



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **January 30, 2023** which reads as follows:*

**“G.R. No. 209620 (*Frankie H. Locsin v. Hon. Sandiganbayan and People of the Philippines*); G.R. No. 218653 (*Ramon T. Tirador, Ricardo S. Minurtio and Luzviminda P. Figueroa v. People of the Philippines*).** — At bar are consolidated Petitions for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court filed by petitioners Frankie H. Locsin (Locsin), Ramon T. Tirador (Tirador), Ricardo S. Minurtio (Minurtio), and Luzviminda P. Figueroa (Figueroa). In his petition<sup>2</sup> docketed as G.R. No. 209620, Locsin questions the Resolutions<sup>3</sup> of the Sandiganbayan dated May 30, 2013 and September 16, 2013, which placed him under preventive suspension, pending resolution of the case against him for violation of Section 3(e) of Republic Act No. 3019.<sup>4</sup> On the other hand, in G.R. No. 218653, petitioners Tirador, Minurtio, and Figueroa assail the Sandiganbayan’s Decision<sup>5</sup> dated February 23, 2015 and Resolution<sup>6</sup> dated June 8, 2015, finding them guilty of violation of Sec. 3(e) of Republic Act No. 3019.<sup>7</sup>

**The Antecedent Facts**

On December 12, 2000, Resolution No. 318-2000 was passed authorizing petitioner Locsin, in his capacity as the municipal mayor of Janiuay, Iloilo, to implement the Rescue and Emergency Disaster Program of Senator Vicente Sotto.<sup>8</sup> On December 19, 2000, the Department of Health (DOH), through the Center for Health Development for Western Visayas,

<sup>1</sup> *Rollo*, G.R. No. 218653, Vol. 1, pp. 10-70; *rollo*, G.R. No. 209620, Vol. 1, pp. 11-17.

<sup>2</sup> *Rollo*, G.R. No. 209620, Vol. 1, pp. 11-17.

<sup>3</sup> Id. at 19-22 and 24-28. Docketed as SB-08-CRM-0381 and penned by Chairperson/Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos.

<sup>4</sup> Entitled “ANTI-GRAFT AND CORRUPT PRACTICES ACT.” Approved: August 17, 1960.

<sup>5</sup> *Rollo*, G.R. No. 209620, Vol. 1, pp. 67-100. Docketed as SB-08-CRM-0381 and penned by Associate Justice Rodolfo A. Ponferrada and concurred in by Associate Justices Efren N. De La Cruz and Rafael R. Lagos.

<sup>6</sup> Id. at 101-113.

<sup>7</sup> *Rollo*, G.R. No. 218653, Vol. 1, pp. 10-70.

<sup>8</sup> Id. at 30.

represented by Dr. Lydia S. Depra-Ramos, entered into a Memorandum of Agreement (MOA) with the Municipal Government of Janiuay, Iloilo, represented by Locsin, who was then the President of the League of Municipalities of the Philippines (LMP) of the Province of Iloilo, for the purchase of medicines, equipment devices and the likes for emergency purposes for distribution to the different municipalities of the province. For this purpose, the DOH released to the municipality of Janiuay the amount of PHP 15,000,000.00.<sup>9</sup>

The office of Locsin then published an Invitation to Bid in the three local newspapers inviting “all qualified and accredited medical Suppliers to participate in the bidding of various medicines and medical supplies of the Municipality” to be conducted at 9:00 a.m. of January 12, 2001 at the municipal hall of Janiuay. On January 4, 2001, the Office of Municipal Treasurer issued another Invitation to Bid for the furnishing and delivery of the various medicines listed therein to the municipality. The opening of the bids was scheduled on January 15, 2001.<sup>10</sup>

In response to the said invitations, three bidders, namely: (1) A.M. Europharma Corporation (AM Europharma), Mallix Drug Center (Mallix), and Phil. Pharmawealth, Inc. (Phil. Pharmawealth) participated in the subject bidding as stated in the Minutes of the Committee on Awards.<sup>11</sup>

On January 15, 2001, the Committee on Awards composed of petitioners Minurtio, acting as representative of Locsin, Municipal Accountant Moreno, Budget Officer Tirador, and Municipal Treasurer Figueroa proceeded with the bidding despite the absence of the Provincial Auditor or his representative. Thereafter, the committee recommended the award of the contract to the lowest bidders, item for item, to AM Europharma and Mallix in the amount of PHP 13,191,223.00 and PHP 1,744,926.00, respectively. The award was approved by Locsin. Pursuant thereto, Purchase orders Nos. 1-ZB and 1-B-(1) both dated January 15, 2001, were issued to Europharma and Mallix.<sup>12</sup>

The next day, the medicines were delivered by Europharma and Mallix and were duly received by Locsin. The medicines were inspected, verified and found to be correct as to quantity and specifications by Supply Officer II Gabriel M. Billena.<sup>13</sup> On January 17, 2001, the municipality of Janiuay issued Land Bank of the Philippines (LBP) Checks Nos. 638564 and 638563 in the amount of PHP 12,711,542.16 and PHP 1,681,747.15, respectively, in favor of Europharma and Mallix. The said payments were received on even date as

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<sup>9</sup> Id. at 83-84.

