



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated March 29, 2023, which reads as follows:

“G.R. Nos. 198272-73 (*Major Antonio Jason Garcia v. People of the Philippines*) and G.R. Nos. 198369-70 (*B/Gen. Vladimir B. De Los Trino¹ v. People of the Philippines*). – Before this Court are the Petition for Review on *Certiorari*² filed by petitioner B/Gen. Vladimir B. De Los Trino (B/Gen. De Los Trino), assailing the Decision³ dated May 18, 2011 and the Resolution⁴ dated August 17, 2011 of the Sandiganbayan in Crim. Case Nos. 28233-28234, and the Motion for Leave to File Second Motion for Consideration⁵ filed by Major Antonio Jason Garcia (Major Garcia), assailing the Court’s Resolution⁶ dated April 11, 2012, which denied with finality the Motion for Reconsideration filed by Major Garcia in G.R. Nos. 198272-73. In the assailed issuances, B/Gen. De Los Trino and Major Garcia were found guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019, and the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC).

The Factual Antecedents

B/Gen. De Los Trino, Major Garcia, Engineer Dante Nelmidia Senen (Engr. Senen), and Antonio R. Ularte (Ularte) were charged with violation of Section 3(e) of R.A. No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act,” in an Information filed before the Sandiganbayan on May 26, 2005, docketed as Criminal Case No. 28233. The accusatory portion of which so provides:

That on December 13-14, 2002 or sometime prior or subsequent thereto, in Lapu-Lapu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **B/Gen. Vladimir Binondo delos Trino**, a high-ranking public officer, being then the Wing

¹ Delos Trino in some parts of the *rollo*.

² *Rollo* (G.R. Nos. 198369-70), pp. 10-37.

³ *Id.* at 40-86. Penned by Associate Justice Alex L. Quiroz, with Associate Justices Francisco H. Villaruz, Jr. and Samuel R. Martires (former Member of this Court), concurring.

⁴ *Id.* at 90-97.

⁵ *Rollo* (G.R. Nos. 198272-73), pp. 160-169.

⁶ *Id.* at 154.

Commander, 2nd TOW Philippine Air Force (PAF), AFP, **Major Antonio Jason Garcia**, also a public officer, being then the PAF Squadron Commander, 564th Supply Squadron, 2nd TOW, PAF, AFP, and **Engineer Dante Nelmida Senen**, a public officer, being the Supply Accountable Officer of the Military Supply Unit-Cebu, who, by reason of their public positions, had control of public funds/properties received by them including four (4) caterpillar back-up power generators, all government properties, committing the offense in relation to their office, while discharging administrative and official functions and taking advantage of their official positions, and accused private individual **Antonio Ularde**, representing Eduard Enterprises, a private business entity, conspiring, confederating and mutually helping one another, with evident bad faith and manifest partiality (or at the very least, gross inexcusable negligence), did then and there, willfully, unlawfully and criminally, cause undue injury to the government and give unwarranted benefits to Antonio Ularde by permitting the taking by **Antonio Ularde** of the said four (4) generators, then having the value of at least **ONE MILLION TWO HUNDRED THOUSAND PESOS** (P1,200,000.00) without the authority to do so and without the conduct of public bidding, and by converting the same into cash, for only **EIGHT HUNDRED THOUSAND PESOS** (P800,000.00), Philippine Currency, and once in the possession of the said amount, the said accused misappropriated the same, to the damage and injury of the government in the aforesaid amount of at least **ONE MILLION TWO HUNDRED THOUSAND PESOS** (P1,200,000.00).

