



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

ROLANDO  
MONTEJO,

BOLASTIG G.R. Nos. 248086-93

*Petitioner.*

- versus -

PEOPLE OF THE PHILIPPINES,  
*Respondent.*

X-----X

PEOPLE OF THE PHILIPPINES,  
*Plaintiff-Appellee,*

G.R. Nos. 248702-09

Present:

LEONEN, J., *Chairperson,*  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
LOPEZ, JJ.

- versus -

MILAGROS TEE TAN and  
REYNALDO ANGELES YABUT,  
*Accused-Appellants.*

Promulgated:

June 28, 2021

MISAPCBAH

X-----X

DECISION

INTING, J.:

Before the Court are the following consolidated cases which seek to reverse and set aside the Decision<sup>1</sup> dated March 1, 2019 and the

<sup>1</sup> Rollo (G.R. Nos. 248086-93), Vol. I, pp. 70-126.

Resolution<sup>2</sup> dated June 26, 2019 of the Sandiganbayan, Fourth Division, to wit:

1. In G.R. No. 248086-93, Rolando Bolastig Montejo (petitioner Montejo), as then Administrative Officer IV of the Province of Samar with Salary Grade 22 under RA 6758,<sup>3</sup> filed his Petition for Review on *Certiorari*<sup>4</sup> seeking to reverse and set aside the assailed Decision which found him guilty beyond reasonable doubt of eight counts of violation of Section 3(e)<sup>5</sup> of Republic Act No. (RA) 3019<sup>6</sup> in SB-05-CRM-0457 to 0464; and the assailed Resolution which denied his motion for reconsideration.<sup>7</sup>
2. In G.R. No. 248702-09, Reynaldo Yabut y Angeles (accused-appellant Yabut), as a private individual, filed his Appeal Memorandum<sup>8</sup> seeking to reverse and set aside the assailed Decision which found him guilty beyond reasonable doubt of two counts of violation of Section 3(e) of RA 3019 in SB-06-CRM-0457 to 58; and the assailed Resolution which denied his motion for reconsideration.

### *The Antecedents*

The case stemmed from a complaint for Plunder under RA 7080<sup>9</sup> filed before the Office of the Ombudsman (OMB) by the Isog Han Samar Movement, represented by Fr. Noel Labendia, against the officials

<sup>2</sup> *Id.* at 126-A-146.

<sup>3</sup> Compensation and Position Classification Act of 1989, approved on August 21, 1989.

<sup>4</sup> *Rollo* (G.R. Nos. 248086-93) Vol. I, pp. 3-66.

<sup>5</sup> Section 3(e) of Republic Act No. 3019 provides:

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

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x

<sup>6</sup> Entitled, "Anti-Graft and Corrupt Practices Act," approved on August 17, 1960.

<sup>7</sup> *Rollo* (G.R. Nos. 248086-93) Vol. I, pp. 147-186.

<sup>8</sup> *Rollo* (G.R. Nos. 248702-09), pp. 144-174.

<sup>9</sup> Entitled, "An Act Defining and Penalizing the Crime of Plunder," approved on July 12, 1991.

of the provincial government of Western Samar (the Province) and certain private individuals. The complaint was based on an audit investigation conducted by the Legal and Adjudication Office of the Commission on Audit (COA) on the purchases made by the Province from January 1, 2001 to April 2003.<sup>10</sup>

In a Resolution dated August 22, 2006, the OMB resolved to charge the following persons with eight counts of violation of Section 3(c) of RA 3019 for the procurement of electric fans, medicines, and assorted goods:<sup>11</sup>

Milagrosa Tee Tan (accused Gov. Tee Tan)	Provincial Governor
Petitioner Montejo	Provincial Administrative Officer IV
Damiano Z. Conde (Conde)	Provincial Treasurer
Romeo C. Reales (accused Reales)	Provincial Accountant
Maximo D. Sison, Jr. (Sison, Jr.)	Provincial Budget Officer
Aurelio A. Bardaje, Jr. (accused Bardaje, Jr.)	General Services Officer
Numeriano C. Legaspi (accused Legaspi)	Records Officer and Inspector, General Services Office (GSO)
Accused-appellant Yabut <sup>12</sup>	Private Individual

The Informations read as follows:

Criminal Case No. SB-06-CRM-0457

That during the period from November 13, 2002 to November 20, 2002, and some time prior or subsequent thereto, in the Province of Western Samar, Philippines and within the jurisdiction of this Honorable Court, accused public officers, namely: MILAGROSA TEE TAN, a high ranking public officer with Salary Grade 30, being the Provincial Governor of Western Samar; ROLANDO B. MONTEJO, the Provincial Administrative Officer; DAMIANO Z.

<sup>10</sup> *Rollo* (G.R. Nos. 248086-93) Vol.1, pp. 70-71.

<sup>11</sup> *Id.* at 71.

<sup>12</sup> Only for SB-06-CRM-0457 and 0458.

CONDE, the Provincial Treasurer; ROMEO C. REALES, the Provincial Accountant; MAXIMO D. SISON, the Provincial Budget Officer; AURELIO A. BARDAJE, JR., the General Services Officer; NUMERIANO C. LEGASPI, GSO Record Officer and Inspector, and JOHN DOES and JANE DOES, all of the aforesaid Province, acting as such and/or as members of the Western Samar Provincial Committee on Bids and Awards, while in the performance of their official position, and through manifest partiality, evident bad faith or gross inexcusable negligence, in conspiracy and connivance with each other and with private supplier REYNALDO YABUT, owner of Raechel Shooper's (*sic*) Plaza, with business address at San Bartolome, Catbalogan, Samar did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits, advantage or preference to Raechel Shooper's (*sic*) Plaza, by directly awarding/contracting to, and procuring from the said private supplier one hundred seventy-six units of electric fans at a total value of Two Hundred Forty-Four Thousand Six Hundred Forty (P244,640[.]00), Philippine currency, without conducting a public bidding as required by law, and by virtue of said award made in favor of Raechel Shooper's (*sic*) Plaza, the amount of Two Hundred Forty-Four Thousand Six Hundred Forty (P244,640[.]00), Philippine currency, was actually paid to said private supplier under Disbursement Voucher No. 22100211065, to the damage and prejudice of the government and/or to the benefit of the said supplier, in the aforesaid amount.

CONTRARY TO LAW.

Criminal Case No. SB-06-CRM-0458


That during the period from December 9, 2002 to December 20, 2002, and sometime prior or subsequent thereto, in the Province of Western Samar, Philippines and within the jurisdiction of this Honorable Court, accused public officers, namely: MILAGROSA TEE TAN, a high ranking public officer with Salary Grade 30, being the Provincial Governor of Western Samar; ROLANDO B. MONTEJO, the Provincial Administrative Officer; DAMIANO Z. CONDE, the Provincial Treasurer; ROMEO C. REALES, the Provincial Accountant; MAXIMO D. SISON, the Provincial Budget Officer; AURELIO A. BARDAJE, JR., the General Services Officer; NUMERIANO C. LEGASPI, GSO Record Officer and Inspector, and JOHN DOES and JANE DOES, all of the aforesaid Province, acting as such and/or as members of the Western Samar Provincial Committee on Bids and Awards, while in the performance of their official position, and through manifest partiality, evident bad faith or gross inexcusable negligence, in conspiracy and connivance with each other and with private supplier REYNALDO YABUT, owner of Raechel Shooper's (*sic*) Plaza, with business address at San Bartolome, Catbalogan, Samar did then and there willfully,

unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits, advantage or preference to Raechel Shooper's (*sic*) Plaza, by directly awarding/contracting to, and procuring from the said private supplier one thousand (1,000) units of electric fans at a total value of One Million Three Hundred Ninety Thousand (P1,390,000.00), Philippine currency, without conducting a public bidding as required by law, and by virtue of said award made in favor of Raechel Shooper's (*sic*) Plaza, the amount of One Million Three Hundred Ninety Thousand (P1,390,000.00), Philippine currency, was actually paid to said private supplier under Disbursement Voucher No. 221200212083, to the damage and prejudice of the government and/or to the benefit of the said supplier, in the aforesaid amount.