<sup>10</sup> Id. at 84.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 85.

evidenced by Europharma's Official Receipt No. 44947 and Mallix's Official Receipt No. 8241.<sup>14</sup>

On post-audit, the Provincial Auditor of Iloilo issued Notice of Suspension No. 2001-03-401 (2001) dated October 2, 2001 in the amount of PHP 14,153,289.31 and required Locsin and Figueroa to explain the alleged failure of the municipality to: (1) notify the Office of the Provincial Auditor of the bidding; (2) require the winning bidders to submit performance bond equivalent to 10% of the purchase price; (3) explain why AM Europharma and Mallix were allowed to bid despite the fact that the President and General Manager of AM Europharma and the Sole Proprietor of Mallix are one and the same person – Mr. Rodrigo D. Villanueva (Villanueva); and (4) submit the list of recipient municipalities with RIVs.<sup>15</sup>

Moreover, the provincial auditor observed that the winning bidders, AM Europharma and Mallix, maintained the same office address and telefax number. It also noted that the accreditations of Phil. Pharmawealth and AM Europharma were suspended by the DOH at the time of the conduct of the bidding. This notwithstanding, the municipality allowed both bidders to participate in the bidding process.<sup>16</sup>

The provincial auditor also issued Notice of Disallowance No. 2001-03-401 (2001) ordering the suspension of the delivery of the medicine – Contrimoxazole (400mg/80ml) for failure of the drug sample to pass the standard of the Bureau of Food and Drugs (BFAD). This was, however, cured by Mallix when it delivered replacement drugs which were found to be compliant with BFAD standard.<sup>17</sup> The medicines were subsequently distributed to the beneficiaries thereof in the province of Iloilo.

On May 29, 2002, Dr. Ferjenel O. Biron (Dr. Biron), President of Phil. Pharmawealth, released to various media outlets in Iloilo City an article entitled "SO THE PUBLIC MAY KNOW." In the said article, Dr. Biron denied his company's participation in the January 15, 2001 bidding of medicines in the municipality of Janiauy, Iloilo.<sup>18</sup>

On June 28, 2002, the Committee on Awards sent a letter to the provincial auditor, requesting for the lifting of Suspension No. 2001-03-401 (2001) alleging that the committee had in fact notified the Office of the Provincial Auditor of the conduct of the January 15, 2001 bidding but the latter or his representative failed to attend. The committee further explained that during the pre-qualification of the bidders, they found no legal impediment to bar them from participating in the bidding process based on

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<sup>14</sup> Id. at 84-85.

<sup>15</sup> Id. at 85.

<sup>16</sup> Id.

<sup>17</sup> Id. at 86.

<sup>18</sup> Id. at 90.

their documentary submissions before the committee. Thus, they were allowed to bid.

On the alleged failure of the committee on awards to require the winning bidders to post a 10% performance bond, it reasoned that there was no necessity for the winning bidders to post a performance bond considering that they delivered the bidded supplies prior to the 10-day period required.<sup>19</sup> Finally, the committee posited that it committed no irregularity when it allowed AM Europharma and Mallix to bid together in one transaction since AM Europharma was a domestic corporation which has a personality separate and distinct from its officers, directors or even stockholders.<sup>20</sup>

Meanwhile, upon the investigation conducted by the Commission on Audit-Regional Legal Adjudication Office (RLAO) of Iloilo, it was confirmed that Phil. Pharmawealth did not actually participate in the January 15, 2001 public bidding. Moreover, upon inquiry with the Securities and Exchange Commission (SEC), it was discovered that AM Europharma is 99% owned by Villanueva, the sole proprietor of Mallix. Since AM Europharma and Mallix are owned by one and the same person, the COA RLAO found that the subject medicines came from a single supplier, hence, no competitive public bidding was conducted in violation of Section 356 of Republic Act No. 7160 which mandates that acquisition of supplies and property by local government units shall be through competitive public bidding.<sup>21</sup>

The anomalous purchase of medicines was then referred by Rod Tecson, anchorman of Bombo Radyo, Iloilo City, to the Office of the Deputy Ombudsman for the Visayas (OMB-Visayas) for investigation.<sup>22</sup>

After preliminary investigation, the OMB-Visayas found probable cause for the filing of three Informations against petitioners for violation of Sec. 3(e) of Republic Act No. 3019, as amended and (2) violation of Rule XXI, Secs. 65.3(1) and 65.2(2) of the IRR-A of Republic Act No. 9184. In the Amended Information, however, only the charge for Violation of Sec. 3(e) of Republic Act No. 3019, as amended was maintained.<sup>23</sup>

For his defense, Locsin claimed that by practice, the municipal mayor does not participate in the conduct of the actual bidding. He merely signed the December 19, 2000 MOA with the DOH and thereafter, he directed the Municipal Bids and Awards Committee of Janiuay to conduct the public bidding and cause the publication of the invitation to bid. After the bidding and upon ascertaining that the subject medicines were delivered in accordance

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<sup>19</sup> Id. at 86.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id. at 91.