CONTRARY TO LAW.⁷ (Emphases in the original)

The above-named accused, likewise, stand charged with the crime of Malversation of Public Funds, defined and penalized under Article 217 of the RPC, as amended by R.A. No. 10951, in an Information filed before the Sandiganbayan on May 26, 2005, docketed as Criminal Case No. 28234, to wit:

That on December 13-14, 2002 or sometime prior or subsequent thereto, in Lapu-Lapu City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused accountable public officials, namely: **B/Gen. Vladimir Binondo delos Trino**, a high-ranking public officer, being then the Wing Commander, 2nd TOW Philippine Air Force (PAF), AFP, **Major Antonio Jason Garcia**, being then the PAF Squadron Commander, 564th Supply Squadron, 2nd TOW, PAF, AFP, and **Engineer Dante Nelmida Senen**, being the Supply Accountable Officer of the Military Supply Unit-Cebu, who, by reason of their public positions, were accountable for and had control of public funds/properties received by them, including four (4) caterpillar back-up power generators, all government properties, committing the offense in relation to their office, taking advantage of their official positions, and accused private individual **Antonio Ularde**, representing Eduard Enterprises, a private business entity, conspiring, confederating and mutually helping one another, did then and there, willfully, unlawfully and feloniously misappropriate, and consent to or through abandonment or gross inexcusable negligence, permit the taking by **Antonio Ularde** of the said four (4) generators, then having the value of at least **ONE MILLION TWO HUNDRED THOUSAND PESOS** (P1,200,000.00), without the

⁷ Id. at 38, Sandiganbayan Decision.

authority to do so, by converting the same into cash, for only **EIGHT HUNDRED THOUSAND PESOS** (P800,000.00), Philippine Currency, and once in the possession of the said amount, the said accused misappropriated the same for their own personal use and benefit to the damage and prejudice of the government.

CONTRARY TO LAW.⁸

Upon arraignment, B/Gen. De Los Trino and Major Garcia entered separate pleas of not guilty.⁹ Meanwhile, Engr. Senen and Ulate remained at large.¹⁰ During pre-trial, the parties entered into the following stipulation of facts and issues:

For B/Gen. Delos Trino

STIPULATION OF FACTS

1. That at the time of the commission of the offense as alleged in the Information, accused Vladimir B. Delos Trino is then the Wing Commander, 2nd TOW, Philippine Air Force (PAF).

X X X X

ISSUE

The main issue to be resolved is:

“Whether or not accused are guilty as charged for violation of Section 3 (e) RA 3019, in Criminal Case Number 28233 and Malversation (under Article 217, RPC) in Criminal Case Number 28234.”

For Major Garcia

STIPULATION OF FACTS

Parties stipulated on the following facts:

1. That at all times material and relevant to the instant cases, accused Antonio Jason Garcia (Garcia for brevity) is a member of the Philippine Air Force with the rank of Major.
2. That at all times material to the instant cases, accused Garcia was the Squadron Commander of the 564th Supply Squadron, 2nd Tactical Operations Wing, Mactan-Benito Ebuen Air Base, Lapu-Lapu City.
3. That accused Garcia heard that delos Trino told Senen that he wanted to dispose of the four (4) back-up generators.
4. That a week after the aforesaid meeting with accused delos Trino and Senen, accused Garcia received the documents for the disposal of the generators from Senen as follows: (a) Inventory and Inspection Report

⁸ Id. at 39.

⁹ Id.

¹⁰ Id.

for 1996 and inserted among them are the list of the four (4) back-up generators; (b) Abstract and Recommendation for Bidding; (c) Notice of Award to Mr. Carlito Soliman; (d) Minutes of Bidding; and (e) Deed of Absolute Sale.

5. That on December 13, 2002, accused Garcia was present at the meeting of delos Trino and Mr. Antonio Olarte [sic], Jose de Guzman and a Chinese looking man, the alleged buyers of the generators.
6. That at the said meeting, accused Garcia saw and heard delos Trino agreed to the purchase of the generators by the buyers at the amount of Php 800,000.00 only.
7. That accused Garcia was ordered by delos Trino to write a receipt which he dictated, as follows:

“Receipt

This is to certify that I have received the sum of P800,000.00 from Mr. Antonio Ularte for payment of four generators.”

8. That accused Garcia signed the said receipt upon the orders of delos Trino.

ISSUE/S

For the prosecution:

1. Whether or not accused Garcia and his co-accused are guilty of violating Section 3(e) of Republic Act 3019 as alleged in Criminal Case No. 28233 and Article 217 of the Revised Penal Code for Criminal Case No. 28234.

