



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, **G.R. No. 255087**

Plaintiff-Appellee,

Members:

-versus-

LEONEN, SAJ.,*
LAZARO-JAVIER, Acting Chairperson,
LOPEZ, M.,
LOPEZ, J.,
KHO, JR., JJ.

ADELBERTO FEDERICO YAP, SIGFREDO V. DUBLIN, VERONICA S. ORDOÑEZ, MA. VENUS B. CASAS, and MARLON E. BARILLO,

Accused-Appellants.

Promulgated:

OCT 04 2023

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DECISION

LAZARO-JAVIER, J.:

The Case

This Appeal¹ seeks to reverse the following dispositions of the Sandiganbayan in Criminal Case No. SB-16-CRM-1076 entitled *People of the Philippines v. Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo* and Criminal Case No. SB-16-CRM-1077 entitled *People of the Philippines v. Adelberto Federico Yap*:

- 1) **Decision**² dated February 14, 2020 in Criminal Case No. SB-16-CRM-1076, finding accused-appellants Adelberto Federico Yap, Sigfredo V. Dublin, Veronica S. Ordoñez, Ma.

* On Leave, left a vote pursuant to Section 4, Rule 12 of the Supreme Court Internal Rules.

¹ *Rollo*, pp. 44-55.

² *Id.* at 4-43; Penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez.

A

Venus B. Casas, and Marlon E. Barillo guilty of violation of Section 3(e) of Republic Act No. 3019³ and sentencing each to the indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from holding public office; and in Criminal Case No. SB-16-CRM-1077, finding accused-appellant Adelberto Federico Yap guilty of violation of Section 3(g) of Republic Act No. 3019 and sentencing him to the indeterminate penalty of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from holding public office; and

- 2) **Resolution**⁴ dated October 21, 2020, denying accused-appellants' respective motions for reconsideration.

Antecedents

The Mactan Cebu International Airport Authority (MCIAA) is a government-owned and controlled corporation created by Republic Act No. 6958.⁵ It is attached to the Department of Transportation.⁶

In preparation for the 12th ASEAN Summit in Cebu in December 2006, the MCIAA, among others, sought to upgrade its firefighting capabilities in accordance with international airport standards. For this purpose, it resolved to purchase one unit of aircraft rescue fire fighting vehicle (ARFFV) through limited source bidding pursuant to the following **Terms of Reference and General Specifications** (Terms of Reference), *viz.*:

x x x

II. INSTRUCTION TO BIDDERS

Only bids from bonafide and responsible private agencies pre-qualified to submit bid proposals shall be considered. No bid shall be accepted from parties who are disqualified from public bidding or entering into any kind of contract with the Philippine Government, as specified under existing laws.

MCIAA reserves the right to verify any pending case against a supplier in court before any decision to award is made. Only those firms, which have been officially issued proposal documents shall be qualified to participate in the bidding.

x x x

³ Anti-Graft and Corrupt Practices Act, approved August 17, 1960.

⁴ *Rollo*, pp. 276–284; Penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez.

⁵ Charter of the Mactan-Cebu International Airport Authority, approved July 31, 1990.

⁶ <https://mciaa.gov.ph/profile/>, last accessed August 9, 2023.

D. BIDDERS

Bidders shall conform to the following additional requirements and guidelines regarding bidding procedures:

1. Withdrawal of bids

Bidders shall be allowed withdrawal of their participation prior to the time set for opening of bids, if they communicate their purpose in writing to the authority. No bid can be withdrawn for any reason whatsoever, after the opening of bids has commenced.

2. Bidders' Responsibility

The bidder shall be responsible for having taken steps to carefully examine the Terms and Condition[s] and, also to be fully informed as to all conditions, local [or] otherwise affecting the carrying out of the procurement. Failure to do so shall be at the bidder's risk. It shall be the sole responsibility of [the] bidder to determine and to satisfy themselves, by such means, as they consider necessary or desirable, as to all matters pertaining to those conditions.

No verbal agreement or conversation with any official/employee of the Authority, either before or after the execution of the contract, and (sic) shall affect or modify any of the conditions or obligation stipulated in the contract.

3. Bidders' Qualification

The Authority reserves the right to further examine the competence and responsibility of a bidder, at any time before awarding the contract, by verification of the bidder's qualification or by other means. Also, to reject any bid, when the facts, as to business and technical organizations, financial resources and experience on similar type of procurement, in the opinion of the Authority, will justify rejection.

4. Discrepancies and Omissions

If a prospective bidder note[s] any omissions or discrepancy in the specifications and other documents or should there be doubt as to their true meaning, the bidder may submit [a] written request for clarification to the Authority. He should allow sufficient time for a reply to reach him before the submission of his bid. Any substantive interpretation given shall be issued by the Authority in the form of [a] supplemental notice furnished to all bidders. No relief shall be granted on a plea of error in the bid. The Authority may also issue supplemental notices prior to the date of opening of bids for clarification or modifications of the Terms of Reference. Each prospective dealer/supplier prior to the submission of bids shall acknowledge receipt of all supplemental notices and receipt of, and compliance shall be indicated in the proposal. Oral interpretation of the bid documents shall not be binding.

E. EVALUATION

All proposals and/or bids shall be evaluated according to certain guidelines, including such guidelines indicated below. The Authority

however reserves the right to reject any bid which it deemed not to the best interest of the required procurement.

1. Bid Reference

The form of the contract to be awarded is on a fixed contract price, as specifically called for in the proposal, and subject to all conditions set forth in the proposal documents. Bids submitted on any other basis will not be considered. Proposals that are qualified by the bidder by the insertion or attachment of unsolicited terms or conditions shall be rejected. Bid prices quoted in U.S. Dollars shall be converted into Philippine peso of th[e] rate prevailing at the time of the opening of bid. It is understood that prices quoted in the bid include taxes.

x x x

F. AWARD OF CONTRACT

After the opening of bids, the Authority shall undertake a detailed evaluation and appraisal of the proposals submitted. The contract shall be awarded to the responsible bidder, whose bid is complying and deemed most advantageous to the Authority and the Philippine Government.

The winning dealer/supplier upon receipt of [the] Notice of Award or his authorized representative shall be required to call the Authority and to submit a performance bond in accordance with any of the following schedule:

1. Cash[,] Manager's Check, Cashier's Check,
Five Percent (5%) of the total contract price.
2. Surety Bond – Thirty Percent (30%) of the total contract price.

G. DURATION OF DELIVERY

The bidder shall deliver the one (1) unit Airport Firefighting Truck within one hundred eighty (180) calendar days from receipt of [the] notice to proceed. The bidder shall ship and deliver on the basis of CIF (Cost, Insurance and Freight) at MCIAA, Lapu-lapu City. (Destination). All expenses covering freight, handling, insurance, taxes and duties and all landed costs shall be borne by the bidder.

x x x

III. SPECIFICATIONS

One (1) unit Airport Fire Fighting and Rescue Vehicle with Rapid Intervention Capability, 11,400 Liters (3,000 Gals) inclusive of the Basic Rescue Equipments (sic) recommended by the ICAO for Category 9. Firefighting Truck should meet or exceed NFPA and/or ICAO Standards and Exhaust Emission Certified with the following specifications:

1. Responsive 4 cycle diesel engine direct injection and turbo-charged with matching automatic transmission (preferably Caterpillar/Twin Disc) combination for commonality with MCIAA's existing fleet
2. 12,000 Liters water content
3. 1,500 Liters foam concentrate

4. 250 kg powder extinguishing unit
5. Foam/Water proportioning unit
6. Roof water/foam turret (3000 / 6000 lpm)
7. Bumper turret (1500 lpm)
8. Body/Ground Protection System
9. All Wheel Drive Axle System
10. 6 x 6 High Stability Coil Spring Suspension System with rigid axle
11. Anti-Lock Brake System
12. Airconditioned Cab
13. Structural Firefighting Capability
14. Intercom System and VHF Radio Transceiver Equipped
15. Cab Capacity for 1 + 5, left hand steering
16. Centrifugal fire pump with one suction inlet and double-piston priming pump
17. Electrical system 24 V
18. Engine min 700 hp, EURO 3
19. Minimum speed 115 km/h
20. Acceleration from 0-80 km/h within 34 sec.

X X X

V. PAYMENT SCHEDULE

The total contract price shall be payable after delivery of the aircraft rescue firefighting vehicle and issuance by MCIAA of a certificate of attendance.