<sup>23</sup> Id. at 87.

with the requisition and issue vouchers, he signed the payment vouchers and checks in favor of the winning bidders.<sup>24</sup>

On the other hand, petitioners Tirador, Minurtio, and Figueroa (Tirador, et al.) uniformly denied giving undue preference to AM Europharma and Mallix. They testified that the January 15, 2001 public bidding was conducted in good faith and in accordance with law. They claimed that the three bidders namely: AM Europharma, Mallix and Phil. Pharmawealth were all pre-qualified to participate in the bidding upon their submission of the required documents and their posting of the 5% bidder's bond to Municipal Treasurer Figueroa. They confirmed that the provincial auditor was not present during the initial bidding scheduled on January 12, 2001, thus, the same was moved to January 15, 2001. That notwithstanding the absence of the provincial auditor on January 15, 2001, the public bidding pushed through as scheduled claiming that the latter was duly notified of the conduct of the bidding.<sup>25</sup>

Tirador, et al. also denied knowledge of the suspension of AM Europharma's DOH accreditation either because no public notice was given to them on the matter or that such fact was concealed by the company.<sup>26</sup>

Finally, Tirador, et al. attested that Phil. Pharmawealth, through a certain Julio Rafas (Rafas), submitted a Bidder's Tender on January 10, 2001, and was subsequently pre-qualified to participate in the public bidding upon submission of the company's SEC Registration, Articles of Incorporation, and BFAD License to Operate.<sup>27</sup> Phil. Pharmawealth also posted the required 5% bidder's bond.<sup>28</sup>

For his part, Villanueva admitted that he is the owner of AM Europharma and Mallix. However, he argued that there is no law prohibiting companies with similar owners from participating in the same bidding, especially if they have separate corporate identities like AM Europharma and Mallix. Anent the expired DOH accreditation of AM Europharma, Villanueva claimed that the said accreditation is relevant only when it is the DOH that is conducting the bidding for the procurement of drugs and medicines pursuant to DOH Administrative Order No. 34 (A.O. 34), Series of 2001, but not so in this case. According to Villanueva, AM Europharma may still rely on its provisional accreditation provided that it has an existing License to Operate as drug manufacturer pursuant to A.O. 34. Since AM Europharma had a License to Operate, it was qualified to participate in the January 15, 2001 public bidding.<sup>29</sup>

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<sup>24</sup> Id. at 83.

<sup>25</sup> Id. at 78-83.

<sup>26</sup> Id. at 82-83.

<sup>27</sup> Id. at 80.

<sup>28</sup> Id. at 81.

<sup>29</sup> Id. at 82.

On February 21, 2013, the prosecution filed before the Sandiganbayan a motion to suspend accused Locsin, Moreno, Tirador, Figueroa, and Minurtio (Locsin, et. al.) *pendente lite* invoking Sec. 13 of Republic Act No. 3019. Locsin opposed the motion on the ground that their preventive suspension will not serve its purpose since the prosecution has already rested its case, thus, there is no longer any opportunity for him to hamper his prosecution. Tirador, et al. likewise filed their comment/opposition to the motion arguing that the same violated the three-day notice rule provided in Secs. 4, 5 and 6, Rule 15 of the Rules of Court. They also averred that their suspension would deprive the people of Janiuay, Iloilo of their services, and that the filing of the motion by the prosecution was politically motivated.<sup>30</sup>

In a Resolution<sup>31</sup> dated May 30, 2013, the Sandiganbayan preventively suspended Locsin, et al. from office for 90 days. The Sandiganbayan held that even if the three-day notice rule was not strictly complied with, Locsin, et al. were not deprived of the opportunity to be heard as they were able to file their respective comment/opposition to the motion. The Sandiganbayan reiterated that it is mandatory for the court to immediately order the suspension of Locsin, et al. upon a proper determination of the validity of the Information as mandated by Sec. 13 of Republic Act No. 3019.<sup>32</sup>

Locsin, et. al.'s motion for reconsideration from their preventive suspension was denied by the Sandiganbayan in a Resolution<sup>33</sup> dated September 16, 2013.

Dissatisfied, Locsin filed a Petition for Review on *Certiorari*<sup>34</sup> with this Court assailing the Sandiganbayan's Order of Suspension, which was docketed as G.R. No. 209620.

In a Resolution<sup>35</sup> dated July 4, 2016, the Court ordered the consolidation of the two cases considering that they involved the same parties and issues.

Pending resolution of the petition filed by Locsin from the Order of Suspension, the Sandiganbayan issued the assailed Decision<sup>36</sup> dated February 23, 2015, finding petitioners guilty of Violation of Sec. 3(e) of Republic Act No. 3019.

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<sup>30</sup> Id. at 20.

<sup>31</sup> Id. at 19-23.

<sup>32</sup> Id. at 20-21.

<sup>33</sup> Id. at 24-28.

<sup>34</sup> *Rollo*, G.R. No. 209620, Vol. I, pp. 11-17.

<sup>35</sup> *Rollo*, G.R. No. 218653, Vol. 1, p. 324.

<sup>36</sup> *Rollo*, G.R. No. 209620, Vol. I, pp. 67-100.

**Ruling of the Sandiganbayan**

In the impugned Decision, the Sandiganbayan First Division found petitioners guilty as charged and were sentenced 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.**<sup>37</sup>

The Sandiganbayan ruled that all the elements under Sec. 3(e) of Republic Act No. 3019 were established by the prosecution: *first*, Locsin, et al. are all public officials; *second*, the public officials committed the prohibited acts during the performance of their official duties; and *third*, the public officials acted with evident bad faith and manifest partiality when they awarded the contract for the purchase of medicines to AM Europharma and Mallix notwithstanding that they have the same owner and despite the fact that AM Europharma's DOH accreditation at the time of the public bidding in question was still suspended, thereby giving AM Europharma/Villanueva unwarranted benefit, advantage or preference in the discharge of their official/administrative functions to the detriment of the government.<sup>38</sup>

Petitioners' motion for reconsideration<sup>39</sup> was denied by the Sandiganbayan in a Resolution<sup>40</sup> dated June 8, 2015.