For accused Garcia:

2. Whether or not accused Garcia is guilty of violating Section 3(e) of Republic Act 3019 as alleged in Criminal Case No. 28233 and Article 217 of the Revised Penal Code for Criminal Case No. 28234.¹¹ (Emphases, italics, and underscoring in the original)

Thereafter, trial ensued.¹²

Evidence for the Prosecution

Prosecution witness Sgt. Jim Sunico (Sgt. Sunico) testified that as a non-commissioned officer-in-charge of maintenance, one of his duties was to maintain custody of turned-in vehicles and equipment of the Armed Forces of the Philippines (AFP).¹³ He claimed that his participation in the instant case was to accompany Major Garcia upon instruction of B/Gen. De Los Trino to introduce the former to Engr. Senen, who was then the Supply

¹¹ Id. at 39-41.

¹² Id. at 41.

¹³ Rollo (G.R. Nos. 198369-70), pp. 45, Sandiganbayan Decision.

Accountable Officer.¹⁴ While Sgt. Sunico knew that Major Garcia brought out the sets of generator in question, he said that he did not know the reason therefor.¹⁵

Prosecution witness S/T. Jose Ignacio (S/T. Ignacio), an investigative specialist and desk officer at the 561st Air Police Squadron, Mactan Air Base, testified that his responsibilities included receiving instructions coming from the Wing Operations Center (WOC), and relaying the same to the personnel concerned.¹⁶ He stated that when he reported for work on December 14, 2002, a Tally Out Sheet was handed to him, detailing therein the taking out of four caterpillar generators subject herein.¹⁷ At around 6 p.m., he narrated that the officers, who escorted the generators, reported to him that said generators were brought out through the gate.¹⁸ S/T. Ignacio added that the WOC was under the 2nd TOW, which, in turn, was under the command of B/Gen. De Los Trino, together with the Directorate.¹⁹

The parties dispensed with the testimony of Eva Pagorogon, the Supply Accountable Officer of the 564th Supply Squadron 2nd TOW of the Philippine Air Force (PAF), after the parties stipulated on the following facts as cited by the Sandiganbayan, to wit:

(1) that on the date material to the case, witness was the Supply Accountable Officer (SAO) assigned at 564th Supply Squadron, 2nd Tactical Operations Wing (TOW), PAF, Mactan Benito Ebuen Air Base, Lapu-Lapu City; (2) that sometime in the year 1995 she received unserviceable equipments [sic] namely: four (4) units Generator Caterpillar Back Up Power with Engine Nos. 66B7939, 66B7942, 66B7958 and 66B7941 from the former SAO Major Alvaro R. de Ramas; (3) that thereafter in 2000 the same unserviceable equipment were turned over by the witness Pagorogon to Engr. Dante N. Senen, SAO, Military Supply Unit Cebu, Arellano Blvd., Cebu City through a document, credit property, turn-in slip duly signed and received by Engr. Dante Senen.²⁰

Prosecution witness Sgt. Ighot, a non-commissioned officer in charge of the accountable supply office at Mactan Ebuen Air Base at the time material to the case, testified that his immediate superior was Major Garcia.²¹ He claimed that on December 14, 2002, Major Garcia instructed him to prepare a Tally Out Sheet for the backup generators with serial numbers 7039, 7941, 7958, and 7952.²² He, likewise, identified during trial the signatures of the accused Ularte and Major Garcia appearing therein.²³

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 47-48.

²¹ Id. at 51.

²² Id.

²³ Id.

Prosecution witness Col. Abner Torres was designated Deputy Chief of the Office of the Ethical Standards and Public Accountability in Camp Aguinaldo, Quezon City in 2003.²⁴ He said that he investigated a case involving the accused herein.²⁵

Briefly, the testimonies and documentary evidence examined during trial revealed that B/Gen. De Los Trino directed Major Garcia to coordinate with Engr. Senen relative to the manner of disposing the four unserviceable generators subject herein.²⁶ 1Lt. Felix Montañez (1Lt. Montañez) coordinated with Major Garcia as regards the potential buyers of the four generators.²⁷ 1Lt. Montañez stated that Major Garcia informed him that the generators would be pulled out from the vicinity where they were located, upon the authority and instructions of B/Gen. De Los Trino.²⁸