The opening of a letter of credit in favor of the Manufacturer shall be the sole liability and responsibility of the manufacturer's representative or agent in the Philippines. x x x⁷

On January 12, 2006, the MCIAA Bids and Awards Committee (BAC) held a pre-bidding conference attended by accused-appellant Veronica S. Ordoñez (Ordoñez), accused-appellant Sigfredo V. Dublin (Dublin), Achilles S. Ponce, Gerard B. Montecillo (Montecillo), Camilo C. Castro (Castro), Tabetha A. Capistrano (Capistrano), and Hannah E. Neilsen (Neilsen).⁸ Also present were the bidders AsiaBorders, Inc.^{**} (AsiaBorders), represented by accused-appellant Marlon E. Barillo (Barillo), Pelican Bay Group Inc. (Pelican Bay), represented by Bryan Cortes (Cortes), and Audiophile Components,^{***} represented by Butch Pabayo.⁹

On January 19, 2006, the BAC issued its Bid Bulletin No. 2¹⁰ notifying that the representative or agent of the manufacturer must be engaged in the supply, delivery, and maintenance of airport rescue firefighting trucks or airport-related equipment for at least five years.¹¹

⁷ Exhibit "D-1" of the Prosecution; Terms of Reference and General Specifications (Purchase of One [1] Unit Airport Rescue Firefighting Truck).

⁸ SB *rollo*, Vol. VII, p. 112; Minutes of the Pre-Bidding Conference dated January 12, 2006.

^{**} Also referred to as Asia Borders Philippines, Inc. and Asia Borders, Inc. in some parts of the *rollo* and records.

^{***} Also referred to as Audiophile, Inc. and Audiophile Components, Inc. in some parts of the *rollo* and records.

⁹ *Id.*

¹⁰ SB *rollo*, Vol. VII, pp. 115-116; Bid Bulletin No. 2 dated January 19, 2006.

¹¹ *Id.*

During its January 25, 2006 meeting, the MCIAA Board of Directors approved the increased budget for the purchase of the ARFFV, thus:

RESOLUTION NO. 2006-1028

“RESOLVE, as it is hereby resolved, that the request for reconsideration to increase the approved budget for the supply and delivery of one (1) aircraft rescue and firefighting vehicle from US\$630,000.00 to US\$785,000.00, be approved, as it is hereby approved.”¹²

The BAC then issued Bid Bulletin No. 4¹³ stating that the approved budget for the contract is USD 785,000.00 inclusive of customs duties and taxes; and that Bid Bulletin No. 2 was amended to the effect that the representative or agent of the manufacturer must be engaged in the supply, delivery, and maintenance of airport rescue firefighting trucks or airport-related equipment for at least one year.¹⁴

On February 2, 2006, the BAC held the bidding for the purchase of the ARFFV.¹⁵ The members of the BAC present were Ordoñez, Dublin, Bienvenido Y. Malayang VII (Malayang), Arnel S. Carolipio (Carolipio), Montecillo, Castro, Capistrano, and Neilsen.¹⁶ The bidders present were AsiaBorders, represented by Barillo; and Pelican Bay, represented by Cortes. The consultant of Rosenbauer Inc., Crisologo V. Saavedra (Saavedra), was likewise present.¹⁷

During the bidding, Envelope A of Pelican Bay was opened. The BAC noted that the following documents were not found therein: (1) commitment from a licensed bank to extend to the bidder a credit line if awarded the contract solely for the project to be bid, or a cash deposit certificate, in an amount which shall be at least equal to 10% of the Approved Budget for the Contract; (2) certification from the Bureau of Internal Revenue that it is not delinquent in its value-added tax remittances; (3) a notarized secretary's certificate attesting to the fact that the representative or agent agreed to be jointly and severally liable with the foreign principal for the implementation of the terms of the contract; and (4) a list of the representative/agent's clients in the Philippines indicating their addresses, contact numbers, and the kind of airport equipment sold and delivered.¹⁸

¹² SB *rollo* Vol. VI, p. 101; Exhibit “O-7” of the Prosecution; Minutes of the MCIAA Board Meeting No. 2006-219 on January 25, 2006, p. 3.

¹³ SB *rollo* Vol. VII, p. 118; Bid Bulletin No. 4 dated January 25, 2006.

¹⁴ *Id.*

¹⁵ SB *rollo* Vol. VII, p. 121; Minutes of the Bidding dated February 2, 2006.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

The BAC then proceeded to open Envelope A of AsiaBorders. It was found to bear all the documentary requirements; hence, its bid proposal was unsealed showing the amount of USD 732,000.00 or PHP 38,129,880.00.¹⁹

On February 8, 2006, the BAC issued its Resolution No. 118-2006²⁰ declaring AsiaBorders as the bidder with the lowest calculated and responsive bid; and recommending that the contract be awarded to AsiaBorders for the amount of USD 732,000.00 or PHP 38,137,200.00.²¹ Acting thereon, MCIAA General Manager accused-appellant Adelberto Federico Yap (Yap) approved the award of the contract to AsiaBorders.²²

On February 22, 2006, the MCIAA Board authorized the management to issue a Notice of Award to AsiaBorders, and to enter into a supply and delivery contract for one ARFFV in the amount of USD 732,000.00 or PHP 38,137,200.00.²³ Accordingly, on March 1, 2006, the MCIAA, represented by then General Manager Yap, and AsiaBorders, represented by its President Barillo executed the corresponding Contract for the Supply and Delivery of One (1) Aircraft Rescue Firefighting Truck (Contract).²⁴

Under Article V of the Contract, AsiaBorders assumed the obligation of obtaining an irrevocable letter of credit in favor of Ziegler Indonesia, its foreign principal. Too, the parties agreed that 80% of the costs, fees, and charges relative to obtaining the letter of credit shall be paid by AsiaBorders while the remaining 20% shall be borne by the MCIAA, viz.:

ARTICLE V

LETTER OF CREDIT

1. The SUPPLIER hereby assumes the obligation of opening an irrevocable letter of credit in favor of the manufacturer which shall be issued within ten (10) days from the execution of this contract.

2. For an[d] in consideration of the above obligation of the SUPPLIER, the PARTIES hereby agree that eighty percent (80%) of the costs, fees and charges in opening the letter of credit shall be paid by the SUPPLIER and the remaining twenty percent (20%) shall be borne by the PURCHASER subject to the following conditions:

a. The amount chargeable to the PURCHASER shall not exceed Six Million Pesos (Php6,000,000.00) which shall be deducted from the total contract price payable to the SUPPLIER

¹⁹ *Id.*

²⁰ SB *rollo*, Vol. VII, p. 122-123; BAC Resolution No. 118-2006 dated February 8, 2006.

²¹ *Id.*

²² *Id.*

²³ SB *rollo* Vol. VII, p. 149; Secretary's Certificate dated December 13, 2018 indicating that the MCIAA Board approved MCIAA Board Resolution No. 2006-1038 on February 22, 2006.

²⁴ SB *rollo* Vol. V, p. 306; Exhibit "D-2" of the Prosecution; See Stipulations of Facts under the Pre-trial Order dated June 26, 2018.

after the complete delivery and acceptance of the aircraft and rescue firefighting truck.

b. The amount chargeable to the PURCHASER shall be covered by a surety bond taken by the SUPPLIER in favor of the PURCHASER and duly issued by the GSIS or any accredited insurance company.²⁵

In a letter addressed to Yap, Barillo requested the remittance of PHP 6 million for the opening of a letter of credit.²⁶ On March 9, 2006, Yap approved the letter-request and referred the same to the Finance Department for processing.²⁷ The next day, on March 10, 2006, Yap and accused-appellant Ma. Venus B. Casas (Casas), in her capacity as Manager of the Accounting Division of the MCIAA, signed Disbursement Voucher No. 101-2006-03118²⁸ in the amount of PHP 6 million in favor of AsiaBorders for “payment of the cost of the opening of the Letter of Credit for the supply & delivery of (1) one Aircraft Rescue Firefighting Truck equivalent to 20% of the contract price but not to exceed PHP 6 million as provided in Art. V of the Contract.”²⁹

The Proceedings before the Sandiganbayan

Accused-appellants were charged with violation of Section 3(e) of Republic Act No. 3019, as amended, under the following Information dated September 19, 2016, *viz.*:

That on 10 March 2006 or sometime prior or subsequent thereto, in the City of Lapu-Lapu, Province, of Cebu, Philippines, the said accused ADELBERTO F. YAP, a high-ranking public officer, being then the General Manager, VERONICA S. ORDÓÑEZ, being then the Chairman of the Bids and Awards Committee (BAC), SIGFREDO V. DUBLIN, being then the Legal Officer and a member of the BAC, MA. VENUS B. CASAS, being then the Officer-in-Charge of the Accounting Division, all of Mactan Cebu International Airport Authority (MCIAA), while in the performance of their official functions and committing the offense in relation to their office, cooperating, conspiring and confederating with one another and with accused private individual MARLON E. BARILLO, then the President of Asiaborders Philippines, Inc. (Asiaborders) unlawfully and wilfully acting with evident bad faith or gross inexcusable negligence caused the advance partial payment of Php6,000,000.00 to Asiaborders despite the fact that Asiaborders was not a qualified bidder, and the vehicle subject of the Contract for the Supply and Delivery of one Aircraft Rescue Fire Fighting Truck between MCIAA and Asiaborders had not yet then been delivered, inspected and accepted, in violation of Section 88 of Presidential Decree No. 1445, thereby giving unwarranted benefits to Asiaborders and causing undue injury to the government in the aforementioned amount.