Aggrieved, Locsin and Tirador, Minurtio and Figueroa lodged their respective petitions for review on *certiorari* with the Court. Locsin's petition, docketed as G.R. No. 218681, was denied by the Court in a Resolution dated September 14, 2015. The Court found that Locsin acted with manifest partiality and evident bad faith when despite the disqualification of AM Europharma due to lack of accreditation from the DOH, he proceeded with the award of the bid to AM Europharma and Mallix Drug upon the recommendation of the committee. The Court also rejected Locsin's denial of prior knowledge that AM Europharma was disqualified and that Phil.

<sup>37</sup> Id. at 99.

<sup>38</sup> Id. at 90.

<sup>39</sup> *Rollo*, G.R. No. 218653, Vol. 1, pp. 118-163.

<sup>40</sup> *Rollo*, G.R. No. 209620, Vol. I, pp. 101-113.

Pharmawealth did not participate in the bidding, holding that it was incumbent upon him to check and authenticate the documents and authority of the companies intending to bid the multi-million contract.<sup>41</sup> The decretal portion of the Decision reads:

WHEREFORE, the instant petition is DENIED. The Decision and Resolution of the Sandiganbayan in Criminal Case No. SB-08-CRM-0381, dated 23 February 2015 and 8 June 2015, respectively, are hereby AFFIRMED.<sup>42</sup>

Thus, what is left for the Court's resolution are the instant petition for review of Tirador, Minurtio, and Figueroa docketed as G.R. No. 218653 assailing the February 23, 2015 and June 8, 2015 Decision and Resolution of the Sandiganbayan, as well as Locsin's petition for review from his suspension order docketed as G.R. No. 209620.

### Issues

The essential issues before Us are: 1) whether petitioners' right to be informed of the nature of the charge against them had been violated; 2) whether petitioners are guilty beyond reasonable doubt of violating Sec. 3(e) of Republic Act No. 3019; and (3) whether the preventive suspension of Locsin was in order.

### Our Ruling

The petitions are without merit.

At the outset, We stress the general rule that the 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 appellate jurisdiction of the Court is limited only to questions of law, and the Sandiganbayan's factual findings, as a rule, are conclusive upon it.<sup>43</sup>

Here, the issues raised in the instant petitions on whether the prosecution's evidence proved the guilt of the petitioners beyond reasonable doubt, and whether there was sufficient evidence to support a charge of conspiracy, are questions of fact, the resolution of which would involve a scrutiny of the evidence introduced before the Sandiganbayan. While there are established exceptions, among them: (1) the conclusion is a finding grounded entirely on speculations, surmises, and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact of the Sandiganbayan are premised on the absence of evidence and are

<sup>41</sup> *Locsin v. People*, G.R. No. 218681 (Notice), September 14, 2015.

<sup>42</sup> *Id.*

<sup>43</sup> *Dela Cruz v. People*, G.R. No. 236807, January 12, 2021.



contradicted by evidence on record,<sup>44</sup> We find none applicable in the instant cases. Thus, We shall not disturb the factual findings of the Sandiganbayan.

***The elements of the offense penalized under Sec. 3(e) of Republic Act No. 3019 were sufficiently alleged in the Information***

Petitioners insist that their constitutional right to be informed of the cause and accusation against them was violated because they were allegedly convicted of acts not mentioned in the Amended Information.

The Court does not agree.

There are two ways by which Sec. 3(e) of Republic Act No. 3019 may be violated – the first, by causing undue injury to any party, including the government, or the second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both.<sup>45</sup>

Here, a plain reading of the Information shows that the allegations stated therein sufficiently apprised petitioners that the crime charged against them was for violation of Sec. 3(e) of Republic Act No. 3019 committed with “deliberate intent,” “evident bad faith,” and manifest partiality” by awarding the contract for the purchase of medicines and in fact, buying the subject medicines from AM Europharma, notwithstanding that its accreditation was suspended at the time of the award and despite the fact that both companies have the same owner and that the public bidding was not attended by the provincial or municipal auditor or its duly authorized representative, thereby giving AM Europharma unwarranted benefits, advantage or preference.

The Amended Information reads:

That on or about January 15, 2001, and for sometime 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 the discharge of their official and administrative functions, conniving, confederating together and mutually helping with each other and with accused RODRIGO S. VILLANUEVA,

<sup>44</sup> *Santillano v. People*, 628 Phil. 62, 79 (2010).

<sup>45</sup> *Ampil v. Ombudsman*, 715 Phil. 733, 759 (2013).

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 THIRTEEN MILLION ONE HUNDRED NINETY-ONE THOUSAND TWO HUNDRED TWENTY-THREE (PHP13,191,223.00) PESOS, Philippine Currency, 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 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 benefits, 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.<sup>46</sup> (Emphasis supplied)

Jurisprudence teaches that the petitioners' constitutional right to be informed of the nature and cause of the accusation against them is upheld as long as the crime, as described, is reasonably adequate to apprise them of the offense charged. This mandate does not require a verbatim reiteration of the law. The use of derivatives, synonyms, and allegations of basic facts constituting the crime will suffice.<sup>47</sup>

In *People v. Lab-eo*,<sup>48</sup> the Court held that:

The test of sufficiency of Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly x x x. The purpose is to allow the accused to fully prepare for his [or her] defense, precluding surprises during the trial. Significantly, the appellant never claimed that he was deprived of his right to be fully apprised of the nature of the charges against him because of the style or form adopted in the Information.<sup>49</sup>

Undoubtedly, the assailed Amended Information here sufficiently enabled petitioners to understand the crime charged against them. There is no ambiguity in the allegations that prevented petitioners to prepare for their defense. Neither was there any showing that petitioners were caught by

<sup>46</sup> *Rollo*, G.R. No. 209620, Vol. I, pp. 67-68.

