offense in relation to office i.e. using their power, authority and influence as members of the Bids and Awards Committee and/or Procurement Committee of the Philippine Navy, in various individual capacities, together with private accused **WILMA C. AQUINO**, conspiring, confederating and mutually aiding one another, with manifest partiality and acting with evident bad faith, did then and there willfully and criminally cause undue injury to the Government and give unwarranted benefits to PMS Commercial, by certifying the existence of an emergency, approving the emergency purchase from PMS Commercial of 70 bottles *Dolmetine Caplet 500 mg*, 25 bottles *Leoplex Capsules 500 mg*, 300 bottles *Choloramphenicol (sic) Suspension* and 30 bottles *Enerforte Capsules* in the amount of Seventy Nine Thousand Nine Hundred Fifty and 00/100 (Php79,950.00), Philippine Currency, and certifying that PMS Commercial is the sole distributor of the aforementioned medicine, when in truth and in fact, as all the accused well knew, said medicines had a market value of only Thirty Five Thousand Eight Hundred Twenty Nine and 50/100 (Php35,829.50) or a difference of Forty Four Thousand One Hundred Twenty and 50/100 (Php44,120.50) and there was no actual emergency, and that PMS Commercial is not the sole distributor of the aforesaid medicines, thereby avoiding the requirement of a public bidding, to the damage and prejudice of the government.

CONTRARY TO LAW.¹¹

⁹ Id. at 119-121.

¹⁰ Id. at 122-124.

¹¹ Id. at 122-123.

Upon arraignment, petitioners separately entered a plea of not guilty under the above-quoted Information.

Version of the Prosecution

People of the Philippines (respondent) presented as its sole witness, Mary S. Adelino who, at the time relevant to the transaction, was State Auditor IV and audit team leader of the group which conducted the audit of the transactions of the PN.¹² The purpose of the audit was to determine whether the transactions entered into by the PN were in accordance with government rules and regulations.¹³

She testified that petitioners were involved in the purchase of Php 79,950.00 worth of medicines from PMS Commercial.¹⁴ The audit team did a comparison of prices using the Philippine Index of Medical Specialties (PIMS)¹⁵ and noted price differences when they compared the subject medicines to generic brands. After examining the relevant documents,¹⁶ the audit team found that petitioners availed of emergency purchase as the mode of procurement despite the absence of an emergency since the subject medicines were to be used for stock purposes only.¹⁷ Moreover, there was non-compliance with the requirement to canvass from at least three (3) suppliers which is mandated for emergency purchases.¹⁸

Version of the Defense

Tuason, who was the Assistant Chief of Staff for Logistics, asserted that his functions were limited to processing the purchase order (PO) transmitted by the procurement officer, and he was designated only as a signatory on the "Recommended for Approval" portion of the PO.¹⁹ Before signing the PO, he reviewed its attachments and verified that the other requisite signatories signed it.²⁰ He claimed that it was the procurement officer who decided to avail of emergency purchase as the mode of procurement.²¹ Finally, he stated

¹² Id. at 37.

¹³ Id. at 38.

¹⁴ Id. at 41.

¹⁵ The PIMS is an index of essential prescribing information designed to be used as a handy reference for routine prescribing of pharmaceutical products available in the Philippines and as an update to PIMS Annual. See Sandiganbayan Decision, p. 15, footnote no. 6; id. at 38.

¹⁶ The audit team examined documents covering the transaction, which includes: disbursement vouchers, official receipts, purchase orders, purchase requisitions, certificate of availability of fund, certificate of emergency purchase, certificate of exclusive distributorship issued by the supplier and certificate from the manufacturer, invoices issued by the manufacturer and its license to operate, the procurement directives, requisition and issue vouchers, comparison of prices, purchase request, and comparative pricing analysis. See Sandiganbayan Decision, p. 15; *rollo*, p. 38.

¹⁷ *Rollo*, p. 38.

¹⁸ Id.

¹⁹ Id. at 50.

²⁰ Id.