A certain Joel De Guzman of KCJ Construction Development Corporation submitted a quotation in a letter dated November 27, 2002 for the purchase of the said generators in the amount of ₱1,200,000.00, upon which B/Gen. De Los Trino affixed his signature above the word “*conforme*.”²⁹

On December 13, 2002, Ularte, accompanied by unidentified persons, passed by the office and offered to purchase the generators for ₱800,000.00.³⁰ B/Gen. De Los Trino agreed to the said offer without observing the procedure of the PAF in the disposal of unserviceable properties and equipment.³¹ Thereafter, Ularte paid the said amount, which was counted by Major Garcia.³² B/Gen. De Los Trino asked Major Garcia to prepare an Acknowledgement Receipt.³³ Subsequently, B/Gen. De Los Trino handed to Major Garcia the amount ₱20,000.00 out of the money paid.³⁴

The next day, the four generators were taken out of the military base by virtue of the Tally out Sheet approved by Major Garcia.³⁵

Evidence for the Defense

Major Garcia claimed that when he was asked to sign the Acknowledgement Receipt and Tally Out Sheet, he thought that said transactions were legal because B/Gen. De Los Trino ordered him to do so.³⁶ He also stated that De Guzman, one of Ularte’s companions, was the same

²⁴ Id. at 55.

²⁵ Id.

²⁶ *Rollo* (G.R. Nos. 198369-70), pp. 15, Petition for Review on *Certiorari*.

²⁷ Id. at 16.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id. at 17.

³⁵ Id.

³⁶ *Rollo* (G.R. Nos. 198369-70), pp. 58, Sandiganbayan Decision.

De Guzman who submitted a Quotation for the purchase of four generators for ₱1,200,000.00.³⁷

During cross-examination, however, Major Garcia admitted that while B/Gen. De Los Trino gave him ₱20,000.00 out of the money paid by Ulate, he did not report the same to the authorities within the AFP.³⁸ He, nonetheless, claimed that he returned the ₱20,000.00 handed by B/Gen. De Los Trino,³⁹ thus, alleging the defense of good faith.

Meanwhile, to support his case, B/Gen. De Los Trino presented documentary evidence, as well as testimonial evidence in the person of the accused himself. According to B/Gen. De Los Trino, in December 2002, he was informed by the Air Police that four generator sets were taken out of the base.⁴⁰ He told Major Garcia to report to his office, and was surprised when Major Garcia came with several persons he supposedly did not recognize.⁴¹ The latter then told him that the disposal had already been consummated.⁴² B/Gen. De Los Trino reprimanded Major Garcia, saying that only the Secretary of Defense had the authority to approve the disposal of such properties.⁴³

During cross-examination, B/Gen. De Los Trino maintained that the generator sets in question were not under his accountability but that of the Military Supply Point.⁴⁴ He asserted that while said generators were still inside the base, the Supply Commander and his subordinate had the responsibility to secure them.⁴⁵

The Ruling of the Sandiganbayan

In its Decision⁴⁶ dated May 18, 2011, the Sandiganbayan found the accused guilty as charged. The dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding B/Gen. Vladimir Binondo Delos Trino and Major Antonio Jason Garcia **GUILTY** beyond reasonable doubt and sentencing each of them to suffer the following penalties:

- 1) In Criminal Case No. 28233, imprisonment for six (6) years and one (1) month to ten (10) years for violation of Section 3 (e) of R.A. No. 3019.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id. at 63.

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id. at 64.

⁴⁵ Id.

⁴⁶ Id. at 40-86.

- 2) In Criminal Case No. 28234, imprisonment for twelve (12) years and one (1) day of *reclusion temporal* minimum to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* maximum, and to pay a fine of ₱1,200,000.00.

The accused are also sentenced to suffer the penalty of perpetual disqualification from public office, and are ordered to pay and indemnify, jointly and severally, the government the amount of ₱1,200,000.00.

The cases against the other accused Senen and Ularde, who remain at large, are in the meantime sent to the archives. Let alias warrants be issued against them.

