Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Petitioner, **DEVELOPMENT BANK OF THE PHILIPPINES,** Petitioner-in-Intervention, - versus - **REYNALDO G. DAVID, ROBERTO V. ONGPIN, JOSEPHINE A. MANALO, MA. LOURDES A. TORRES, PATRICIA A. STO. TOMAS, ALEXANDER I. MAGNO, FLORO F. OLIVEROS, MIGUEL L. ROMERO, EDGARDO F. GARCIA, ARMANDO O. SAMIA, ROLANDO S.C. GERONIMO, PERLA S. SOLETA, JESUS S. GUEVARA[1] II, CRESENCIANA R. BUNDOC, ARTURO C. BALITON, FRANKLIN M. VELARDE, JOSEPH N. PANGILINAN, NELSON P. MACATLANG, MARISSA S. CAYETANO, RENATO S. VELASCO, RAMON R. DURANO IV, BENEDICTO ERNESTO R. BITONIO, JR., MA. TERESITA S. TOLENTINO, RODOLFO C. CEREZO, and WARREN DE GUZMAN,** Respondents.	**G.R. Nos. 217417 & 217914** Present: LEONEN, *S.A.J.*, Chairperson, LAZARO-JAVIER, LOPEZ, M., LOPEZ, J., and KHO, JR., *JJ.* Promulgated: AUG 07 2023

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[1] "Guevarra" in some parts of the *rollos*.

DECISION

KHO, JR., J.:

Before the Court is a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assailing the Resolutions dated May 28, 2014[3] and March 27, 2015[4] of the Sandiganbayan ordering the dismissal of Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106**.

The Facts

The instant case stemmed from a Complaint-Affidavit[5] filed before the Office of the Ombudsman (Ombudsman) by the Development Bank of the Philippines (DBP) against Reynaldo G. David (David), Franklin M. Velarde (Velarde), Edgardo F. Garcia (Garcia), Armando O. Samia (Samia), Perla S. Soleta (Soleta), Rolando S.C. Geronimo (Geronimo), Ramon R. Durano IV (Durano), Alexander I. Magno (Magno), Floro F. Oliveros (Oliveros), Joseph N. Pangilinan (Pangilinan), Miguel L. Romero (Romero), Renato S. Velasco (Velasco), Patricia A. Sto. Tomas (Sto. Tomas), Benedicto Ernesto R. Bitonio, Jr. (Bitonio), Jesus S. Guevara II (Guevara), Benilda A. Tejada (Tejada), Crescencia R. Bundoc (Bundoc), Josephine E. Jaurigue (Jaurigue), Ma. Teresita S. Tolentino (Tolentino), Justice Lady L.S. Flores (Flores), Arturo C. Baliton (Baliton), Marissa S. Cayetano (Cayetano), Rodolfo C. Cerezo (Cerezo), Warren P. De Guzman (De Guzman), Nelson P. Macatlang (Macatlang), Roberto V. Ongpin (Ongpin), Josephine A. Manalo (Manalo), and Ma. Lourdes A. Torres (Torres). The subject of the Complaint-Affidavit involved, *inter alia*, the grant and release of DBP of two loans to Deltaventures Resources, Inc. (DVRI) in April and November 2009 in the aggregate sum of PHP 660,000,000.00 (subject loans).[6]

DBP is a state-owned development bank with original charter, i.e., Executive Order No. 81, s. 1986,[7] as amended by Republic Act No. (RA) 8523.[8] At the time of the assailed transactions, David and Sto. Tomas were the DBP's President/Vice-Chairman and Chairman of the Board, respectively; Velarde, Durano, Magno, Oliveros, Pangilinan, Romero, and Velasco were DBP's Directors; while Garcia, Samia, Soleta, Geronimo, Bitonio, Guevara, Tejada, Bundoc, Jaurigue, Tolentino, Flores, Baliton, Cayetano, Cerezo, De

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2 *Rollo*, pp. 211–282.

3 *Id.* at 283–359, 360–363, 364–373. Penned by Associate Justice Samuel R. Martires (a retired Member of the Court), with Associate Justices Jose R. Hernandez and Efren N. Dela Cruz, concurring. Associate Justices Maria Cristina J. Cornejo and Oscar C. Herrera, Jr. dissenting.

4 *See id.* at 449–459, 461–462, and 463–465.

5 *Id.* at 618–711

6 *Id.* at 556.

7 Entitled "Providing for the 1986 Revised Charter of the Development Bank of the Philippines," approved on December 3, 1986.

8 Entitled "An Act Strengthening the Development Bank of the Philippines, Amending for the Purpose Executive Order No. 81," approved on February 14, 1998.