²⁵ Exhibit “D-2” of the Prosecution.

²⁶ Exhibit “O-24” of the Prosecution.

²⁷ *Id.*

²⁸ Exhibit “D-8” of the Prosecution.

²⁹ *Id.*

CONTRARY TO LAW.³⁰

In another Information of even date, Yap was also charged with violation of Section 3(g) of Republic Act No. 3019, as amended, *viz.* :

That on 1 March 2006 or sometime prior or subsequent thereto, in the City of Lapu-Lapu, Province of Cebu, Philippines, accused ADELBERTO F. YAP, a high-ranking public officer, being then the General Manager of Mactan Cebu International Airport Authority (MCIAA), while in the performance of official functions and committing the offense in relation to his office, unlawfully and wilfully entered, on behalf of the government, into a contract manifestly and grossly disadvantageous to the same with Asiaborders Philippines, Inc. for the supply of one unit Aircraft Rescue Fire Fighting Truck (ARFF) for the sum of US\$732,000.00 of Php38, 137,200 when the ARFFV has a value of only US\$61, 836.86 or Php30, 903.526.69.

CONTRARY TO LAW.³¹

The Sandiganbayan thereafter issued a hold departure order against accused-appellants per its Resolution dated November 21, 2016.³²

Accused-appellants individually moved to quash the Information/s and/or to dismiss the case/s due to the alleged inordinate delay in the conduct of the preliminary investigation, which the Sandiganbayan denied for lack of merit under its Resolutions dated May 15, 2017 and July 10, 2017.³³

Barillo moved to reconsider the Resolution dated May 15, 2017 but his motion was denied per Resolution dated September 4, 2017. He thereafter filed a petition for *certiorari* and prohibition with the Court³⁴ docketed as G.R. No. 234187.

Meantime, the joint motion for reconsideration of Dublin and Ordoñez; and the separate motion for reconsideration of Casas were denied in the Resolution dated November 2, 2017 and Resolution dated December 4, 2017 of the Sandiganbayan, respectively.³⁵

On arraignment, accused-appellants pleaded not guilty to the charge/s against them.³⁶ During pre-trial, the parties made the following stipulation of facts:

³⁰ *Rollo*, p. 5.

³¹ *Id.*

³² *Rollo*, p. 6.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Rollo*, p. 7.

"II. STIPULATION OF FACT[S]"

1. The identity of all the accused as the same persons charged in the instant informations;

The parties, except accused Marlon E. Barillo, agree and stipulate on the following:

2. That at the time of the alleged commission of the offenses charged in the present informations, the following accused were public officers occupying the following positions in the Mactan-Cebu International Airport Authority (MCIAA):
 - a) Accused Adelberto Yap was the General Manager from 22 February 2005 to 31 July 2006;
 - b) Accused Veronica Ordonez was the Chairperson of the Bids and Awards Committee (BAC) until relieved on July 24, 2006;
 - c) Sigfredo V. Dublin was the Legal officer and BAC member until his resignation on July 31, 2006; and
 - d) Venus B. Casas was Officer-in-Charge of the Accounting Division for the period covering March 19, 2002 to September 13, 2005 and the Division Manager of the Accounting Division from September 14, 2005 up to the present;
3. Accused YAP, DUBLIN and ORDOÑEZ admit that at the time of the alleged commission of the offenses charged in the present informations, accused Marlon E. Barillo was the President of Asiaborders, Inc.;
4. Accused YAP, DUBLIN and ORDONEZ admit that on March 1, 2006, the MCIAA represented by its General Manager, Adelberto Yap, and Asiaborders Philippines, Inc. represented by its President, Marlon E. Barillo, entered into a Contract for the Supply and Delivery of one (1) Aircraft Rescue Firefighting Truck, marked as Exhibits "C-2", "D-2," "I," and "O-17";
5. Accused DUBLIN and ORDONEZ admit that Asiaborders Philippines, Inc. is a corporation duly-organized and existing under Philippine laws, as evidenced by a Certificate of Incorporation dated July 28, 2004 issued to AsiaBorders Philippines, Inc. under Company Registration No. CS200411433, marked as Exhibit "O-33";
6. For purposes of procurement, MCIAA has established a Bids and Awards Committee ("BAC");
7. Accused Yap signed the Contract for the Supply (Exh. "O-33) and Delivery of One (1) Aircraft Rescue Fire Fighting Vehicle and signed also Box A of the Disbursement Voucher No. 101-2006-03118 (Exh. "D-8") for the opening of the Letter of Credit; and
8. Accused Casas admits that, as the Officer in Charge Accountant MCIAA, she signed the Disbursement Voucher No. 101-2006-03118 (Exh. "D-8") certifying that "*Adequate available*

funds/budgetary allotment in the amount of Php6,000,000.00; expenditure properly certified; supported by documents; account codes proper; previous cash advance liquidated /accounted for.”³⁷

During the trial, Lou Pagaran-Tila, Gina Q. Cane, Ma. Irma S. Purog, Allan S. Bisnar, Ma. Chona J. Gonzales, Atty. Eula G. Parawan, Ela R. Borinaga, Buenaventura V. Leyva, Nilo R. Confessor, and Cornelia Bacayo Wilwayco testified for the prosecution while Yap, Ordoñez, Dublin, and Casas testified for the defense.

Version of the Prosecution

Lou Pagaran-Tila, Graft Investigator Officer (GIO) I of the Office of the Ombudsman-Visayas testified that she investigated the purchase of the ARFFV. Based on the results of her investigation, she issued her final evaluation report and accompanying affidavit. Her report was mainly based on the affidavit of the assigned auditor of the Commission on Audit (COA). Among others, she concluded that manifest partiality, evident bad faith, or gross inexcusable negligence tainted the bidding process because the number of years of relevant experience by AsiaBorders fell short of the required number of years specified in BAC Bulletin No. 2. Further, there was a 90% price difference between the unit price as reflected in the Bureau of Customs' (BOC) entry document, on the one hand, and the price paid by the MCIAA for the project, on the other. There was conspiracy among the accused-appellants because the transaction would not have pushed through without their individual acts.³⁸

Ma. Irma S. Purog testified that she was assigned as the audit team leader for the MCIAA from January 2010 until January 2013. The MCIAA made an advance payment of PHP 6 million to AsiaBorders for the purpose of securing the required letter of credit. But it was the MCIAA, instead of AsiaBorders itself, which applied for the letter of credit with the Landbank of the Philippines (LBP) for the payment of USD 616,836.14 to Ziegler Indonesia, a prohibited act under Presidential Decree No. 1445.³⁹ Both actions of the MCIAA are disadvantageous to the government. When a transaction occurs, a procuring entity is not allowed to open a letter of credit under the law.⁴⁰

Allan R. Bisnar, Vice President and head of the LBP Cebu South Lending Center since 2017, testified that he received a subpoena from the Office of the Ombudsman requiring him to produce the original copies of documents relative to the acquisition of an ARFFV by the MCIAA including

³⁷ SB *rollo* Vol. V, pp. 305–307; Pre-trial Order dated June 26, 2018.

³⁸ *Rollo*, p. 9.

³⁹ Government Auditing Code of the Philippines, approved June 11, 1978.

⁴⁰ *Rollo*, p. 10.

the application for issuance of Commercial Letter of Credit No. 9115 LCCLC-06-12F dated November 28, 2006; LBP Check No. 0000006621 dated March 10, 2006 for PHP 6 million; and the bill of lading, packing list, and commercial invoice pertinent to the purchase of the ARFFV. But his staff could no longer locate these documents. Thus, he signed a certification to the effect that their original copies could no longer be located because of their office's internal policy – "ten-year retention period." Since the transaction happened in 2006, the requested documents had already been disposed of.⁴¹

Gina Q. Cane testified that she issued certified true copies of the Terms of Reference, Bid Bulletin No. 2, and the Contract. These documents had been endorsed to her office by the MCIAA Legal Division.⁴²

Ma. Chona J. Gonzales, Credit Investigation Officer of LBP Cebu South Lending Center from 2000 to 2015, testified that she reviewed the documents submitted by the MCIAA relative to the letter of credit.⁴³

Atty. Eula G. Parawan, Executive Assistant B of the MCIAA, testified that she was required to submit to the trial court the original copies of the Minutes of the MCIAA Board Meeting dated January 25, 2006 and the Minutes dated August 31, 2006.⁴⁴

Ela R. Borinaga, Officer-in-Charge of the MCIAA Cashiering Division since 2006, testified that she signed LBP Check No. 0000006621 dated March 10, 2006 after she had thoroughly examined Disbursement Voucher No. 101-2006-03118 bearing the respective signatures of Yap (in box A certifying that the expenses or cash advance was necessary, lawful, and incurred under his direct supervision and in box C approving the disbursement); and of Casas (in box B certifying that there was adequate available fund or budgetary allotment in the amount of PHP 6 million). From her office, LBP Check No. 0000006621 was forwarded to Yap for his signature.⁴⁵

Buenaventura V. Leyva, account officer of the LBP Cebu South Lending Center in November 2006, testified that he signed MCIAA's application for a letter of credit. As a policy, he only signs a letter of credit application after the branch of the account or the servicing branch has already verified the applicant's signature. His approval of the application means that the fund intended for the letter of credit had already been earmarked.⁴⁶

⁴¹ *Id.* at 11.