<sup>47</sup> *Villarba v. Court of Appeals*, G.R. No. 227777, June 15, 2020.

<sup>48</sup> 424 Phil. 482 (2002).

<sup>49</sup> *Id.* at 497.

surprise during trial. As long as this purpose is attained, the constitutional right to be informed of the nature and cause of accusation is satisfied.<sup>50</sup> Accordingly, We find that the petitioners' constitutional right to be informed of the nature and cause of the accusation against them was not violated.

In any case, assuming that the Amended Information was indeed insufficient and did not conform to the substantially prescribed form, petitioners should have moved to quash it, which they failed to do. This means that they had already acquiesced to the validity and sufficiency of the Amended Information.<sup>51</sup>

***The guilt of the petitioners  
had been proven beyond  
reasonable doubt***

Sec. 3 (e) of Republic Act No. 3019 states:

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 x

Verily, the elements of violation of Sec. 3(e) of Republic Act No. 3019 are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he or she acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his or her action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.<sup>52</sup>

<sup>50</sup> *Villarba v. Court of Appeals*, supra.

<sup>51</sup> See id.

<sup>52</sup> *Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016), citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 102 (2015).

In the case at bar, the Court agrees with the Sandiganbayan in finding petitioners guilty of violating Sec. 3(e) of Republic Act No. 3019 based upon the pieces of evidence presented by the prosecution.

With regard to the first element, it is undisputed that at the time the crime was committed, petitioners Locsin, Tirador, Minurtio and Figueroa were public officers being then the Municipal Mayor, Municipal Budget Officer, Municipal Environment and Natural Resources Officer and Municipal Treasurer, respectively, of the Municipality of Janiuay, Iloilo.

However, in a desperate attempt to obtain an acquittal, petitioners argue that they were not acting in their administrative or official functions but merely on a “borrowed capacity” during the conduct of the public bidding since the Municipality of Janiuay was simply called to be the “project implementor” of the subject Rescue and Disaster Program.

This argument is unacceptable.

It must be stressed that petitioners Tirador and Figueroa, being the Municipal Budget Officer and Municipal Treasurer, respectively, of the Municipality of Janiuay, Iloilo, were by operation of law,<sup>53</sup> members of the Committee on Awards of the municipality. Since the procurement of supplies and property is one of the main functions of the Committee on Awards, in which Tirador and Figueroa were regular members, it cannot be denied that they were performing their official functions when the questioned public bidding was undertaken.

The same is true with Minurtio who was appointed by Locsin as his representative in the Committee on Awards during the January 15, 2001 public bidding.

Locsin’s culpability is likewise undisputed. To recall, Locsin was authorized by the *Sanggunian Bayan* of Iloilo under Resolution No. 318-2000 dated December 12, 2000 to enter into and sign the MOA with the DOH for the implementation of the Rescue and Disaster Program. Pursuant to the said Resolution, Locsin signed the December 19, 2000 MOA for and in behalf of the Municipal Government of Janiuay and the Province of Iloilo in general. Thereafter, by his own admission, Locsin instructed the Municipal Bids and

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<sup>53</sup> Republic Act No. 7160, Section 364.

Section 364. *The Committee on Awards.* - There shall be in every province, city or municipality a Committee on Awards to decide the winning bids and questions of awards on procurement and disposal of property.

The Committee on Awards shall be composed of the local chief executive as chairman, the local treasurer, the local accountant, the local budget officer, the local general services officer, and the head of office or department for whose use the supplies are being procured, as members. In case a head of office or department would sit in a dual capacity, a member of the sanggunian elected from among its members shall sit as a member. The Committee on Awards at the barangay level shall be the sangguniang barangay. No national official shall sit as a member of the Committee on Awards.

Awards Committee to conduct the requisite public bidding.<sup>54</sup> After the bidding, Locsin signed the payment vouchers and checks in favor of the winning bidders, AM Europharma and Mallix.<sup>55</sup> Thus, contrary to petitioners' claim, the subject public bidding was clearly administered by the Municipality of Janiuay, and not by the LMP of Iloilo. Therefore, when the public bidding was conducted on January 15, 2001, petitioners were certainly acting in the performance of their official/administrative functions as municipal officials of Janiuay, Iloilo being then members of the Committee on Awards.

Moreover, We cannot countenance petitioners' flawed argument that they cannot be considered as discharging their official/administrative functions simply because they were not acting in their capacities as municipal mayor, budget officer, accountant and environment and natural resources officer, at the time of the questioned public bidding. To follow such postulation would open the floodgates to similarly situated public officers to evade prosecution of similar charges by simply invoking the defense that they were not acting in their official capacities at the time the prohibited acts complained of were committed. In such a case, nobody would be made accountable for their wrongdoings.