CONTRARY TO LAW.

Criminal Case No. SB-06-CRM-0459

That during the period from December 9, 2002 to December 20, 2002, and sometime prior or subsequent thereto, in the Province of Western Samar, Philippines and within the jurisdiction of this Honorable Court, accused public officers, namely: MILAGROSA TEE TAN, a high ranking public officer with Salary Grade 30, being the Provincial Governor of Western Samar; ROLANDO B. MONTEJO, the Provincial Administrative Officer; DAMIANO Z. CONDE, the Provincial Treasurer; ROMEO C. REALES, the Provincial Accountant; MAXIMO D. SISON, the Provincial Budget Officer; AURELIO A. BARDAJE, JR., the General Services Officer; NUMERIANO C. LEGASPI, GSO Record Officer and Inspector, all of the aforesaid Province, acting as such and/or as members of the Western Samar Provincial Committee on Bids and Awards, while in the performance of their official position, and through manifest partiality, evident bad faith or gross inexcusable negligence, in conspiracy and connivance with each other and with JOHN DOES and JANE DOES, did then and there willfully, unlawfully and criminally cause undue injury to the government and/or give unwarranted benefits, advantage or preference to Wilmar's Mini Mart, owned by Maribel C. Ty, by directly awarding/contracting to, and procuring from the said private supplier assorted goods at a value of Three Million Six Hundred Eighty Thousand Five Hundred Fifty-Eight and Forty Centavos (P3,680,558.40), Philippine currency, without conducting a public bidding as required by law, and by virtue of said award made in favor of Wilmar's Mini Mart, the amount of Three Million Six Hundred Eighty Thousand Five Hundred Fifty-Eight and Forty Centavos (P3,680,558.40), Philippine currency, was actually paid to said private supplier under Disbursement Voucher No. 10120020764, to the damage and prejudice of the government and/or to the benefit of the said supplier, in the aforesaid amount.



CONTRARY TO LAW.<sup>13</sup>

The Informations in SB-06-CRM-0460 to 0464 are similarly worded with that of SB-06-CRM-0459, except as to the amount involved, the items procured, the suppliers, and the disbursement voucher numbers (DV).<sup>14</sup>

On January 16, 2007, the prosecution filed a Manifestation and Motion for Leave to Amend and to Admit Amended Information which, among others, informed the Sandiganbayan that the OMB granted the immunity to accused Bardaje, Jr. and accused Legaspi, and prayed that the amended Informations excluding the latter as accused be admitted.<sup>15</sup>

On February 27, 2007, the Sandiganbayan denied the motion for leave to admit the amended Informations. After review, the Sandiganbayan found probable cause to issue warrants of arrest against all the accused.<sup>16</sup>

When arraigned, accused Reales and accused Legaspi entered “not guilty” pleas; while the rest of the accused refused to enter pleas, and thus, the Sandiganbayan entered pleas of “not guilty” on their behalf.<sup>17</sup>

On April 29, 2008, the prosecution filed a Motion to Discharge Accused Aurelio A. Bardaje, Jr. and Numeriano Legaspi as State Witnesses (Motion to Discharge) wherein they presented five witnesses.<sup>18</sup>

On August 12, 2010, the Sandiganbayan issued a Resolution denying the Motion to Discharge.<sup>19</sup>

Trial on the merits ensued.

<sup>13</sup> *Rollo* (G.R. Nos. 248086-93) Vol.1, pp. 71-73.

<sup>14</sup> *Id.* at 73-74.

<sup>15</sup> *Id.* at 74-75.

<sup>16</sup> *Id.* at 75.

<sup>17</sup> *Id.* at 76.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 77.

*Version of the Prosecution*

The prosecution adopted the testimonies of the five witnesses who were earlier presented for the hearing on the motion to discharge as part of the prosecution's evidence in chief. In addition, the prosecution presented seven other witnesses.

Their pertinent testimonies are summarized as follows:

Atty. Edna P. Forto (Atty. Forto), State Auditor V, COA, testified that she was part of the Audit Team. The audit for the transactions/purchases of the Province covering the period from January 1, 2001 to April 2003, based on the relevant documents from the Provincial Auditor's Office, revealed that SB-06-CRM-0457 and 0458 involved the purchase of desk fans covered by DV No. 221-2002-11065 and DV No. 221-2002-12083, respectively. The transactions were made to appear to have undergone public bidding because of the supporting documents, to wit: notice to bid and abstract of bids. However, the Audit Team discovered that the transactions were not supported by essential documents like bidder's bond, copy of the publication for bids, and performance bond, among others, per COA Circular No. 92-386 (COA Circular) which prescribes the Rules and Regulations on Supply and Property Management for Local Governments.<sup>20</sup>

The Audit Team noted several inconsistencies found in DV No. 221-2002-11065 for the purchase of 176 units of desk fans, to wit: (1) the bidding was allegedly conducted on November 19, 2002, or two days ahead of the purchase order (PO) dated November 21, 2002; (2) the delivery receipt (DR) was dated November 19, 2002 – an indication that the desk fans were delivered on the same day as the bidding; (3) the sales invoice which indicated payment by the Province was dated November 20, 2002, a day earlier than the PO; and (4) the desk fans were distributed only on August 31, 2003 showing the lack of necessity for the purchase at the time it was made. Also, the Audit Team's Final Report showed the date of the resolution of the teachers' request for the desk fans but the corresponding approval came months after the purchases had already been made.<sup>21</sup>

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<sup>20</sup> *Id.* at 77-78.

<sup>21</sup> *Id.* at 78.

Further, in DV No. 221-2002-12083, the Audit Team found that: (1) while the bidding was allegedly conducted on December 17, 2002, the PO was actually dated a day later, or on December 18, 2002; (2) the inspection report and DRs were dated December 16, 2002, or a day earlier than the supposed bidding; and (3) the desk fans were distributed on various dates between May to June 2003, or at about the same time the Audit Team requested for the supporting documents of the transactions.<sup>22</sup>

On account of the missing supporting documents and the inconsistencies found in the available documents, the Audit Team concluded as follows: (a) the purchases were not made through a public bidding but on a mere personal canvass; and (b) the purchases were not necessary considering that the request and distribution were made in 2003 but the purchases were done as early as December 2002.<sup>23</sup>

As to the procurements of assorted medicines covered by DV No. 101-2002-01-1093 (SB-06-CRM-0460) in the amount of ₱1,689,790.00 and DV No. 101-2002-01-0194 (SB-06-CRM-0461) in the amount of ₱2,258,815.00, the Audit Team found that they were not made in accordance with the pertinent COA Circular governing the procurement of supplies through emergency purchase. Pursuant to Section 85 of the COA Circular, emergency purchases could only be resorted to where there is an exceptionally urgent or absolutely indispensable need and only to prevent imminent and real danger to or loss of life and property. In the case, the Audit Team did not find imminent danger or loss of life and property in the Province at the time the questionable purchases were made.<sup>24</sup>

Atty. Forto also identified a letter from Victor Alcazar Ngking<sup>25</sup> (Ngking), Managing Director of Medic Aid Distributors (Medic Aid), one of the purported suppliers, stating that the Medic Aid does not deal with government entities because of its complicated requirements and that the invoice presented for this particular transaction was spurious. By comparison, the genuine copy of Invoice No. 66083 was dated September 20, 2000 containing only one item, with typewritten entries, properly signed by the relevant company officials, and with Bureau of

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 78-79.

