



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division
OCT 31 2019

SUPREME COURT OF THE PHILIPPINES
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PEOPLE OF THE PHILIPPINES,
Petitioner,

- versus -

HON. SANDIGANBAYAN (Second
Division) and FELICIDAD B.
ZURBANO,
Respondents.

G.R. Nos. 233280-92

Present:

PERALTA, J., Chairperson,
LEONEN,
REYES, A., JR.,
HERNANDO, and
INTING, JJ.

Promulgated:

September 18, 2019

X-----MISAEL DOMINGO C. BATTUNG III-----X

DECISION

PERALTA, J.:

In this Petition for *Certiorari* under Rule 65 of the Rules of Court, the State, as petitioner, seeks to annul and set aside the Resolution¹ of the Sandiganbayan dated February 21, 2017, which granted respondent Felicidad Zurbano’s Motion for Reconsideration and Supplemental Motion for Reconsideration, and reversed and set aside the Decision² dated April 12, 2016 finding her guilty beyond reasonable doubt for violation of Section 3(h) of Republic Act (R.A.) No. 3019, and Resolution³ dated June 15, 2017, which denied petitioner’s Very Urgent Motion for Reconsideration dated March 8, 2017.

¹ Penned by Associate Justice Michael Frederick L. Musngi, with Associate Justices Samuel R. Martires (later on appointed Associate Justice of this Court) and Geraldine Faith A. Econg concurring; *rollo*, pp. 33-40.

² Penned by Associate Justice Teresita V. Diaz-Baldos, with Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo concurring; *id.* at 62-108.

³ Penned by Associate Justice Michael Frederick L. Musngi, with Associate Justices Oscar C. Herrera, Jr. and Lorifel L. Pahimna concurring; *id.* at 42-46.

Respondent was indicted for thirteen (13) counts of violation of Section 3(h) of R.A. No. 3019 before the Sandiganbayan. When arraigned upon Informations that contain similar allegations of violation of the said law with difference only with regard to Purchase Order Number and date of issue for each count, respondent entered a negative plea. In a Joint Stipulation of Facts submitted before the court *a quo* on February 26, 2007, the parties stipulated on the following facts:

1. At all times material to the case, accused Felicidad Brillon Zurbano was a public officer, a CESO IV, being then the Provincial Director of TESDA-CAVITE, holding office at Trece Martires City, Cavite;

2. On January 2, 2003, accused Felicidad B. Zurbano assumed the Provincial Directorship of TESDA-CAVITE by virtue of the Central Office-directed rotation of Provincial Directors nationwide replacing Provincial Director Remedios Flestado who was re-assigned to TESDA-Rizal;

3. At all times material to the case and during the term of the accused as Provincial Director of TESDA-Cavite, Arnold S. Campos, Lleonor C. Hulguin, Julita Osia, Wilfredo Bathan, Eva Defiesta, Lorena P. Lim, and Rizal Bautista were permanent employees of TESDA-Cavite;

4. At all times material to the case, the Isuzu Highlander with plate number SFU-969, was under Memorandum Receipt to the accused with Mr. Arnold Campos as the official driver thereof;

5. Two (2) weeks after her assumption to the Provincial Directorship, or on January 15, 2003, the accused by virtue of an Office Order designated Arnold Campos as canvasser for their office on top of other additional functions contained in the subject office order without any additional compensation;

6. At all times material to the case, Lleonor Hulguin was with an item of Financial Analyst and among her functions were the preparation of purchase orders, disbursement vouchers and checks for payment to the suppliers of their office materials and technical supplies;

7. During the period covering March to October 2003, Julita Osia, Eva Defiesta and Rizal Bautista in their capacity as Bids and Awards Committee (BAC) members, recommended the award to supply materials to CDZ Enterprises resulting in the issuance of the thirteen (13) purchase orders subject matter of the instant cases;

8. At all times material to the case, the office supplies and materials of TESDA-CAVITE were being obtained from different suppliers such as D.M. Austria Trading, Mark Karl Trading and CDZ Enterprises. among others;

9. At all times material to the case, TESDA-CAVITE had at least thirteen (13) Purchase Orders (PO) from CDZ Enterprises respecting its office and technical supplies;

10. Ms. Nieves B. Cabigan is a sister of the accused Felicidad B. Zurbano, Ms. [Cabigan] is the sole proprietor of CDZ Enterprises per Department of Trade and Industry (DTI) records;

11. On March 17, 2005, the TESDA Provincial Office and Training Center of Trece Martires City was burned by fire including all of its records and documents.