Guzman, and Macatlang all held key positions in DBP (involved DBP officials).[9]

On the other hand, DVRI is a stock corporation which primary purpose is to engage in the real estate business, with total paid up capital of PHP 625,000.00. At the time material to this case, Ongpin, Manalo, and Torres were the general manager, president, and treasurer, respectively, of DVRI.[10]

Essentially, DBP averred in its Complaint-Affidavit, among others, that the involved DBP officials: (*a*) granted two (2) behest loans in favor of DVRI, respectively amounting to PHP 150,000,000.00 and PHP 510,000,000.00, or PHP 660,000,000.00 in total; (*b*) violated existing banking laws and regulations, as well as DBP's own policies when they extended to DVRI credit accommodations in hundreds of millions of pesos despite the fact that DVRI's capacity to repay such loan was doubtful; (*c*) granted unwarranted waivers to DVRI with the intention of favoring Ongpin; (*d*) willfully and intentionally failed to act according to safe and sound banking practices and principles and were manifestly partial to Ongpin and DVRI; (*e*) knowingly granted the loans and concessions to DVRI with the full knowledge that the latter was not qualified to obtain said loans; and (*f*) conspired with one another and with Ongpin, Manalo, and Torres as DVRI officials, to ensure that the loan transactions would materialize.[11] The Ombudsman, after providing those accused in the Complaint-Affidavit the opportunity to file their respective counter-affidavits, proceeded with the preliminary investigation of the case.[12]

After due proceedings, the Ombudsman issued a Review Resolution[13] dated September 24, 2012 finding probable cause to indict the following for violations of Section 3(e) of RA 3019:

(a) In relation to the PHP 150,000,000.00 loan: Sto. Tomas, David, Magno, Oliveros, Romero, Velarde, Velasco, Pangilinan, Garcia, Samia, Geronimo, Soleta, Guevara, Bundoc, Baliton, Macatlang, Cayetano, Ongpin, Manalo, Torres; and

(b) In relation to the PHP 510,000,000.00 loan: Sto. Tomas, David, Magno, Oliveros, Romero, Velarde, Velasco, Durano, Garcia, Samia, Geronimo, Soleta, Guevara, Bundoc, Bitonio, Baliton, Tolentino, Cerezo, De Guzman, Ongpin, Manalo, and Torres.

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9 *Rollo*, pp. 556–557.
10 *Id.*
11 *Id.* at 568.
12 *See id.* at 568–574.
13 *Id.* at 555–617. Signed by Assistant Ombudsman Wecmark Ryan G. Layson, Director Adoracion A. Agbada, and Graft Investigation and Prosecution Officer II Anna Francesca M. Limbo, and approved by Ombudsman Conchita Carpio-Morales.

On the other hand, it dismissed the charges against Tejada, Jaurigue, and Flores, for insufficiency of evidence.

Those indicted separately moved for reconsideration but the same were denied by the Ombudsman through an Order[14] dated November 26, 2012.

In due course, two Informations were filed before the Sandiganbayan charging those indicted with violation of Section 3(e) of RA 3019. The accusatory portions of the Informations read:[15]

SB-13-CRM-0105

That on 15 April 2009 or sometime prior or subsequent thereto, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named. REYNALDO G. DAVID, President/ Chief Executive Officer, PATRICIA A. STO. TOMAS, Chairman, FRANKLIN M. VELARDE, ALEXANDER I. MAGNO, FLORO F. OLIVEROS, JOSEPH N. PANGILINAN, MIGUEL L. ROMERO, all members of the Board of Directors, EDGARDO F. GARCIA, Senior Executive Vice President and Chief Operating Officer, ARMANDO O. SAMIA, Senior Executive Vice President and Marketing Sector Head, ROLANDO S. C. GERONIMO, Senior Executive Vice President, JESUS S. GUEVARRA II, Executive Vice President and Branch Banking Sector (BBS) Head, CRESCENCIA R. BUNDOC, Senior Vice President and BBS Marketing Head, PERLA S. SOLETA, Senior Assistant Vice President, ARTURO C. BALITON, BBS Manager, NELSON P. MACATLANG, Chief Accounts Management Specialist for Regional Marketing Center - Western Luzon (RMC-WL), MARISSA S. CAYETANO, RMC-WL Manager, all high ranking public officers of the Development Bank of the Philippines (DBP), a government-owned bank created under Executive Order No. 81, as amended by Republic Act No. 8523, while in the performance of their official functions and committing the offense in relation to their office, taking advantage of their positions and conspiring and confederating with one another and with accused ROBERTO V. ONGPIN, JOSEPHINE A. MANALO and MA. LOURDES A. TORRES, all private individuals being the General Manager, President and Treasurer, respectively, of Deltaventures Resources, Inc. (DVRI), a private stock corporation engaged in real estate business, did then and there willfully, unlawfully, criminally, with evident bad faith and manifest partiality, give unwarranted benefits, advantage and preference to DVRI by facilitating and/or granting the loan of ONE HUNDRED FIFTY MILLION PESOS (PHP150,000,000.00) Philippine currency, to DVRI, despite the fact that: (a) DVRI was undercapitalized having only a paid-up capital of Php625,000.00; (b) the loan was under-collateralized, being secured only by the shares of stock in Philweb Corporation, an unlisted company, which can only secure a maximum loan of Php75,858,074.50 in accordance with the collateral-to-loan value ratio of 4:1 prescribed under Section E (2) of DBP's Credit Policy Manual No. 65; (c) the stock trading activities of DVRI to be

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[14] *Id.* at 712–754. Signed by Assistant Ombudsman Weomark Ryan G. Layson, Director Adoracion A. Agbada, and Graft Investigation and Prosecution Officer II Anna Francesca M. Limbo, and approved by Ombudsman Conchita Carpio Morales.