SO ORDERED.⁴⁷ (Emphases in the original)

Consequently, the accused filed a Motion for Reconsideration, which was denied by the Sandiganbayan in a Resolution dated August 17, 2011.

Before this Court are the Petition for Review on *Certiorari* filed by B/Gen. De Los Trino, assailing the Decision dated May 18, 2011 and the Resolution dated August 17, 2011 of the Sandiganbayan in G.R. Nos. 198369-70, and the Motion for Leave to File Second Motion for Consideration filed by Major Garcia, assailing the Court's Resolution dated April 11, 2012, which denied with finality the earlier Motion for Reconsideration filed by Major Garcia in G.R. Nos. 198272-73.

Subsequent to the above submissions, the Court issued a Notice of Consolidation.

Issues

The accused submit the following issues for the Court's resolution:

- (1) In G.R. Nos. 198369-70: whether the Sandiganbayan was correct in finding B/Gen. De Los Trino guilty of the crimes charged; and
- (2) In G.R. Nos. 198272-73: whether the Motion for Leave to File Second Motion for Consideration filed by Major Trino must be given credence.

The Ruling of the Court

Upon a careful scrutiny of the records of the case, the Court finds no merit in both the Petition for Review on *Certiorari* filed by B/Gen. De Los Trino and the Motion for Leave to File Second Motion for Consideration filed by Major Garcia.

⁴⁷ Id. at 85-86.

On Procedural Matters***In G.R. Nos. 198369-70***

In assailing the Sandiganbayan's Decision, which was issued in the exercise of its original jurisdiction, B/Gen. De Los Trino filed the present Rule 45 Petition. The Court finds the same to be improper.

Section 1(a), Rule XI of the Sandiganbayan Rules so provides:

REVIEW OF JUDGMENTS AND FINAL ORDERS**Section 1. *Methods of Review.* –**

(a) *In General.* – The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by notice of appeal filed with the Sandiganbayan and by serving a copy thereof upon the adverse party.

x x x x (Emphases supplied)

Based on the foregoing, the Court rules that B/Gen. De Los Trino availed himself of the improper remedy, and hence, the Sandiganbayan's assailed Decision had attained finality and immutability.

In G.R. Nos. 198272-73

Undaunted, Major Garcia comes before this Court through a Motion for Leave to File Second Motion for Consideration, assailing the Court's Resolution, which denied his first Motion for Reconsideration. The Court, likewise, finds the same to be improper.

Section 2 of Rule 52 of the Rules of Court states:

Section 2. *Second motion for reconsideration.* – No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

The rationale thereof rests on the basic tenet of immutability of judgments, as found in jurisprudence, which so explains that at some point, a decision must become final and executory, and, consequently, all litigations must come to an end.⁴⁸ More so, a second motion for reconsideration does not suspend the running of the period to appeal and neither does it have any legal effect.⁴⁹

⁴⁸ *Carreon v. Aguillon*, G.R. No. 240108, June 29, 2020.

⁴⁹ *Id.*

Even so, the Court stresses that a cursory reading of the present motion reveals that it is a reiteration of the factual issues and arguments raised by Major Garcia in his appeal and first Motion for Reconsideration, which had already been passed upon by this Court. Therefore, the Court has every reason to deny the present Motion for Leave to File Second Motion for Consideration.

On Substantive Matters

In any case, even if the case be decided on the merits, the Court still finds no cogent reason to depart from the findings of the Sandiganbayan, holding B/Gen. De Los Trino and Major Garcia guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019, and the crime of Malversation of Public Funds under Article 217 of the RPC.

Violation of Section 3(e) of R.A. No. 3019

In the instant case, B/Gen. De Los Trino and Major Garcia were charged with violation of Section 3(e) of R.A. No. 3019. The pertinent provision of the law 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:

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.