12. On September 20, 2004, accused filed an Administrative case against Arnold Campos, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman which later referred the same to the Civil Service Commission now pending and docketed as Disciplinary Case No. D-04-0183 for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

13. On September 30, 2004, accused filed administrative cases against Julita U. Osia, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman which decided to suspend her for one (1) month without pay for simple misconduct. Accused also filed a criminal case for malversation against Julita U. Osia before the Office of the Ombudsman.

14. On September 30, 2004, accused filed administrative and criminal cases against Petra A. Ferrer, but with no action taken by the Director General of TESDA, the complaint was filed before the Office of the Ombudsman. The Deputy Ombudsman for Luzon resolved to indict her for Malversation of Public Funds. However, with respect to the administrative case, the Ombudsman deferred to TESDA's jurisdiction.

15. On September 30, 2004, accused filed administrative and criminal cases against Lleonor C. Hulguin, but with no action taken by the Director General of TESDA, the complaints were filed before the Office of the Deputy Ombudsman for Luzon.⁴

Petitioner presented two (2) witnesses to prove its theory that respondent took advantage of her official position as TESDA-Cavite Provincial Director by willfully, unlawfully and feloniously had an indirect financial or pecuniary interest in the thirteen (13) contracts entered into by her office with CDZ Enterprises, which was owned by her sister, Nieves Brillo Cabigan.

First to testify was Arnold Subia Campos, who worked as driver and later on designated as canvasser, on top of other additional functions, without additional compensation by virtue of an Office Order issued by the respondent.

Campos detailed the procurement procedure adopted at TESDA-Cavite in the following manner: purchase requests from the end-user agency

⁴ Rollo, pp. 72-74.

of the supplies and materials were submitted to their office and forwarded to the Administrator and Provincial Director for their signatures. After these requests were brought back to him, he would then prepare three (3) canvass forms containing the needed supplies and materials which were encoded in each canvass form to be signed by the respondent. After being signed by the respondent, only two of these canvass forms were circulated to possible suppliers, while the remaining canvass form was retained by the respondent.

Upon respondent's instructions, Campos would give back to respondent Zurbano the two (2) canvass forms which contained the prices and quotations submitted by the bidder supplier. After one to three days, respondent would give to him three canvass forms, including the one that retained with her, which already have prices and quotation from CDZ Enterprises that have the lowest bids as compared to the other two suppliers. Respondent Zurbano would then prepare the abstract of canvass and call on the Bids and Awards Committee (*BAC*), which would recommend the winning supplier. Campos would, thereafter, receive the Purchase Order prepared by the respondent.

As the designated driver of the respondent, Campos knew personally that the respondent used the TESDA-Cavite service vehicle to deliver the supplies from CDZ Enterprises to their office. He was the one who unloaded the supplies and materials from their service vehicle and brought them to the office of the respondent. He also testified that he acted as payment collector for CDZ Enterprises. Upon orders of the respondent, Campos followed up on the checks of CDZ Enterprises with the Financial Analyst of TESDA-Cavite and turned over these checks, including the vouchers, to the respondent.

Petitioner's last witness was Julita Osia, who was the Senior TESD Specialist of TESDA-Cavite and also a BAC member. She testified that she and the other members of the BAC were tasked to evaluate the bid documents, specifically, the canvass forms and abstract of canvass which they received from Campos. These documents were already completely prepared and they had nothing more to do except to sign them. After affixing their signatures thereon, the documents were returned to Campos, who was waiting for further instructions from the respondent.

Osia admitted that part of Campos' duty was to prepare the Abstract of Canvass and that the duty of the BAC members was limited to the evaluation of said documents and affixing their signatures upon finding that the entries were true and correct.

After the petitioner rested its case, respondent filed a Motion with Leave of Court to File Demurrer which was granted by the Sandiganbayan in its Order dated July 10, 2009. Respondent's Demurrer to Evidence, which

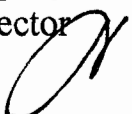
was grounded on the prosecution's failure to establish and prove all the elements of violation of Section 3(h) of R.A. 3019, was subsequently denied by the Sandiganbayan in its Resolution dated January 12, 2011. The motion for reconsideration filed by respondent was, likewise, denied by the court *a quo* in its Resolution dated June 27, 2011.