[15] *See id.* at 286–288.

financed by the loan is not feasible because DVRI was not a duly licensed dealer in securities; (d) there was corporate layering as accused Ongpin used DVRI to obtain credit accommodations from DBP; (e) there was extraordinary speed in the processing and release of the loans, the same having been granted on April 15, 2009 after the filing of amended loan application on April 7, 2009; (f) accused Ongpin is a crony of accused David; and (g) the loan was approved at the behest of accused David, thereby resulting in the grant of behest loan to DVRI to the latter's unwarranted benefit, advantage and preference and against public interest. CONTRARY TO LAW.

SB-13-CRM-0106

That on 4 November 2009 or sometime prior or subsequent thereto, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named, REYNALDO G. DAVID, President/ Chief Executive Officer, PATRICIA A. STO. TOMAS, Chairman of the Board of Directors, ALEXANDER I. MAGNO, FLORO F. OLIVEROS, MIGUEL L. ROMERO, FRANKLIN M. VELARDE, RENATO S. VELASCO, RAMON R. DURANO IV, all Members of the Board of Directors, EDGARDO F. GARCIA, Senior Executive Vice President and Chief Operating Officer, ARMANDO O. SAMIA, Senior Executive Vice President and Marketing Sector Head, ROLANDO S. C. GERONIMO, Senior Executive Vice President, JESUS S. GUEVARRA II, Executive Vice President and Branch Banking Sector (BBS) Head, BENEDICTO ERNESTO R. BITONIO, JR., Executive Vice President and Finance Sector Head, CRESCENCIA R. BUNDOC, Senior Vice President and BBS Marketing Head, PERLA S. SOLETA, Senior Assistant Vice President, MA. TERESITA S. TOLENTINO, Vice President and Regional Marketing Center - Metro Manila (RMC-MM) Head, ARTURO C. BALITON, BBS Manager, RODOLFO C. CEREZO and WARREN P. DE GUZMAN, both RMC-MM Assistant Managers, all high ranking public officers of the Development Bank of the Philippines (DBP), a government-owned bank created under Executive Order No. 81, as amended by Republic Act No. 8523, while in the performance of their official functions and committing the offense in relation to their office, taking advantage of their positions and conspiring and confederating with one another and with accused ROBERTO V. ONGPIN, JOSEPHINE A. MANALO and MA. LOURDES A. TORRES, all private individuals being the General Manager, President and Treasurer, respectively, of Deltaventures Resources, Inc. (DVRI), a private stock corporation engaged in real estate business, organized and registered in accordance with Philippine laws, did then and there willfully, unlawfully, criminally, with evident bad faith and manifest partiality, give unwarranted benefits, advantage and preference to DVRI by facilitating and/or granting the loan of FIVE HUNDRED TEN MILLION PESOS (PHP510,000,000.00) to DVRI through waivers of several banking requirements under DBP Circular No. 7 dated 30 June 2009, DBP Credit Policy Memorandum Nos. 1, 10, 29, 42, 43.1, 61-A, 65 and 79, and Bangko Sentral ng Pilipinas Circular No. 472 (2005), and despite the fact that (a) DVRI was undercapitalized having only a paid-up capital of Php625,000.00; (b) the loan was under-collateralized, being secured only by shares of stock in Philex Mining Corporation, a listed corporation, which are not yet in the name of DVRI, and which collateral can only secure a maximum loan of Php316,750,000.00 in accordance with the collateral-to-loan value ratio of 2:1 prescribed under Section X313 of the Manual of Regulations for Banks and DBP's Credit Policy Manual No. 65; (c) the

> stock trading activities of DVRI to be financed by the loan is not feasible because DVRI was not a duly licensed dealer in securities; (d) there was a resort to corporate layering as accused Ongpin used DVRI to obtain credit accommodations from DBP; (e) there was extraordinary speed in the processing and release of the loans, the same having been granted on the same day of its application on November 4, 2009; (1) accused Ongpin is a crony of accused David; and (g) the loan was approved at the behest of accused David, thereby resulting in the grant of behest loan to DVRI to the latter's unwarranted benefit, advantage and preference and against public interest.
> CONTRARY TO LAW.

Shortly after the filing of the Informations, four separate motions[16] were filed before the Sandiganbayan essentially seeking that the latter conduct a judicial determination of probable cause against all the accused. The Office of the Special Prosecutor (OSP), on behalf of the People of the Philippines, filed a consolidated opposition to these motions.[17]

In a Resolution[18] dated July 26, 2013, the Sandiganbayan judicially determined that there existed probable cause against all the accused. Accordingly, the Sandiganbayan: (*a*) ordered the issuance of warrants of arrest against Sto. Tomas, Magno, Durano, Bitonio, Baliton, Soleta, De Guzman, Tolentino, Cayetano, Macatlang, Oliveros, Cerezo, Velasco, Manalo, and Torres in order for the Sandiganbayan to have jurisdiction over them; and (*b*) found it unnecessary to issue warrants of arrest against David, Velarde, Pangilinan, Romero, Garcia, Samia, Geronimo, Guevara, Bundoc, and Ongpin, considering that they have already posted their respective bails, and hence, the Sandiganbayan already has jurisdiction over them.[19] Ongpin, Manalo, Torres, David, and Romero all moved for reconsideration but the same was denied in a Resolution[20] dated September 12, 2013.