<sup>24</sup> *Id.* at 79.

<sup>25</sup> Spelled as Nanking in some parts of the *rollo*.



Internal Revenue (BIR) permit details at the lower portion; while the spurious Invoice No. 66083 was dated December 14, 2002 and was merely a reprinted copy with several handwritten entries, with no signature, and no proper BIR permit notation on the lower portion.<sup>26</sup>

With regard to the four procurements of assorted goods from Wilmar's Mini Mart, Tacloban City, for the period of December 18-20, 2002 and covered by DV No. 101-2002-03-1202 (SB-06-CRM-0463) in the amount of ₱2,243,700.00; DV No. 101-2002-03-1203 (SB-06-CRM-0462) in the amount of ₱1,952,900.00; DV No. 101-2002-02-0763 (SB-06-CRM-0464) in the amount of ₱2,737,344.00; and DV No. 101-2002-02-0764 (SB-06-CRM-0459) in the amount of ₱3,680,558.40, their purchase requests stated that these were for distribution to the victims of Typhoon *Kidang* (also known as Tropical Storm *Quedan*). However, the *Sangguniang Panlalawigan* Resolution, attached to DV No. 101-2002-03-1202 and DV No. 101-2002-03-1203, declared the Province in a state of calamity sometime in November 2001. The Audit Team, too, secured a certification from the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) which reported that the Typhoon *Kidang* passed through the Province on December 4 and 5, 2002.<sup>27</sup>

Hence, the Audit Team concluded that the transactions were not really for emergency needs, and that the date of the transactions, issuance of the POs, deliveries, and inspections of the goods all occurred in one day.<sup>28</sup>

Atty. Forto also testified that accused Bairdaje, Jr. and accused Legaspi informed the COA of the lack of delivery of the procured goods.<sup>29</sup>

Ngking, Managing Director of Medic Aid, testified that the ₱1.6 Million worth of transaction between Medic Aid and the Province never occurred; and that Alex Sotto, the payee of the check purportedly intended for Medic Aid, was not connected with the company.<sup>30</sup>

<sup>26</sup> *Rollo* (G.R. Nos. 248086-93), Vol. 1, p. 79.

<sup>27</sup> *Id.* at 79-80.

<sup>28</sup> *Id.* at 80.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 80-81.

Accused Legaspi, the Administrative Officer III of the Samar Provincial Hospital, was the designated Inspector of the Province during the period under investigation; and that he was one of the two accused sought to be discharged by the prosecution to be used as a state witness.<sup>31</sup>

He testified that it was his duty to check if the purchased goods were in the Office of petitioner Montejo, as the Property Officer, before he signs the inspection report. He narrated that he was threatened by the "people of the Governor" to sign the inspection reports which were already pre-signed by the other accused public officials, although he did not see the goods allegedly purchased by the Province. He added that, at one time, accused Gov. Tee Tan's bodyguard even pointed a gun at him, to force him to sign all the inspection reports.<sup>32</sup>

Accused Bardaje, Jr., the General Services Officer of the Province, is the other accused sought to be discharged by the prosecution to be used as a state witness. He testified that: (1) all the supporting documents for the purchase of goods in SB-06-CRM-0459 were dated December 12, 2001 per instruction of accused Gov. Tee Tan that Wilmar's Minimart would be the winning supplier for that particular transaction; (2) accused Gov. Tee Tan had already set the delivery date on December 12, 2001; and (3) there was an intention to conduct a public bidding, but accused Gov. Tee Tan instructed him and petitioner Montejo to make an early payment for the transactions. Consequently, petitioner Montejo made a certification in the abstract of bids which indicated that the public bidding should be dispensed with and that an emergency purchase should be conducted.<sup>33</sup>

According to accused Bardaje, Jr., it was impossible for the delivery to have been made on the same day of the purchase because of the distance from Wilmar's Minimart in Tacloban City to Calbayog City which was about 111 kilometers. He called the transactions as ghost deliveries.<sup>34</sup>

Further, accused Bardaje, Jr. implicated that accused Gov. Tee Tan threatened him to sign several documents, with a remark that if he

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<sup>31</sup> *Id.* at 81.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 81-82.

<sup>34</sup> *Id.* at 82.

refused to sign, he was only one bullet away. Allegedly, accused Gov. Tee Tan motioned by pointing her finger to accused Bardaje's right temple,<sup>35</sup> while she approached the two unidentified men in the room who had guns in their waist.<sup>36</sup>

In the interim, the Court issued a Resolution which dismissed the petition for *certiorari* assailing the Sandiganbayan Resolutions dated August 12, 2010 and January 7, 2011 which denied accused Legaspi and accused Bardaje, Jr.'s motion to be discharged and utilized as state witnesses.<sup>37</sup>

Moreover, on June 13, 2014, the Sandiganbayan issued a Resolution which dismissed the case as against accused Conde in view of his death and ordered the return of the bond posted for his provisional liberty.<sup>38</sup>

#### *Version of the Defense*

Accused Gov. Tee Tan, on the other hand, presented 13 witnesses.<sup>39</sup> The pertinent testimonies for the defense are summarized as follows:

Accused Gov. Tee Tan testified that she was the then Governor of the Province during the period relevant to these cases. She testified that the desk fans were for the public school teachers as evidenced by the Minutes of the School Board Meeting. They were procured through a public bidding as shown by the allotment and obligation slips (AL OBS), canvass, notice to bidders, abstract of bids, and minutes. There were also delivery receipts and inspection and acceptance reports which indicated that the desk fans were delivered to the teachers and distributed by one Corazon Villarin. The supplier was also paid as shown by the DVs.<sup>40</sup>

As regards the purchased medicine, accused Gov. Tee Tan testified that these were procured through personal canvass when the Province

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<sup>35</sup> *Id.* at 82, 84.

<sup>36</sup> *Id.* at 84.

<sup>37</sup> *Id.* at 87-88.

<sup>38</sup> *Id.* at 89.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 94.

was in a state of calamity as supported by the Minutes of the 16<sup>th</sup> Regular Session of the *Sangguniang Panlalawigan*. She proved that a canvass was conducted through a request for quotation, bids, and canvass; and as to the delivery, accused Gov. Tee Tan showed the delivery receipts, inspection and acceptance of delivery of supplies and material forms, and requisition and issue slips. Likewise, to prove the availability of the funds and payment to the suppliers, accused Gov. Tee Tan presented the ALOBs, DVs, and official receipts.<sup>41</sup>

With respect to the assorted goods, accused Gov. Tee Tan narrated that these were entrusted to petitioner Montejo, who, in turn, assigned them to the person in charge of the distribution.<sup>42</sup>

Accused Gov. Tee Tan further justified that her motion for reconsideration on the notice of disallowance issued for the transactions remained pending.<sup>43</sup>

The version of accused-appellant Yabut, owner of Raechel Shopper's Plaza, appeared to contradict the presence of anomalies in the questioned transactions. He related that they attended the bidding for the desk fans scheduled on November 19, 2002 pursuant to the posting for a public bidding, and won. On the same night, he directed his staff to prepare the delivery receipts and to issue them the following day. On November 21, 2002, his staff received the PO; thus, he ordered them to deliver the goods to the GSO in the afternoon of the same day. He was paid for the desk fans on the latter part of the month.<sup>44</sup>

Regarding the bidding held on December 17, 2002 for the 1,000 desk fans, he again saw the posting at the bulletin board. They won the bid again and on December 18, 2002, he received the PO and ordered the delivery of the items.<sup>45</sup>

#### *Ruling of the Sandiganbayan*

On March 1, 2019, the Sandiganbayan rendered the assailed

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 95.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 96.