Besides, We stress that this issue has already been settled by the Court in the case of *Locsin v. People*,<sup>56</sup> when it decreed, *viz.*:

As to the contention that Mayor Locsin entered the agreement in his "borrowed capacity" as the President of the League of Municipalities of the Iloilo Province and not as the Mayor of Janiuay, the same is also denied. It would be absurd, to the point of defeating the spirit of the Anti-Graft and Corrupt Practices Act, if a mayor who is likewise the President of the League of Municipalities, would be allowed to be exempted from the definition of being a public officer due to a mere invocation that he is not acting as a mayor but as a league officer. Simply put, all elective officials who are acting as league officers would invoke their latter status to evade the ambit of [Republic Act] No. 3019.

Accordingly, We cannot sustain petitioners' assertion that they were merely acting on "borrowed capacities" when they conducted the public bidding.

The Court also finds that the second and third constitutive elements were established by the prosecution in this case. The second element may be committed in three ways, that is, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection

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<sup>54</sup> *Rollo*, G.R. No. 209620, Vol. 1, p. 83.

<sup>55</sup> *Id.*

<sup>56</sup> G.R. No. 218681 (Notice), September 14, 2015.

with the prohibited acts mentioned in Sec. 3(e) of Republic Act No. 3019 is enough to convict.<sup>57</sup> The Court expounds:

[As defined], “[p]artiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” “Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men [or women] never fail to take on their own property.”<sup>58</sup>

In this case, petitioners’ partiality is clear. Records show that the Committee on Awards made it appear that three bidders participated in the bidding when in truth and in fact, only two of them actually took part. This was established by the testimony of Teresa G. Aragon (Aragon), Assistant Vice President for Operations of Phil. Pharmawealth where she categorically denied their company’s participation in the January 15, 2001 bidding.<sup>59</sup> The same was confirmed by the COA Auditors who investigated the questioned transaction.<sup>60</sup> In fact, Aragon testified that Rafas was not even an employee of their company.<sup>61</sup>

Petitioners cannot take refuge on the documents they presented showing that a certain Rafas allegedly from Phil. Pharmawealth submitted a Bidder’s Tender and actively participated in the questioned bidding. To stress, no written authorization was offered in evidence to show that Rafas was legally authorized to represent Phil. Pharmawealth despite the fact that the Committee on Awards required the participating bidders to present their authorization from their respective companies.<sup>62</sup> The absence of a written authorization coupled with the downright denial of Phil. Pharmawealth of its participation in the January 15, 2001 bidding, clearly belie petitioners’ averment that there were three qualified participants during the controversial bidding.

Since Phil. Pharmawealth did not partake in the bidding, it was left with only two entities, AM Europharma and Mallix. Worse, it was uncovered upon the investigation of the COA auditors that both companies are owned and controlled by the same person, accused Villanueva, as evidenced by AM

<sup>57</sup> *Ampil v. Ombudsman*, supra note 45 at 757.

<sup>58</sup> *Valencerina v. People*, 749 Phil. 886, 907 (2014), citing *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693-694 (1994).

<sup>59</sup> *Rollo*, G.R. No. 209620, Vol. 1, pp.77-78.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 94.

<sup>62</sup> *Id.*

Europharma's Cover Sheet and General Information Sheet, Amended Articles of Incorporation and Certificate of Increase of Capital Stock, furnished by the SEC showing that Villanueva owns almost 99% of the capital stock of AM Europharma while he is at the same time the sole proprietor of Mallix.<sup>63</sup> As such, the required competitive public bidding in the acquisition of supplies by local government units under COA Circular No. 92-386<sup>64</sup> was clearly not satisfied. Common sense dictates that a competitive bidding cannot be achieved if the only two remaining bidder-companies are owned and controlled by the same individual. Simply stated, companies which have the same owner cannot be expected to compete with each other.

Since AM Europharma and Mallix are owned by one and the same person, the bidding held in this case ceased to be competitive. Ergo, the government was not favored with the best bid.

The three principles of public bidding are: (1) the offer to the public; (2) an **opportunity for competition**; and (3) a basis for the exact comparison of bids.<sup>65</sup> By its very nature, public bidding aims to secure for the government the lowest possible price under the most favorable terms and conditions, to curtail favoritism in the award of government contracts and avoid suspicion of anomalies, and it places all bidders in equal footing.<sup>66</sup>

Petitioners' denial of any knowledge regarding the ownership by accused Villanueva of both AM Europharma and Mallix deserves scant consideration.

We note that as per the documents submitted by AM Europharma and Mallix to the Committee on Awards, it was clearly indicated that they shared the same business address, telephone and fax numbers. To Our minds, this constituted as red flag, so to speak, which behooved petitioners to thoroughly scrutinize and examine with greater detail the companies' submissions in order to determine their connection to each other. Such significant information which was apparent and available during the pre-qualification of bidders was clearly ignored by petitioners when it went ahead and awarded the contract to AM Europharma and Mallix. Thus, petitioners cannot now insist that they had no prior knowledge of Villanueva's ownership of the winning bidders simply because the documents submitted by the prosecution were recently secured from the SEC and were not available to the members of the Committee on Awards during the pre-qualification stage. Surely, they were already apprised of the probability that the two companies were connected to each other.

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<sup>63</sup> Id. at 76.

<sup>64</sup> Entitled "PRESCRIBING RULES AND REGULATIONS ON SUPPLY AND PROPERTY MANAGEMENT IN THE LOCAL GOVERNMENTS." Dated: October 20, 1992.

<sup>65</sup> *Capalla v. Commission on Elections*, 697 Phil. 644, 669 (2012).

<sup>66</sup> See id. at 669-670.