Meanwhile, on August 28, 2013, Sto. Tomas, Velarde, Magno, Durano, Velasco, Garcia, Samia, Geronimo, Guevara, Bundoc, Soleta, Baliton, Macatlang, Cayetano, and Tolentino (Sto. Tomas, *et al.*) filed a Motion to Quash;[21] while Bitonio filed a Motion to Quash and to Defer Arraignment[22] on September 2, 2013. On October 7, 2013, Ongpin, Manalo, and Torres, and

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16 The motions are: (*1*) Urgent Omnibus Motion for Judicial Determination of Probable Cause and Deferment of Issuance of Warrants of Arrest or Recall of Warrants of Arrest filed by Ongpin, Manalo, and Torres; (*2*) Urgent Manifestation and Motion Re: Absence of Probable Cause with a) Prayer to direct submission of the Ombudsman original/reviewed resolution, and b) Prayer to suspend issuance of warrant of arrest filed by Sto. Tomas, Magno, Durano, Velarde, Garcia, Geronimo, Samia, Bundoc, Guevara, Baliton, Soleta, De Guzman, Cayetano, and Macatlang; (*3*) Urgent Omnibus Motion filed by David and Romero; and (*4*) Urgent Supplement to the Urgent Manifestation and Motion Re: Absence of Probable Cause with a) Prayer to direct submission of the Ombudsman original/reviewed resolution, and b) Prayer to suspend issuance of warrant of arrest filed by Bitonio (*see id.* at 765–766)

17 *Id.* at 767.

18 *Id.* at 765–770. Penned by Associate Justice Jose R. Hernandez, with Associate Justices Samuel R. Martires (a retired Member of the Court) and Maria Cristina J. Cornejo concurring.

19 *Id.*

20 *Id.* at 771–776.

21 *Id.* at 404–446.

22 *Id.* at 374–403.

David and Romero filed separate Manifestations adopting the Sto. Tomas, *et al.* Motion to Quash; and on October 16, 2013, Pangilinan followed suit and also adopted the same motion.[23] Notably, Olivarez, Cerezo, and De Guzman did not file a similar motion.

Both motions essentially raise similar issues and arguments, which the Sandiganbayan summarized as follows: *First, the facts charged do not constitute an offense*. The motions maintained that undue injury is a necessary element of giving unwarranted benefits as defined by Section 3(e) of RA 3019. Absent any factual averments stated in the Informations relating thereto, no criminal liability may be ascribed against the accused. *Second, the questioned transactions cannot be classified as behest loans*. The motions stressed that the loans were paid before the due date; hence, the government did not suffer any loss, thereby precluding the presence of undue injury. Further, the motions pointed out that the DBP derived a total of almost PHP 7,000,000.00 in interest income from the loan transactions. Finally, the motions claimed that DVRI was adequately capitalized at the time the loans were contracted and that the loans were adequately secured.[24]

In opposition to the motions to quash, the OSP maintained that the factual averments in the Informations are sufficient. In this regard, the OSP pointed out that a violation of Section 3(e) of RA 3019 may be committed either by causing undue injury, or by giving unwarranted benefits, advantage, or preference. Since the Informations already allege the giving of unwarranted benefits, advantage, or preference, an allegation pertaining to causing undue injury is no longer necessary. Further, the OSP argued that the other grounds raised by the accused are matters of defense which can be determined only after a full-blown trial.[25]

The Sandiganbayan Ruling

In a Resolution[26] dated May 28, 2014, the Sandiganbayan, in a 3-2 vote, granted the motions and, accordingly, ordered the dismissal of Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** for all accused.[27]

Prefatorily, the Sandiganbayan agreed with the OSP and ruled that in violations of Section 3(e) of RA 3019, "causing undue injury" may or may not coincide with "by giving unwarranted benefits, advantage, or preference"; and as such, a factual allegation of either of these is sufficient. Thus, the Sandiganbayan found that the Informations are complete as the elements of violation of Section 3(e) of RA 3019 are present, to wit: (*a*) the accused are

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[23] *Id.* at 285.
[24] *Id.* at 286.
[25] *Id.* at 288-289.
[26] *Id.* at 283-359, 360-363 and 364-373.
[27] *Id.* at 359.

high-ranking public officials of the DBP who committed the offense in relation to their office, taking advantage of their positions and conspiring and confederating with one another and with accused private persons; (*b*) they acted with evident bad faith and manifest partiality; and (*c*) gave unwarranted benefits, advantage, and preference to DVRI.[28]

The foregoing notwithstanding, the Sandiganbayan opined that the prosecution obstinately refused to admit an "undeniable fact", i.e., that DVRI had already fully paid the two (2) loans it acquired from DBP.[29] Using this as a springboard, the Sandiganbayan re-examined the evidence on record, and thereafter, concluded that the subject loans are not behest in nature. The Sandiganbayan then went on to rule that since said loans are not behest, the elements of: (*1*) evident bad faith and manifest partiality; and (*2*) giving of unwarranted benefits are absent—hence, Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** must be dismissed.[30]

Notably, Sandiganbayan Justices Maria Cristina J. Cornejo (Justice Cornejo) and Oscar C. Herrera, Jr. (Justice Herrera) dissented from the majority.