²¹ Id.

that he reviewed the supporting documents of the disbursement voucher (DV) which he certified in good faith after verifying that the procurement officer and the supply accountable officer had likewise signed the same.²²

On the other hand, Tolin, then Deputy Commandant of the Philippine Coast Guard, testified that he signed the Certificate of Emergency Purchase (CEP) on behalf of the Commandant who was then on leave. He relied on the technical knowledge of the medical officer who was the most qualified to determine the existence of an emergency.²³ He maintained that it was only after the PO obtained the requisite approval from several officers that he finally signed the same on behalf of the Commandant, who was the Head of the Procurement Agency.²⁴ He also signed the DV as Acting Commandant because all the signatories before him already signed, which confirmed that there was compliance with all procedural requirements.²⁵

Collectively, petitioners denied any knowledge that PMS Commercial was not the sole distributor of the subject medicines or their market values.²⁶ Likewise, they denied that they were members of the Bids and Award Committee as alleged in the *Information*.²⁷

Wilma C. Aquino (Aquino) was the Customer Service Manager of Drugmaker's Laboratory Inc. (DLI) during the year material to this case. She signed the Certification stating that DLI was the manufacturer of the pharmaceutical products being distributed by PMS Commercial.²⁸ She testified that the Certification she issued was based on the Certificate of Product Registration (CPR) from the Bureau of Food and Drug (BFAD), now the Food and Drug Administration, which attests that the subject medicines were registered and that PMS Commercial had the exclusive right to the product as its owner.²⁹ Without the CPR, a trader cannot market the product and a manufacturer would not be allowed to produce an unregistered product. Finally, she denied knowing the petitioners or participating in their transaction and explained that it was part of DLI's standard operating procedure to issue the Certification when requested by their clients.³⁰

On January 12, 2017, the Sandiganbayan rendered a Decision³¹ finding petitioners guilty of Section 3 (e) of RA 3019, the dispositive portion of which states:

²² Id.

²³ Id. at 51.

²⁴ Id. at 52.

²⁵ Id.

²⁶ Id. at 49 and 52.

²⁷ Id. at 49 and 51.

²⁸ Id. at 45.

²⁹ Id.

³⁰ Id.

³¹ Id. at 24-83.

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follows:

x x x

10. In Criminal Case No. SB-11-CRM-0431, accused **FRANCISCO L. TOLIN** and **MANUEL R. TUASON** are found GUILTY beyond reasonable doubt of violation of Section 3(e) of RA 3019, and pursuant to Section 9 thereof, are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum, with perpetual disqualification from holding public office.

Accused **WILMA C. AQUINO** is hereby **ACQUITTED** for failure for (*sic*) the prosecution to prove her guilt beyond reasonable doubt.

x x x

As the act or omission from which the civil liability might arise did not exist, no pronouncement of the civil liability of the accused is hereby made.

Let the hold departure order against accused Aquino be lifted and set aside, and her bonds released, subject to the usual accounting and auditing procedure.

For accused Dumancas, Roque, Renales, Tolin and Tuason, let the hold departure orders against them be lifted and set aside, and their bonds released only with respect to Criminal Cases Nos. SB-11-CRM-0422 to -0427.

SO ORDERED.³²

The Sandiganbayan held that overpricing was not substantiated as the COA audit team did not canvass from different suppliers.³³ This notwithstanding, the Sandiganbayan held that petitioners were still liable for violation of Section 3 (e) of RA 3019 for conspiring with one another and giving PMS Commercial an unwarranted benefit when it was awarded the contract for the subject medicines without public bidding.³⁴ At the time of the transaction, the prevailing guidelines on procurement was COA Circular No. 85-55A³⁵ which required public bidding on purchases of supplies, materials, and equipment in excess of Php 50,000.00, unless the law or the agency charter provides otherwise. By exception, Section 4.1.b of the same Circular authorizes the conduct of emergency purchase in cases when there is an emergency, *i.e.*, "loss of or danger to life and/or property," or that the medicines "are to be used in connection with a project or activity which cannot be delayed causing detriment to public service."³⁶ That the medicines were

³² Id. at 81-82.

³³ Id. at 78.

³⁴ Id. at 67.

³⁵ Commission on Audit: Amended Rules and Regulation on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property, COA Circular No. 85-55-A (September 8, 1985).