Additionally, Sec. 44 of COA Cir. No. 92-386 which mandates that all bids must be accompanied by a statement declaring under oath all the business establishments or interest in the locality of the bidders was not complied with. Evidently, petitioners did not require the winning bidders to declare their respective business interests in the locality. Had they done so, they should have discovered that the two companies were owned by the same individual. This, coupled with the fact that petitioners disregarded the indications of possible relation of the two companies, unmistakably show petitioners' bias in favor of the winning bidders.

Further, petitioners clearly extended, with manifest partiality and evident bad faith, undue advantage or benefit to Villanueva when they allowed AM Europharma to participate in the bidding in question notwithstanding the suspension of its accreditation by the DOH during the time in question. We cannot accept petitioners' contention that they were not aware of the suspension of AM Europharma's accreditation simply because nobody informed them about it. Being the duly constituted members of the Committee on Awards, it was incumbent upon them to ensure that the companies intending to bid were qualified and have satisfied all the requirements to participate in the bidding.

Petitioners likewise cannot insist on their erroneous argument that the supplier's accreditation was not relevant because the bidding was not conducted by the DOH. *First*, it bears to point out that the December 19, 2000 MOA was executed by and between DOH, through the Center for Health Development for Western Visayas and the Municipal Government of Janiway, Iloilo. Hence, it is clear that the procuring agency was the DOH, only that, it was the Municipality of Janiway that conducted the bidding. *Second*, the fact that the medicines delivered by Mallix went through the scrutiny of the BFAD, an agency under the DOH, strongly suggests DOH's connection in the acquisition of the subject medicines. *Finally*, assuming arguendo that the DOH had no hand in the bidding process, We find it incomprehensible that the supplier's accreditation finds application only in biddings conducted by the DOH itself. We note that the medicines procured in this case were intended to be distributed to the different municipalities of the province of Iloilo pursuant to the Rescue and Emergency Disaster Program of Senator Vicente Sotto. Undoubtedly, it was a program of the government. In this regard, Administrative Order No. 14, Series of 2001<sup>67</sup> provides for the background and rationale for the necessity of accreditation for DOH Drugs and Medicine Suppliers, *viz.*:

The department of Health (DOH) purchases drugs and medicines in order to promote various public health and clinical services. These drugs and medicines have to be safe, effective and of good quality. The Department

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<sup>67</sup> Entitled "INTERIM ACCREDITATION GUIDELINES FOR DOH DRUGS AND MEDICINE SUPPLIERS." Dated: May 15, 2001.



recognizes the role of the Bureau of Food and Drugs in ensuring this condition.

Drug companies must never assume that the privilege of supplying drugs and medicines to the Department is automatically given to them as a right by virtue of their issuance of BFAD license. Furthermore, drug companies must also not assume that Certificates of Product Registration (CPR) granted to them for their registered product is automatically considered as safe, effective and of good quality.

The DOH, in the interest of making drug and medicine procurement to be advantageous to the government, will screen licensed drug companies for eligibility as DOH drug suppliers, taking into consideration various parameters, and their technical and financial capability to participate in the bidding process and to supply these drugs and medicines. **This system of accreditation imposes a higher standard in order to transact business with government, since it uses people's taxes to provide health care to people who do not have the means to pay for it.** Since the department is the purchaser of medicines, it reserves the right to identify the best suppliers to deliver to the Department. (Emphasis ours)

Notably, the system of accreditation is in place to ensure that only those licensed and eligible drug manufacturers and suppliers would be able to participate in transactions with the government since the purchase of medicines by the government entails use of peoples' taxes. In short, the parameters in choosing the right supplier are more stringent as it involves public funds.

Moreover, since these medicines are intended to promote various public health and clinical services of the government, these drugs and medicines have to be safe, effective and of good quality. In sum, the accreditation requirement ensures that the government gets only the best suppliers to deliver the medicines. Hence, it is illogical to say that the supplier's accreditation was not relevant in this case because the bidding was conducted by the municipal government of Janiuay and not by the DOH for after all, the procurement was a government program which inured to the benefit of the people of Iloilo and funded by the taxpayer's money.

More importantly, We point out that in the Invitation to Bid published by the Office of Mayor Locsin in three local newspapers in the Municipality of Janiuay, it was categorically stated that they were inviting "***all qualified and accredited medical Suppliers to participate in the bidding of various medicines and medical supplies of the Municipality.***"<sup>68</sup> It is clear that the Office of the Mayor invited only those qualified and accredited medical suppliers to participate in the contested bidding. Despite such requirement, the Committee on Awards did not verify if the participants were indeed qualified and accredited medical suppliers. Thus, they cannot now deny the need for a valid supplier's accreditation in this case.

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<sup>68</sup> Rollo, G.R. No. 209620, Vol. 1, p. 84.

Likewise, the License to Operate Business submitted by AM Europharma clearly indicated that it was only valid up to December 31, 2000. Consequently, AM Europharma was no longer licensed to operate as a drug manufacturer in the Philippines when the public bidding was held on January 15, 2001. This was, however, ignored by petitioners despite their evident knowledge thereof.

***Conspiracy was sufficiently established***

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.<sup>69</sup>

Direct proof is not required to prove conspiracy. In a number of cases,<sup>70</sup> the Court ruled that conspiracy may be proved by circumstantial evidence. It may be established through the collective acts of the accused before, during, and after the commission of a felony, all the accused aimed at the same object, one performing one part and the other performing another for the attainment of the same objective; and that their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.<sup>71</sup>

In this case, We agree with the Sandiganbayan that the circumstances enumerated above point to the culpability of petitioners. The unity of purpose and unity in the execution of an unlawful objective were sufficiently established in the cases at bar.