In her Dissenting Opinion,[31] Justice Cornejo posited, *inter alia*, that even if the prosecution admitted to DVRI's full payment of the subject loans, the same does not negate the prosecution's assertions that: (*a*) DVRI was given unwarranted benefits, advantage, and/or preference; and (*b*) the grant of the subject loans was tainted with various irregularities. Further, Justice Cornejo pointed out that the Sandiganbayan had already previously judicially determined the existence of probable cause against the accused and even issued the corresponding warrants of arrest against them. Thus, it would be highly inconsistent for the Sandiganbayan to essentially confirm the findings of the Ombudsman insofar as the existence of probable cause is concerned, and thereafter, allow the majority to order the dismissal of the Informations on the supposed ground that the elements of the crime charged do not exist.[32]

For his part, Justice Herrera submitted in his Dissenting Opinion[33] that while the majority correctly ruled that the Informations are complete and sufficiently charge the crime of violation of Section 3(e), they erred in dismissing the criminal cases against the accused on the supposed ground that some the elements of the crime charged are absent. Similar to Justice Cornejo, Justice Herrera pointed out that the Sandiganbayan had already previously judicially determined the existence of probable cause against the accused and issued the corresponding warrants of arrest against them. Thus, the majority's

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28 *Id.* at 289–293.
29 *Id.* at 294–299.
30 *Id.* at 299–359
31 *Id.* at 360–363.
32 *Id.*
33 *Id.* at 364–373.

ruling in this case constitutes: (*a*) an unwarranted turnaround of the Sandiganbayan's earlier ruling; (*b*) a premature appreciation of evidence not yet formally presented and offered; (*c*) for all intents and purposes, a judgment of acquittal even before the trial begins; and (*d*) a violation of the People's right to due process.[34]

The prosecution moved for reconsideration but the same was denied by the Sandiganbayan, in another 3-2 vote, in a Resolution[35] dated March 27, 2015. Justices Cornejo and Herrera again tendered their respective Opinions which essentially reiterated their earlier dissent.

Hence, the instant petition.[36]

The Issue Before the Court

The issue for the Court's resolution is whether the Sandiganbayan erred in granting the aforementioned motions to quash and, accordingly, dismissing Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106**.

The Court's Ruling

The petition is meritorious.

I.

In *People v. Odtuhan*,[37] the Court, through Associate Justice Diosdado M. Peralta, had the occasion to reiterate the legal significance of a motion to quash, to wit:

> "[A] motion to quash information is the mode by which an accused assails the validity of a criminal complaint or information filed against him for insufficiency on its face in point of law, or for defects which are apparent in the face of the information." It is a hypothetical admission of the facts alleged in the information. The fundamental test in determining the sufficiency of the material averments in an Information is whether or not the facts alleged therein, which are hypothetically admitted, would establish the essential elements of the crime defined by law. Evidence *aliunde* or matters extrinsic of the information are not to be considered. x x x.[38]

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34 *Id.*

35 *See id.* at 449–459, 461–462, and 463–465.

36 *Id.* at 211–282.

37 714 Phil. 349 (2013) [Per J. Peralta, Third Division].

38 *Id.* at 356; citation omitted.

The grounds for a motion to quash are enumerated under Section 3, Rule 117 of the Revised Rules of Criminal Procedure, one of which is "[t]hat the facts charged do not constitute an offense."[39] In this regard, case law instructs that "the fundamental test in considering a motion to quash on the ground that the facts in the Information do not constitute an offense is whether the facts alleged, if hypothetically admitted, will establish the essential elements of the offense as defined in the law."[40] Thus, as a general rule, facts outside the Information itself will not be considered. Nonetheless, jurisprudence recognizes an exception to this general rule, i.e., where there are additional facts not alleged in the Information but are admitted or not denied by the prosecution. Notably, inquiry into such facts may be allowed where the ground invoked is that the allegations in the information do not constitute an offense.[41]

In this case, it is well to recall that the motions to quash filed by the accused before the Sandiganbayan similarly raised the following grounds: (*a*) the facts charged do not constitute an offense; and (*b*) the subject loans are not behest in nature, considering that, *inter alia*, DVRI fully paid them before their due dates.[42] Thus, the Court shall now look into the propriety of the grant of the said motions.

II.

Section 3(e) of RA 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:
>
> . . . .
>
> (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.
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> . . . .

Verily, the elements of violation of Section 3(e) of RA 3019 are as follows: (*i*) that the accused must be a public officer discharging

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39 *See* Section 3(a), Rule 117 of the Revised Rules of Criminal Procedure.

40 *Lorenzo v. Sandiganbayan*, G.R. Nos. 242506-10 & 242590-94, September 14, 2022 [Per J. Caguioa, Third Division], citing *Antone v. Beronilla*, 652 Phil. 151, 165 (2010) [Per J. Perez, First Division].

41 *Id.*, citing *Garcia v. Court of Appeals*, 334 Phil. 621, 634 (1997) [Per J. Davide, Jr., Third Division].

42 *See rollo*, p. 286.

administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*ii*) that they acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*iii*) that their 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 their functions.[43]

The first element is self-explanatory and need no further elaboration.