⁴² *Id.* at 9.

⁴³ *Id.* at 11.

⁴⁴ *Id.* at 11–12.

⁴⁵ *Id.* at 12.

⁴⁶ *Id.* at 12–13.

Nilo R. Confessor, Technical Audit Specialist of the COA, testified that he and his team did a technical inspection of the ARFFV sometime in February 2011, as requested by COA Auditor Purog. He found the ARFFV to be in good operational condition, albeit it was already used. He indicated his findings in his Inspection Report dated March 14, 2011.⁴⁷

The testimony of Joegina J. Gozo, Acting Chief Liquidation and Billing Section of the BOC, was dispensed with after the parties stipulated, among others, that she could identify the import entry documents relative to the subject ARFFV which arrived at the Port of Cebu.⁴⁸

Finally, Cornelia Bacayo Wilwayco, Customs Operations Officer III of the BOC from 1998 to 2017 testified that she examined one unit of ARFFV per Import Entry No. 6636-07 in 2007, including its shipping documents. The consignee of Bill of Lading No. 42506120026-00 was the MCIAA and the ARFFV unit arrived at the Port of Cebu on December 2007. The taxes and duties paid totaled PHP 503,673.00 based on the declared transactional value of the imported unit as stated in the Commercial Invoice/Packing List No. 061148/EXP/INV/ZI/XI/06. Transactional value refers to an amount inclusive of the cost of the imported goods, insurance, and freight cost (CIF). The CIF for Import Entry No. 6636-07 was USD 80,105.00.⁴⁹

The prosecution formally offered its evidence on October 25, 2016 consisting of *Exhibits "A" to "S-6"* with sub-markings. The Sandiganbayan admitted the same per its Resolution dated January 11, 2019.⁵⁰

Version of the Defense

Yap testified that he was the MCIAA's General Manager from February 22, 2005 until he got removed by the MCIAA Board of Directors on July 31, 2006. The purchase of the ARFFV from AsiaBorders, as the winning bidder, was approved by the MCIAA Board of Directors per recommendation of the BAC.⁵¹

As the MCIAA's duly authorized signatory, he signed the Contract with AsiaBorders for the acquisition of one ARFFV. He had no participation in the drafting of the Contract though. He relied in good faith on the validity of the Contract since it had already been cleared by the BAC and the MCIAA's Legal Department.⁵²

⁴⁷ *Id.* at 13–14.

⁴⁸ *Id.* at 14.

⁴⁹ *Id.* at 14–15.

⁵⁰ *Id.* at 15.

⁵¹ *Id.*

⁵² *Id.* at 16.

He received Barillo's letter request for remittance of PHP 6 million to secure the letter of credit. He wrote a marginal note "Approved GM" on the letter. He directed the Chief of the MCIAA's Finance and Accounting Division to process the request.⁵³

As for Disbursement Voucher No. 101-2006-03118, he signed the same since the Finance and Accounting Division had already approved it. He confirmed that when he signed the disbursement voucher, the ARFFV had not been delivered yet.⁵⁴

Ordoñez affirmed her judicial affidavit. She was the Manager of the MCIAA's Finance and Accounting Department and concurrent Chairperson of the BAC until July 2006. In 2009, she got reassigned to the Human Resource Management Division where she stayed until she retired in 2014. The BAC held the bidding for the purchase of one unit of ARFFV with Rosenbauer International, Ziegler, and Oshkosh Truck Corporation as participating bidders. They were represented by their respective local agents, Pelican Bay, AsiaBorders, and Audiophile, Inc..⁵⁵

The BAC resorted to limited source bidding as the mode of procurement of the ARFFV upon the recommendation of Yap and the MCIAA Board of Directors. From the original five years of relevant experience in the supply, delivery, and maintenance of airport rescue firefighting trucks or airport-related equipment for participating representatives/agents of foreign manufacturers, the BAC reduced it to only one year of relevant experience. According to the witness, the BAC opted for this modification based on the feedback it received from the interested participants that the five-year experience requirement was too strict which many, if not all of them, would not be able to muster. As it turned out, if the BAC retained the five-year experience requirement, two out of the three participating bidders would not have been able to participate in the bidding.⁵⁶

Dublin testified that he was employed with the MCIAA from January 16, 1991 until he resigned on July 31, 2006. He was the MCIAA's Legal Officer and a member of the BAC. Based on the bidding results, the Contract was awarded to Ziegler Indonesia, through its local representative AsiaBorders headed by Barillo. It was Barillo who coordinated with his office and submitted the draft Contract. After reviewing the same, he found it to be in order, sans any anomaly or disadvantage to the MCIAA.⁵⁷

Finally, Casas testified that she was the Division Manager of the MCIAA Accounting Division. She signed the Contract as an attesting official.

⁵³ *Id.*

⁵⁴ *Id.* at 17.

⁵⁵ *Id.*

⁵⁶ *Id.* at 17--18.

⁵⁷ *Id.* at 19.

The contract price of USD 732,000.00, or PHP 38,137,200.00, was well within the approved budget for the purchase of an ARFFV. She also signed Disbursement Voucher No. 101-2006-03118 dated March 10, 2006 as head of the MCIAA Accounting Division. She examined the disbursement voucher and the supporting documents, and found the payment of PHP 6 Million to be in order.⁵⁸

The defense offered the following documentary exhibits: *Exhibits “2” and “3”* (Casas); *Exhibits “1-DO” to “16-E-DO”* (Ordoñez and Dublin); and *Exhibits “2” to “6”* (Yap), with sub-markings. By its Resolution dated July 19, 2019, the Sandiganbayan admitted the aforesaid exhibits.⁵⁹

Notably, Barillo did not present any countervailing evidence on his own behalf. He maintained that the Office of the Ombudsman had lost its authority to prosecute the case; and the Sandiganbayan, its jurisdiction to hear the case due to inordinate delay.⁶⁰

The Ruling of the Sandiganbayan

By Decision⁶¹ dated February 14, 2020, the Sandiganbayan rendered a verdict of conviction in both cases, *viz.*:

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

1. In SB-16-CRM-1076, accused Adelberto Federico Yap, Veronica S. Ordoñez, Sigfredo V. Dublin, Ma. Venus B. Casas and Marlon E. Barillo are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019, and are each hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum; and to suffer perpetual disqualification to hold public office; *and*
2. In SB-16-CRM-1077, accused Adelberto Yap is found **GUILTY** beyond reasonable doubt of violation of Section 3(g) of R.A. No. 3019, and is sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum; and to suffer perpetual disqualification to hold public office.

SO ORDERED.⁶²

In SB-16-CRM-1076, the Sandiganbayan ruled that the prosecution had sufficiently established that accused-appellants are guilty of violating

⁵⁸ *Id.* at 19–20.

⁵⁹ *Id.* at 20–21.

⁶⁰ TSN dated February 1, 2018, p. 4.

⁶¹ *Rollo*, pp. 4–43.

⁶² *Id.* at 42–43.

