



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 254886

Present:

- versus -

CAGUIOA, J.,
Chairperson,
INTING,
GAERLAN,
DIMAAMPAO, and
SINGH, JJ.

ROBERT G. LALA, PUREZA A.
FERNANDEZ, AGUSTINITO P.
HERMOSO and GERARDO S.
SURLA,

Accused-Appellants.

Promulgated:

October 11, 2023

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DECISION

GAERLAN, J.:

Before this Court is an appeal by Roberto G. Lala (Lala), Pureza A. Fernandez (Fernandez), Agustinito P. Hermoso (Hermoso), and Gerardo Surla (Surla) (collectively, accused-appellants), assailing the Joint Decision¹ dated September 29, 2020 and the Resolution² dated December 23, 2020 of the Sandiganbayan 6th Division in Criminal Case Nos. SB-08-CRM-0270 and SB-12-CRM-006, which found accused-appellants guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019.

¹ *Rollo*, pp. 6–86. Penned by Associate Justice Kevin Narce B. Vivero, with Associate Justices Sarah Jane T. Fernandez and Karl B. Miranda, concurring.

² *Id.* at 304–318.

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Factual Antecedents

In January 2007, the 12th Association of Southeast Asian Nations (ASEAN) Summit was set to be held in Cebu, Philippines. In preparation for the same, on January 27, 2006, then President Gloria Macapagal Arroyo (President Arroyo) issued Administrative Order No. 139, designating the Department of Foreign Affairs (DFA) as the lead agency to organize and carry out the ASEAN Summit. The Department of Public Works and Highways (DPWH), on the other hand, was given tasks to implement several projects for the ASEAN Summit and to assist the DFA.³

On June 23, 2006, the DFA submitted an *Aide Memoire* to then DPWH Acting Secretary Hermogenes E. Ebdane, Jr., with a list of proposed projects, and a recommendation that an alternative mode of procurement be resorted to because the target completion date of such projects was set on October 20, 2006. DPWH Region 7 then received the *Aide Memoire*, and a Memorandum with List of Projects and Funding, with the list of projects and their respective costs duly approved for implementation by then President Arroyo.⁴

Notably, among the approved projects were the supply and installation of decorative lampposts and other street lighting facilities along several thoroughfares of Mandaue City and Lapu-Lapu City, which were part of the ceremonial routes during the ASEAN Summit. These projects were categorized as road safety projects to be funded from the Motor Vehicles Users Charge.⁵

In view of the foregoing, DPWH Region 7 prepared the Program of Works and Estimates (POWE) and the Approved Budget for the Contract (ABC), and then procured, through negotiated procurement, the supply and installation of the decorative lampposts and other street lighting facilities, which were later identified as Contract ID No. 06HO0008 and Contract ID No. 06HO0048.⁶

Pursuant to the rules on negotiated procurement, three bidders were drawn or selected from the DPWH's registry or list of contractors. These three contractors were then asked to submit their bids. Thereafter, on August 14, 2006 and November 28, 2006, respectively, the Bids and Awards Committee

³ *Id.* at 52.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 52-53.

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(BAC) – DPWH Region 7 conducted the Dropping and Opening of Bids for Contract ID No. 06HO0008 and Contract ID No. 06HO0048.⁷

For Contract ID No. 06HO0008, the three contractors who were drawn from the DPWH's registry of contractors and who submitted bids were GAMPIK Construction and Development, Inc. (GAMPIK); Cebu Technochem Industries, Inc., and Square Cube Construction. Meanwhile, for Contract ID No. 06HO0048, the three selected contractors were GAMPIK, Cebu Technochem Industries, Inc., and Fambik Construction and Equipment Co., Inc.⁸

For both contracts, GAMPIK was determined to be the lowest bidder, and thus, the corresponding Notices of Award were issued to GAMPIK.⁹ However, it must be noted that for Contract ID No. 06HO0048, a Memorandum of Understanding (MOU) dated November 22, 2006 was apparently executed between DPWH Region 7 and GAMPIK, where the latter was authorized to immediately proceed with the project, even before the conduct of the public bidding on November 28, 2006.¹⁰

The following contracts were then entered into between DPWH Region 7 and GAMPIK, represented by its Chairman of the Board, accused-appellant Surla:

1. Contract ID No. 06HO0008, for the supply and installation of street lighting facilities (consisting of 300 sets of decorative park lamp assembly) along Mandaue Causeway, City of Mandaue, executed on September 12, 2006 for PHP 83,250.00 per set, or a total of PHP 24,975,000.00;¹¹ and
2. Contract ID No. 06HO0048, executed on March 8, 2007, for PHP 35,634,401.25, and consisting of four projects:
 - a. Supply and installation of testing and commission of LED bulbs, traffic signal lanterns, and other traffic control devices at junctions ML Quezon Avenue-Terminal Bldg. Access Road and ML Quezon Avenue-Patalinghug Avenue;

⁷ *Id.* at 53.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 60.

¹¹ *Id.* at 53.

- b. Supply and installation of street lighting facilities along Punta Engaño Road Network, Lapu-Lapu City;
- c. Supply and installation of street lighting facilities (decorative lamps) along Terminal Building Access Road, Lapu-Lapu City (60 sets of decorative park lamp assembly); and
- d. Supply and installation of street lighting facilities (decorative lamps) along Patalinghug Avenue, Lapu-Lapu City (120 sets of decorative park lamp assembly).¹²

In December 2006, GAMPIK was paid PHP 21,228,750.00 as payment for 85% of the work accomplished for Contract ID No. 06HO0008. No payment was released, however, in relation to Contract ID No. 06HO0048.¹³

**Investigation by the Ombudsman-Visayas
and Informations filed before the Sandiganbayan**

On January 9, 2007, the Ombudsman (OMB)-Visayas received a letter from representatives of various people's organizations in Cebu, requesting for the conduct of an investigation relative to the ASEAN lamppost projects, and alleging therein that the actual cost of the lampposts is much lower than the purchase price paid by the government. On February 7, 2007, the OMB-Visayas received another letter from a certain Crisologo Saavedra, who submitted a contract proposal showing that he supplied, delivered, and installed decorative street lights in Cebu City for PHP 25,124.53 per set.¹⁴

Acting on the letters, the Public Assistance and Corruption Prevention Office (PACPO) of the OMB-Visayas collated evidence and also conducted a fact-finding investigation on the alleged anomalies in the procurement for the ASEAN lamppost projects. Thereafter, on March 23, 2007, PACPO rendered its Final Evaluation Report finding that the lampposts and the other lighting facilities are highly overpriced, and a preliminary investigation was conducted. PACPO then filed a Complaint against accused-appellants, and later, recommended that the Complaint be upgraded to a criminal case for violation of Section 3(e) of R.A. No. 3019.¹⁵

¹² *Id.* at 53–54.

¹³ *Id.* at 58.

¹⁴ *Id.* at 58–59.

¹⁵ *Id.* at 59.

Thus, the following Informations were filed before the Sandiganbayan:¹⁶

Information in SB-08-CRM-0270

That on or about the 12 of September 2006, and for some time prior or subsequent thereto, at the City of Cebu, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **ROBERT GINGGING LALA, GLORIA RUIZ DINDIN, MARLINA SANCHEZ ALVIZO, PUREZA ANUNCIADO FERNANDEZ, CRESENCIO TOCMO BAGOLOR, AGUSTINITO PAGE HERMOSO, LUIS ABREGANA GALANG, RESTITUTO ROSELL DIANO, BUENAVENTURADA CONOL PAJO, AYAON SOGADOR MANGGIS, and MARILYN ABRIO OJEDA**, public officers, being the Regional Director, Assistant Regional Director, Assistant Regional Director and Chairperson, Bids and Awards Committee [BAC], Officer-in-Charge Chief, Maintenance Division, Officer-in-Charge Assistant Chief, Maintenance, Regional Legal Officer and BAC Member, Chief, Planning and Design Division and BAC Member, Chief Administrative Division and BAC Member and BAC-Technical Working Group (TWG) Members, all of the Department of Public Works and Highways [DPWH]-VII, respectively, in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with each other, and with **GERARDO SISON SURLA**, a private individual, in his capacity as Chairman of the Board of GAMPIK Construction and Development, Inc., with deliberate intent, manifest partiality or evident bad faith, did then and there willfully, unlawfully, criminally cause the award of **Contract ID No. 06HO0008** for the SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES (consisting of 300 sets of decorative park lamp assembly) ALONG MANDAUE CAUSEWAY, STA 6+305-STA, 9+069, CITY OF MANDAUE, executed on 12 September 2006, by an between accused GLORIA R. DINDIN (in her capacity as DPWH-VII Assistant Regional Director) and accused GERARDO S. SURLA (Chairman of the Board, GAMPIK Const. and Dev., Inc.) for EIGHTY THREE THOUSAND TWO HUNDRED FIFTY PESOS (P83,250.00) PER SET of a total of TWENTY FOUR MILLION NINE HUNDRED SEVENTY FIVE THOUSAND PESOS (P24,975,000.00), by preparing the Program of Works and Estimates [POWE], Approved Budget for the Contract [ABC] and other related documents, and conducting the procurement process, despite absence of legal requirements for a valid procurements process under *Republic Act No. 9184, otherwise known as Government Procurement Reform Act*, aside from awarding, implementing and releasing the Eighty Five Percent [85%] payment of the excessive contract price in the amount of P24,975,000.00, which amount is in excess by SEVENTEEN MILLION FOUR HUNDRED EIGHTY SEVEN THOUSAND EIGHT HUNDRED SIXTY TWO PESOS AND 60/100 [P17,487,862.60] as against the Ombudsman [OMB] Computation, or in excess by SIXTEEN MILLION TWO HUNDRED TWENTY NINE THOUSAND FOUR HUNDRED THIRTY FOUR PESOS AND 23/100 [P16,229,434.23] as against the Commission of Audit [COA] Cost Evaluation vis-à-vis Comparable

¹⁶ *Id.*

Imported Lamps, or in excess by ELEVEN MILLION THIRTY ONE THOUSAND FOUR HNDRED FIFTY FOUR PESOS AND 23/100 [P11,031,454,23] as against the COA Cost Evaluation vis-à-vis Similar Purpose Lampposts, which in any computation is excessive as the amount is beyond the ten percent (10%) allowable price variance under *COA Circular No. 85-55A*, thereby giving unwarranted benefits, advantage or preference to the contractor, GAMPIK Construction and Development, Inc. and further causing undue injury to the government in the aforementioned excess amount, to the damage and/or prejudice of the government.

CONTRARY TO LAW.¹⁷ (Emphasis in the original)

Information in SB-12-CRM-0006

That on or about the 08 March 2007 and for sometime prior or subsequent thereto, at the City of Cebu, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused **ROBERT GINGGING LALA, GLORIA RUIZ DINDIN, MARLINA SANCHEZ ALVIZO, PUREZA ANUNCIADO FERNANDEZ, CRESENCIO TOCMO BAGOLOR, AGUSTINITO PAGE HERMOSO, LUIS ABREGANA GALANG, RESTITUTO ROSELL DIANO, AYAON SOGADOR MANGGIS, MARILYN ABRIO OJEDA and TERESA BALDO BERNIDO**, public officers, being the Regional Director, Assistant Regional Director, Assistant Regional Director and Chairperson, Bids and Awards Committee (BAC), Officer-in-Charge Chief, Maintenance Division and BAC Member, Officer-in-Charge Assistant Chief, Maintenance Division and BAC-Technical Working Group (TWG) Member, Regional Legal Officer and BAC Member, Chief, Planning and Design Division and BAC Member, Chief, Administrative Division and BAC Member, Head, BAC-TWG and BAC-TWG Members, all of the Department of Public Works and Highways [DPWH]-VII, respectively, in such capacity and committing the offense in relation to office, conniving, confederating and mutually helping with each other, and with **GERARDO S. SURLA**, a private individual, in his capacity as Chairman of the Board of GAMPIK Construction and Development, Inc., with deliberate intent, manifest partiality or evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause the award through negotiated procurement of **Contract ID No. 06GO0048** consisting of four (4) projects, to wit: **[1] SUPPLY AND INSTALLATION OF TESTING AND COMMISSIONING OF L.E.D. BULBS, TRAFFIC SIGNAL LANTER AND OTHER TRAFFIC CONTROL DEVICES AT JUNCTIONS ML QUEZON AVENUE-TERMINAL BLDG. ACCESS ROAD AND ML QUEZON AVENUE-PATALINGHUG AVENUE** (1.a. Supply and installation, testing and commissioning of traffic signal equipment and other traffic control devices at junctions ML Quezon Avenue and Terminal Bldg. access road; 1.b. Replacement of old lantern and bulbs with compatible, low maintenance, low electric consumption, long life at junction ML Quezon Avenue and Patalinghug Avenue); **[2] SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES ALONG PUNTA ENGAÑO ROAD NETWORK, LAPU-LAPU CITY** (2.a. Supply and Installation of

¹⁷ *Id.* at 7-9.

decorative lamps [40 sets decorative park lamp assembly]' 2.b. Supply and Installation of flood lights); [3] **SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES [DECORATIVE LAMPS] ALONG TERMINAL BLDG. ACCESS ROAD, LAPU-LAPU CITY** [60 sets of decorative park lamp assembly); and [4] **SUPPLY AND INSTALLATION OF STREET LIGHTING FACILITIES [DECORATIVE LAMPS] ALONG PATALINGHUG AVENU [ML QUEZON-SANGI SECTION], LAPU-LAPU CITY** (120 sets of decorative park lamp assembly) executed on 8 March 2007, by and between accused GLORIA R. DINDIN (in her capacity as DPWH-VII Assistant Regional Director) and accused GERARDO S. SURLA (Chairman of the Board, GAMPIK Const. and Dev., Inc.) for THIRTY FIVE MILLION SIX HUNDRED THIRTY FOUR THOUSAND FOUR HUND[RE]D ONE PESOS AND 25/100 (P35,634,401.25), by preparing the Program of Works and Estimates (POWE), Approved Budget for the Contract (ABC) and other related documents and conducting the procurement process, despite absence of legal requirements for a valid procurement process, such as, among others, the absence of competitive bidding, the grounds resorted to and the procedure in the negotiated procurement of Contract ID No. 06HO0048 which do not fall within the requirements under *Republic Act No. 9184, otherwise known as Government Procurement Reform Act*, aside from awarding and implementing the project at an excess price of P35,634,401.25, which is in excess by **TWELVE MILLION SIX HUNDRED TWENTY NINE THOUSAND EIGHT HUNDRED SIXTEEN PESOS AND 99/100 (P12,629,816.99)** as against the Ombudsman (OMB) Computation of **TWENTY THREE MILLION FOUR THOUSAND FIVE HUNDRED EIGHTY FOUR PESOS AND 26/100 [P23,004,584.26]** which excess amount is beyond the ten percent (10%) allowable price variance under *COA Circular No. 85-55A*, thereby giving unwarranted benefits, advantage or preference to the contractor, GAMPIK Construction and Development, Inc. to the damage and/or prejudice of the government.

CONTRARY TO LAW.¹⁸ (Emphasis in the original)

Ruling of the Sandiganbayan

On September 29, 2020, the Sandiganbayan rendered its Joint Decision, the dispositive portion of which reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follows:

- (1) In **Criminal Case No. SB-08-CRM-0270 (Contract ID No. 06HO0008)**, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused **ROBERT GINGGIN LALA, MARLINA SANCHEZ ALVIZO, PUREZA ANUNCIADO FERNANDEZ, CRESENCIO TOCMO BAGOLOR,**

¹⁸ *Id.* at 9–10.

AGUSTINITO PAGE HERMOSO, LUIS ABREGANA GALANG, BUENAVENTURADA CONOL PAJO, AYAON SOGADOR MANGGIS, MARILYN ABRIO OJEDA, and GERARDO SISON SURLA are hereby **ACQUITTED** of the offense of violation of Section 3(e) of RA 3019.

As the act or omission from which the civil liability might arise did not exist, no civil liability may be adjudged against the accused. The hold departure order issued against the accused by reason of this case is hereby lifted and set aside, and the bond posted for their provisional liberty is ordered released, subject to the usual auditing and accounting procedures.

- (2) In **Criminal Case No. SB-12-CRM-0006 (Contract ID No. 06HO0048)**, accused **ROBERT GINGGING LALA, PUREZA ANUNCIADO FERNANDEZ, AGUSTINITO PAGE HERMOSA and GERARDO SISON SURLA** are hereby found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of RA 3019 and sentenced to suffer the indeterminate penalty of imprisonment of **six (6) years and one (1) month, as minimum, up to eight (8) years, as maximum**, with perpetual disqualification from public office. Since no payment was released by the government with respect to the subject contract, no civil liability is adjudged against the accused.

On the other hand, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused **MARLINA SANCHES ALVIZO, CRESENCIO TOCMO BAGOLOR, LUIS ABREGANA GALANG, AYAON SOGADOR MANGGIS, MARILYN ABRIO OJEDA, and TERESA BALDO BERNIDO** are hereby **ACQUITTED** of the offense of violation of Section 3(e) of RA 3019. As the act or omission from which the civil liability might arise did not exist, no civil liability may be adjudged against these accused. The hold departure order issued against them by reason of this case is hereby lifted and set aside, and the bond posted for their provisional liberty is ordered released, subject to the usual auditing and accounting procedures.

SO ORDERED.¹⁹ (Emphases in the original)

In convicting accused-appellants Lala, Fernandez, and Hermoso in Criminal Case No. SB-12-CRM-0006, the Sandiganbayan found that they illegally and prematurely entered into the MOU with GAMPIK.²⁰

The Sandiganbayan noted that, during trial, it was established that the MOU (authorizing GAMPIK to immediately proceed with the project and DPWH Region 7 guaranteeing payment therefor) between the DPWH Region 7 and GAMPIK was executed on November 22, 2006. However, records

¹⁹ *Id.* at 84–85.

²⁰ *Id.* at 67.

reveal that the Dropping and Opening of Bids for Contract ID No. 06HO0048 – where GAMPIK was determined to be the lowest bidder – was held only on November 28, 2006.²¹ Thus, the Sandiganbayan observed that GAMPIK was already predetermined to be the winning bidder as early as November 22, 2006, or six days before the actual bidding was held on November 28, 2006. As stated by the Sandiganbayan:

Indubitably, GAMPIK was already predetermined to be the winning bidder as early as 22 November 2006, or six (6) days ahead of the actual bidding held on 28 November 2006. By allowing GAMPIK to proceed with the project even before the scheduled bidding, accused public officers, in a way, guaranteed that GAMPIK will be declared the lowest bidder. Although a public bidding was actually conducted later on, the Court believes that it was done as a mere formality.

....

Besides, the irregularity was already ostensible on the face of the Memorandum of Understanding, executed on a date earlier than the scheduled bidding, a fact that should have already incited suspicion for accused Lala and Fernandez, who were the signatories and final approving authorities. Thus, absent any convincing controverting evidence as to the date of its execution, the Memorandum of Understanding should be made to speak for itself.²²

Given these circumstances, the Sandiganbayan concluded that accused-appellants Lala, Fernandez, and Hermoso gave unwarranted advantage or preference to GAMPIK and/or accused-appellant Surla. As explained by the Sandiganbayan, the Court, in *Abubakar v. People*²³ (*Abubakar*), already had the occasion to rule that allowing contractors to proceed with the project ahead of the scheduled public bidding is considered giving unwarranted benefits and/or advantage within the contemplation of Section 3(e), R.A. No. 3019.²⁴

Moreover, the Sandiganbayan held that accused-appellants Lala, Fernandez, and Hermoso acted with manifest partiality and gross inexcusable negligence:

While the Court fails to discern evident bad faith on the part of the accused, the Memorandum of Understanding, however, by allowing GAMPIK to start the project prior to the bidding, is a clear indication of manifest partiality to favor GAMPIK and/or accused Surla over the other contractors or bidders. The act of predetermining a contractor in anticipation of the result of the actual bidding certainly constitutes manifest

²¹ *Id.* at 67–68.

²² *Id.* at 70–71.

²³ 834 Phil. 435 (2018).

²⁴ *Rollo*, pp. 81–82.

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partiality, or, at the very least, gross inexcusable negligence on the part of the accused.

All told, the Court is convinced that the circumstances in this case clearly demonstrate that accused Lala, Fernandez and Hermoso are guilty of manifest partiality or gross inexcusable negligence in predetermining GAMPIL and/or accused Surla as the winning bidder prior to the conduct of the actual bidding, giving the said contractor unwarranted advantage or preference over the other bidders.²⁵

Meanwhile, with respect to accused-appellant Surla, the Sandiganbayan found that circumstances of the case show that he was in conspiracy with accused-appellants Lala, Fernandez, and Hermoso when he signed the MOU in behalf of GAMPIK.²⁶

Thereafter, accused-appellants moved for reconsideration, arguing, among others, that: (1) the date found in the MOU is merely a typographical error; (2) there was no prior determination as winner in favor of GAMPIK; (3) there is no proof that the project started before November 28, 2006; (4) there is a presumption of regularity; and (5) the finding of prematurity and illegality in the execution of the MOU is not what is charged and/or included in the Information.²⁷

On December 23, 2020, the Sandiganbayan issued its Resolution,²⁸ which denied accused-appellant Surla's Partial Motion for Reconsideration, and accused-appellants Lala, Fernandez, and Hermoso's Motion for Reconsideration (to the Joint Decision dated 19 September 2020),²⁹ reasoning as follows:

First, the prosecution has established that accused-appellants Lala, Fernandez and Hermoso had predetermined GAMPIK as the winning bidder though the execution of the MOU even before the actual bidding. The defense that there was a typographical error is merely self-serving, and in weighing evidence, documentary evidence prevails over testimonial evidence.³⁰

Second, they cannot hide behind the cloak of presumption of regularity because the prosecution was able to effectively dispute the same through proof of the premature, and therefore, illegal execution of the MOU.³¹

²⁵ *Id.* at 82-83.

²⁶ *Id.* at 83.

²⁷ *Id.* at 306-307.

²⁸ *Id.* at 304-318.

²⁹ *Id.* at 318.

³⁰ *Id.* at 308-309.

³¹ *Id.* at 311-312.

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Third, the Information in SB-12-CRM-0006 sufficiently stated the ultimate facts constituting the offense charged; thus, accused-appellants were properly informed of the nature and cause of the accusation against them. Indeed, while the Information did not specifically allege that accused-appellants executed the MOU prior to the public bidding, the ultimate facts constituting the offense – awarding the subject contract to GAMPIK without the legal requirements for a valid procurement process – was sufficiently alleged. As averred by the Sandiganbayan:

The details of why and how there was no competitive bidding (such as the predetermination of the winning bidder through the execution of the MOU prior to the actual bidding) need not be stated in the Information. These are matters of evidence best threshed out in the court of the trial, which the prosecution eventually did in this case.³²

Appeal before the Court

On December 29, 2020, accused-appellants filed a Notice of Appeal.³³ Accused-appellant Surla then filed his Brief,³⁴ contending, among others, that: (1) his constitutional right to a fair and impartial preliminary investigation was violated when the same person acted as both the complainant and chairperson of the committee on lamppost cases which resolved the preliminary investigation;³⁵ (2) he was deprived of his constitutional right to be informed of the charge against him, considering the variance of the facts alleged in the Information and the basis of his conviction;³⁶ and (3) the Sandiganbayan committed a serious and reversible error when it found him guilty of conspiracy, considering that there was no unwarranted benefit granted to GAMPIK, and the element of manifest partiality was not proven beyond reasonable doubt.³⁷

Meanwhile, on June 11, 2021, accused-appellants Lala, Fernandez, and Hermoso filed their Brief,³⁸ arguing that the Sandiganbayan committed grave error in ruling that: (1) they are guilty beyond reasonable doubt of violation of Section 3(e), R.A. No. 3019 despite the absence of its essential elements;³⁹ (2) conspiracy existed among the accused;⁴⁰ and (3) they are guilty of a charge

³² *Id.* at 314.

³³ *Id.* at 91–93.

³⁴ *Id.* at 131–218.

³⁵ *Id.* at 139.

³⁶ *Id.*

³⁷ *Id.* at 139–140.

³⁸ *Id.* at 330–410.

³⁹ *Id.* at 348.

⁴⁰ *Id.*

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not found or included in the Information, in violation of their right to be informed of the nature and accusation against them.⁴¹

Finally, on September 9, 2021, the People of the Philippines, through the Office of the Special Prosecutor of the OMB, filed its Brief,⁴² praying for the dismissal of the appeal.

Issues

The case presents the following issues for the Court's resolution:

1. Whether all the elements of Section 3(e), R.A. No. 3019 were satisfactorily proven.
2. Whether the right of accused-appellants to a fair and impartial investigation was violated.
3. Whether the right of accused-appellants to be informed of the nature and cause of the charge against them was violated.

The Court's Ruling

The appeal is meritorious.

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

In order to convict an accused for violation of Section 3(e), the following elements must be proven beyond reasonable doubt: *first*, the accused must be a public officer discharging administrative, juridical, or official functions; *second*, he or she must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and *third*, his or her action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.⁴³

⁴¹ *Id.* at 348-349.

⁴² *Id.* at 615-646.

⁴³ *Martel v. People*, G.R. Nos. 224720-23, February 2, 2021.

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As to the first element, there is no dispute that accused-appellants Lala, Fernandez, and Hermoso are public officers at the time material to the case. Clearly, the first element is satisfied in this case.

However, as to the second and third elements, the Court finds that the same were not established by the prosecution beyond reasonable doubt, as will be discussed below.

For the second element, Section 3(e) of R.A. No. 3019 provides three modes of commission of the crime, as explained in *Fuentes v. People*:⁴⁴

As to the second element, it is worthy to stress that the law provides three modes of commission of the crime, namely, through “manifest partiality,” “evident bad faith,” and/or “gross negligence.” In *Coloma, Jr. v. Sandiganbayan*, the Court defined the foregoing terms as follows:

“Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” “Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.” (Emphasis and underscoring supplied)

In other words, there is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, “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. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.⁴⁵ (Emphasis and underscoring in the original; citations omitted)

Thus, to satisfy the second element, it must be established that the accused caused undue injury or gave unwarranted benefits through any of the

⁴⁴ 808 Phil. 586 (2017).

⁴⁵ *Id.* at 593–594.

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followings modes: manifest partiality, evident bad faith, or gross inexcusable negligence.

Meanwhile, for the third element, case law instructs that there are two ways by which a public official violates Section 3(e), R.A. No. 3019: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage, or preference.⁴⁶

Here, the Sandiganbayan found that accused-appellants Lala, Fernandez, and Hermoso gave unwarranted benefit to GAMPIK and/or accused-appellant Surla by manifest partiality, or at the very least, gross inexcusable negligence, when the MOU was executed before the actual public bidding was conducted. In support of its conclusion, the Sandiganbayan cited *Abubakar*.

However, the Court finds that *Abubakar* is inapplicable to the present case. To start, the factual context of *Abubakar* is starkly different from the facts of the present case. To recall, in *Abubakar*, the Court held that petitioners therein gave unwarranted benefit through manifest partiality and gross inexcusable negligence when they allowed several contractors to already deploy their equipment to the project sites before the public bidding was conducted, to wit:

The certificates of mobilization, which were issued at least one (1) week before the date of public bidding, categorically identified HMB Construction and Supply, Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz-Engineering, and MGL Construction as contractors for some portions of the Awang-Nuro Road and Cotabato-Lanao Road Projects.

The acts of identifying certain contractors ahead of the scheduled public bidding and of allowing the advanced deployment of their equipment through the issuance of certificates of mobilization are glaring irregularities in the bidding procedure that engender suspicion of favoritism and partiality towards the seven (7) contractors. These irregularities create a reasonable, if not conclusive, presumption that the concerned public officials had no intention of complying with the rules on public bidding and that the results were already predetermined.

.....

... There is no justifiable reason why contractors should be allowed to deploy their equipment in advance considering that it would defeat the

⁴⁶ *Tiongco v. People*, 843 Phil. 225 (2018); *Rivera v. People*, 749 Phil. 124 (2014); *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214 (2014).

very purpose of competitive public bidding. Benefits derived from this practice, if any, would certainly not redound to the government.

....

Clearly, petitioners Baraguir and Guiani gave seven (7) contractors **unwarranted benefits and advantage through manifest partiality**. Petitioner Baraguir also gave **unwarranted benefits and advantage to the contractors through gross inexcusable negligence**. Admittedly, **he failed to check the dates on the certificates of mobilization when they were presented to him for his signature.**⁴⁷ (Emphases supplied; citations omitted)

As seen above, the Court held that the act of allowing the seven contractors to already move on with the project even before the issuance of the certificate of mobilization and the conduct of public bidding showed gross and inexcusable negligence. Pertinently, in the said case, there was no indication that the seven contractors were qualified to bid and perform the services required under the contract. In contrast, the facts of the present case demonstrate that GAMPIK was found to be the lowest bidder and was in fact qualified to enter the bid and perform the work under Contract ID No. 06HO0048. Moreover, Contract ID No. 06HO0048 only pertained to four lamp post installation projects, which was listed as one of the projects related to the ASEAN Summit, which, at that time, needed to be immediately completed. Certainly, these differences justify the difference in treatment and the non-application of the pronouncements of *Abubakar* to the instant case.

Even more compellingly, the pronouncements made in *Abubakar* find no application to the instance case in view of the Court's ruling in the recent *en banc* case of *Martel v. People*⁴⁸ (*Martel*). In particular, the Court in *Martel* clarified that in cases involving R.A. No. 3019, the corrupt intent of the accused must be evident in his or her actions because at the heart of the acts punishable under R.A. No. 3019 is corruption:

In criminal cases involving Section 3(e) of Republic Act No. (R.A.) 3019, or the Anti-Graft and Corrupt Practices Act, in relation to alleged irregularities in procurement committed by public officers, findings of violations of procurement laws, rules, and regulations, *on their own*, do not automatically lead to the conviction of the public officer under the said special penal law. *It must be established beyond reasonable doubt that the essential elements of Section 3(e) of R.A. 3019 are present.*

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⁴⁷ *Abubakar v. People*, *supra* note 23, at 476-478.

⁴⁸ *Supra* note 43.

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At this juncture, the Court emphasizes the spirit that animates R.A. 3019. As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under R.A. 3019 is *corruption*. As explained by one of the sponsors of the law, Senator Aliuro M. Tolentino, “[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized.” Graft entails the acquisition of gain in dishonest ways.⁴⁹ (Underscoring and italics in the original; citations omitted)

From the foregoing jurisprudential guide, it is manifestly clear that cases involving R.A. No. 3019 should be framed on whether or not there was corrupt intent on the part of the accused. Plain and simple, a conviction of violation of Section 3(e) of R.A. No. 3019 cannot be sustained if the acts of the accused were not driven by any corrupt intent.

Based on such parameters, the Court is convinced that the prosecution was unable to establish all the elements of violation of Section 3(e) of R.A. No. 3019 because there was no clear showing of any corrupt intent on the part of any of the accused-appellants. To reiterate, GAMPIK was determined to be qualified to perform the services and complete the project under Contract ID No. 06HO0048, and the execution of the MOU was only resorted to because there was immense pressure to ensure that the lamp post installation projects were completed before the ASEAN Summit. It was, likewise, determined that the project was not overpriced, GAMPIK was able to finish the project, and that GAMPIK was not even paid for its services. To the Court’s mind, these undisputed facts reveal that the accused-appellants were not driven by any corrupt intent to make them liable of violation of Section 3(e) of R.A. No. 3019. Thusly, the Court finds that the Sandiganbayan erred when it convicted accused-appellants of the crime charged.

Fair and Impartial Investigation

At the outset, it must be emphasized that this issue was raised for the first time on appeal before this Court. This generally cannot be done as it is axiomatic that “issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process.”⁵⁰ In fact, in *Rangasa v. People*,⁵¹ the Court expressly held that:

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues

⁴⁹ *Id.*

⁵⁰ *Punongbayan-Visitacion v. People*, 323 Phil. 212, 222–223 (2018).

⁵¹ G.R. No. 218969, January 18, 2021.

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and arguments not brought to the attention of the lower court, administrative agency or quasi-judicial body, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by estoppel.⁵²

Applying the foregoing, it is apparent that the Court need not discuss nor entertain this issue, which was raised for the first time before the Court. At any rate, however, a review of the evidence shows that, contrary to their averments, accused-appellants were afforded a fair and impartial trial.

While PACPO of the OMB-Visayas conducted the fact-finding and preliminary investigations for the filing of the Informations against accused-appellants, the same does not automatically entail that accused-appellants' right to a fair and impartial investigation was violated.

To be sure, the Court is mindful of its rulings in *Panlililo v. Sandiganbayan*⁵³ and *Cojuangco v. Presidential Commission on Good Government (PCGG)*⁵⁴ (*Cojuangco*), where it was explained that the person conducting preliminary investigations must do so with the cold neutrality of an impartial judge, and such is impossible when the person conducting the same gathered the evidence in the said case, and filed the complaint. Nevertheless, the Court finds that its ruling in *Diaz v. Sandiganbayan*⁵⁵ (*Diaz*), is more squarely applicable to the instant case.

In *Diaz*, then Solicitor General Frank Chavez (Chavez) accused Ramon Diaz of corruption and ineptness. After collating the evidence presented by Chavez, the OMB Special Prosecutor Jose Parentela (Parentela) conducted a preliminary investigation against Ramon Diaz, with the approval of the OMB. After due proceedings, Special Prosecutor Parentela recommended the filing of an Information against Ramon Diaz. An Information was, thus, filed, but Ramon Diaz filed a Petition for *Certiorari* and Prohibition before the Court, arguing that his right to due process was violated because the preliminary investigation was made by the same persons who gathered the evidence against him.

In ruling against Ramon Diaz, the Court held that the doctrine in *Cojuangco* is not applicable in his case because Special Prosecutor Parentela did not gather any evidence against him. The Court then proceeded to state:

⁵² *Id.*

⁵³ 285 Phil. 927 (1992).

⁵⁴ 268 Phil. 235 (1990).

⁵⁵ 292 Phil. 678 (1993).

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Petitioner's reliance on this Court's ruling in *Cojuangco v. PCGG* is misplaced, for the factual milieu of that case is entirely different from this case. The preliminary investigation of Eduardo Cojuangco *by the* PCGG was held null and void because previous thereto, the PCGG itself had gathered evidence against him to support its order for the sequestration of Cojuangco's assets and the filing of civil complaints to recover them as ill-gotten wealth. On the basis of the same evidence, the Solicitor General, as counsel for the PCGG, filed criminal complaints against Cojuangco with the PCGG. The latter, exercising its power to investigate and prosecute ill-gotten wealth cases against President Marcos, his relatives and associates, under Sections 2(b) and 3(a) of Executive Order No. 1 and Sections 1 and 2 of Executive Order No. 14 conducted a preliminary investigation of the criminal charges. Cojuangco questioned the PCGG's authority to conduct the preliminary investigation, alleging that he was denied due process.

.....

In this case, unlike the Cojuangco case, Parentela was not the accuser and investigator rolled into one. Chavez was the accuser. Parentela preliminarily investigated the charges, evaluated the evidence which Chavez produced, and filed the information in the Sandiganbayan. As pointed out by that court, the differences between Cojuangco's case and the petitioner's case are the following:

“... While in Cojuangco, it may be said that both the complainant and preliminary investigating officer were the PCGG, the same is not true in the present case. It is readily discernible that Chavez is the complainant, while the Office of the Ombudsman/Special Prosecutor is the investigating body in the instant complaint, thereby barring any probability of partiality that would require inhibition. It is Chavez who came up with the evidence, while Prosecutor Parentela evaluated the same to find out if he could make out a *prima facie* case.”

Clearly, both the preliminary investigation which Parentela conducted and the information which he filed in the Sandiganbayan are valid.⁵⁶ (Citations omitted)

Verily, the preliminary investigation and the Informations filed in this case are valid because, similar to *Diaz*, PACPO merely collated and evaluated evidence which were submitted to it. There was, likewise, no showing that PACPO served as both the prosecutor and judge at the same time when it recommended the filing of the Informations against accused-appellants. As such, it is undeniable that accused-appellants' right to due process was not violated.

⁵⁶ *Id.* at 689-690.

The Right to be Informed

Accused-appellants, likewise, contend that their right to be informed of the nature and cause of the accusations against them was violated. They are mistaken.

In *Villarba v. Court of Appeals*⁵⁷ (*Villarba*), the Court thoroughly discussed that a person's right to be informed of the nature and cause of an accusation against him or her is deeply rooted in his or her constitutional right to due process and the presumption of innocence. On this note, *Villarba* instructs that the factual allegations in an Information are vital in determining the guilt or innocence of an accused, and should therefore be meticulously scrutinized. Still, it must be clarified that an Information is adequate as long as the same sufficiently alleges the ultimate facts constituting the offense.

In *People v. Sandiganbayan (Fourth Division)*,⁵⁸ the Court explicitly postulated that not all details need to be included in the Information:

The purpose of an Information is to afford an accused his right to be informed of the nature and cause of the accusation against him. It is in pursuit of this purpose that the Rules of Court require that the Information allege the ultimate facts constituting the elements of the crime charged. **Details that do not go into the core of the crime need not be included in the Information, but may be presented during trial.** The rule that evidence must be presented to establish the existence of the elements of a crime to the point of moral certainty is only for purposes of conviction. It finds no application in the determination of whether or not an Information is sufficient to warrant the trial of an accused.⁵⁹ (Emphasis supplied)

Similarly, in *People v. Coritana*,⁶⁰ the Court held that: “[a]n information need only state the ultimate facts constituting the offense. It need not state the finer details of why and how the crime was committed.”⁶¹

From these precepts, the Court finds that accused-appellants' right to be informed was not violated in this case because the Information adequately alleged the ultimate facts constituting the offense charged. To reiterate, the Information indicates that the means by which accused-appellants committed the crime charged was:

⁵⁷ 874 Phil. 84 (2020).

⁵⁸ 769 Phil. 378 (2015).

⁵⁹ *Id.* at 382.

⁶⁰ G.R. No. 209584, March 3, 2021.

⁶¹ *Id.*

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[W]ith deliberate intent, manifest partiality or evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally cause the award through negotiated procurement x x x by preparing the Program of Works and Estimates (POWE), Approved Budget for the Contract (ABC) and other related documents and conducting the procurement process, despite absence of legal requirements for a valid procurement process, such as, among others, the absence of competitive bidding, the grounds resorted to and the procedure in the negotiated procurement of Contract ID No. 06HO0048 which do not fall within the requirements under *Republic Act No. 9184, otherwise known as Government Procurement Reform Act*, aside from awarding and implementing the project at an excess price of P35,634,401.25, which is in excess by **TWELVE MILLION SIX HUNDRED TWENTY NINE THOUSAND EIGHT HUNDRED SIXTEEN PESOS AND 99/100 (P12,629,816.99)** as against the Ombudsman (OMB) Computation of **TWENTY THREE MILLION FOUR THOUSAND FIVE HUNDRED EIGHTY FOUR PESOS AND 26/100 [P23,004,584.26]** which excess amount is beyond the ten percent (10%) allowable price variance under *COA Circular No. 85-55A*, thereby giving unwarranted benefits, advantage or preference to the contractor, GAMPIK Construction and Development, Inc. to the damage and/or prejudice of the government.⁶² (Emphases supplied)

Indubitably, such Information demonstrates that accused-appellants failed to observe the requirements for a valid procurement process when they caused the award of Contract ID No. 06HO0048 to GAMPIK prior to the actual conduct of the public bidding. Nevertheless, as explained above, the acquittal of the accused-appellants is still in order.

All told, the Court finds that the Sandiganbayan gravely erred in convicting accused-appellants of violation of Section 3(e), R.A. No. 3019. Indeed, while their right to due process was properly observed, the prosecution failed to establish each and every element of the crime charged. To repeat, in cases involving R.A. No. 3019, it is crucial to establish that the accused was driven by corrupt intent, which the prosecution failed to prove in this case.

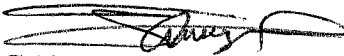
WHEREFORE, the appeal is **GRANTED**. The Joint Decision dated September 29, 2020 and the Resolution dated December 23, 2020 of the Sandiganbayan 6th Division are **REVERSED** and **SET ASIDE**. Accused-appellants Robert G. Lala, Pureza A. Fernandez, Agustin P. Hermoso, and Gerardo S. Surla are **ACQUITTED** of the crime of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case No. SB-12-CRM-0006.

Let entry of judgment be issued immediately.

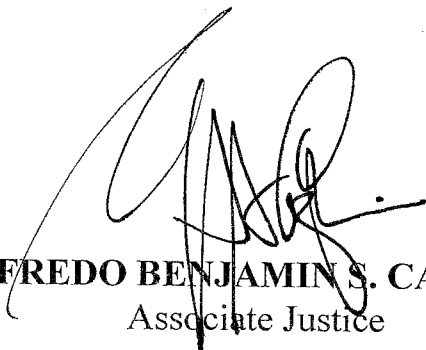
⁶² Rollo, pp. 9-10.

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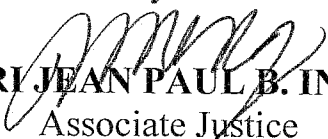
SO ORDERED.



SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ple. all members of opinion

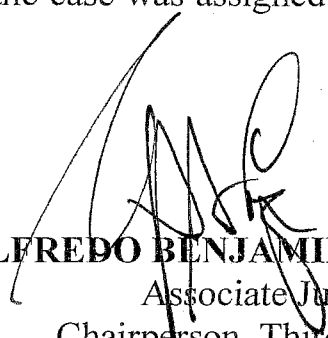

HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice


MARIA FILOMENA D. SINGH
Associate Justice

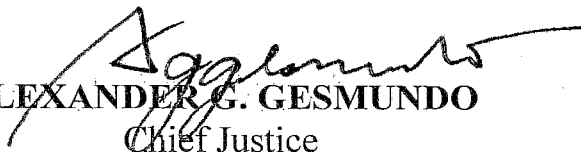
ATTESTATION

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.


ALFREDO BENJAMIN S. CAGUIOA
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.


ALEXANDER G. GESMUNDO
Chief Justice

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G.R. No. 254886 – PEOPLE OF THE PHILIPPINES, Plaintiff-Appellee, v. **ROBERT G. LALA, PUREZA A. FERNANDEZ, AGUSTINITO P. HERMOSO and GERARDO S. SURLA**, Accused-Appellants.

Promulgated:

October 11, 2023

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CONCURRING OPINION

INTING, J.:

I concur in the *ponencia*. Accused-appellants must be acquitted of violation of Section 3(e) of Republic Act No. (RA) 3019. I submit this opinion only for emphasis.

Briefly, the facts are as follows:

Roberto G. Lala (Lala), Pureza A. Fernandez (Fernandez), Agustinito P. Hermoso (Hermoso), and Gerardo S. Surla (Surla), (collectively, accused-appellants) were charged before the Sandiganbayan with violation of Section 3(e) of RA No. 3019. The charges stemmed from the alleged irregularities surrounding the negotiated procurement of the supply and installation of decorative lampposts and other street lighting facilities along several thoroughfares of Mandaue City and Lapu-Lapu City that were part of the ceremonial routes during the ASEAN Summit.

Three bidders were drawn from the registry of contractors of the Department of Public Works and Highways (DPWH) who were then asked to submit their bids. On August 14, 2006, and November 28, 2006, respectively, the Bids and Awards Committee conducted the opening of bids for Contract ID No. 06HO0008 and Contract ID No. 06HO0048.

For both contracts, GAMPIK was determined to be the lowest bidder. However, for Contract ID No. 06HO0048, DPWH Region 7 and GAMPIK entered into a Memorandum of Understanding (MOU) dated November 22, 2006, authorizing GAMPIK to immediately proceed with the project even before the public bidding on November 28, 2006. Thereafter, GAMPIK, represented by accused-appellant Surla, its

Chairman of the Board, and DPWH Region 7 entered into several contracts for the supply and installation of lampposts and streetlights.

Subsequently, the Public Assistance and Corruption Prevention Office (PACPO) of the OMB-Visayas conducted a fact-finding investigation on the alleged anomalies in the procurement of the said lampposts and streetlights. After the preliminary investigation, the PACPO filed a complaint against accused-appellants, and later, recommended that the complaint be upgraded to a criminal case for violation of Section 3(e) of RA No. 3019.

Thus, two Informations were filed before the Sandiganbayan:

- (i) Information in SB-08-CRM-0270, charging accused-appellants with violation of Section 3(e) of RA 3019 regarding the procurement for the supply and installation of street lighting facilities under Contract ID No. 06HO0008; and
- (ii) Information in SB-12-CRM-0006, likewise charging accused-appellants with violation of Section 3(e) of RA No. 3019 but involving Contract ID No. 06GO0048.

In its Decision, the Sandiganbayan acquitted accused-appellants in Criminal Case No. SB-08-CRM-0270 (Contract ID No. 06HO0008) for failure of the prosecution to prove their guilt beyond reasonable doubt but convicted accused-appellants in Criminal Case No. SB-12-CRM-0006 (Contract ID No. 06HO0048).

The Sandiganbayan observed that with the execution of the MOU dated November 22, 2006, involving Contract ID No. 06HO0048, GAMPIK was already predetermined to be the winning bidder as early as November 22, 2006, before the actual bidding was held on November 28, 2006. The Sandiganbayan ruled that accused-appellants Lala, Fernandez, and Hermoso, (collectively, accused-officers) gave unwarranted preference to GAMPIK.

Further, the Sandiganbayan held that accused-officers acted with manifest partiality and gross inexcusable negligence for pre-determining GAMPIK to be the winning bidder. With respect to Surla, the Sandiganbayan found that he conspired with accused-officers when he signed the MOU on behalf of GAMPIK.

Accused-appellants moved for reconsideration; however, the Sandiganbayan denied Surla's Partial Motion for Reconsideration, as well as accused-officers' Motion for Reconsideration.

Hence, the appeal.

Accused-appellants must be acquitted of violation of Section 3(e) of RA 3019.

“[I]t bears to reiterate that an accused has in his/her favor the presumption of innocence which the Bill of Rights guarantees. Unless his/her guilt is shown beyond reasonable doubt, he/she must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution, which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal.”¹

Guided by the foregoing principles, accused-appellants' conviction in Criminal Case No. SB-12-CRM-0006 must be set aside on the ground of reasonable doubt.

The elements of violation of Section 3(e) of RA No. 3019 are as follows: (i) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (ii) *that he or she acted with manifest partiality, evident bad faith, or inexcusable negligence*; and (iii) that his or her action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.²

With respect to the second element, case law explains that there are three distinct modes of commission of the offense:

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. It contemplates a state of mind affirmatively operating with

¹ *Villarosa v. People*, 875 Phil. 270, 305–306 (2020).

² *Cabrera v. People*, G.R. Nos. 191611-14, April 6, 2022.

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.³

A closer look at the instant case shows that the second element was not established beyond reasonable doubt.

In *Martel v. People*,⁴ which is also a case involving procurement, the Court held that *violations of RA 3019 must be grounded on graft and corruption*. “[T]he Court emphasizes the spirit that animates R.A. 3019. As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under R.A. 3019 is corruption.”⁵ The Court ruled that:

[I]n order to successfully prosecute the accused under Section 3 (e) of R.A. 3019 based on a violation of procurement laws, the prosecution cannot *solely* rely on the fact that a violation of procurement laws has been committed. The prosecution must prove *beyond reasonable doubt* that: (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.⁶

Thus, an acquittal for a charge of violation of Section 3 (e) of RA No. 3019 is warranted when the alleged acts of the accused were not motivated by any evil scheme to profit, but by honest, albeit mistaken, belief that the manner of procurement adopted or executed was warranted.⁷

Guided by the foregoing, I strongly concur that the prosecution failed to prove beyond reasonable doubt that the complained acts were done with corrupt intent as to hold them liable under RA 3019.

As keenly observed by Associate Justice Alfredo Benjamin S. Caguioa in the course of the Court’s deliberations:

³ *Id.*

⁴ G.R. Nos. 224720-23 & 224765-68, February 2, 2021.

⁵ *Id.*

⁶ *Id.*

⁷ *See Cabrera v. People, supra note 2.*

It can be readily discerned from the facts that what animated accused-appellants to enter into the MOU ahead of the bidding was not a corrupt intent, but the pressure to ensure that the lamp post installation projects were completed for the ASEAN Summit. To be sure, the four (4) lamp post installation projects subject of Contract ID No. 06H00048 needed to be finished by December 2006, because the 12th ASEAN Summit was originally to be held in that month. The *Aide Memoire* from then Secretary Ebdane stating that the ASEAN Summit was to be held in Cebu was only forwarded to DPWH Region 7 sometime in July. Thus, on top of Contract ID No. 06H00048, DPWH Region 7 had to implement other infrastructure projects in relation to the Summit. However, it appears that even though December was fast approaching, a public bidding was just about to be held on November 28, 2006 for the award of Contract ID No. 06H00048. As mentioned by accused-appellant Hermoso, from November 28, 2006 there were only just around thirteen (13) days left to complete the project and the implementing unit was under a lot of pressure to finish the project. Thus, Hermoso revealed that fellow accused-appellant Fernandez requested GAMPIK if it could start with the project but the contractor was not willing to start without the written recommendation from BAC and a written contract. It was only then that Hermoso admitted that, as legal officer of DPWH Region 7, he was the one who came up with the idea of a MOU so that GAMPIK would be convinced to start the project, even if the funds were still forthcoming and even without the recommendation from BAC.

In addition, the DPWH also considered the fact that GAMPIK was already previously chosen for another contract, Contract ID No. 06HO0008. In the same Contract, executed on September 12, 2006, GAMPIK also supplied and installed street lighting facilities, consisting of 300 sets of decorative park lamp assembly, along Mandaue Causeway, City of Mandaue.

....

In addition to all the above, and as succinctly found by the Sandiganbayan itself, accused-appellants did not illegally resort to negotiated procurement, and the contract price was not overpriced. And the irony in all of this is that the amount charged by GAMPIK for the installation of the lampposts was not only not proven to be overpriced, it was also proven that GAMPIK was never paid for its service.


Considering the foregoing observations, it cannot be said that the execution of the MOU between the DPWH Region 7 and GAMPIK, authorizing GAMPIK to immediately proceed with the project even before the conduct of the public bidding on November 28, 2006, was motivated by a corrupt intent to favor GAMPIK over the other bidders. *Notably, for both contracts, GAMPIK was determined to be the lowest*

bidder. It could hardly be concluded that accused-appellants' actuations were tainted with graft and corruption.

While authorizing GAMPIK to proceed with the project even before the conduct of the public bidding is an irregularity, nonetheless, the prosecution failed to show that such act was spurred by a corrupt or ill motive as to rule that there was manifest partiality, or at the very least, gross inexcusable negligence. The facts in the case fail to show that "there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another" or that there was "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."

As ruled by the Court en banc in *Martel*, "it is through the lens of the anti-graft and corruption law, and not the procurement laws, that the guilt of the accused for violation of Section 3 (e) of R.A. 3019 must be determined."

For these reasons, accused-appellants must indeed be acquitted.


HENRI JEAN PAUL B. INTING
Associate Justice