As regards the second element, case law instructs that there are three means of committing the crime charged—i.e., through manifest partiality, evident bad faith, or gross inexcusable negligence—and proof of any of these in connection with the prohibited acts under Section 3(e) of RA 3019 is enough to convict.[44] In *People v. Naciongayo*,[45] the Court, through Senior Associate Justice Estela M. Perlas-Bernabe, reiterated the definition of these means as follows:

> "Partiality" 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 in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[46]

Anent the third element, jurisprudence provides that "there are two ways by which a public official violates Section 3(e) of [RA] 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) ***by giving any private party any unwarranted benefit, advantage or preference*****. The accused may be charged under either mode or both. The disjunctive term 'or' connotes that either act qualifies as a violation of Section 3 (e) of [RA] 3019. In other words, the presence of one would suffice . . . ."**[47]

In this case, a plain reading of the Informations in Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** indubitably contain the necessary factual allegations that would constitute the crime of violations of Section 3(e)

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43 *People v. Naciongayo*, G.R. No. 243897, June 8, 2020 [Per J. Perlas-Bernabe, Second Division], *citing Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016) [Per J. Perlas-Bernabe, *En Banc*].

44 *Id.*, citing *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 229 (2014).

45 G.R. No. 243897, June 8, 2020.

46 *Id.*, citing *Coloma, Jr. v. Sandiganbayan*, supra, at 229.

47 *Id.*, citing *Coloma, Jr. v. Sandiganbayan*, *id.* at 231–232 (Emphasis supplied).

of RA 3019. As aptly pointed out by the Sandiganbayan, both Informations had sufficiently alleged that: (*a*) the accused are either high ranking officials of the DBP who committed the offense in relation to their office, taking advantage of their positions, or private individuals who have conspired or confederated with such public officials; (*b*) they acted with evident bad faith and manifest partiality insofar as the grant of the subject loans are concerned; and (*c*) such acts resulted in the giving of unwarranted benefits, advantage, and preference on the part of DVRI.[48] Thus, the Sandiganbayan correctly ruled that in a prosecution for a violation of Section 3(e) of RA 3019, it is not required that "undue injury" be alleged in the Information, considering that the same may be replaced with, or coincide with "giving of unwarranted benefits, advantage, and/or preference."

Thus, the Sandiganbayan correctly found untenable the first ground relied upon by the accused in their motions to quash, i.e., the facts charged do not constitute an offense.

III.

The foregoing notwithstanding, the Sandiganbayan used the supposed "undeniable fact" that DVRI had already fully paid the loans it acquired from DBP[49] as a springboard to re-examine the evidence on record, and thereafter, conclude that the elements of: (*1*) evident bad faith and manifest partiality; and (*2*) giving of unwarranted benefits, are absent—hence, Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** must be dismissed.[50]

The Sandiganbayan gravely erred in this regard.

At the onset, it is well to point out that the Sandiganbayan, by re-examining the evidence on record, essentially is judicially determining all over again the existence of probable cause against the accused. However, this course of action is unwarranted for the following reasons:

First, as succinctly pointed out by Justices Cornejo and Herrera in their respective dissents, the Sandiganbayan, through its Resolution[51] dated July 26, 2013, had already judicially determined the existence of probable cause against the accused, and even had caused the issuance of warrants of arrest against the latter. Moreover, the accused had already been given ample opportunity to have this finding reconsidered as evinced by their filing of a motion for reconsideration, but the same was denied in a Resolution[52] dated September 12, 2013. Notably, the records are bereft of any showing that the

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48 *See rollo*, p. 293.
49 *Id.* at 294–299.
50 *Id.* at 299–359.
51 *Id.* at 765–770.
52 *Id.* at 771–776

accused availed of further remedies to assail the judicially determined existence of probable cause against them. As the Court sees it, this matter had already been long settled; thus, it was inappropriate for the Sandiganbayan to rule on it again.

Second, it bears emphasizing that "[l]ack of probable cause during the preliminary investigation is not one of the grounds for a motion to quash. A motion to quash should be based on a defect in the information, which is evident on its face. The guilt or innocence of the accused, and their degree of participation, which should be appreciated, are properly the subject of trial on the merits rather than on a motion to quash."[53] Moreover, "the presence or absence of the elements of the crime charged is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits."[54]

Here, a circumspect review of the records shows that the second ground relied upon by the accused in their motions to quash is that the subject loans are not behest in nature, pointing out various factual matters to support such ground.[55] Verily, this issue propounded by the accused is evidentiary in nature, and as such, should be considered as a matter of defense. This is because the resolution of this issue goes to the very determination of the existence of the elements of the crime charged against them. As such, it was improper for the Sandiganbayan to traverse this matter in the incident before it, i.e., resolution of the accused's motions to quash.

Third, even assuming *arguendo* that the Sandiganbayan could re-do its judicial determination of probable cause against the accused in the resolution of the motions to quash, there is no showing of a ***"clear-cut absence"*** of probable cause against the accused. It must be stressed that "[i]n dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."[56]

In *De Los Santos-Dio v. Court of Appeals*,[57] the Court expounded on the parameters in judicially determining probable cause, as follows:

> While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a), Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause, *viz.*:

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53 *Poblete v. Justice Sandoval*, 470 Phil. 150, 167 (2004) [Per J. Carpio Morales, Third Division].
54 *Reyes v. Ombudsman*, 783 Phil. 304, 363 (2016) [Per J. Perlas-Bernabe, *En Banc*].
55 *See rollo*, p. 286.
56 *Reyes v. Ombudsman*, supra, at 314, *citing Brinegar v. United States*, 338 U.S. 160 (1949).
57 712 Phil. 288 (2013) [Per J. Perlas-Bernabe, Second Division].