Section 3(e) of Republic Act No. 3019 beyond any shadow of doubt. **First**, it was undisputed that Yap, Ordoñez, Dublin, and Casas were public officers.⁶³ **Second**, accused-appellants exhibited manifest partiality, evident bad faith, and gross inexcusable negligence when they caused the PHP 6 million to be paid to AsiaBorders in advance of the actual delivery, inspection, and acceptance of the ARFFV;⁶⁴ and further when it was MCIAA itself, instead of AsiaBorders which applied for a letter of credit in violation of the terms of the Contract, the Terms of Reference, and Bid Bulletin No. 2.⁶⁵ **Third**, the MCIAA shelled out PHP 6 million for the letter of credit, the obtention of which was the obligation of AsiaBorders. More, without any justification or study, the BAC reduced the required number of years of experience from five years to one year, thus making AsiaBorders a qualified bidder.⁶⁶

Conspiracy allegedly existed among accused-appellants. Dublin drafted, while Ordoñez signed, Bid Bulletin No. 4 which reduced the required years of relevant experience from five years to one year, sans any justification. Both Dublin and Ordoñez recommended that AsiaBorders be declared as the winning bidder despite the fact that AsiaBorders had a paid-up capital of only PHP 300,000.00. AsiaBorders' financial incapacity was further highlighted by its inability to open a letter of credit on its own. Meanwhile, on March 9, 2006, Barillo sent a letter to Yap, requesting that the sum of PHP 6 million be remitted to AsiaBorders to secure a letter of credit notwithstanding that there was yet no delivery, inspection, and acceptance of the ARFFV. The next day, Yap approved Barillo's letter-request and signed Disbursement Voucher No. 101-2006-03118 twice when he certified that the expenses and cash advance were necessary and lawful; and when he approved the voucher in the amount of PHP 6 million. Yap was also the signatory in the LBP Check dated March 10, 2006 in favor of AsiaBorders in the amount of PHP 6 Million. In fine, accused-appellants all acted in concert to attain a common unlawful purpose.⁶⁷

As for **SB-16-CRM-1077**, the Sandiganbayan also found Yap guilty of violation Section 3(g) of Republic Act No. 3019 beyond reasonable doubt. It held that Yap was a public officer who, as the General Manager of the MCIAA, transacted with AsiaBorders and executed the *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck*.⁶⁸ Anent the third element, the pieces of evidence clearly showed that the Contract was grossly and manifestly disadvantageous to the government. It indicated that the price of the ARFFV was USD 732,000.00 or PHP 38,137,200.00, albeit it only had an actual value of USD 616,836.86 or PHP 30,903,526.69. Too, the CIF value of the ARFFV per Commercial Invoice No. 061148/EXP/INV/ZI/XI/06 dated November 30, 2006 issued by Ziegler Indonesia was USD 616,836.14. But the declared value of the ARFFV under BOC Import

⁶³ *Id.* at 22.

⁶⁴ *Id.* at 22.

⁶⁵ *Id.* at 22-24.

⁶⁶ *Id.* at 32-34.

⁶⁷ *Id.* at 35-36.

⁶⁸ *Id.* at 38.

Entry and Internal Revenue Declaration No. NGA 0165-06 was only USD 80,105.00 (or PHP 4,013,260.50) or roughly only 10% of its invoice price. Therefore, the government was not able to collect the correct amount of customs taxes and duties because the value of the ARFFV was under-declared.⁶⁹

Meantime, by Resolution dated September 8, 2020 in G.R. No. 234187, the Court denied Barillo's petition for *certiorari* and prohibition for being academic in view of the foregoing verdict of conviction.⁷⁰

Accused-appellants' respective motions for reconsideration⁷¹ were denied under the Sandiganbayan's Resolution⁷² dated October 21, 2020.

The Present Appeal

In his Appellant's Brief⁷³ dated June 28, 2021, Yap faults the Sandiganbayan for drawing factual conclusions based on extraneous matters not alleged in the Information in SB-16-CRM-1076 (violation of Section 3[e] of Republic Act No. 3019). Even though the Information charged him and his co-accused with violation of Section 3(e) by causing advance partial payment to AsiaBorders despite it not being a qualified bidder, and notwithstanding that the ARFFV had not been delivered, inspected, and accepted yet by MCIAA, the Sandiganbayan considered another means of committing the crime not otherwise alleged in the Information, i.e., by changing the required number of years of relevant experience for the local agents acting as such in behalf of the foreign manufacturers.⁷⁴ In so doing, the Sandiganbayan allegedly committed a clear violation of his right to due process and his right to be informed of the nature and cause of the accusation against him.⁷⁵

Further, he asserts that the alleged irregularities with respect to the opening of the letter of credit in November 2006 and the supposed undervaluation of the ARFFV in the documents presented to the BOC in December 2006 all happened after he was no longer connected with the MCIAA. The parties' joint stipulation of facts indicates that he only served as General Manager of the MCIAA from February 22, 2006 until July 31, 2006.⁷⁶

More, contrary to the findings of the Sandiganbayan, the prosecution was not able to prove that the PHP 6 million was an advance payment to

⁶⁹ *Id.* at 40.

⁷⁰ *Barillo v. Sandiganbayan*, G.R. No. 234187, September 8, 2020 [Per Notice, First Division].

⁷¹ SB *rollo*, Vol. VIII, pp. 207–272.

⁷² *Rollo*, pp. 276–284.

⁷³ *Id.* at 89–230.

⁷⁴ *Id.* at 130.

⁷⁵ *Id.* at 133.

⁷⁶ *Id.* at 142–145.

AsiaBorders. For one, Article V of the Contract itself stated that the PHP 6 million corresponded to the costs, fees, and charges in the opening of the letter of credit. Thus, the PHP 6 million was not an advance payment, but merely the MCIAA's share in the costs, fees and charges relative to the opening of the letter of credit.⁷⁷ For another, he was merely implementing the terms of the Contract following its review by the MCIAA Legal Department and approval by the MCIAA Board of Directors. Thus, he was not motivated by any criminal design, but was acting in good faith when he implemented to the letter the Terms of the Contract.⁷⁸ He likewise had no participation in the bidding process because he was not a member of the BAC.⁷⁹ Finally, the Sandiganbayan erred in finding that conspiracy existed among himself and the other accused-appellants.

As for SB-16-CRM-1077 (violation Section 3[g] of Republic Act No. 3019), the Information alleged that he signed the Contract for procurement of the ARFFV in the amount of USD 732,000.00 or PHP 38,137,200.00, albeit the ARFFV was only valued at USD 616,836.86 or PHP 30,903,526.69. Thus, the Contract was manifestly and grossly disadvantageous to the government. The Sandiganbayan nonetheless failed to discuss how it was so. The so-called irregularities relative to the opening of the letter of credit in November 2006, and the alleged undervaluation of the ARFFV in the BOC documents in December 2006 had nothing to do with the contract price or value of the ARFFV.⁸⁰

Going now to Ordoñez and Dublin, in their Appellants' Brief⁸¹ dated June 17, 2021, they argue that: first, they cannot be held liable for the letter of credit opened by the MCIAA on November 28, 2006 since Dublin was already resigned on July 31, 2006 while Ordoñez was relieved of her position as Chairperson of the BAC and Manager of the Finance Department effective July 24, 2006;⁸² second, the reduced number of years of experience required of the representative or agent of the manufacturer from five years to one year was justified. For one, the BAC gave more importance to the reputation of the foreign supplier; and it was apprehensive that no one among the bidders would qualify based on the representation of the interested participants to them that the five-year requirement might be too high;⁸³ second, the modification was made in the performance of the BAC's discretionary function to set the minimum qualification standards for the prospective bidders. Hence, the mere absence of market probe did not make such modification irregular or anomalous absent any proof that it was for a fraudulent or dishonest purpose;⁸⁴ third, they have in their favor the presumption of good faith and regularity in the performance of their official duties when they held the bidding for the

⁷⁷ *Id.* at 155–157.

⁷⁸ *Id.* at 175.

⁷⁹ *Id.* at 177.

⁸⁰ *Id.* at 197–202.

⁸¹ *Id.* at 307–332.

⁸² *Id.* at 311.

⁸³ *Id.* at 312–313.

⁸⁴ *Id.* at 316.

purchase of the ARFFV;⁸⁵ fourth, they cannot be dragged into the alleged conspiracy among their co-accused. Their participation was limited to the bidding process, including the evaluation of the bids, determining the qualified and winning bidder, and recommending the award of the contract to the winning bidder;⁸⁶ fifth, the gravamen of the charge is the advance partial payment of PHP 6 million to AsiaBorders per Disbursement Voucher No. 101-2006-03118. But they had no involvement at all in the preparation and approval thereof. Contrary to Yap's testimony during the trial, there is nothing on record showing that Dublin reviewed and examined the disbursement voucher;⁸⁷ and finally, there was inordinate delay in the conduct of the preliminary investigation of the case before the Office of the Ombudsman.⁸⁸

In his Appellant's Brief⁸⁹ dated July 19, 2021, Barillo faults the Sandiganbayan for ruling that an advance payment of PHP 6 million was given to AsiaBorders despite the failure of the prosecution to present the original copy of the LBP Check No. 0000006621 to prove the encashment or deposit of said LBP check by AsiaBorders or its representative. The Sandiganbayan disregarded the established rule that a check is discharged only by payment in due course or by other means provided by law. The admission made by his co-accused pertaining to the issuance of the LBP check did not relieve the prosecution of the burden of presenting proof that the check was actually negotiated and honored by the drawee bank.⁹⁰ The mere photocopies of the LBP check offered in evidence by the prosecution were inadmissible since there was no reasonable explanation why the original copy thereof was not presented in court.⁹¹ Therefore, there is simply no evidence to prove the remittance to AsiaBorders of the advance partial payment in the amount of PHP 6 million.⁹²

As for Casas, she argues in her Appellant's Brief⁹³ dated November 9, 2021 that the Sandiganbayan erred in appreciating the payment of PHP 6 Million to AsiaBorders as advance payment, thus, effectively disregarding how the Contract considered it to be, that is, as the just share of the MCIAA in the fees and charges relative to the obtention of a letter of credit by AsiaBorders preparatory to the shipping and delivery of the ARFFV from Indonesia to the Philippines.⁹⁴ While it may be true that Republic Act No. 9184⁹⁵ prohibits procuring entities themselves from opening a letter of credit, it is also equally true that nothing bars the government from taking part in bearing the costs for its obtention. Therefore, the act of the MCIAA in shouldering 20% of the costs of the opening of the letter of credit under the

⁸⁵ *Id.* at 317.