³⁶ Id.

badly needed, or that there was no remaining supply was not the situation contemplated in authorizing the resort to emergency purchase.

With regard to Aquino, the Sandiganbayan found nothing irregular or fraudulent with her issuance of the Certification stating that DLI was the manufacturer of the medicines distributed by PMS Commercial or that a particular distributor is the sole distributor of the same.³⁷ The Sandiganbayan observed that neither DLI nor Aquino signed any documents pertaining to the purchases or communicated with the PN in relation thereto.³⁸

In a Resolution³⁹ dated May 9, 2017, the Sandiganbayan denied petitioners' Joint Motion for Reconsideration⁴⁰ for lack of merit.

Hence, this present Petition.

Petitioners maintain that except for the element that they are all public officers, the prosecution failed to prove all the other elements to hold them liable for violation of Section 3 (e) of RA 3019,⁴¹ or that they conspired with Aquino, whom they have never met.⁴² As senior officers, they relied on the work of their subordinates and hence, the *Arias v. Sandiganbayan* ruling should be appreciated in their favor.⁴³ Finally, petitioners assert that in approving the transaction with PMS Commercial, they acted in good faith and there was no evidence that they personally benefitted from the same.⁴⁴

In its Comment,⁴⁵ respondent, as represented by the Office of the Special Prosecutor (OSP), avers that petitioners acted with manifest partiality and evident bad faith, or at the very least, gross inexcusable negligence in approving the purchase of medicines from PMS Commercial through emergency purchase.⁴⁶ Unlike other minute requirements in government procurement, non-compliance with the rules on public bidding is readily apparent, and the approving authority can easily call the attention of the subordinates concerned.⁴⁷ Further, the OSP submits that even if overpricing was not established, this does not negate petitioners' culpability for violation of Section 3 (e) of RA 3019.⁴⁸ Finally, the OSP avers that the Petition must be

³⁷ Id. at 77.

³⁸ Id. at 78.

³⁹ Id. at 107-118.

⁴⁰ Id. at 84-106.

⁴¹ Id. at 13-15.

⁴² Id. at 15-16.

⁴³ Id. at 16-18.

⁴⁴ Id. at 19.

⁴⁵ Id. at 237-257.

⁴⁶ Id. at 246-247.

⁴⁷ Id. at 248.

⁴⁸ Id. at 250.

denied because the grounds relied upon by petitioners involve the resolution of questions of fact and not of law.⁴⁹

In their Joint Reply to Comment with Motion to Admit,⁵⁰ petitioners reiterated the arguments and defenses raised in their Petition.

The sole issue for resolution is whether the Sandiganbayan erred in finding petitioners guilty of the crime of violation of Section 3 (e) of RA 3019.

We rule in the affirmative.

As a rule, the findings of fact of the Sandiganbayan as a trial court are accorded great weight and respect.⁵¹ However, in cases where there is a misappreciation of facts, the Court will not hesitate to reverse the conclusions reached by the trial court.⁵² To justify a conviction, the culpability of an accused must be proven beyond reasonable doubt. After evaluating the facts and circumstances of the case, the Court must reach a moral certainty as to the accused's guilt; that is, a degree of proof which produces conviction in an unprejudiced mind.⁵³ Otherwise, where there is reasonable doubt, the accused must be acquitted.

In the present case, the Court finds that the facts and evidence presented by the prosecution failed to establish all the elements of Section 3 (e) of RA 3019 to warrant petitioners' conviction.

The prosecution failed to establish the second element of Section 3(e) of RA 3019.

Section 3 (e) of RA 3019 reads:

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:

XXX

(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 impartiality, evident bad faith or gross inexcusable negligence.

⁴⁹ Id. at 253-255.

⁵⁰ Id. at 262-267.

⁵¹ *Cruz v. People*, G.R. Nos. 197142 & 197153, October 9, 2019.

⁵² Id.

⁵³ *Cannan v. People*, 614 Phil. 179,194 (2009).

To be found liable for this offense, the following elements must concur: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and (3) his 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.⁵⁴

The presence of the first element is undisputed. During pre-trial, petitioners' statuses as public officers at the time of the transaction took place were stipulated upon.⁵⁵ Petitioners were members of the PN where Tolin was the Deputy Commandant of the Philippine Coast Guard (PCG), and Tuason was the Assistant Chief of Staff for Logistics.