> SEC. 5. *When warrant of arrest may issue.* — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.** If he finds probable cause, he shall issue a warrant of arrest, or acommitment order if the accused had already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. x x x
>
> In this regard, so as not to transgress the public prosecutor's authority, it must be stressed ***that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause — that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.*** On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.
>
> In other words, once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: *(a)* issue a warrant of arrest, if he finds probable cause; *(b)* immediately dismiss the case, if the evidence on record clearly fails to establish probable cause; and *(c)* order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause.[58] (Emphases and underscoring in the original)

Applying these principles, the Court finds that the Sandiganbayan's dismissal was improper as the standard of ***clear lack of probable cause*** was not observed. Here, the records show that certain essential facts asserted by the prosecution tending to show that the subject loans are behest, which in turn, are reflected in the Informations—namely, that: (*a*) DVRI was undercapitalized; (*b*) the stock trading activities of DVRI to be financed by the loan is not feasible because DVRI was not a duly licensed dealer in securities; (*c*) there was a resort to corporate layering as Ongpin used DVRI to obtain credit accommodations from DBP; (*d*) there was extraordinary speed in the processing and release of the loans; (*e*) Ongpin is David's crony; and (*f*) the loans were approved at the behest of David---remain controverted. Thus, it is only after a full-blown trial on the merits when the Sandiganbayan will be in a proper position to determine the presence or absence of the

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[58] *Id.* at 307–308; citations omitted.

elements of the crime charged. Since the same could not be definitively established at this point, it was highly improper for the Sandiganbayan to order the dismissal of Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106**.

At this juncture, the Court notes that the "undeniable fact"—as the Sandiganbayan majority ruling puts it—that DVRI had fully paid the two (2) loans it acquired from DBP ***does not necessarily*** take the loans outside the ambit of a behest loan. To be sure, Memorandum Order No. 61 dated November 9, 1992, entitled "*Broadening the Scope of the Ad-Hoc Fact Finding Committee on Behest Loans Created Pursuant to Administrative Order No. 13, dated 8 October 1992*" issued by then President Fidel V. Ramos, provides for the following criteria which may be utilized as a frame of reference in determining whether a loan granted by a government-owned or -controlled banking and/or financing institution—such as DBP in this case—is behest in nature. The full text of this Memorandum Order reads:

MEMORANDUM ORDER NO. 61

BROADENING THE SCOPE OF THE AD-HOC FACT FINDING COMMITTEE ON BEHEST LOANS CREATED PURSUANT TO ADMINISTRATIVE ORDER NO. 13, DATED 8 OCTOBER 1992

WHEREAS, among the underlying purposes for the creation of the Ad-Hoc Fact Finding Committee on Behest Loans is **to facilitate the collection and recovery of defaulted loans owing government-owned and controlled banking and/or financing institutions**;

WHEREAS, this end may be better served by broadening the scope of the fact finding mission of the Committee to include all non-performing loans which shall embrace behest and non-behest loans;

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Section 1. The Ad-Hoc Fact Finding Committee on Behest Loans shall include in its investigation, inventory, and study all non-performing loans which shall embrace both behest and non-behest loans.

The following criteria may be utilized as a frame of reference in determining a behest loan:

(*a*) It is undercollateralized;

(*b*) The borrower corporation is undercapitalized;

(*c*) Direct or indirect endorsement by high government officials like presence of marginal notes;

(*d*) Stockholders, officers, or agents of the borrower corporation are identified as cronies;

> **(*e*) Deviation of use of loan proceeds from the purpose intended;**
>
> **(*f*) Use of corporate layering;**
>
> **(*g*) Non-feasibility of the project for which financing is being sought; and**
>
> **(*h*) Extra-ordinary speed in which the loan release was made.**
>
> Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.
>
> Section 2. This Memorandum Order takes effect immediately. (Emphases and underscoring supplied)

As the Court sees it, an examination of these criteria would readily show that these matters relate to circumstances pertaining to the pre-execution and execution stages of the subject loans. These do not include circumstances occurring in the post-execution stage, or in other words, those only happening ***after*** the loan was granted—including payment of the subject loans. Given this, the Court is hard-pressed to agree with the conclusion of the Sandiganbayan majority ruling that the full payment of the two (2) loans that DVRI obtained would result in a finding that the same are not behest in nature, which would then, in turn, result in the negation of the elements of: (*i*) evident bad faith and manifest partiality; and (*ii*) giving of unwarranted benefits. At this juncture, the Court expresses its agreement with Justice Cornejo's dissent that the fact of DVRI's full payment of the two (2) loans it acquired from DBP will not necessarily result in the negation of the required elements for violation of Section 3(e) of RA 3019.