⁸⁶ *Id.* at 319-322.

⁸⁷ *Id.* at 322-328.

⁸⁸ *Id.* at 329-331.

⁸⁹ *Id.* at 563-587.

⁹⁰ *Id.* at 573-578.

⁹¹ *Id.* at 579.

⁹² *Id.* at 582.

⁹³ *Id.* at 656-686.

⁹⁴ *Id.* at 689.

⁹⁵ Government Procurement Reform Act, approved January 10, 2003.

Contract is not, by itself, a violation of the law.⁹⁶ Too, her act of signing Disbursement Voucher No. 101-2006-03118 was not attended by manifest partiality, evident bad faith, or gross inexcusable negligence. The procurement of the ARFFV was duly approved by the MCIAA Board, the amount of PHP 6 Million was well within the approved budget for the said procurement, and the Contract, which was reviewed by the MCIAA Legal Office and was executed in full by the MCIAA and AsiaBorders. Hence, the act alone of signing Disbursement Voucher No. 101-2006-03118 is far from being considered graft.⁹⁷ Also, the amount of PHP 6 million actually formed part of the total consideration payable to AsiaBorders per stipulation in the Contract itself, hence, the government could not have suffered injury from the payment of that amount.⁹⁸ In any event, she signed Disbursement Voucher No. 101-2006-03118 only after she had examined and verified its supporting documents. She nonetheless did not have any active participation in the bidding process nor in the award of the contract to AsiaBorders.⁹⁹

On the other hand, in its Appellee's Brief¹⁰⁰ dated September 14, 2021, the People of the Philippines, through the Office of the Ombudsman-Office of the Special Prosecutor counters that all the elements of violation of Section 3(e) of Republic Act No. 3019 in SB-16-CRM-1076, as well as all the elements of violation of Section 3(g) of Republic Act No. 3019 in SB-16-CRM-1077, were proven by the prosecution beyond reasonable doubt.

In SB-16-CRM-1076 (violation of Section 3[e] of Republic Act No. 3019), the existence of the first element was undisputed. Yap, Dublin, Ordoñez, and Casas were officers and employees of the MCIAA.¹⁰¹ As for the second element, the prosecution convincingly proved that accused-appellants acted with manifest partiality, evident bad faith and/or gross inexcusable negligence when they caused and facilitated the partial advance payment of PHP 6 million to AsiaBorders purportedly for the opening of a letter of credit in favor of Ziegler Indonesia prior to the delivery of the ARFFV. After the release of the PHP 6 million, no letter of credit was opened by AsiaBorders with the LBP within 10 days from execution of the Contract. Neither did Barillo obtain any surety bond from the Government Service Insurance System or an accredited insurance company to cover the PHP 6 million already paid by the MCIAA in accordance with the Contract.¹⁰²

Further, in his letter to Capt. Bersonda, Barillo asked for the full payment of the contract price of the ARFFV, thereby negating accused-appellants' contention that the PHP 6 million was not an advance payment to AsiaBorders. Besides, all the while, Barillo treated the PHP 6 million as an

⁹⁶ *Rollo*, p. 690.

⁹⁷ *Id.* at 693-694.

⁹⁸ *Id.* at 695-696.

⁹⁹ *Id.* at 696-701.

¹⁰⁰ *Id.* at 607-644.

¹⁰¹ *Id.* at 619.

¹⁰² *Id.* at 620.

advance partial payment, not as part of the cost, fees and charges for the opening of a letter of credit. This bolsters the allegations in the Information that AsiaBorders was not a qualified bidder due to its financial incapacity.¹⁰³

As well, AsiaBorders' failure to open a letter of credit in favor of Ziegler Indonesia resulted in the delayed delivery of the ARFFV by 104 days. It was delivered only on December 20, 2006, or 284 days from March 10, 2006 when the PHP 6 million LBP check was issued to AsiaBorders. In fine, the MCIAA would not have suffered the difficult procurement of the ARFFV from AsiaBorders and Ziegler Indonesia had Yap, Dublin, Ordoñez, and Casas exercised due diligence in the performance of their functions as public officers.¹⁰⁴

The third element had also been established. Without the indispensable cooperation of accused-appellants, the MCIAA would not have been prejudiced by the advance payment of PHP 6 million to AsiaBorders for an item that had been procured but was still undelivered. The undue injury suffered by the MCIAA proved that unwarranted benefit, preference, or advantage was given to AsiaBorders, despite its ineligibility to bid for the ARFFV.¹⁰⁵

Finally, conspiracy existed among accused-appellants. The BAC, through Ordoñez and Dublin, declared AsiaBorders as the winning bidder and recommended to Yap that the contract for the procurement of the ARFFV be awarded to AsiaBorders despite its financial incapacity to perform its obligations under the contract. Ordoñez and Dublin made sure that AsiaBorders would qualify as a bidder by issuing Bid Bulletin No. 4 which reduced the number of years of existence of the local representatives/agents of a foreign manufacturer of the ARFFV. Meanwhile, Yap referred to the MCIAA Board for approval the BAC recommendation to award the contract to AsiaBorders. Upon its approval by the MCIAA Board, a notice of award was issued by Yap to Barillo. It was Barillo who drafted the Contract which he submitted to Dublin for review. The draft Contract was then referred to Yap. Upon certification by Casas of availability of funds, the parties proceeded to sign the Contract.¹⁰⁶

The averment of Ordoñez and Dublin that there was inordinate delay in the conduct of the preliminary investigation of the case before the Office of the Ombudsman is likewise without merit. They clearly failed to raise their right to speedy disposition at the earliest opportunity before the Office of the Ombudsman. They only raised this issue before the Sandiganbayan when they

¹⁰³ *Id.* at 621.

¹⁰⁴ *Id.* at 622.

¹⁰⁵ *Id.* at 629- 632.

¹⁰⁶ *Id.* at 633.

sought the quashal of the Information and dismissal of the case against them.¹⁰⁷

In SB-16-CRM-1077 (violation of Section 3[g] of Republic Act No. 3019), the Sandiganbayan did not err in convicting Yap of violation of Section 3(g) of Republic Act No. 3019 since the prosecution had proven its elements with moral certainty.¹⁰⁸

First, at the time material to the subject transaction, Yap was a public officer, then the General Manager and *ex-officio* Vice-Chairperson of the MCIAA and its Board of Directors.¹⁰⁹ Second, the Sandiganbayan correctly found that the prosecution established that as the General Manager and *ex-officio* Vice-Chairperson of the MCIAA, Yap was considered as the Head of the MCIAA, subject to the authority of its Board of Directors. He executed with AsiaBorders the Contract for procurement of the ARFFV. In the said Contract, he obligated the MCIAA to shoulder 20% of the contract price amounting to PHP 6 million as the MCIAA's share in the cost, fees, and charges relative to the opening of a letter of credit in favor of Ziegler Indonesia, which was supposedly the sole responsibility of AsiaBorders. Yap immediately approved Barillo's request to release the amount of PHP 6 million despite (1) the non-delivery of the ARFFV, and (2) the absence of surety bond AsiaBorders should have secured as required by the Contract.¹¹⁰ Finally, the Contract was grossly and manifestly disadvantageous to the government and Yap had a hand in its execution.¹¹¹

Issues

SB-16-CRM-1076 (Violation of Section 3[e] of Republic Act No. 3019)

1. Was the Information anchored on any supposed defective terms in the Contract for the procurement of the ARFFV?
2. Was AsiaBorders a qualified bidder?
3. May accused-appellants be held liable for acts not specifically alleged in the Information?
4. Was the payment of PHP 6 Million representing the costs and charges for opening a letter of credit for AsiaBorders premature?

SB-16-CRM-1077 (Violation of Section 3[g] of Republic Act No. 3019)

1. Who fixed the purchase price for the procurement of the ARFFV?

¹⁰⁷ *Id.* at 635-636.

¹⁰⁸ *Id.* at 639.

¹⁰⁹ *Id.* at 639.

¹¹⁰ *Id.* at 640-641.

¹¹¹ *Id.* at 641.

2. Did Yap execute the customs documents bearing a lower valuation of the ARFFV?

Our Ruling

We acquit.

I.

SB-16-CRM-1076 (Violation of Section 3[e] of Republic Act No. 3019)

Accused-appellants were charged with violation of Section 3(e) of Republic Act No. 3019, as amended, thus:

“That on 10 March 2006 or sometime prior or subsequent thereto, in the City of Lapu-Lapu, Province of Cebu, Philippines, the said accused ADELBERTO F. YAP, a high-ranking public officer, being then the General Manager, VERONICA ORDOÑEZ, being then the Chairman of the Bids and Awards Committee (BAC), SIGFREDO V. DUBLIN, being then the Legal Officer and a member of the BAC, MA. VENUS B. CASAS, being then the Officer-in-Charge of the Accounting Division, all of Mactan Cebu International Airport Authority (MCIAA), while in the performance of their official functions and committing the offense in relation to their office, cooperating, conspiring and confederating with one another and with accused private individual MARLON E. BARILLO, then the President of Asiaborders Philippines, Inc. (Asiaborders) unlawfully and wilfully acting with evident bad faith or gross inexcusable negligence caused the advance partial payment of Php6,000,000.00 to Asiaborders despite the fact that Asiaborders was not a qualified bidder, and the vehicle subject of the Contract for the Supply and Delivery of one Aircraft Rescue Fire Fighting Truck between MCIAA and Asiaborders had not yet then been delivered, inspected and accepted, in violation of Section 88 of Presidential Decree No. 1445, thereby giving unwarranted benefits to Asiaborders and causing undue injury to the government in the aforementioned amount.

CONTRARY TO LAW.”¹¹²

The pertinent provisions of Section 3(e) of Republic Act No. 3019, as amended, state:

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

X X X X

¹¹² *Id.* at 5.

(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 x

Violation of Section 3(e) of Republic Act No. 3019 requires the following elements: (1) the accused must be a public officer discharging administrative, judicial, or official functions or a private individual acting in conspiracy with such public officers; (2) the accused acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) the 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.¹¹³

There is no question as to the presence of the **first element**. Yap, Ordoñez, Dublin, and Casas were public officers for the period relevant to the offense charged, being then the General Manager, Chairperson of the BAC, Legal Officer and BAC member, and Manager of the Accounting Division, respectively, of the MCIAA, a government-owned and controlled corporation created under Republic Act No. 6958.¹¹⁴ As for Barillo, he is a private individual charged to have acted in conspiracy with the other accused-appellants who were all public officers.

We now focus on the **second and third elements**.

Second element – manifest partiality, evident bad faith, or gross inexcusable negligence

In *Uriarte v. People*,¹¹⁵ the Court decreed that Section 3(e) of Republic Act No. 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.¹¹⁶ This is the mental element of the crime charged — its *mens rea*. It ranges from recklessness to an intentional mental framework.¹¹⁷

Evident bad faith “does not simply connote bad judgment or negligence” but of having a “palpably and patently fraudulent and dishonest

¹¹³ *Renales v. People*, G.R. No. 231530-33, June 16, 2021 [Per J. Carandang, First Division].

¹¹⁴ Charter of the Mactan Cebu International Airport Authority; approved July 31, 1990.

¹¹⁵ 540 Phil. 477 (2006) [Per J. Callejo, Sr., First Division].

¹¹⁶ *Id.* at 494.

¹¹⁷ *People v. Ramirez*, G.R. No. 254552, July 20, 2022 [Per J. Lazaro-Javier, Second Division].

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.”¹¹⁸ **Manifest partiality**, on the other hand, is defined as a clear, notorious, or plain inclination or predilection to favor one side or person rather than another,¹¹⁹ while **gross inexcusable negligence** is defined as negligence characterized by the want of even the slightest care. It presupposes 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.¹²⁰ We find that the element of **manifest partiality, evident bad faith, or gross inexcusable negligence** is not present in this case.

The Information was not hinged on any supposed defective terms in the Contract for the procurement of the ARFFV

Undeniably, the **Contract** is the primary source of the rights and obligations of the government and AsiaBorders, represented by Barillo relative to the procurement of the ARFFV. With respect to the duty of the supplier to obtain a letter of credit as condition *sine qua non* to the delivery of the subject ARFFV to the Philippines, we quote anew the relevant terms of the Contract, *viz.*:

ARTICLE V

LETTER OF CREDIT

1. The SUPPLIER hereby assumes the obligation of opening an irrevocable letter of credit in favor of the manufacturer which shall be issued within ten (10) days from the execution of this contract.

2. For an[d] in consideration of the above obligation of the SUPPLIER, the PARTIES hereby agree that eighty percent (80%) of the costs, fees and charges in opening the letter of credit shall be paid by the SUPPLIER and the remaining twenty percent (20%) shall be borne by the PURCHASER subject to the following conditions:

a. The amount chargeable to the PURCHASER shall not exceed Six Million Pesos (Php6,000,000.00) which shall be deducted from the total contract price payable to the SUPPLIER after the complete delivery and acceptance of the aircraft and rescue firefighting truck.

b. The amount chargeable to the PURCHASER shall be covered by a surety bond taken by the SUPPLIER in favor of the

¹¹⁸ *Chung v. Office of the Ombudsman*, G.R. No. 239871, March 18, 2021 [Per J. Caguioa, First Division].

¹¹⁹ *Id.*, citing *Albert v. Sandiganbayan*, 599 Phil. 439 (2009) [Per J. Carpio, First Division].

¹²⁰ *Id.*, citing *Sanchez v. People*, 716 Phil. 397 (2013) [Per C.J. Sereno, First Division].

PURCHASER and duly issued by the GSIS or any accredited insurance company.¹²¹

As it was, the charge was hinged on the supposed illegal payment of the government's 20% share in these costs, fees, and charges. This alleged illegality sprang from the "not qualified bidder status" of AsiaBorders and the payment of the 20% government share even before the delivery to and acceptance by the government of the ARFFV.

Were these factual allegations proved by the prosecution to a moral certainty? **We rule in the negative.**

On the supposed "not qualified bidder" status of AsiaBorders, the Court notes **that the validity of the Contract was never assailed in this case, whether here or below; nor in any separate proceeding. For all intents and purposes, therefore, the Contract is valid in all respects, including the subject matter, the obligee and the obligor, the reciprocal obligations of the parties, and the price certain or consideration.**

A mere allegation in the Information that AsiaBorders was not a 'qualified bidder' is at best a stray conclusion of fact. As worded, the Information did not even allege any relevant details to apprise the accused-appellants of the cause of the accusation against them vis-à-vis the "not qualified bidder status" of AsiaBorders. In fine, such sweeping characterization of AsiaBorders in the Information should be considered as a mere surplusage to be deemed not to have been written at all. Otherwise, there would be a serious violation of the constitutional right of accused-appellants to be apprised of the nature and cause of the accusation against them as part of their cognate right to due process.

Section 14 (2), Article III of the 1987 Constitution guarantees the right of the accused in all criminal prosecutions to be informed of the nature and cause of the accusation against him or her, viz.:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Emphasis supplied)

¹²¹ Exhibit "D-2" of the Prosecution.

Indeed, in criminal cases, as here, where the life and liberty of the accused is at stake, **due process requires that the accused be informed of the nature and cause of the accusation against him. An accused cannot be convicted of an offense unless it is clearly charged in the complaint or information. To convict him or her of an offense other than that charged in the complaint or information would be a violation of this constitutional right.** The important end to be accomplished is to describe the act with sufficient certainty in order that the accused may be apprised of the nature of the charge against him or her and to avoid any possible surprise that may lead to injustice. Otherwise, the accused would be left in the unenviable state of speculating why he or she is made the object of a prosecution.¹²²

AsiaBorders was a qualified bidder

Records show that the status of AsiaBorders as a qualified bidder has been affirmed many times over. It participated in the pre-bidding conference and the bidding on February 2, 2006 for the supply and delivery of the subject ARFFV by entering a bid of USD 732,000.00 or PHP 38,129,880.00.¹²³ It was found by the BAC to have complied with all the documentary requirements for a valid bid.¹²⁴ Per Resolution No. 118-2006, the BAC declared AsiaBorders as the bidder with the lowest calculated and responsive bid, and recommended that the contract be awarded to AsiaBorders.¹²⁵ Consequently, in his capacity as MCIAA General Manager, Yap approved the award of the contract to AsiaBorders.¹²⁶ The Contract was subsequently reviewed and found to be in order by then MCIAA General Counsel Dublin. And finally, it was approved by the MCIAA Board of Directors, which also authorized the MCIAA Management to issue the notice of award to AsiaBorders. It was the reason Yap, in his capacity as MCIAA General Manager, entered into the subject Contract with AsiaBorders.