Respondent Zurbano took the witness stand and testified on her defense. She alleged that when she assumed office in TESDA-Cavite in January 2003, there was no turn-over of properties, accountabilities and responsibilities because her predecessor, Director Remedios Flestado was also assigned to TESDA-Rizal. She averred that there were three (3) operating units, *i.e.*, the TESDA Provincial Office and two Provincial Training Centers located in Trece Martires City and in Rosario, Cavite. She had nine staff members at the Provincial Office who included Arnold Campos. Upon her assumption as TESDA-Cavite Provincial Director, respondent Zurbano called for a staff meeting in order to know them and their responsibilities, and to know their issues and concerns. She also held regular meetings to facilitate the updating of programs and activities of the Field Operating Units.

Respondent Zurbano asserted that it was former Provincial Director Remedios Flestado who appointed the members of the BAC which examined and reviewed the bids submitted by the suppliers, and selected and recommended to the Provincial Director the lowest responsive bid. The signing authority of the Provincial Director was for transactions up to ₱500,000.00, while transactions above ₱500,000.00 belonged to the Regional Director.

According to respondent Zurbano, her involvement in the procurement process was only in the approval of the Purchase Request, the signing of the canvass form and the Purchase Order, and that she had no participation in the other steps undertaken by the procurement officer, the BAC and the Financial Analyst. She denied that she retained one canvass form that would stay with her for 2 to 3 days and which would be returned to Campos already filled up. She asserted that she signed only one canvass form for every Purchase Order, since it may be faxed or reproduced by those suppliers requesting for quotations.

Zurbano disclaimed Campos' testimony that she was using the TESDA-Cavite service vehicle to deliver the supplies from CDZ Enterprises to their office. She stated that she was informed of the arrangement between her sister and Mr. Campos who offered to bring the supplies to TESDA-Cavite through the said service vehicle. She alleged that the supplies that were procured could either be delivered by the supplier or picked up by TESDA-Cavite and were brought to a place agreed upon with the inspector for inspection by the designated TESDA-Cavite personnel.



Respondent Zurbano testified that her sister was invited to join the procurement process and that the latter submitted documents regarding her company and forwarded quotations to the canvasser, who accepted them. She cited the price quotation of CDZ Enterprises for certain supplies and materials which were lower than those submitted by other suppliers.

Respondent Zurbano admitted that CDZ Enterprises only became an accredited supplier in TESDA-Cavite when she became its Provincial Director and CDZ Enterprises never participated in any public bidding because the procurement involved small items which could be done through canvass.

The defense also presented Asuncion Mercado Ordon and Rowena Villena Bacos. Ms. Ordon represented herself as the Supervising Technical Education and Skills Development (TESD) Specialist at TESDA-Cavite and testified on her duties at TESDA-Cavite.

Ms. Bacos, on the other hand, testified that the staff of the Provincial Office led the move to oust the respondent during a meeting attended by other TESDA-Cavite operating units. The staff of TESDA-Cavite prepared a complaint against respondent and filed it before the Director General of the TESDA, which was, however, later on retracted after the latter talked with them.

Ms. Bacos confirmed respondent's testimony that there was only one canvass form that was prepared by Mr. Campos and submitted to the respondent for signature and that these forms were logged in her logbook. She testified that the delivered supplies were inspected by the Inspector Officer and were stored in the storage room in TESDA-Cavite. She added that she had no way of knowing what happened to the canvass form once it came out from the office of the respondent after signing it until it came back to their office as attachment to the Purchase Order.

After the respondent terminated the presentation of her evidence and formally rested her case, the prosecution opted not to adduce rebuttal evidence. Both parties complied with the Sandiganbayan's directive to file their respective memorandum.

On April 12, 2016, the Sandiganbayan rendered its Decision finding respondent Zurbano guilty beyond reasonable doubt of thirteen counts of violation of Section 3(h) of R.A. No. 3019, as amended, and sentenced her to the indeterminate penalty of imprisonment ranging from six (6) years and one (1) month, as minimum, to twelve (12) years, as maximum, with the accessory penalty of disqualification from holding any public office.



On May 3, 2016, respondent Zurbano filed a Motion for Reconsideration and followed it up with a Supplemental Motion for Reconsideration on June 27, 2016. On July 18, 2016, the prosecution filed its Comment/Opposition which drew a Motion to Admit Attached Reply and Reply separately filed by the respondent on August 23, 2016 and August 25, 2016, respectively.

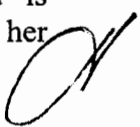
In its Resolution dated February 21, 2017, the Sandiganbayan granted respondent's Motion for Reconsideration and Supplemental Motion for Reconsideration and, accordingly, acquitted the respondent of the offense charged. The Sandiganbayan ratiocinated the reversal in its previous decision based on the following disquisitions and conclusion:

However, a review of the records of this case shows that the prosecution was not able to sufficiently prove the second element of the crime. In its *Decision*, this Court applied the case of *Republic vs. Tuvera, et al.*, where the Supreme Court held that the fact that the principal stockholder of Twin Peaks was the son of accused Presidential Executive Assistant Juan Tuvera establishes the latter's indirect pecuniary interest in the transaction he appears to have intervened in. However, it is important to note that the Supreme Court also mentioned that kinship alone may not be enough to disqualify the accused's son from seeking the timber license agreement.

In this case, the prosecution merely assumed the pecuniary interest of the accused when her sister's company, CDZ Enterprises, was able to submit the lowest price quotations for the contracts due to the accused's intervention. This Court finds that the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. The prosecution was not able to present evidence that the accused received any financial benefit from these transactions. Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest.

x x x x

Indeed, the accused personally intervened in the procurement of office supplies in order to ensure that her sister, who was the sole proprietor of CDZ Enterprises, would be granted the contracts. The accused also admitted that CDZ Enterprises became a supplier of TESDA-Cavite only during her incumbency as Provincial Director. Therefore, it appears that the accused took advantage of her position and used her knowledge of the prices of the other suppliers to safeguard the bid of CDZ Enterprises. Since CDZ Enterprises would end up with the lowest prices for the supplies, then the BAC will eventually grant the contracts to said company. Nonetheless, Section 3(h) of R.A. No. 3019 primarily requires the existence of a direct or pecuniary interest on the part of the accused on the contracts with CDZ Enterprises to which she intervened in. Unfortunately, the prosecution failed to show how the accused is connected with CDZ Enterprises or how this intervention led to her acquisition of any financial interest or benefit.



Moreover, even if the accused's driver was ordered by the accused to collect and follow up on the checks of CDZ Enterprises with the Financial Analyst of TESDA-Cavite and that the checks were then physically turned over the accused, the checks were still under the name of CDZ Enterprises. The prosecution did not present any other evidence that would link the accused to CDZ Enterprises. The totality of evidence and circumstances fails to convince this Court that the accused has direct or indirect pecuniary interest in the subject contracts.

In the case of *Jaime H. Domingo vs. Sandiganbayan, et al.*, the Supreme Court found Domingo and Garcia guilty for violating Section 3(h) of R.A. No. 3019. The Supreme Court found that Garcia, the godson of Domingo in marriage, was a mere dummy of public officer Domingo in contracting with the municipality for the supply and delivery of gravel and sand to the barangays. In this case, the prosecution was able to prove the direct or indirect financial or pecuniary interest of accused Domingo for the following reasons: (a) accused was the co-drawer and payee of the subject checks, (b) accused's trucks were being used for the delivery of gravel and sand to different barangays, (c) undisputed testimony of Garcia on the subject transactions that he was the contractor for the supply and delivery of gravel and sand, among others, (d) supporting documents which showed manifest irregularities, (e) absence of the contract for the supply and delivery of gravel and sand, and (f) encashment of the checks by accused Domingo and his wife.

Unlike the *Domingo* case, there was an apparent lack of factual basis in this case that the accused has direct or indirect pecuniary interest in her sister's contract with TESDA-Cavite. To reiterate, the prosecution merely relied on the existence of relationship of the accused and her sister as basis of pecuniary interest. The intervention of the accused in the procurement process definitely favored and benefitted her sister's company. Nonetheless, in order to be liable for violation of Section 3(h) of R.A. No. 3019, the prosecution must also sufficiently show that the accused has a pecuniary interest over the contracts which she intervened in.