In sum, the Sandiganbayan gravely erred in dismissing Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106**, at least at this point of the proceedings before it. Therefore, it is only proper that these criminal cases be reinstated, and thereafter, remanded to the Sandiganbayan for a trial on the merits.

IV.

At this juncture, the Court notes that during the pendency of the instant petition, it received a Manifestation[59] dated November 16, 2016 from Romero's counsel, informing the Court that Romero died on January 18, 2015, as evinced by the latter's Certificate of Death[60] attached therewith.

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[59] *Rollo*, pp. 2764–2766.

[60] *Id.* at 2767.

Similarly, the Court also received a Manifestation[61] dated December 21, 2020 from David's counsel, informing the Court that David died on December 13, 2020. However, David's Certificate of Death was not attached to said Manifestation, with his counsel merely stating that the same shall be submitted to the Court after they have secured a copy of the same.[62] Nonetheless, various media outlets had released news articles confirming that David had indeed died on December 13, 2020.[63]

Finally, the Court received a Manifestation[64] dated March 3, 2023 from Ongpin's counsel, informing the Court of Ongpin's passing on February 5, 2023, attaching therewith Ongpin's Certificate of Death.[65] Notably, numerous media outlets have also released news articles related thereto.[66]

Under prevailing law and jurisprudence, an accused's death prior to their final conviction should result in the dismissal of the criminal case against them. Article 89 (1) of the Revised Penal Code provides that criminal liability is **totally extinguished** by the death of the accused, to wit:

> Article 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x

In the same vein, "the civil action instituted x x x for the recovery of the civil liability *ex delicto* is also *ipso facto* extinguished, grounded as it is on the criminal action."[67] The rationale behind this rule is that upon an accused's death pending appeal of their conviction, the criminal action is deemed extinguished inasmuch as "there is no longer a defendant to stand as the accused."[68]

Nonetheless, the Court clarified in *People v. Culas*[69] that in such an

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61 *Id.* at 3108–3112.
62 *Id.*
63 *See* Deflation, Alex Magno, Philstar Global <https://www.philstar.com/opinion/2020/12/19/2064811/deflation> (last accessed July 28, 2023); and Former DBP president Rey David passes away, Bilyonaryo <https://bilyonaryo.com/2020/12/15/former-dbp-president-rey-david-passes-away/business/> (last accessed July 28, 2023).
64 *Rollo*, pp. 3130-3132.
65 *Id.* at 3133.
66 *See* Billionaire businessman technocrat, political operator Roberto Ongpin dies at 86, Daxim L. Lucas, Inquirer.Net < https://business.inquirer.net/385143/billionaire-businessman-and-former-trade-minister-roberto-ongpin-dies-at-86> (last accessed July 28, 2023); Tracing the late Roberto 'Bobby' Ongpin, Ralf Rivas <https://www.rappler.com/business/bobby-ongpin-profile-obituary-legacy/> (last accessed July 28, 2023).
67 *People v. Culas*, 810 Phil. 205, 209 (2017) [Per J. Perlas-Bernabe, First Division].
68 *Id.*
69 *Id.*

instance, the accused's civil liability in connection with their acts against the private complainant, if any, may be based on sources other than *delicts*; in which case, the private complainant may file a separate civil action against the accused's estate, as may be warranted by law and procedural rules, *viz.*:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."
>
> 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:
>
> a) Law
> b) Contracts
> c) Quasi-contracts
> d) x x x
> e) Quasi-delicts
>
> 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.
>
> 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the [private offended] party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[70]

For this reason, Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** should already be dismissed insofar as Romero and Ongpin are concerned due to their supervening death, both of which had been confirmed through Certificates of Death[71] submitted by their respective counsels.

On the other hand, while no certificate of death was submitted to the

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[70] *Id.* at 208–209; *citing People v. Layag*, 797 Phil. 386, 390–391 (2016) [Per J. Perlas-Bernabe, First Division].

[71] *Rollo*, pp. 2767 & 3133.

Court proving David's death, the Court nevertheless takes discretionary judicial notice of such fact, since they are of public knowledge as evinced by various media outlets reporting on the same. To be sure, the Court is allowed to do so in accordance with Section 2, Rule 129 of the Revised Rules on Evidence, which reads:

> Section 2. *Judicial notice, when discretionary.* — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Thus, the Court deems it proper to also dismiss Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** as against David due to his supervening death.

ACCORDINGLY, the petition is **GRANTED**. The Resolutions dated May 28, 2014 and March 27, 2015 of the Sandiganbayan in Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** are hereby **REVERSED** and **SET ASIDE**. As such, Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** are **REINSTATED**, except as to respondents Miguel L. Romero, Reynaldo G. David, and Roberto V. Ongpin, and thereafter, **REMANDED** to the Sandiganbayan for a trial on the merits **WITH DISPATCH**.

However, the Court resolves to **DISMISS** Criminal Case Nos. **SB-13-CRM-0105** and **SB-13-CRM-0106** as against respondents Miguel L. Romero, Reynaldo G. David, and Roberto V. Ongpin due to their supervening deaths during the pendency of the criminal proceedings against them, and **DECLARE** these cases **CLOSED** and **TERMINATED** as to them.

SO ORDERED.

ANTONIO T. KHO, JR.
Associate Justice

WE CONCUR:

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

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

MARVIC M.V.F. LEONEN
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice