

BY: YSA
TIME: 8:49

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DOMINADOR C. FERRER, JR.,
Petitioner,

G.R. No. 240209

Present:

- versus -

PEOPLE OF THE
PHILIPPINES,
Respondent.

CARPIO, J., Chairperson,
PERLAS-BERNABE,
CAGUIOA,
J. REYES, JR.,* and
LAZARO-JAVIER, JJ.

Promulgated:

10 JUN 2019

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DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated May 11, 2018 and the Resolution³ dated June 18, 2018 of the *Sandiganbayan* (SB) in Crim. Case No. 26546, which found petitioner Dominador C. Ferrer, Jr. (Ferrer) guilty beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. (RA) 3019,⁴ entitled the "Anti-Graft and Corrupt Practices Act."

* On leave.
¹ *Rollo*, pp. 3-16.
² *Id.* at 17-43. Penned by Associate Justice Oscar C. Herrera, Jr. with Associate Justices Michael Frederick L. Musngi and Lorifel L. Pahimna, concurring.
³ See minute resolution; *id.* at 45.
⁴ (August 17, 1960).

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The Facts

The instant case stemmed from an Information⁵ charging Ferrer with violation of Section 3 (e) of RA 3019, the accusatory portion of which states:

That, on or about August 20, 1998 or for sometime (*sic*) prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, DOMINADOR C. FERRER, JR., being the Administrator of the Intramuros Administration (IA), Manila, while in the performance of his official and administrative functions as such, and acting with manifest partiality, evident bad faith and gross inexcusable negligence, did then and there, willfully, unlawfully and criminally give unwarranted benefits to Offshore Construction and Development Company, by causing the award of the Lease Contracts to said company, involving Baluarte de San Andres, R[e]vellin de Recoletos, and Baluarte de San Francisco de Dilao, Intramuros, Manila, without conducting any public bidding as required under Joint Circular No. 1 dated September 30, 1989 of the Department of Budget and Management, Department of Environment and Natural Resources and Department of Public Works and Highways, and by allowing the construction of new structures in said leased areas without any building permit or clearance required under the Intramuros Charter (P.D. 1616) and the National Building Code, to the damage and prejudice of public interest.

CONTRARY TO LAW.⁶

The prosecution alleged that Ferrer, then Administrator of the Intramuros Administration (IA), gave unwarranted benefits to Offshore Construction and Development Company (OCDC) when he: (a) awarded to it three (3) contracts of lease covering three (3) areas⁷ in Intramuros without any public bidding; and (b) allowed OCDC to construct new structures without a building permit or clearance as required under the Intramuros Charter and the National Building Code.⁸ The prosecution's witnesses testified that in August 1998, OCDC presented plans to the Technical Committee (Committee) – whose favorable recommendation is required before a building permit can be processed – for the development of structures on top of the Intramuros Walls. However, the plans were disapproved because they would impair the Walls' integrity and violate the laws relating to the conservation of heritage sites. Notwithstanding the Committee's disapproval, and without their knowledge, OCDC commenced construction in the leased areas.⁹ Later on, the Committee inspected the areas and found that air conditioning units had been installed through the Walls, that nails bored through them, and that the concrete added to put up a mezzanine was damaging the same. Seeing the unauthorized construction

⁵ Not attached to the *rollo*.

⁶ Referenced in the SB's Decision dated May 11, 2018; see *rollo*, pp. 17-18.

⁷ See Contracts of Lease dated August 20, 1998 covering Baluarte de San Andres (*id.* at 66-67), Revellin de Recoletos (*id.* at 46-55), and Baluarte de San Francisco de Dilao (*id.* at 56-65).

⁸ See *id.* at 17-18.