<sup>45</sup> *Id.* at 96-97.

Decision<sup>46</sup> finding accused Gov. Tee Tan, petitioner Montejo, and accused-appellant Yabut guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019.

The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. In SB-06-CRM-0457 accused MILAGROSA TEE TAN, ROLANDO BOLASTIG MONTEJO, and REYNALDO ANGELES YABUT are hereby found GUILTY beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day as minimum and ten (10) years as maximum, with perpetual disqualification from holding public office.

Accused ROMEO CHAN REALES, MAXIMO DACUNDAY SISON, JR., AURELIO AQUINO BARDAJE, JR., and NUMERIANO CUNA LEGASPI are hereby ACQUITTED for failure of the prosecution to prove their culpability beyond reasonable doubt.

2. In SB-06-CRM-0458 accused MILAGROSA TEE TAN, ROLANDO BOLASTIG MONTEJO, and REYNALDO ANGELES YABUT are hereby found GUILTY beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day as minimum and fifteen (15) years as maximum, with perpetual disqualification from holding public office.

Accused ROMEO CHAN REALES, MAXIMO DACUNDAY SISON, JR., AURELIO AQUINO BARDAJE, JR., and NUMERIANO CUNA LEGASPI are hereby ACQUITTED for failure of the prosecution to prove their culpability beyond reasonable doubt.

3. In SB-06-CRM-0459 to 0464 accused MILAGROSA TEE TAN and ROLANDO BOLASTIG MONTEJO are hereby found GUILTY beyond reasonable doubt of six (6) counts of Violation of Sec. 3(e) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day as minimum and fifteen (15) years as maximum, with perpetual disqualification from holding public office for each count.

<sup>46</sup> *Id.* at 70-126.

Accusec. ROMEO CHAN REALES, MAXIMO DACUNDAY SISON, JR., AURELIO AQUINO BARDAJE, JR., and NUMERIANO CUNA LEGASPI are hereby ACQUITTED for failure of the prosecution to prove their culpability beyond reasonable doubt.

4. The cash bond posted by accused Sison for his provisional liberty is ordered RELEASED, subject to the usual accounting and auditing procedures, and the Hold Departure Order issued against him is therefore LIFTED.

5. The surety bonds posted by accused Reales, Bardaje, Jr., and Legaspi for their provisional liberty are CANCELLED and the Hold Departure Orders issued against them are therefore LIFTED.

6. The cases against accused DAMIANO ZERDA CONDE had earlier been dismissed by reason of his death per *Resolution* dated 13 June 2014.

SO ORDERED.<sup>47</sup>

On June 26, 2019, the Sandiganbayan issued the assailed Resolution<sup>48</sup> denying for lack of merit the following: (1) Motion for Reconsideration<sup>49</sup> dated March 15, 2019 filed by accused Gov. Tee Tan; (2) Motion for Reconsideration dated March 15, 2019 filed by petitioner Montejo; and (3) Verified Motion for Reconsideration dated March 15, 2019 and the Supplemental dated March 19, 2019 filed by accused-appellant Yabut.

#### *Issues*

In G.R. Nos. 248702-09, accused-appellant Yabut laid the following assignment of errors, to wit:

A. THE SANDIGANBAYAN FOURTH DIVISION COMMITTED SERIOUS REVERSIBLE ERROR WHEN IT CONVICTED YABUT NOT ON THE STRENGTH OF THE PROSECUTION'S EVIDENCE, BUT ON THE PERCEIVED WEAKNESS OF DEFENSE EVIDENCE.

B. THE SANDIGANBAYAN SERIOUSLY ERRED WHEN IT IGNORED EVIDENCE PRESENTED BY NO LESS THAN THE

<sup>47</sup> *Id.* at 124-125.

<sup>48</sup> *Id.* at 126-A-146.

<sup>49</sup> *Id.* at 147-192.

## PROSECUTION EXCULPATORY OF YABUT.

C. THE SANDIGANBAYAN GRAVELY ERRED WHEN IT RULED THAT CONSPIRACY AMONG THE ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT.

D. THE SANDIGANBAYAN GRAVELY ERRED IN FINDING THAT THE PROSECUTION'S EVIDENCE PROVED YABUT GUILTY BEYOND REASONABLE DOUBT.<sup>50</sup>

On the other hand, in G.R. Nos. 248086-93, petitioner Montejo raised the following grounds for consideration of the Court, to wit:

## A.

THE ASSAILED DECISION AND RESOLUTION IS BEREFT OF ANY STATEMENT OF PARTICULAR SPECIFIC ACTS COMMITTED BY PETITIONER THAT CONSTITUTED THE ELEMENTS OF THE CRIMES CHARGED. THERE IS THUS NO BASIS TO CONVICT PETITIONER FOR THE CRIMES CHARGED.<sup>51</sup>

## B.

WITH ALL DUE RESPECT THE HONORABLE COURT *A QUO* COMMITTED REVERSIBLE ERROR WHEN IT FOUND PETITIONER GUILTY FOR EIGHT (8) COUNTS OF VIOLATION OF SECTION 3 (E) OF REPUBLIC ACT NO. 3019, DESPITE THE FACT THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>52</sup>

## C.

WITH ALL DUE RESPECT THE HONORABLE COURT *A QUO* COMMITTED A REVERSIBLE ERROR WHEN IT FOUND THAT THE EVIDENCE IN THE INSTANT CASE PROVES CONSPIRACY BETWEEN PETITIONER AND HIS CO-ACCUSED TAN AND YABUT, AS THE EVIDENCE FAILED TO ESTABLISH THAT PETITIONER SHOULD BE CONVICTED ON THE GROUND OF CONSPIRACY.<sup>53</sup>

<sup>50</sup> *Rollo* (G.R. Nos. 248702-09), p. 151

<sup>51</sup> *Rollo* (G.R. Nos. 248086-93), Vol. 1, p. 20.

<sup>52</sup> *Id.* at 31.

<sup>53</sup> *Id.* at 58.

*The Court's Ruling*

The Court affirms the assailed Decision and Resolution of the Sandiganbayan.

*On the procedural aspect-*

*Petitioner Montejo availed of the wrong mode of appeal.*

The 2018 Revised Internal Rules of the Sandiganbayan<sup>54</sup> (2018 Revised Rules) reads:

RULE XI

REVIEW OF JUDGMENTS AND FINAL ORDERS

Section 1. *Methods of Review.* —

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

x x x (Italics supplied.)

Petitioner Montejo availed of the wrong mode of appeal when he filed his Petition for Review on *Certiorari* before the Court following Rule 45 of the Rules of Court.

Time and again, the Court is consistent in ruling that the law abhors the technicalities that impede the cause of action.<sup>55</sup> “It is a more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal rather than dispose of the case on technicality and cause a grave injustice to the parties,”<sup>56</sup> because in essence it is making a false impression of speedy disposition of cases when in truth it is only resulting in more delays, if not miscarriage of justice.<sup>57</sup>

<sup>54</sup> A.M. No. 13-07-05-SB, approved on October 9, 2018.

<sup>55</sup> See *Spouses Godinez v. Spouses Norman*, G.R. No. 225449, February 26, 2020.

<sup>56</sup> *Id.*, citing *Heirs of Zaulda v. Zaulda*, 729 Phil. 639, 651 (2014).

<sup>57</sup> *Id.*



Considering the possibility of serious consequences should the instant petition be dismissed solely on the ground of technicalities, emphatically necessitates the Court to have a careful examination of the grounds relied upon by petitioner Montejo. The instant petition involves public funds, therefore, it is of transcendental importance that the issues be settled promptly and definitely.

Therefore, in the interest of substantial justice, the Court finds that the petition's nomenclature following Rule 45 of the Rules and petitioner Montejo's procedural lapses<sup>58</sup> warrant the relaxation of the rules.

*Accused Gov. Tee Tan's death  
extinguished her criminal and  
civil liability.*

On July 15, 2019, accused Gov. Tee Tan filed a Notice of Appeal<sup>59</sup> from the assailed Sandiganbayan Decision and Resolution dated March 1, 2019 and June 26, 2019, respectively, on both errors of fact and law.

However, during the pendency of the appeal of the consolidated cases, the counsel of accused Gov. Tee Tan filed a Notice of Death<sup>60</sup> dated December 9, 2019 informing the Court that the latter died on November 30, 2019 and attaching therein a certified true copy of the Certificate of Death.<sup>61</sup>

In view of accused Gov. Tee Tan's death, paragraph 1 of Article 89 of the Revised Penal Code (RPC) provides:

ART. 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.

<sup>58</sup> *Id.*

<sup>59</sup> *Rollo* (G.R. Nos. 248702-09), pp. 112-115.

<sup>60</sup> *Id.* at 127-129.

<sup>61</sup> *Id.* at 129.

The Court in *People v. Bayotas*,<sup>62</sup> explained that “[t]he term *final judgment employed in the Revised Penal Code means judgment beyond recall x x x*[,] as long as a judgment has not become executory, it cannot be truthfully said that defendant is definitely guilty of the felony charged against him.”<sup>63</sup> The rules in case the accused dies prior to a final judgment are summarized as follows:

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 the provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.<sup>64</sup>

<sup>62</sup> 306 Phil. 266 (1994).

<sup>63</sup> *Id.* at 270.

<sup>64</sup> *Cruz v. People*, G.R. Nos. 197142 & 197153, October 9, 2019, citing *People v. Bayotas*, *supra* note 62 at 282-284.

Applying the established rules in the present case, the death of accused Gov. Tee Tan pending the resolution of her appeal, clearly extinguished her criminal liability as well as the civil action that comes with it.<sup>65</sup> Her death resulted in the dismissal of the criminal case against her. Accordingly, the Sandiganbayan's assailed Decision finding accused Gov. Tee Tan guilty of violating Section 3(e) of RA 3019 is consequently rendered ineffectual.<sup>66</sup>

Premises considered, the Court will now discuss the criminal liabilities of accused-appellant Yabut and petitioner Montejo.

*On the substantive aspect:*

*The guilt of accused-appellant Yabut and petitioner Montejo were proven beyond reasonable doubt.*

At the time of the questioned transactions, the governing law is RA 7160,<sup>67</sup> which requires that procurements should be done through a public bidding, except when the circumstances allow for the alternative methods of procurement, thus:

SECTION 356. *General Rule in Procurement or Disposal.*

Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive public bidding. Supplies which have become unserviceable or no longer needed shall be sold, whenever applicable, at public auction, subject to applicable rules and regulations.

SECTION 366. *Procurement Without Public Bidding.* —

Procurement of supplies may be made without the benefit of public bidding under any of the following modes:

- (a) Personal canvass of responsible merchants;
- (b) Emergency purchase;

<sup>65</sup> *Id.* See also *People v. Ezagamao*, 792 Phil. 500 (2016).

<sup>66</sup> *Id.*, citing *People v. Abungan*, 395 Phil. 456, 462 (2000).

<sup>67</sup> Local Government Code of 1991, approved on October 10, 1991.

(c) Negotiated purchase;

(d) Direct purchase from manufacturers or exclusive distributors; and

(e) Purchase from other government entities.

For a successful prosecution under Section 3(e) of RA 3019, the following elements must concur, to wit:

1. The offender must be a public officer;
2. The act was done in the discharge of the public officer's official, administrative, or judicial functions;
3. The act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
4. The public officer caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference.<sup>68</sup> (Emphasis supplied.)

*On the first and second elements*, both in SB-06-CRM-0457 to 58 and SB-06-CRM-0459 to 0464, petitioner Montejo, in his capacity as Provincial Administrative Officer IV, was undoubtedly a public officer in the discharge of his official functions at the time of the commission of the offenses.

Likewise, a private person may be charged with violation of Section 3(e) of RA 3019 if he conspired with the public officers. The case law is clear that *“if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is ‘to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto.’”*<sup>69</sup>

In this case, accused-appellant Yabut is a private individual who was indicted in SB-06-CRM-0457 and 0458 of having *acted in*

<sup>68</sup> *Sabio v. Sandiganbayan (First Division)*, G.R. Nos. 233853-54, July 15, 2019, citing *Sison v. People*, 628 Phil. 573, 583 (2010).

<sup>69</sup> *Singian, Jr. v. Sandiganbayan, et al.*, 718 Phil. 455 (2013), citing *Go v. The Fifth Division, Sandiganbayan, et al.*, 603 Phil. 393, 395 (2009).

*conspiracy* with accused Gov. Tee Tan, petitioner Montejo, and other accused public officials of the Province in the commission of acts in violation of Section 3(e) of RA 3019. Hence, he may also be held liable therefor.

Thus, the first and second elements are present:

*With regard to the third element, the Court in Albert v. The Sandiganbayan, et al.*<sup>70</sup> discussed in length the different modes by which Section 3(e) of RA 3019 may be committed, thus:

The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In *Uriarte v. People*, this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>71</sup>

In SB-06-CRM-0457 and 0458, the Court affirms the findings of the Sandiganbayan that no actual bidding took place for the consecutive purchases of the desk fans. The purchases were made with evident bad faith and carried out with manifest partiality on the part of the accused public officials to favor Raechel Shopper's Plaza, a pre-determined supplier, which is owned by accused-appellant Yabut. In fact, none of the supposed substitute members to the Committee on Awards were able to explain in detail how they were informed of the bidding allegedly held on November 19, 2002. On record, one witness claimed that she received the notice on November 18, 2002, but retracted her testimony

<sup>70</sup> 599 Phil. 439 (2009).

<sup>71</sup> *Id.* at 450-451.

when it was made known to her that their office only received the notice on November 19, 2002, or on the same day of the bidding.<sup>72</sup>

As aptly found by the Sandiganbayan, while there was a Notice to Bid (notice) attached to DV No. 221-2002-11-065 pertaining to the purchase of the desk fans subject of SB-06-CRM-0457, the notice stated “Drugs and Medicines, Tires and Tube” with the words “and others” but were typed in a different font indicating that it was a mere afterthought.<sup>73</sup> Nilda P. Acaylar (Acaylar), the person who prepared the notice denied knowledge of the apparent difference in the font used in the words “and others,” and admitted that she had no knowledge as to how the prospective bidders were notified.<sup>74</sup>

Notably, Sections 357(a) and 365 of RA 7160 are instructive as to what constitutes the “lowest complying and responsible bid,” which reads:

SECTION 357. *Definition of Terms.* — When used in this Title, the term:

- (a) “Lowest Complying and Responsible Bid” refers to the proposal of one who offers the lowest price, meets all the technical specifications and requirements of the supplies desired and, as a dealer in the line of supplies involved, maintains a regular establishment, and has complied consistently with previous commitments;

X X X X

SECTION 365. *Rule on Awards.* — Awards in the procurement of supplies shall be given to the lowest complying and responsible bid which meets all the terms and conditions of the contract or undertaking.

In the present case, the notice made no mention of the quantity, specifications, and technical descriptions of the desk fans sought to be purchased by the Province.<sup>75</sup> Clearly, the notice is insufficient in form as to properly notify the suppliers including accused-appellant Yabut of the bidding, quantity, specifications, and technical descriptions of the desk fans. More importantly, the bidding was done hastily only after a day from its posting at the GSO.

<sup>72</sup> *Rollo* (G.R. No. 248702-09), pp. 88-89.

<sup>73</sup> *Id.* at 87.

<sup>74</sup> *Id.* at 88.

<sup>75</sup> *Id.*

Indubitably, from the words of the Sandiganbayan, “*the lack of specifications for the desk fans begs the question as to how the accused were able to determine which bids were most advantageous to the Government.*”<sup>76</sup> If the procedures laid down in Articles 432 to 434<sup>77</sup> and 436<sup>78</sup> of Rule XXXV of the Implementing Rules and Regulations (IRR) of RA 7160 were followed, then the supporting documents starting from the purchase request would have been sequentially dated, which is not

<sup>76</sup> *Id.*

<sup>77</sup> Articles 432 to 434 of Rule XXXV of the Implementing Rules and Regulations of Republic Act No. (RA) 7160 provides:

ARTICLE 432. Requisition Procedures. — (a) Requirement of Requisition — Any order for supplies shall be filled by the provincial general services officer, the city general services officer, the municipal treasurer or barangay treasurer, as the case may be, for any office or department of LGU concerned only upon written requisition as hereinafter provided.

(b) Preparation of Requisition — Requisition shall be prepared by the head of office or department, or the punong barangay for the barangay, needing the supplies, who shall certify as to their necessity for official use and shall specify the project or activity where the supplies or property are to be used.

(c) Certification on Existence of Appropriations — Every requisition must be accompanied by a request for obligation and allotment showing the certification of the local budget officer, the local accountant, and the local treasurer that an appropriation therefor exists; that the estimated amount of such expenditure has been obligated; and that funds are available for the purpose, respectively.

In case of the barangays, every requisition must be accompanied by a request for obligation and allotment showing the certifications of: the chairman of the committee on appropriations or its equivalent of the sangguniang barangay that an appropriation exists; the city or municipal accountant that the amount has been obligated; and the barangay treasurer that funds are available for the purpose.

(d) Forms to be Used — Requisitions shall be accomplished using the following forms:

- (1) Requisition and Issue Voucher (RIV) for supplies carried in stock; and
- (2) Purchase Request (PR) for supplies not carried in stock.

(e) Approval of Requisitions — Approval of requisition by the head of the office or department concerned who has administrative control of the appropriation against which the proposed expenditure is chargeable is deemed sufficient, except in case of requisition for supplies to be carried in stock which shall be approved by the local chief executive concerned provided that such supplies are listed or included in the annual procurement plan and the maximum quantity thereof does not exceed the estimated consumption corresponding to a programmed three-month period and provided further that nothing herein contained shall be construed as authorizing the purchase of furniture and equipment for stock purposes.

The punong barangay shall approve all requisitions of the barangay.

X X X X

ARTICLE 433. Call for Bids. — When procurement is to be made by LGUs, the provincial general services officer or city general services officer, or the municipal treasurer, or barangay treasurer shall call bids for open public competition. The call for bids shall show the complete specifications and technical descriptions of the required supplies and shall embody all terms and conditions of participation and award, terms of delivery and payment, and all other covenants affecting the transaction. In all calls for bids, the right to waive any defect in the tender as well as the right to accept the bid most advantageous to the government shall be reserved. In no case, however, shall failure to meet the specifications or technical requirements of the supplies desired be waived.

X X X X

the case herein.

In SB-16-CRM-0457, the dates of the supporting documents attached to D.V. No. 221200211065 are jumbled, showing that the process as mentioned above, was not followed and thereby reinforcing the prosecution's claim that no bidding was actually conducted. x x x

Purchase Request	Notice to Bidding/	Date of Purchase Order	Delivery Receipt	Sales Invoice	Inspection and	D.V Check
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ARTICLE 434. Publication of Call for Bids. — (a) The call for bids shall be given the widest publicity possible, sending by mail or otherwise, any known prospective participant in the locality, copies of the call and by posting copies of the same in at least three (3) publicly accessible and conspicuous places in the provincial capitol or city, municipal, or barangay hall, as the case may be. The provincial general services officer, or the city general services officer, or municipal treasurer, or barangay treasurer, as the case may be, shall certify to the effect that these requirements have been complied with.

(b) The notice of the bidding may likewise be published in a newspaper of general circulation in the territorial jurisdiction of LGU concerned when the provincial general services officer, city general services officer, or the municipal treasurer, or the barangay treasurer, as the case may be, deems it necessary in order to obtain the lowest responsible and complying bid.

Unless otherwise directed by the committee on awards, publication shall be made at least ten (10) calendar days prior to the opening of bids.

Article 436 of Rule XXXV of the Implementing Rules and Regulations of RA 7160 provides:

ARTICLE 436. Procedures on Awards. — (a) Roster of Bidders — The provincial general services officer, the city general services officer, the municipal treasurer, or the barangay treasurer, respectively, shall maintain a list of bona fide bidders in their respective LGUs.

(b) Obligations of Bidders — Every bidder shall be presumed to know all terms and conditions of the call for bid and shall assume all risks attendant thereto.

(c) Quotations — Quotations must be certain and definite in amount. Unless otherwise called for in the call for bids, all quotations must be in Philippine currency inclusive of all government taxes, fees, imposts, or duties, if any, and all incidental expenses.

The bidders shall state the period during which offer is good, which in no case shall be less than sixty (60) days.

(d) Submission of Bids — On or before the time and date of opening of bids, the bidders shall submit their bids in sealed envelopes to the offices of the provincial general services officer and city general services officer or in the offices of the municipal treasurer or barangay treasurer, as the case may be. Said offices shall stamp thereon the time and date of receipt.

(e) Opening of Bids — All bids submitted shall be opened at the time, date and place set in the call for bids by the committee on awards. Opening of bids shall be made only in the presence of the provincial, city, or municipal auditor or his duly authorized representative who shall initial and secure copies of the bids and certify the abstract of the bidding.

Bidders or their representatives may witness the proceedings.

(f) Acceptance of Bids and Awards — Award in the procurement of supplies shall be given to the lowest complying and responsible bid which meets all the terms and conditions of the contract or undertaking.

The results of the bidding shall be made public by posting the same in the provincial capitol or city, municipal, or barangay hall, as the case may be.

(g) Protest Against an Award — A losing bidder may file with the committee on awards a protest within ten (10) days from the date the winner was announced. The protest shall be in writing based on justifiable grounds, accompanied with a protest bond, either in cash, certified or cashier's check, or surety bond, in an amount equivalent to ten percent (10%) of



	Bidders	Abstract	(P.O.)	(D.R.)		Acceptance Report		
13 Nov. 2002	13 Nov. 2002	19 Nov. 2002	21 Nov. 2002	19 Nov. 2002	20 Nov. 2002	22 Nov. 2002	22 Nov. 2002	25 Nov. 2002 <sup>79</sup>

X X X X

In SB-06-CRM-0458, x x x, involving the purchase of 1,000 desk fans, the supporting documents attached to D.V. No. 221-2002-12-083 are as follows:

Purchase Request	Date of Bidding	Purchase Order	Delivery Receipt	Sales Invoice	Inspection and Acceptance Report	D.V.	Check	Requisition and Issue Slip
10 Dec. 2002	17 Dec. 2002	13 Dec. 2002	16/19 Dec. 2002	18 Dec. —	16 Dec. 2002	19 Dec. 2002	20 Dec. 2002	19 Dec. 2002 <sup>80</sup>

In SB-16-CRM-0457, it is obvious that there was delivery *before* there was purchase, per DR dated November 19, 2002 which was ahead of the purchase per PO dated November 21, 2002. Worse, from the records, the delivery happened on the same day of the alleged bidding.

The Sandiganbayan also rightfully observed substantial discrepancies in the testimonies of the accused and their witnesses. Accused-appellant Yabut claimed that he had a representative who attended the bids subject of SB-06-CRM-0457 and 0458, and he was immediately informed that they won the bid. Yet, his testimony was contradicted by the testimonies of other defense witnesses such as Acaylar, who testified that no bidders actually attended the bidding.<sup>81</sup> During cross-examination, Ms. Pelayo testified that on the bidding allegedly held on November 19, 2002, only her, Daganzo, Villacorte, and petitioner Montejo were present;<sup>82</sup> while the bidding allegedly conducted on December 17, 2002 was only attended by Daganzo, Mahinay, Pelayo, and petitioner Montejo.<sup>83</sup>

the total value involved. Within seven (7) days from receipt of the protest, the committee on awards shall render its decision.

<sup>79</sup> *Rollo* (G.R. No. 248702-09), pp. 90-91.

<sup>80</sup> *Id.* at 92-93.

<sup>81</sup> *Id.* at 91.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

Similarly, the invitation to bid stated that bids were to be submitted on November 17, 2002, or two days before the bidding on November 19, 2002.<sup>84</sup> However, as testified to by Januario Arnaiz, Publisher and Editor-in-Chief of Samar Reporter in 2002, the notice was published in the Samar Reporter on November 19, 2002, or on the same day of the alleged bidding, which is in clear violation of the IRR of RA 7160 that requires publication of call for bids at least ten calendar days prior to the opening of bids, unless otherwise directed by the committee on awards.<sup>85</sup> Publication must also be made in at least three (3) publicly accessible and conspicuous places in the provincial capitol or city, municipal, or barangay hall.<sup>86</sup>

As the Sandiganbayan accurately puts it, "*it would have been practically impossible for bidders to have been properly informed of the bidding, especially considering that only one posting was made for the same, and that the said Notice did not even mention or include desk fans.*"<sup>87</sup>

Veritably, in SB-06-CRM-0458, what is apparent is that there was no notice to bidders. There was no notice published in a newspaper of general circulation in the locality, or posted in conspicuous places in the Province in compliance with the requirements for procurement under the IRR of RA 7160. Further, a closer look at the supporting documents as aforementioned would reveal that the inspection of the procured items took place on December 16, 2002 or ahead of the bidding which was allegedly held on December 17, 2002. The DR also carries an intercalation showing that the delivery happened either 16 or 19 of December 2002.

Thus, the Court adheres to the findings of the Sandiganbayan that the prosecution was able to establish that there was no public bidding that actually took place for the consecutive purchases of the desk fans, and that there was connivance between the pre-determined suppliers, one of which was accused-appellant Yabut as the owner of Raechel Shopper's Plaza, and the public officials involved.<sup>88</sup> There was a manifest partiality towards accused-appellant Yabut who was able to supply the desk fans despite the notice's lack of specifications, technical

<sup>84</sup> *Id.* at 92.

<sup>85</sup> Article 434 of Rule XXV, V of the Implementing Rules and Regulations of RA 7160.

<sup>86</sup> *Id.*

<sup>87</sup> *Reallo* (G.R. Nos. 248702-09), p. 92.

<sup>88</sup> *Id.* at 92-93.

descriptions, and quantity of the items sought to be purchased by the Province.<sup>89</sup>

With regard to SB-06-CRM-0459 to 0464, the main issue is whether the procurement of assorted goods subject of SB-06-CRM-0459 and 0462 to 0464 and of assorted medicines subject of SB-06-CRM-0460 and 0461 are classified as emergency purchases that would no longer require a public bidding.

As summarized by the Sandiganbayan, the following are the series of events that are material to the resolution of SB-06-CRM-0459 to 0464, to wit:

- (i) On 22 October 2001, the Local Health Board of Gandara, Samar, approved a "Resolution Requesting Funds from Hon. Mila Tan, Provincial Governor, Province of Samar, needed for the Procurement of Medicines;"
- (ii) On 7 November 2001 Public Storm Signal No. 2 was raised over the Province of Western Samar in view of Tropical Depression Nanang;
- (iii) From 9 November 2001 to 13 November 2001 relief goods consisting of rice, noodles, and sardines were distributed by the Provincial Government to affected constituents;
- (iv) On 13 November 2001, accused Tan sent a letter to the *Sangguniang Panlalawigan*, requesting for a resolution declaring the Province of Samar as a calamity area in view of the damage brought about by "Typhoon Nanang," and another resolution seeking financial assistance from the Office of the President through the Chairman of the National Disaster Coordinating Council (NDCC);
- (v) On 21 November 2001, the *Sangguniang Panlalawigan* approved Resolution No. 88-2001 dated 15 November 2001 entitled "Resolution Declaring the Entire Province of Samar as a Calamity Area Caused by Typhoon Nanang," recognizing that the said typhoon hit the Province of Samar on 6 November 2001, causing damage to crops and infrastructure;
- (vi) Between 4 to 7 December 2001, Tropical Storm Quedan passed through the south of Samar. At its strongest, Storm Signal No. 2 was raised over the Province. This was at around 8:00 p.m. of 4 December 2001. There is no evidence of any Resolution issued by the

<sup>89</sup> *Id.* at 94.

*Sangguniang Panlalawigan* of Samar or the NDCC declaring the Province to be under a state of calamity:

(vii) On 12 December 2001, accused Tan signed a Purchase Request for the procurement of 3,000 sacks of commercial rice, 502 boxes of Hakata sardines, and 564 boxes of Maggi noodles for distribution to barangays affected by "Typhoon Kidang." The mode of procurement was by means of emergency purchase, and the winning supplier was determined to be Wilmar's Minimart, which is located in Tacloban City and owned by Marilou C. Ty. The quotation, release of the ALOBS, purchase, delivery, and inspection of the said items were all dated on the same day:

(viii) On 14 December 2001, accused Tan signed two Purchase Requests for the procurement of the following assorted medicine, all of which the Provincial Government was able to eventually procure through emergency purchase:

x x x x

(ix) Separate purchases were purportedly made from Rilem Pharmacy and Medic Aid Distributors through Alex Sotto, who allegedly offered the lowest prices per canvass:

(x) On 18, 19, and 20 December 2001, accused Tan signed Purchase Requests for the Procurement of the following items:

x x x x

(xi) All of the said purchases for assorted goods were made from Wilmar's Minimart.<sup>90</sup>

When Luz Cabuenas Tacal, the Provincial Social Welfare Development Officer, testified as to the procurement of assorted goods and medicines, she admitted that it was the Tropical Depression *Nanang* that hit Samar on November 7, 2001 which brought forth the destruction of the Province, *but she also clarified that the relief operations started on November 9, 2001 and ended on November 13, 2001.*<sup>91</sup> Thus, the procurement of the assorted goods and medicines which were allegedly intended to address the emergency and calamity caused by the Tropical Depression *Nanang* becomes highly suspect because clearly, the questioned purchases happened on December 14, 18, and 19, 2001, or after the relief and distribution operations already ended.<sup>92</sup> While it is

<sup>90</sup> *Id.* at 96-98.

<sup>91</sup> *Id.* at 98-99.

<sup>92</sup> *Id.* at 99.

true that another weather disturbance named Typhoon *Kidang* hit the Province on December 4, 2001, however, the Province was not placed under a state of calamity making the alleged emergency purchases more doubtful.<sup>93</sup> From the words of the Sandiganbayan, thus:

x x x the prosecution's evidence proves that there was no actual calamity or emergency that justified the resort to emergency purchases. While reference is made to a "Typhoon Kidang," accused failed to present evidence that the Province was placed under a state of calamity, or even that requests for relief were made because of Tropical Storm Quedan. In other words, *the evidence shows that the emergency purchases were attended by evident bad faith, and resorted to only to avoid competitive public bidding.*<sup>94</sup> (Emphasis supplied)

With manifest partiality and evident bad faith attendant in the questioned acts of subject public officials, the third element of Section 3(e) of RA 3019 is established.

*As to the fourth element*, the Court agrees with the ruling of the Sandiganbayan that the prosecution failed to establish beyond reasonable doubt that there was an undue injury caused to the Government by reason of the questioned purchases. However, there are two (2) ways by which Section 3(e) of RA 3019 may be violated, to wit: (1) by causing undue injury to any party, including the government; **or** (2) by giving any private party any unwarranted benefit, advantage or preference.<sup>95</sup> Clearly, the accused may be charged under either mode or both as the use of the disjunctive "or" connotes that the two modes need not be present at the same time.<sup>96</sup> Worded differently, the presence of one would already suffice for accused's conviction.<sup>97</sup>

In this case, there were no personal canvasses from the other suppliers which would otherwise support the allegation that the items procured from the alleged winning bidders were overpriced.<sup>98</sup> In other words, there is no way for the Court to compare the prices of these questionable purchases. Hence, the allegation that the Province could have bought the items at the lowest bid price possible lacks merit.<sup>99</sup>

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 105.

<sup>95</sup> See *Sison v. People*, 628 Phil. 573 (2010).

<sup>96</sup> *Id.* at 585.

<sup>97</sup> *Id.*, citing *Quibal v. Sandiganbayan*, 314 Phil. 66 (1995).

<sup>98</sup> *Rollo* (G.R. No. 248702-09), p. 106.

<sup>99</sup> *Id.*

Further, the testimonies of accused Legaspi and accused Bardaje, Jr. regarding the absence of deliveries of the purchased items at the time they did an inspection does not negate the possibility that there could have been subsequent deliveries at a much later date.<sup>100</sup>

However, petitioner Montejo is likewise charged with having given unwarranted benefit, advantage or preference to private suppliers. Under the second mode, no damage is required for successful prosecution thereof,<sup>101</sup> thus:

However, in SB-06-CRM-0457 and 0458, the fact that no legitimate public biddings were conducted for the purchase of desk fans clearly show that undue preference or unjustified favor was accorded to Rachel Shopper's Plaza, owned by accused Yabut. The same is true with respect to the purchase of medicine in SB-06-CRM-0460 and 0461 and assorted goods in SB-06-CRM-0459 and 0462 to 0464, although the Court notes that the favored suppliers – Alex L. Setto, from whom the medicines were said to have been purchased, and Marilou C. [redacted], proprietor of Wilmar's Mini Mart from where the assorted good were purchased -- have not been impleaded as accused. Such fact, however, is not fatal to the prosecution of accused public officials for their respective liabilities.<sup>102</sup>

Petitioner Montejo, as Provincial Administrative Officer IV, is expected to know the general rule on procurement under RA 7160 and its IRR and is bound by law to strictly follow the procedure, inasmuch as accused Gov. Tee Tan is. In this case, it is well-founded that both accused Gov. Tee Tan and petitioner Montejo, in the discharge of their official functions, blatantly failed to follow the procedure to favor private suppliers, who were personally chosen, which included accused-appellant Yabut. As the Sandiganbayan puts it, the process provided under RA 7160 is to assure transparency and to make sure that a competitive public bidding is conducted.<sup>103</sup> Petitioner Montejo and accused Gov. Tee Tan, having clearly deviated from the procedure, must discharge the burden of providing the Court with explanations or justifications for their noncompliance, which they failed to do so.<sup>104</sup>

<sup>100</sup> *Id.*

<sup>101</sup> *Sison v. People*, *supra* note 95 at 585.

<sup>102</sup> *Rollo* (G.R. No. 248702-09), p.106.

<sup>103</sup> *Rollo* (G.R. No. 248086-93), Vol. 1, p. 135.

<sup>104</sup> *Id.*

Accordingly, the knowledge and active participation of herein petitioner Montejo, being the Provincial Administrative Officer IV, in facilitating the signing of the documents in the absence of a public bidding, noncompliance with the requirements of RA 7160, and despite the lack of actual inspection and delivery of the purchased items, made him liable for violation of Section 3(e) of RA 3019 in SB-06-CRM-0457 and 0458; and in SB-06-CRM-0459 to 0464.<sup>105</sup> To strengthen further his guilt in the purchase of desk fans, petitioner Montejo appeared to be the only accused to have attended and facilitated the simulated biddings.<sup>106</sup>

Consequently, unwarranted benefit, advantage or preference was given to accused-appellant Yabut who supplied the desk fans without the benefit of a fair system to determine the best possible price for the government.<sup>107</sup> In the absence of proof that his prices were the most beneficial to the government, accused-appellant Yabut is presumed to have profited from the transactions.<sup>108</sup>

Under the foregoing circumstances, accused-appellant Yabut is equally guilty in the commission of the wrongful acts by accused public officials. His unlawful participation as the pre-designated bidder was specifically manifested in his act of making the bidding documents appear that the questionable purchases were made through a legitimate public bidding, despite noncompliance with RA 7160 and its IRR, coupled with his eventual receipt of payment therefor despite lack of actual delivery of the desk fans at the time of inspection.

Indeed, the Court finds that herein petitioner Montejo and accused-appellant Yabut “*devised and utilized a scheme in order that the procurement of the subject item be 'awarded' to favored suppliers. While the individual acts of the accused seemed to be separate, they are, however, coordinated and aimed towards a common goal,*”<sup>109</sup> which is to veer away from the procurement process provided under RA 7160 and its IRR.

All told, any person guilty of violating Section 3(e) of RA 3019 is punished with imprisonment of not less than six (6) years and one (1)

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<sup>105</sup> *Rollo*, G.R. No. 248702-09, p.107.

<sup>106</sup> *Id.*

<sup>107</sup> *Sison v. People*, *supra* note 95 at 586.

<sup>108</sup> *Id.*

<sup>109</sup> *Rollo* (G.R. No. 248086-93), Vol. 1, p. 133.

month nor more than fifteen (15) years and perpetual disqualification from public office.<sup>11</sup>

**WHEREFORE**, the Decision dated March 1, 2019 and the Resolution dated June 26, 2019 of the Sandiganbayan, Fourth Division are **AFFIRMED**. Accordingly, judgment is hereby rendered as follows :

- (a) In SB-05-CRM-0457, petitioner Rolando Bolastig Montejo and accused-appellant Reynaldo Angeles Yabut are hereby found guilty of violation of Section 3(e) of Republic Act No. 3019 and are sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day, as minimum, and ten (10) years, as maximum, with perpetual disqualification from holding public office;
- (b) In SB-05-CRM-0458, petitioner Rolando Bolastig Montejo and accused-appellant Reynaldo Angeles Yabut are hereby found guilty of violation of Section 3(e) of Republic Act No. 3019 and are sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, and fifteen (15) years, as maximum, with perpetual disqualification from holding public office;
- (c) In SB-05-CRM-0459 to 0464, petitioner Rolando Bolastig Montejo is hereby found guilty of six counts of violation of Section 3(e) of Republic Act No. 3019 and is sentenced to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day, as minimum, and fifteen (15) years, as maximum, with perpetual disqualification from holding public office for each count of the offense.

The cases against accused-appellant Milagros Tee Tan are dismissed by reason of her death.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

<sup>11</sup> *Sison v. People, supra* note 95 at 586.



WE CONCUR:



**MARVIC M.V.F. LEONEN**

*Associate Justice  
Chairperson*



**RAMON PAUL L. HERNANDO**

*Associate Justice*



**EDGARDO L. DELOS SANTOS**

*Associate Justice*



**JHOSEPV 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**

*Associate Justice  
Chairperson*

**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*