Briefly, the subject medicines in the present case were purchased without public bidding. Petitioners, however, contend that these were emergency purchases which dispensed with the requirement of public bidding. Likewise, no canvass was conducted from three (3) *bona fide* suppliers under the guise that PMS Commercial was the exclusive distributor..

At this juncture, it bears to emphasize that emergency purchase as the mode of procurement of the subject medicines for the PN was unjustified. As correctly pointed out by the Sandiganbayan,⁵⁶ COA Circular No. 85-55-A, then the prevailing rule on government procurement, is emphatic as to what constitutes an emergency for purposes of availing of emergency procurement.⁵⁷ There was no showing that the purchase of the subject medicines in this case would fall under the definition of an "emergency"

⁵⁴ *Martel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

⁵⁵ *Rollo*, p. 35.

⁵⁶ *Id.* at 72.

⁵⁷ COA Circular No. 85-55-A, Rule 4.1.b states:

b. Emergency Purchase

1. Unless otherwise provided by law or the charter, agencies are authorized to make emergency purchase of supplies, materials and spare parts to meet an emergency which may involve the loss of or danger to life and/or property, or are to be used in connection with a project or activity which cannot be delayed causing detriment to the public service. (applicable to NLC sectors)
2. An emergency purchase shall be allowed only upon a proper showing of the nature of the purchase. For this purpose, a certification shall be made by the agency head or his duly authorized representative particularly stating the actual conditions obtaining at the time of purchase, the quantity of items needed and the time or period when such items are to be used.
3. In an emergency purchase, canvass of prices of items from at least three (3) bonafide reputable suppliers shall be required, except when the amount involved is less than P1,000.00 or in case of repeat orders where the price is the same or less than the original price.

A supplier may be deemed a bonafide and reputable if it satisfies the following criteria:

- a) it should be duly licensed and registered with appropriate bodies;
- b) it is not "blacklisted" by any government agency at the time of canvass; and
- c) it should be in business for at least six (6) months.

which is limited to "loss of or danger to life and/or property" or that the medicines "are to be used in connection with a project or activity which cannot be delayed causing detriment to public service."⁵⁸ That the medicines were badly needed, or that there was no remaining supply, was not the situation contemplated in authorizing the resort to emergency purchase. Moreover, on the assumption that emergency purchase was viable, a canvass of prices of items from at least three (3) *bona fide* reputable suppliers is required.⁵⁹ Records show that this requirement was bypassed when the branded name instead of the generic name of the medicines were used in the canvass.⁶⁰ Naturally, utilizing the branded name of the medicine would correspond to only one distributor, which was PMS Commercial.⁶¹

With respect to the second element, there are three (3) distinct modes of committing the offense of Section 3 (e) of RA 3019. In the case of *People v. Pallasigue*,⁶² the Court described each mode as follows:

There is "**manifest partiality**" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also 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. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally; with conscious indifference to consequences insofar as other persons may be affected.

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ *Rollo*, p. 69.

⁶¹ Executive Order No. 301, Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal, (July 26, 1987).

SECTION 1. Guidelines for Negotiated Contracts. — Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, except under any of the following situations:

- a. Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;
- b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;
- c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;
- d. Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;
- e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned; and
- f. Whenever the purchase is made from an agency of the government. (Underscoring supplied).

⁶² G.R. Nos. 248653-54, July 14, 2021.

Guided by the foregoing pronouncements, the Court finds that the prosecution failed to establish beyond reasonable doubt that petitioners acted with evident bad faith and/or manifest partiality, as alleged in the *Information*.