In the case of *Republic vs. Tuvera, et al.*, the Supreme Court mentioned that the legal principle of *delicadeza* embodied in the provisions of R.A. No. 3019, specifically in paragraphs (a) and (h), should have dissuaded the accused from any official participation or intervention in behalf of Twin Peaks request for a timber license. However, the absence of *delicadeza* on the part of the accused does not make her liable for violation of Section 3(h) of R.A. No. 3019. This law prohibits such actual intervention by a public officer in a transaction over which he/she has a financial or pecuniary interest because the law aims to prevent the dominant use of influence, authority and power. All the elements of the crime must be sufficiently proven in order to convict the accused.⁵

On March 9, 2017, the prosecution filed a Very Urgent Motion for Reconsideration,⁶ which was denied in the Resolution issued by the Sandiganbayan on June 15, 2017. Hence, this petition.

⁵ *Id.* at 37-39. (Citations omitted)

⁶ *Id.* at 135-147;282-294.

Petitioner ascribes grave abuse of discretion on the part of the Sandiganbayan in issuing the assailed Resolutions dated February 21, 2016 and June 15, 2017 and contends that it was able to establish by clear and convincing evidence respondent's indirect financial or pecuniary interest in the thirteen (13) contracts for acquisition of office supplies and materials of TESDA-Cavite with CDZ Enterprises. It posits that respondent's active intervention in the accomplishment of the canvass forms; the surreptitious inclusion of CDZ Enterprises in the three (3) suppliers canvassed for their respective quotations; personally undertaking the delivery of procured supplies and materials to TESDA-Cavite from CDZ Enterprises using the former's government-issued service vehicle; requiring her office driver to follow-up the checks due to CDZ Enterprises; and, by personally receiving such payment for and in behalf of CDZ Enterprises, were all considered overt acts of her pecuniary interest in the subject transactions since CDZ Enterprises was owned by her sister.

In issuing the assailed resolutions, petitioner, thus, argues that the court *a quo* misapplied the ruling in *Domingo v. Sandiganbayan, et al.*,⁷ which refer to the commission of Section 3(h) of R.A. No. 3019 by a public officer having direct financial or pecuniary interest in government transactions. It insisted on the application of the ruling in *Republic v. Tuvera, et al.*,⁸ where former Executive Secretary Juan Tuvera was found guilty of having indirect pecuniary interest in the transaction of Twin Peaks where his son appeared as the principal stockholder of the said corporation.

The petition is not impressed with merit.

In this jurisdiction, We adhere to the *finality-of-acquittal* doctrine, that is, a judgment of acquittal is final and unappealable.⁹ The reason for the *finality-of-acquittal* doctrine was explained by this Court in *People v. CA*,¹⁰ thus:

In our jurisdiction, the finality-of-acquittal doctrine as a safeguard against double jeopardy faithfully adheres to the principle first enunciated in *Kepner v. United States*. In this case, verdicts of acquittal are to be regarded as absolutely final and irreviewable. The cases of *United States v. Yam Tung Way*, *People v. Bringas*, *Gandicela V. Lutero*, *People v. Cabarles*, *People v. Bao*, to name a few, are illustrative cases. The fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes. As succinctly observed in *Green v. United States* the underlying idea, one that is deeply ingrained in at least the Anglo-

⁷ 379 Phil. 708 (2000).

⁸ 545 Phil. 21 (2007).

⁹ *People v. Lino Alejandro y Pimentel*, G.R. No. 223099, January 11, 2018.

¹⁰ 468 Phil. 1, 12-13 (2004).

American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty.

The proscription against placing the accused in double jeopardy is expressly mandated in the 1987 Constitution which provides that, “No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.”¹¹ The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted or the case was dismissed without his express consent.¹² The only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was sham.¹³

In this case, all the elements of double jeopardy are present: (1) the Informations for thirteen (13) counts of violation of Section 3(h) of R.A. No. 3019 were sufficient in form and substance to sustain the conviction of the respondent; (2) the court *a quo* definitely had jurisdiction over the cases; (3) arraignment took place on July 13, 2006 where the respondent entered a negative plea; and (4) the court *a quo*, on motion for reconsideration filed by the respondent, acquitted the latter of the offense charged.