When an accused is charged with a violation of the said provision, the prosecution must prove the following to warrant his conviction: (1) the accused must be a public officer discharging administrative, judicial, or official functions, (2) he or she must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) 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 functions.⁵⁰

As stipulated by the parties, B/Gen. De Los Trino and Major Garcia were Wing Commander and Squadron Commander of the 2nd TOW, Mactan-Benito Ebuen Air Base, PAF, respectively. Hence, anent the first

⁵⁰ *Reyes v. People*, 641 Phil. 91, 103-104 (2010).

element, there is no argument that the accused are public officers. During the time material to the case, B/Gen. De Los Trino, as Wing Commander of the Mactan Air Base, on one hand, had the responsibility for all personnel and properties within the base. On the other hand, Major Garcia was Squadron Commander of the 564th Supply Squadron of the Mactan Air Base from where the generators were taken.

Significant to the second element is the definition of gross negligence. It has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.⁵¹ In the context of Section 3(e) of R.A. No. 3019, negligence *per se* is not enough to warrant a conviction, as the negligence required should be both gross and inexcusable.⁵²

As aptly found by the Sandiganbayan, by his own admission, B/Gen. De Los Trino is clearly responsible for all personnel and properties inside the Mactan Air Base.⁵³ He may have been correct in attesting that the generator sets were not under his accountability, but he still had the obligation to secure the same or, at the very least, to know if they were being taken out of the base.⁵⁴ Neither would he have the authority to sell them, for he himself admitted that it was the Secretary of National Defense who could dispose of property worth ₱500,000.00.⁵⁵

For Major Garcia's part, 1Lt. Montañez recalled having seen the former in the powerplant area with the buyers, during which the accused said that the generators would be disposed of.⁵⁶ Major Garcia likewise affirmed that he had been at the meeting which took place in B/Gen. De Los Trino's on December 14, 2002.⁵⁷ At that time, he knew that the latter had no authority to dispose of the generators, and that there had been no public bidding therefor, but he still carried out his superior's orders.⁵⁸

Furthermore, Major Garcia's defense that he returned the ₱20,000.00 inserted by B/Gen. De Los Trino in his pocket, gives this Court all the more reason to rule that the former knew that the order is illegal. Even after returning the same, he proceeded to prepare the receipt for the sale of the generators, and even affixed his signature on the Tally Out Sheet.⁵⁹ Said acts negate his defense of good faith. As cited by the Sandiganbayan, after admitting that he received ₱20,000.00 from B/Gen. De Los Trino, it was

⁵¹ *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693-694 (1994).

⁵² *Mayor Constantino v. Sandiganbayan*, 559 Phil. 622, 638 (2007).

⁵³ *Rollo* (G.R. Nos. 198369-70), pp. 70, Sandiganbayan Decision.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 71.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

only upon further questioning that Major Garcia claimed having returned the money, as if by mere afterthought.⁶⁰

Lastly, with regard to the third element, the prosecution was adequately able to establish that through the illegal sale of the four generators, the PAF of the AFP lost ₱1,200,000.00 in revenue.⁶¹

B/Gen. De Los Trino asserted that the initial offer of ₱1,200,000.00 for the generators had been withdrawn, which conceivably led him to accept the offer by Ulate for ₱800,000.00.⁶² Verily, such contention could not be taken seriously when the former failed to present any document for the withdrawal of such offer. Boldly and contradictorily, B/Gen. De Los Trino denied that the sale for the generators took place, leaving ₱800,000.00 unaccounted.

Even assuming that B/Gen. De Los Trino's contention has credence, he still failed to observe the procedure for disposal of unserviceable property. A careful perusal of the pertinent laws, *i.e.*, National Budget Circular No. 425 and PAF Material Directive Number 4S-14 dated August 30, 1993, reveals that unserviceable property of the government, including the Air Force of the Philippines, should be disposed of by public bidding.⁶³ The pertinent provision of the National Budget Circular No. 425 specifies:

PART II

DISPOSAL ACTIVITIES/PROCESSES

x x x x

G. Modes of Disposal

x x x x

5.0. Sale of Property

5.1. Public Bidding. As a general rule, the disposal of government property shall be done by public bidding. Public bidding may be done through sealed public bidding or when circumstances warrant, by viva voce.

x x x x

Meanwhile, PAF Material Directive Number 4S-14 dated August 30, 1993, otherwise known as the "Disposal of Republic and Non-Republic Property and Utilization of the Income Derived Therefrom," specifically provides:

⁶⁰ Id.
⁶¹ Id. at 76.
⁶² Id. at 77.
⁶³ Id. at 74.

x x x x

7. METHODS OF DISPOSAL

- a. Public Bidding – the primary method of disposal is by public bidding. Pertinent laws, rules and regulations on public bidding shall be observed.
- b. Negotiated sale or barter is resorted to:
 - (1) When public bidding fails twice.
 - (2) When directed by higher Headquarters.
 - (3) When negotiated sales or barter is most advantageous to the government.
- c. Other Methods - the following methods may be resorted to after securing the approval of the [Security of National Defense]:
 - (1) Transfer with or without cost to other government agencies
 - (2) Donations on exceptional and meritorious cases with the approval of the Office of the President and the Commission on Audit upon recommendation of the Department of Budget and Management.
 - (3) Destruction or dumping into the sea to prevent recovery and use of items in their original form.

In the case at bar, nowhere in the records or testimonies of the accused does it appear that a public bidding had been conducted prior to the sale to Ularte. As found by the Sandiganbayan, the Certification dated May 30, 2003 issued by Engr. Senen attests to this fact.⁶⁴ Neither did the accused obtain an authorization from the concerned official, such as the Secretary of National Defense, or from the unit accountable for the generators, which would be the Military Supply Unit VI. Instead, the sale took place in B/Gen. De Los Trino's office right after Ularte and his companions had inspected the generator sets.

All things considered, with the elements of the violation being present, and the accused having failed to refute the evidence found against them, the Court finds B/Gen. De Los Trino and Major Garcia guilty beyond reasonable doubt of violating Section 3(e) of R.A. No. 3019.

***Malversation of Public Funds under
Article 217 of the Revised Penal Code***

⁶⁴ Rollo (G.R. Nos. 198369-70), pp. 75, Sandiganbayan Decision.

B/Gen. De Los Trino and Major Garcia were, likewise, charged with Malversation of Public Funds. Article 217 of the RPC, as amended by R.A. No. 10951, reads:

Article 217. *Malversation of public funds or property. – Presumption of malversation.* – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

1. The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed Forty thousand pesos (P40,000).

2. The penalty of prision mayor in its minimum and medium periods, if the amount involved is more than Forty thousand pesos (P40,000) but does not exceed One million two hundred thousand pesos (P1,200,000).

3. The penalty of prision mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than One million two hundred thousand pesos (P1,200,000) but does not exceed Two million four hundred thousand pesos (P2,400,000).

4. The penalty of reclusion temporal, in its medium and maximum periods, if the amount involved is more than Two million four hundred thousand pesos (P2,400,000) but does not exceed Four million four hundred thousand pesos (P4,400,000).

5. The penalty of reclusion temporal in its maximum period, if the amount involved is more than Four million four hundred thousand pesos (P4,400,000) but does not exceed Eight million eight hundred thousand pesos (P8,800,000). If the amount exceeds the latter, the penalty shall be reclusion perpetua.

In all cases, persons guilty of malversation shall, also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal uses.

In order to secure the conviction of an accused charged with Malversation of Public Funds, the prosecution must establish the following elements: (1) offender is a public officer; (2) he or she has the custody and control of funds or property by reason of the duties of his office; (3) funds or properties are public funds or property for which he is accountable; and (4)

he or she appropriated, took, misappropriated or consented, or through abandonment or negligence, permitted another person to take them.⁶⁵

The first two elements are present in the present case. As earlier discussed, B/Gen. De Los Trino and Major Garcia are public officers, both being ranking officers of the PAF. The generators subject of this case were indisputably properties of the PAF which, although already turned over to the Military Supply Unit VI of Cebu, remained within the base, and therefore, within custody and control of the accused.

An accountable public officer, within the purview of the third element, is one who has custody or control of public funds or property by reason of the duties in his office.⁶⁶ To be liable for malversation, an accountable officer need not be a bonded official.⁶⁷ The name or relative importance of the office or employment is not the controlling factor. What is, therefore, decisive is the nature of the duties that he performs and that as part of, and by reason of, said duties, he received public money or property, which he or she is bound to account for.⁶⁸

Here, B/Gen. De Los Trino himself admitted that among his responsibilities is to secure the generator sets within the Mactan Air Base. Major Garcia, on the other hand, would not have willingly affixed his signature on the Tally Out Sheet, thereby signifying his approval of the taking out of the generators, if he were not an accountable officer.