⁹ See *id.* at 23-24.

activities, they asked for building permits but OCDC could not produce any.¹⁰ Thereafter, the matter was reported to then Department of Tourism (DoT) Secretary Gemma Cruz-Araneta (Secretary Cruz-Araneta), to Ferrer as Administrator, and to the Urban Planning and Community Development Division. In his testimony, Victor B. Reyes (Reyes), then head of the Urban Planning and Community Development Division, confirmed that OCDC was not among those listed as recipients of building permits, and testified that his office prepared a Notice of Violation addressed to OCDC which Ferrer was supposed to sign but did not. This prompted their division to prepare a letter requiring OCDC to cease construction activities and to secure the necessary building permits. Reyes also confirmed that OCDC applied for development clearances, which were then issued to them upon Ferrer's instruction.¹¹

Pleading "not guilty" to the charge,¹² Ferrer argued that it was at the instance of Secretary Cruz-Araneta that the lease contracts with OCDC were entered into. The former assured him that she will also sign the said contracts in her capacity as DoT Secretary. Both of them even signed the Letter dated August 19, 1998 allowing OCDC to enter the leased properties for purposes of site development and inspection. He claimed that after he received reports of OCDC's violations, he immediately visited the site and issued a Notice of Demolition. He further testified that the required clearances under the Intramuros Charter were issued to OCDC.¹³

The SB Ruling

In a Decision¹⁴ dated May 11, 2018, the SB found Ferrer guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.¹⁵

The SB found that while no public bidding was required for IA to enter into lease contracts,¹⁶ the prosecution had nevertheless established that Ferrer committed a violation of Section 3(e) of RA 3019 considering that: (a) Ferrer was a public officer, particularly the IA's Administrator, at the time material to this case; (b) he exhibited gross inexcusable negligence when he allowed the construction of the structures on top of the Intramuros

¹⁰ See *id.* at 23.

¹¹ See *id.* at 25-26.

¹² *Id.* at 19.

¹³ See *id.* at 28-29. Notably, OCDC applied for clearances for the three (3) areas only on October 13, 1998 when construction was already ongoing, and the developmental clearances were approved merely two (2) days after or on October 15, 1998 (see *id.* at 37).

¹⁴ *Id.* at 17-43.

¹⁵ *Id.* at 42.

¹⁶ The SB rejected the prosecutor's view that public bidding was necessary before the IA can award lease contracts. It stressed that the mere fact that OCDC is a construction company does not change the nature of the contracts entered into (*i.e.*, lease) and that whatever improvements or modifications made on the leased properties were only incidents arising from such lease. (See *id.* at 33-36.)

Walls without the recommendatory approval of the Technical Committee, which is a requirement for getting a building permit;¹⁷ and (c) his acts gave OCDC a distinct advantage to enter the leased properties, occupy them, and commence construction activities.

Aggrieved, Ferrer filed a motion for reconsideration,¹⁸ which was denied in a Resolution¹⁹ dated June 18, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the SB correctly convicted Ferrer for violation of Section 3 (e) of RA 3019.

The Court's Ruling

The petition is without merit.

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:

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.

As may be gleaned above, the elements of violation of Section 3 (e) of RA 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 acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the

¹⁷ The SB listed his specific infractions: (i) in a letter dated August 19, 1998, granted OCDC access to the leased premises even before the lease contract was executed; (ii) failed to act despite being apprised as early as September 1998 of violations committed by OCDC; and (iii) hurriedly issued the development clearances to OCDC in October 1998 when construction was already ongoing. (See *id.* at 41.)

¹⁸ Dated May 25, 2018; not attached to the *rollo*.

¹⁹ *Rollo*, p. 45.

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government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.²⁰

After a judicious review of the case, the Court is convinced that the SB correctly convicted Ferrer of the crime charged. The elements constituting a violation of Section 3 (e) of RA 3019 have been sufficiently established considering that: (a) Ferrer was indisputably a public officer at the time of the commission of the offense, discharging his administrative and official functions as the IA Administrator; (b) he acted with gross inexcusable negligence when he knowingly allowed OCDC to commence construction on the Intramuros Walls without the required permits or clearances; and (c) by his actions, he gave unwarranted benefits to a private party, *i.e.*, OCDC, to the detriment of the public insofar as the preservation and development plans for Intramuros are concerned.²¹

Insisting on his innocence, Ferrer argues that the allegations in the Information, *i.e.*, “the construction of **new** structures in said leased areas **without** any building permit or clearance x x x[.]”²² were not actually proved during trial. He posits that what was involved was mere renovation, and the SB even conceded that clearances were eventually issued.²³