Petitioner’s claim of grave abuse of discretion on part of the Sandiganbayan does not persuade Us. Grave abuse of discretion has been defined as that capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice.¹⁴ Contrary to petitioner’s assertions, the conclusions of the Sandiganbayan were not whimsical, capricious or arbitrary, considering that material and

¹¹ 1987 Constitution, Art. 3, Sec. 21.

¹² *Tiu v. Court of Appeals*, 604 Phil. 48, 56 (2009).

¹³ *Bangayan, Jr. v. Bangayan*, 675 Phil. 656, 667-668 (2011).

¹⁴ *Id.* at 669.

relevant evidence and existing jurisprudence were indeed considered in the assailed Resolutions dated February 21, 2017 and June 15, 2017.

At the core of the present petition is the Sandiganbayan's finding that not all the elements of violation of Section 3(h) of R.A. No. 3019 were present which necessarily involves a review of the evidence presented during trial. A writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings.¹⁵ Simply put, the petition basically raises issues pertaining to alleged errors of judgment, not errors of jurisdiction, which is tantamount to an appeal, contrary to express injunction of the Constitution, the Rules of Court, and prevailing jurisprudence.¹⁶

The dissenting opinion of Justice Marvic Mario Victor F. Leonen favors the grant of the People's Petition on the ground that the Sandiganbayan committed grave abuse of discretion in decreeing the acquittal of respondent Felicidad Zurbano from the charge of violation of Section 3(h) of Republic Act (R.A.) No. 3019.

The dissent raised three (3) grounds for the grant of the petition, to wit: (1) Zurbano has the burden to contradict the presumption that she indirectly benefitted financially from the transaction of her sister with TESDA-Cavite where she holds the position of Provincial Director; (2) the Sandiganbayan ignored the ruling in *Republic v. Tuvera*, where it was expressly found that a relationship, in and of itself, can establish the indirect pecuniary interest of someone charged with violation of R.A. No. 3019, Section 3(h); and 3) the Sandiganbayan's citation of *Tuvera* is misleading. Thus, the dissenting opinion argued that the muddling of this Court's pronouncements in *Tuvera* to acquit Zurbano amounted to grave abuse of discretion.

In shifting to Zurbano the burden to contradict the presumption that she indirectly benefitted from the transaction of her sister, the dissenting opinion advanced the proposition that when a person assists her sibling in obtaining an award, that person will indirectly benefit financially following the ordinary course of life in the Filipino family. It cited Article 291 of the Civil Code which provides for the obligation of brothers and sisters, whether full or half-blood, to render support to each other.

The Court disagrees.



¹⁵ *Villareal v. Aliga*, 724 Phil. 47, 64 (2014).

¹⁶ *Id.* at 65.

Under the facts obtaining in this case, indirect pecuniary benefit cannot be presumed from the mere fact of assistance being rendered by Zurbano to her sister in obtaining the award at TESDA-Cavite. Article 291 of the Civil Code cannot be made to apply in this case, since the record is bereft of proof that Zurbano was obliged to financially support or that she was, in fact, providing financial support to her sister, or that the latter was financially dependent on the former. What is borne by the evidence was that Zurbano's sister is the registered owner of CDZ Enterprises. Hence, Zurbano's sister is presumed to be financially independent from Zurbano.

There is, likewise, absence of evidence that Zurbano has financial interests in the said company. As admitted in the dissenting opinion, "a close family relationship does not conclusively entail financial interest in each other's successes. After all, a person may assist her sibling out of love or some concept of familial duty, without necessarily contemplating any monetary gain."

With regard to the failure of the Sandiganbayan to consider the alleged explicit ruling of the Supreme Court in the *Tuvera* case concerning the establishment of the presumption of indirect pecuniary benefit by reason of relationship and the "muddling" of the said case, the Court has not read in the text of *Tuvera*, the pronouncement of the Court "which expressly found that a relationship, in and of itself, can establish the indirect pecuniary interest of someone charged with violation of Republic Act No. 3019, Section (h)."