Finally, the Court rules that the prosecution was able to establish that B/Gen. De Los Trino and Major Garcia misappropriated the generators by allowing the taking thereof by Ulate. Major Garcia brought the generators out of the Base upon the instructions of B/Gen. De Los Trino. The Tally Out Sheet also bears Major Garcia's signature approving the taking of the generators by Ulate. The Investigation Report of the Office of the Inspector General, Camp Aguinaldo, Quezon City also corroborated that the accused were responsible in disposing of the generators.

Therefore, with all the elements established, the Court finds B/Gen. De Los Trino and Major Garcia guilty beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the RPC.

Penalties

The penalty for violation of Section 3(e) of R.A. No. 3019 is imprisonment of not less than six (6) years and one (1) month nor more than fifteen (15) years. Applying the Indeterminate Sentence Law, and affirming the ruling of the Sandiganbayan, this Court hereby sentences B/Gen. De Los

⁶⁵ *Tello v. People*, 606 Phil. 514, 521 (2009).

⁶⁶ *People v. Hipol*, 454 Phil. 679, 689 (2003).

⁶⁷ *Id.*

⁶⁸ *Id.*

Trino and Major Garcia the penalty of imprisonment of six (6) years and one (1) month to ten (10) years.

However, for the crime of Malversation of Public Funds, this Court deems it proper to modify the penalty imposed by the Sandiganbayan, in accordance with R.A. No. 10951, the same being more favorable to the accused. Under paragraph 2 of Article 217 of the RPC, as amended by R.A. No. 10951, an offender found guilty of malversation is penalized by *prision mayor* in its minimum and medium periods, if the amount involved is more than ₱40,000.00 but does not exceed ₱1,200,000.00, and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. Applying the Indeterminate Sentence Law, the minimum penalty shall be *prision correccional* in its medium and maximum periods, or two (2) years, four (4) months and one (1) day to six (6) years of imprisonment.

Thus, this Court modifies the Sandiganbayan ruling, and hereby sentences B/Gen. De Los Trino and Major Garcia the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and eight (8) months of *prision mayor* as maximum, and orders them to pay a fine of ₱1,200,000.00, which shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until full payment.

Additionally, B/Gen. De Los Trino and Major Garcia shall suffer the penalty of perpetual disqualification from public office as provided under both of the abovementioned offenses.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* filed by B/Gen. De Los Trino and the Motion for Leave to File Second Motion for Consideration filed by Major Garcia are hereby **DENIED**. The Decision dated May 18, 2011, and the Resolution dated August 17, 2011 of the Sandiganbayan in Criminal Case Nos. 28233-28234 and the Court's Resolution dated April 11, 2012 in G.R. Nos. 198272-73 are hereby **AFFIRMED with MODIFICATION**:

- (1) The Court finds B/Gen. Vladimir B. De Los Trino and Major Antonio Jason Garcia **GUILTY** beyond reasonable doubt for violation of Section 3(e) of Republic Act No. 3019 and hereby sentences them to suffer the penalty of imprisonment of six (6) years and one (1) month to ten (10) years.
- (2) The Court, likewise, finds B/Gen. Vladimir B. De Los Trino and Major Antonio Jason Garcia **GUILTY** beyond reasonable doubt of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code and hereby sentences them to suffer the penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and eight (8) months of *prision mayor*, as maximum.

(3) B/Gen. Vladimir B. De Los Trino and Major Antonio Jason Garcia are also **ORDERED** to pay a fine of ₱1,200,000.00, with legal interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until full payment.

(4) B/Gen. Vladimir B. De Los Trino and Major Antonio Jason Garcia shall also suffer the penalty of perpetual special disqualification from holding any public office.

SO ORDERED.”

By authority of the Court:

Misael D. Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
SER 4/25/23

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