Ferrer’s arguments are untenable. As the SB correctly pointed out, even if a development clearance was belatedly granted to OCDC, the construction had already reached 75% completion by then.²⁴ As the IA Administrator, Ferrer is presumed aware of the requirements **before** any construction work may be done on the Intramuros Walls. This is also palpably clear in the tenor of the lease agreement which provides that the Lessor will “[a]ssist the Lessee in **securing all required government permits and clearances for the successful implementation of this agreement** and to **give its conformity to such permits and clearances** or permits whenever necessary.”²⁵ Despite knowing the requirements and conditions precedent mandated by law, he knowingly allowed OCDC to proceed with construction without such permits or clearances.²⁶ This amounted to gross inexcusable negligence on his part. Gross negligence 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 **wilfully 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.”²⁷

²⁰ See *Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016), citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 102 (2015).

²¹ See *rollo*, pp. 37-41.

²² *Id.* at 9; emphases supplied.

²³ See *id.*

²⁴ *Id.* at 37.

²⁵ *Id.* at 52, 62, and 72; emphases supplied.

²⁶ See *id.* at 37.

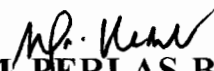
²⁷ *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 229 (2014); emphasis supplied.

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In view of the foregoing, the Court finds no reason to overturn these findings, as there was no showing that the SB overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case.²⁸ “[I]t bears pointing out that in appeals from the [SB], as in this case, only questions of law and not questions of fact may be raised. Issues brought to the Court on whether the prosecution was able to prove the guilt of the accused beyond reasonable doubt, whether the presumption of innocence was sufficiently debunked, whether or not conspiracy was satisfactorily established, or whether or not good faith was properly appreciated, are all, invariably, questions of fact. Hence, absent any of the recognized exceptions to the above-mentioned rule, the [SB’s] findings on the foregoing matters should be deemed as conclusive.”²⁹ As such, Ferrer’s conviction for violation of Section 3 (e) of RA 3019 must stand.

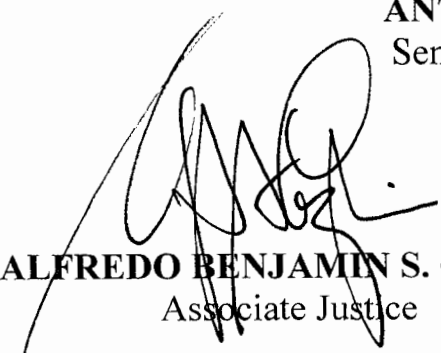
WHEREFORE, the petition is **DENIED**. The Decision dated May 11, 2018 and the Resolution dated June 18, 2018 of the *Sandiganbayan* in Crim. Case No. 26546 are hereby **AFFIRMED**. Petitioner Dominador Carandang Ferrer, Jr. is found **GUILTY** beyond reasonable doubt of the crime of violation of Section 3 (e) of RA 3019, and accordingly, sentenced to suffer the indeterminate penalty of imprisonment for a period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
 Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
 Senior Associate Justice
 Chairperson


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

On leave
JOSE C. REYES, JR.
 Associate Justice

²⁸ See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017.

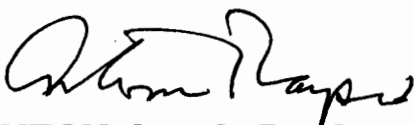
²⁹ *Lihaylihay v. People*, 715 Phil. 722, 728 (2013); citations omitted.



AMY C. LAZARO-JAVIER
Associate Justice

ATTESTATION

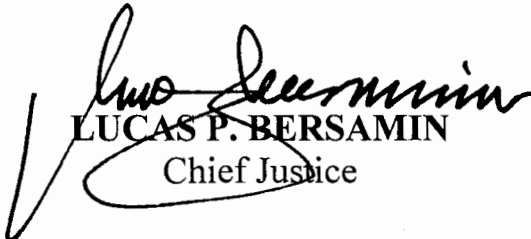
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
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.



LUCAS P. BERSAMIN
Chief Justice