With respect to Tuason, the Sandiganbayan ruled that he acted with evident bad faith when he allowed the procurement officer to decide when a purchase should be made through the emergency mode of procurement, "in total disregard of the directive that it should be the head of the agency who shall make such certification."⁶³ Likewise, he recommended for approval the PO despite the absence of an emergency as contemplated by COA Circular No. 85-55-A. The Sandiganbayan ruled:

By virtue of his position [Assistant Chief of Staff for Logistics], accused Tuason's function is to advise the commandant of the PCG on matters pertaining to logistics and to determine the supply requirement of the PCG. As such, he is aware of the supply required by each unit and has prepared a logistics program including the same. Yet, despite knowing fully well the supply requirement of the medical unit, he recommended the PO for approval on the sole basis that the medical unit indicated in the RJV that the medicines were "urgently needed." He did not inquire as to the conditions obtaining at that time which would necessitate the request. x x x.⁶⁴

Meanwhile, as regards Tolin, the Sandiganbayan did not specify whether he acted with evident bad faith or manifest partiality. In holding him liable, the Sandiganbayan ruled that Tolin, who at the time of the transaction was the acting agency head on behalf of the Commandant who was on leave, depended on the Certification of the medical officer that the subject medicines were urgently needed. The Sandiganbayan did not accept Tolin's defense that he relied on the assessment of the medical officer whom he believed was the most qualified in determining the existence of an emergency.⁶⁵ In addition, Tolin was faulted for approving the PO on the basis of the assessment of a subordinate that there was an emergency. Thus, the Sandiganbayan concluded:

The pertinent COA Circular provides that the certification of an emergency shall be made by the agency head or his duly authorized representative. Clearly, the medical officer is not the proper officer to determine and certify when an emergency purchase must be resorted to. Aside from this, the certification fails as it merely noted that the medicines were urgently needed, which did not meet the requirement that it must particularly state the actual conditions obtaining at the time of purchase. The medical officer could have described the request as urgent but not exactly pertaining to an emergency. In any case, accused Tolin, acting as the head of the agency, must

⁶³ Id. at 76.

⁶⁴ Id.

⁶⁵ Id. at 75.

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have inquired further as to the actual situation which would warrant the need to dispense [with] public bidding and opt for emergency purchase instead. Admittedly, the said accused is in the best position to review what has been undertaken by the other offices with respect to the procurement of the subject medicines.⁶⁶

It is evident from the foregoing that the Sandiganbayan's finding of evident bad faith on the part of petitioners was primarily anchored on the procurement of allegedly overpriced medicines without the benefit of a public bidding. However, the Court, in *Macairan v. People*,⁶⁷ was categorical that for there to be a violation under Section 3 (e) of RA 3019 based on a breach of applicable procurement laws, the prosecution cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must still be shown beyond reasonable doubt that the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

Significantly, the Court finds it curious that while petitioners are alleged to have acted with evident bad faith which is committed by means of *dolo* or with deliberate intent, a closer examination of the assailed Decision reveals that petitioners' culpability evinces *culpa* or gross inexcusable negligence. It is evident from the foregoing that in actuality, the Sandiganbayan found petitioners criminally liable for their gross inexcusable negligence; specifically, for breaching their duties to properly supervise their subordinates. It was underscored in the assailed Decision that Tolin admitted that he was in the best position to review what has been undertaken by the other offices with respect to the procurement of the subject medicines.⁶⁸ On the other hand, by virtue of his position, Tuason exercised direct supervision over the procurement officer.⁶⁹ Thus, petitioners were faulted for their omissions, that is, for failing to make further inquiries as to the actual conditions obtaining at the time of the transaction with PMS Commercial which would justify resort to emergency purchase. While these are undoubtedly mistakes on the part of petitioners, mistakes committed by a public officer, no matter how patently clear, are not actionable under RA 3019 absent any clear showing that they were motivated by malice or some perverse motive or ill will. As aptly explained by the Court in *Macairan*.⁷⁰

xxx in other words, to constitute evident bad faith or manifest partiality, it must be proven that the accused acted with malicious motive or fraudulent intent. It is not enough that the accused violated a law, committed mistakes or was negligent in his duties. There must be a clear showing that the accused was spurred by a corrupt motive or a deliberate intent to do wrong or cause damage. Thus, as the Court explained about 20 years ago in *Sistoza v. Desierto*

⁶⁶ Id. at 75-76.

⁶⁷ G.R. Nos. 215104, 215120, 215147, 215212, 215354-55, 215377, 215923 & 215541, March 18, 2021.

⁶⁸ *Rollo*, p. 76.

⁶⁹ Id.