In the *Tuvera* case, the Court imposed the burden upon Mr. Tuvera the presumption that he indirectly benefitted financially from the transaction of Twin Peaks' request for timber license because of the evidence on record which showed that there was "failure to undergo public bidding or to comply with the requisites for the grant of such agreement by negotiation, and in favor of a corporation that did not appear legally capacitated to be granted such agreement." Said the Court, "Certainly, the circumstances presented by the evidence of the prosecution are sufficient to shift the burden of evidence to Tuvera in establishing that he did not violate the provisions of the Anti-Graft and Corrupt Practices Act in relation to the Twin Peaks' 'request'."¹⁷ The burden was shifted to Mr. Tuvera because he waived his right to present evidence to disprove that he violated the allegations against him.

None of the foregoing circumstances were present in Zurbano's case. Unlike in the *Tuvera* case where the totality of the prosecution evidence created a presumption of indirect pecuniary benefit against the accused, the Sandiganbayan ruled that the prosecution failed to show the connection of

¹⁷

Emphasis supplied.

Zurbano to CDZ Enterprises or how Zurbano's intervention led to her acquisition of any financial interest or benefit. As stated earlier, the assistance rendered to a sibling maybe by reason of love or some other concept of familial duty, without not necessarily contemplating any monetary gain.

On the matter of "muddling" of the *Tuvera* case, it maybe conceded that the Sandiganbayan misread the import of the discussions of the Court on *delicadeza* in the said case. However, the Sandiganbayan's acquittal of Zurbano was not only based on the *Tuvera* ruling. In fact, petitioner's position, in the instant petition, was that the Sandiganbayan misapplied, in the assailed decision, the case of *Jaime Domingo vs. Sandiganbayan, et., al.*, and insisted on the application of the *Tuvera* case.

Evidently, the Sandiganbayan reviewed the entire case after Zurbano filed a Motion for Reconsideration and acquitted her because of its subsequent finding that the prosecution failed to prove all the elements of the crime charged. Its basis for the acquittal was that:

In this case, the prosecution merely assumed the pecuniary interest of the accused when her sister's company, CDZ Enterprises, was able to submit the lowest price quotations for the contracts due to the accused's intervention. This Court finds that the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. The prosecution was not able to present evidence that the accused received any financial benefit from these transactions. Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest.

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Unlike the *Domingo* case, there was an apparent lack of factual basis in this case that the accused has direct or indirect pecuniary interest in her sister's contract with TESDA-Cavite. To reiterate, the prosecution merely relied on the existence of relationship of the accused and her sister as basis of pecuniary interest. The intervention of the accused in the procurement process definitely favored and benefitted her sister's company. Nonetheless, in order to be liable for violation of Section 3(h) of R.A. No. 3019, the prosecution must also sufficiently show that the accused has a pecuniary interest over the contracts which she intervened in."

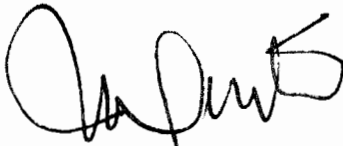
At any rate, the issues raised in the instant petition pertain to errors of judgment, not errors of jurisdiction. As held in one case,¹⁸ the only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case

¹⁸ *Bangayan v. Bangayan*, 675 Phil. 656, 667-668 (2011).

against the accused or where the trial was sham. Here, the prosecution was not denied due process as it was given opportunity to present its evidence. All the elements of double jeopardy are present.

WHEREFORE, the instant petition is **DISMISSED** for lack of merit. The acquittal of respondent FELICIDAD B. ZURBANO by the Sandiganbayan in its Resolutions dated February 21, 2017 and June 15, 2017, entitled *People of the Philippines v. Felicidad B. Zurbano*, is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

See separate opinions


MARVIC MARIO VICTOR F. LEONEN
Associate Justice

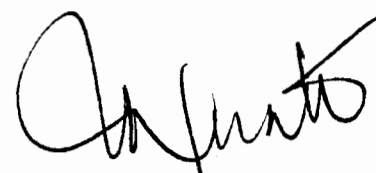
Reyes
ANDRES B. REYES, JR.
Associate Justice

On leave
RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
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.



DIOSDADO M. PERALTA
Associate Justice
Chairperson, Third 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.

CERTIFIED TRUE COPY

MisPOCbat
MISAEAL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division


ANTONIO T. CARPIO
Acting Chief Justice

OCT 31 2019