The Court gives credence to the report and findings of the audit investigation team, affirmed by the Sandiganbayan, that petitioners gave AM Europharma and Mallix undue advantage and preference through manifest partiality and evident bad faith by allowing AM Europharma to participate in the subject bidding despite the suspension of its supplier's accreditation and the expiration of its License to Operate at the time of the bidding. Due to the said suspension, only Mallix was qualified to bid thereby deviating from the required competitive public bidding.

Petitioners likewise manifested their partiality by intentionally ignoring the circumstances that pointed to the probability that AM Europharma and Mallix have the same owners. Consequently, both companies were allowed to participate in the subject bidding thereby eliminating the chance of the government to obtain the best bid as the bidding ceased to be competitive.

In fine, petitioners' concerted acts as public officers, allowed AM Europharma and Mallix to unduly derive unwarranted benefits, advantage,

<sup>69</sup> REVISED PENAL CODE, Art. 8.

<sup>70</sup> *People v. Bohol*, 594 Phil. 219, 231-232 (2008); *People v. Agudez*, 472 Phil. 761, 777 (2004); *People v. Caballero*, 448 Phil. 514, 528 (2003); and *People v. Sagario*, 121 Phil. 1257, 1271 (1965).

<sup>71</sup> *Lacson v. People*, G.R. No. 243805, September 16, 2020.

and preference from the transaction. Therefore, the Court finds no reason to overturn the Sandiganbayan's findings, as there was no showing that the court *a quo* overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case.<sup>72</sup> It bears pointing out that the Sandiganbayan was in the best position to assess and determine the credibility of the witnesses presented by both parties.<sup>73</sup> As such, petitioners' conviction for violation of Sec. 3 (e) of Republic Act No. 3019 must stand.

***Petitioners' suspension from office was mandatory***

The authority of the Sandiganbayan to order the preventive suspension of an incumbent public official charged with violation of the provisions of Republic Act No. 3019 has both legal and jurisprudential support. Sec. 13 of the statute provides:

SECTION 13. *Suspension and loss of benefits.* — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to restitute the same to the Government. (As amended by BP Blg. 195, March 16, 1982).

Sec. 13 is so clear and explicit that there is hardly any room for any extended court rationalization of the law. Sec. 13 unequivocally mandates the suspension of a public official from office pending a criminal prosecution under Republic Act No. 3019 or Title 7, Book II of the Revised Penal Code or for any offense involving public funds or property or fraud on government. This Court has repeatedly held that such preventive suspension is mandatory, and there are no 'ifs' and 'buts' about it.<sup>74</sup>

As to Locsin's contention that his suspension *pendente lite* would no longer serve its purpose since the prosecution has already rested its case and that all witnesses, other than the accused have already testified, it is worthy to stress that the preventive suspension has a two-fold purpose: (1) to prevent the accused from hampering his prosecution; and (2) to prevent the accused

<sup>72</sup> *People v. Naciongayo*, G.R. 243897, June 8, 2020.

<sup>73</sup> *Id.*

<sup>74</sup> *Beroña, v. Sandiganbayan*, 479 Phil. 182, 188 (2004).

from committing further malfeasance in office. In *Bolastig v. Sandiganbayan*,<sup>75</sup> the Court had this to say:

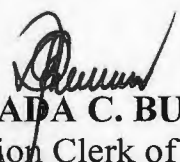
Our holding that, upon the filing of a valid information charging violation of Republic Act No. 3019, Book II, Title 7 of the Revised Penal Code, or fraud upon government or public property, it is the duty of the court to place the accused under preventive suspension disposes of petitioner's other contention that since the trial in the Sandiganbayan is now over with respect to the presentation of evidence for the prosecution there is no longer any danger that petitioner would intimidate prosecution's witnesses. **The fact is that the possibility that the accused would intimidate witnesses or otherwise hamper his prosecution is just one of the grounds for preventive suspension. The other one is, as already stated, to prevent the accused from committing further acts of malfeasance while in office.**<sup>76</sup> (Emphasis supplied)

Thus, in issuing the preventive suspension of petitioners, the Sandiganbayan merely adhered to the clear and unequivocal mandate of the law, as well as the jurisprudence in which the Court has, more than once, upheld Sandiganbayan's authority to decree the suspension of public officials and employees indicted before it.<sup>77</sup>

**WHEREFORE**, the petitions are **DENIED**. The May 30, 2013 and the September 16, 2013 Resolutions, the February 23, 2015 Decision and the June 8, 2015 Resolution of the Sandiganbayan in Crim. Case No. SB-08-CRM-0381 are **AFFIRMED**.

**SO ORDERED.**” *Singh, J., designated additional Member per January 25, 2023 Raffle vice Gesmundo, C.J., who recused due to prior action in the Sandiganbayan. Rosario, J., on official leave.*

By authority of the Court:

  
LIBRADA C. BUENA  
Division Clerk of Court *m.2/8*

by:

MARIA TERESA B. SIBULO  
Deputy Division Clerk of Court

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<sup>75</sup> 305 Phil. 110 (1994).

<sup>76</sup> Id. at 116-117.

<sup>77</sup> See *Santiago v. Sandiganbayan*, 408 Phil. 767, 775 (2001).

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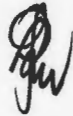
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