⁷⁰ *Macairan v. People*, *supra*.

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(Sistioza), mere bad faith or partiality *per se* is not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest. *xxx* (Underscoring supplied)

In the present case, the Court finds that the prosecution failed to prove the existence of factual circumstances that point to fraudulent intent.

Similarly, there is no cogent reason for the Court not to appreciate the defense of good faith in petitioners' favor.

Good faith has been defined as a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."⁷¹ For *one*, in approving emergency procurement and consequently, the direct purchase of the subject medicines, petitioners were under the assumption, *albeit* mistakenly, that PMS Commercial was the exclusive distributor. This belief was based on the Certification issued by Aquino on behalf of her employer, DLI, that PMS Commercial was the exclusive distributor of the subject medicines. In turn, Aquino's Certification was based on the certificates of product registration issued by the BFAD.⁷² To the mind of this Court, there was no cause for petitioners to doubt the veracity of the said Certification since it was issued by DLI who was not only the manufacturer of the subject medicines but was a separate entity from PMS Commercial, with whom the PN directly transacted with.

In addition, petitioners believed that the subject medicines were urgently needed as requested by the medical unit, and confirmed by the procurement officer. While it was later found that this "urgent need" failed to meet the definition of an emergency as intended by COA Circular No. 85-55-A, there is no showing that petitioners were aware of this irregularity. Moreover, petitioners ensured that all the necessary documentation were attached and all the necessary signatories had signed-off on the request. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations.⁷³ This attains more significance in the case of Tolin, who only signed the CEP and PO on behalf of the Commandant who was on leave.

Second, there was no proof of overpricing. To substantiate the allegation of overpricing, there must be a canvass of different suppliers

⁷¹ *Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, January 22, 2019.

⁷² *Rollo*, p. 77.

⁷³ *Arias v. Sandiganbayan*, 259 Phil. 794, 801 (1989).

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showing their respective prices of the goods subject of the transaction⁷⁴ and the comparison must pertain to the very same item or identical item procured.⁷⁵ In the present case, the prosecution compared the prices of the subject medicines with those stated in the PIMS, which only provided the suggested retail price of the medicines listed therein.⁷⁶ Hence, it is not unreasonable to expect differences in the quoted price and the actual selling price in the market. Moreover, the prosecution compared prices of generic medicines with the subject medicines purchased by the PN, which are branded medicines.⁷⁷ As observed by the Sandiganbayan, except for the active ingredient found in generic medicines, the prosecution could not state with absolute certainty that the generic and branded medicines contain the same ingredients, in the same dosage, and produce the same effect.⁷⁸ Such difference in composition is material as it may explain the difference in prices.

Third, there was no evidence that petitioners deliberately sought to favor PMS Commercial or that they obtained any financial gain in the transaction. It should be recalled that manifest partiality, similar to evident bad faith, is in the nature of *dolo*.⁷⁹ Hence, it must be proven that petitioners had a malicious and deliberate intent to bestow unwarranted partiality. In the instant case, purchasing the subject medicines from PMS Commercial, instead of any other supplier, was premised on the belief that it was the exclusive distributor.

The foregoing instances cast doubt on the culpability of petitioners for the crime charged. It bears to emphasize that even the OSP, in its Comment, entertained doubts whether the prosecution met its burden in establishing evident bad faith in so far as it alleged that petitioners' acts would, at the very least, constitute gross inexcusable negligence.⁸⁰ Even on the assumption that petitioners' inactions constitute a serious breach of their respective duties in an extremely careless manner, they cannot be held criminally liable therefor. To recall, the Information only alleged evident bad faith and/or manifest partiality. The allegation of these two (2) modalities of committing a violation of Section 3 (e) of RA 3019 necessarily means the exclusion of gross inexcusable negligence.⁸¹

Conspiracy was not established

In conspiracy, the act of one is the act of all; thus, it is never presumed. Like the physical acts constituting the crime itself, the elements of conspiracy

⁷⁴ *Sajul v. Sandiganbayan*, 398 Phil. 1082, 1100 (2000).

⁷⁵ *Miranda v. Sandiganbayan*, 815 Phil. 123, 151 (2017).

⁷⁶ *Rollo*, p. 78.

⁷⁷ *Id.*

⁷⁸ *Id.* at 79.

⁷⁹ *Martel v. People*, supra note 53.

⁸⁰ *Rollo*, pp. 246-247.

⁸¹ *Villarosa v. People*, G.R. Nos. 233155, June 23, 2020.

March 30, 2022

must be proven beyond reasonable doubt.⁸² To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.⁸³ In the assailed Decision, the Sandiganbayan held that conspiracy could be inferred from the collective acts and omissions of petitioners, which were instrumental in carrying out the transaction with PMS Commercial. However, a finding of conspiracy cannot solely be predicated on the very functions that a public officer had to discharge in the performance of his official duties, especially when there is no indication that he had foreknowledge of the irregularity committed by his co-accused.⁸⁴ In this case, petitioners signed the POs by virtue of their positions. While petitioners in this case may have been lax and administratively remiss in their duties by relying too much on the representations and certification of their subordinates that the request for the subject medicines were urgently needed, *i.e.*, an emergency, without making further inquiries as to actual conditions availing at that time, it is still essential that there was a conscious design to commit an offense. After all, conspiracy is not the product of negligence but of intentionality.

In criminal cases, the burden of proof is on the prosecution to establish all the elements of the crime beyond reasonable doubt. This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense.⁸⁵ Considering that the prosecution miserably failed to prove the second element of the crime charged, there is no more reason for the Court to discuss the third element. The absence of the second element for violation of Section 3 (e) of RA 3019 is enough to acquit petitioners.⁸⁶

All told, the Court takes this occasion to reiterate that the overriding consideration in criminal cases is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt — if there exists even one iota of doubt, the Court must resolve the doubt in favor of the accused.⁸⁷ Hence, if the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, the accused must be acquitted.⁸⁸ As already explained, the prosecution did not establish any deceitful intent and motivation behind the procurement of the subject medicines from PMS

⁸² *Tan v. People*, 797 Phil. 411, 428 (2016).

⁸³ *Id.*

⁸⁴ *Macairan v. People*, note 66, citing *Magsuci v. Sandiganbayan*, 310 Phil. 14-21 (1995).

⁸⁵ *Villarosa v. People*, *supra*.

⁸⁶ *Id.*

⁸⁷ *Maamo v. People*, 801 Phil. 627, 666 (2016).

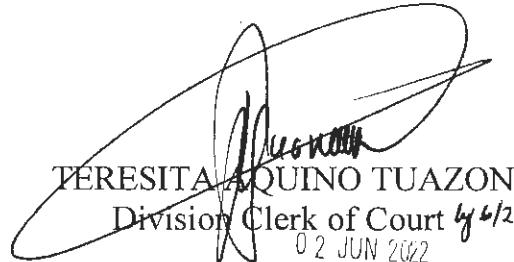
⁸⁸ *Id.*

Commercial. There was insufficient evidence showing that petitioners were animated by fraudulent and devious motives.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated January 12, 2017 and Resolution dated May 9, 2017 of the Sandiganbayan in Criminal Case No. SB-11-CRM-0431 are hereby **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove the guilt of petitioners Commo. Francisco L. Tolin and Cdr. Manuel R. Tuason beyond reasonable doubt, they are **ACQUITTED** of violation of Section 3 (e) of Republic Act No. 3019.

SO ORDERED.”

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court 46/2
02 JUN 2022

CASTRO CASTRO & ASSOCIATES (reg)
Counsel for Petitioners
12D Mabuhay Street, Brgy. Central
1100 Quezon City

COMMO. FRANCISCO L. TOLIN (reg)
CDR. MANUEL R. TUASON (reg)
Petitioners
c/o Castro Castro & Associates
12D Mabuhay Street, Brgy. Central
1100 Quezon City

OFFICE OF THE SPECIAL PROSECUTOR (reg)
4th Floor, Ombudsman Building
Agham Road, Diliman, Quezon City

SANDIGANBAYAN (reg)
5/F Sandiganbayan Centennial Building
COA Compound, Commonwealth Avenue
Cor. Batasan Road, 1126 Quezon City
(Crim. Case No. SB-11-CRM-0431)

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