Accused-appellants cannot be held liable for acts not specifically alleged in the Information

Nothing in the Information mentioned the omission of any of the foregoing steps relevant to the status of AsiaBorders as a qualified bidder and awardee of the Contract. Nor did the Information allege the specific acts by which each of herein accused-appellants acted in conspiracy in the commission of the crime charged.

In its appealed decision, however, the Sandiganbayan found three reasons to support its factual conclusion that AsiaBorders was not a qualified

¹²² *Limbo v. People*, G.R. Nos. 204568-83 & 207028-30, April 26, 2023 [Per J. Zalameda, First Division].

¹²³ SB rollo Vol. VII, p. 121; Minutes of the Bidding dated February 2, 2006.

¹²⁴ *Id.*

¹²⁵ *Id.* at 122.

¹²⁶ *Id.* at 121.

bidder, and yet, was awarded the Contract through the alleged conspiratorial scheme of accused-appellants among themselves. **First, Dublin and Ordoñez** drafted and signed, respectively, Bid Bulletin No. 4 which reduced, sans any justification, from five years to one year the relevant experience required of the local representatives/agents in the supply, delivery, and maintenance of airport rescue firefighting trucks or airport-related equipment. According to the Sandiganbayan, since AsiaBorders had only one year of relevant experience, it was not a qualified bidder; **Second, Dublin and Ordoñez** recommended the bid of AsiaBorders notwithstanding it only had a paid-up capital of PHP 300,000.00, which financial inability was highlighted by the fact that AsiaBorders was unable to open a letter of credit by and for itself; **Third**, on March 9, 2006, **Barillo** sent a letter to **Yap** requesting that the sum of PHP 6 million be remitted to AsiaBorders for the opening of the required letter of credit despite the non-delivery of the ARFFV; **Fourth**, **Yap** approved this request right off and signed the **Disbursement Voucher No. 101-2006-03118** where he certified that the expenses and cash advance were necessary and lawful; and approved the voucher in the amount of PHP 6 Million. **Yap** too was a signatory to the LBP Check dated March 10, 2006 payable to AsiaBorders.¹²⁷

We keenly note that these factual conclusions on how accused-appellants supposedly performed their individual or collective acts in concert for the purpose of violating Section 3(e) of Republic Act No. 3019 were not borne in the Information itself. The same were not part of the factual allegations which were read to accused-appellants during their respective arraignments. We therefore sustain the argument of **Yap** that the Sandiganbayan invalidly supplied and read into the Information inculpatory factual allegations which were not found therein. This equates to grave abuse of discretion amounting to excess or lack of jurisdiction. Most of all, it violates the constitutional right of accused-appellants to be informed of the charge and cause of the accusation against them.

This being the case, therefore, the so called “not qualified bidder” status of AsiaBorders as alleged in the Information, sans any particulars on how it was so and how each of the accused-appellants “unlawfully and wilfully acted with evident bad faith or gross inexcusable negligence” caused the advance payment of PHP 6 million to AsiaBorders, albeit it was “not a qualified bidder” is **deemed not to have been established.**

In *Evangelista v. People*,¹²⁸ the Court reversed a judgment of conviction for violation of Section 3(e) of Republic Act No. 3019 on the ground that the accused was made liable for acts different from those described in the Information. The accused therein was convicted on the finding that she failed to identify with certainty in her certification the kinds of taxes paid by Tanduay Distillery, Inc., although the Information charged

¹²⁷ *Rollo*, pp. 35-36.

¹²⁸ 392 Phil. 449 (2000) [Per J. Ynares-Santiago, First Division].

her with falsifying the said certificate. **The Court decreed that, constitutionally, the accused has a right to be informed of the nature and cause of the accusation against her. To convict her of an offense other than that charged in the complaint or Information would be a violation of this constitutional right.**¹²⁹

Thus, applying *Evangelista*, to affirm accused-appellants' conviction based on supposed acts not found in the Information would gravely violate the sacred constitutional right of accused-appellants to be informed of the nature and cause of the accusation against them.

The payment of PHP 6 million representing the government's share in the costs and expenses for securing the required letter of credit was not premature

We now tackle the second and last circumstance used by the Sandiganbayan against accused-appellants, i.e., **PHP 6 million was paid to AsiaBorders even though there was no delivery yet of the ARFFV to the government.**

To begin with, the payment of PHP 6 million is an obligation of the government under the **Contract**, particularly in paragraphs 1 and 2 of Article V under the heading **Letter of Credit** which, for easy reference, is once more quoted below, *viz.*:

ARTICLE V

LETTER OF CREDIT

1. The SUPPLIER hereby assumes the obligation of opening an irrevocable letter of credit in favor of the manufacturer which shall be issued within ten (10) days from the execution of this contract.

2. For an (sic) in consideration of the above obligation of the SUPPLIER, the PARTIES hereby agree that eighty percent (80%) of the costs, fees and charges in opening the letter of credit shall be paid by the SUPPLIER and the remaining twenty percent (20%) shall be borne by the PURCHASER subject to the following conditions:

a. The amount chargeable to the PURCHASER shall not exceed Six Million Pesos (Php6,000,000.00) which shall be deducted from the total contract price payable to the SUPPLIER after the complete delivery and acceptance of the aircraft and rescue firefighting truck.

b. The amount chargeable to the PURCHASER shall be covered by a surety bond taken by the SUPPLIER in favor of the

¹²⁹ *Burgos v. Sandiganbayan*, 459 Phil. 794 (2003) [Per J. Azcuna, First Division].

PURCHASER and duly issued by the GSIS or any accredited insurance company.¹³⁰

In determining accused-appellants' criminal liability vis-à-vis the alleged premature payment of the amount in question, we focus on **when exactly it should have been paid in accordance with the Contract.**

As worded in the **Contract**, the government shall share in the cost, fees, and charges in the opening of the letter of credit to the extent of 20%. As to when it shall be paid, the provisions did not explicitly state. What is clear though, based on the attendant circumstances of the case, is - time was of the essence. For being part of the cost, fees, and charges relative to securing a letter of credit for AsiaBorders, the amount of PHP 6 million necessarily had to be paid before the delivery of the ARFFV itself since precisely this item could only be brought into the Philippines upon the obtention of the required letter of credit, a condition imposed under the **Contract itself, as approved by the MCIAA Board of Directors.** Without the government paying its part of the cost, fees, and charges, no letter of credit could be secured for the transaction which consequently would preclude the delivery of the item to the Philippines. In other words, the right time for its payment ought to coincide with when exactly it was needed to achieve the purpose for which it was intended in the first place. Stated differently, it should be paid at the time when the need for it arose, that is, at the filing of the application for the letter of credit.

In any case, we also reckon with the clause in the Contract that the PHP 6 million "shall be deducted from the total contract price payable to the SUPPLIER after the complete delivery and acceptance of the aircraft and rescue firefighting truck."¹³¹ In light of the attendant circumstances, specifically the fact that the PHP 6 million was intended as a component of the charges and fees to be incurred vis-à-vis the opening of the letter of credit and the time when it was precisely needed for the purpose, it is logical to conclude that "after complete delivery and acceptance of the aircraft and rescue firefighting truck" refers not to the time when PHP 6 million shall be paid by the government but rather to the time when that amount shall be deducted from the total purchase price. This is the significance of the word "deducted" as borne in the Contract itself, taking into consideration the attendant circumstances, the intention of the parties, and their contemporaneous acts.

Be that as it may, in criminal cases, where the Contract upon which the indictment is hinged partakes of varying interpretations, that which is favorable to the accused and consistent with the presumption of innocence should prevail. In *Intestate Estate of Carungcong v. People*,¹³² we held

¹³⁰ Exhibit "D-2" of the Prosecution.

¹³¹ *Id.*

¹³² 626 Phil. 117 (2010) [Per J. Corona, Third Division].

that “the fundamental principle in applying and in interpreting criminal laws is to resolve all doubts in favor of the accused. *In dubio pro reo*. “In case of doubt, then for the accused.” This is in consonance with the constitutional guarantee that the accused shall be presumed innocent until proven otherwise.

Intimately related to the *in dubio pro reo* principle is the rule of lenity. The rule applies when the court is faced with two possible interpretations of a penal statute, one that is prejudicial to the accused and another that is favorable to him or her. The rule calls for the adoption of an interpretation which is more lenient to the accused.¹³³ For it is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies, or equitable considerations. If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred.¹³⁴

Finally, we have the equipoise rule which states that where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scales in favor of the accused,¹³⁵ as in this case.

At any rate, the fact that the PHP 6 million shall be deducted from the total contract price simply goes to show that the government was not prejudiced, nor disadvantaged, much less, unnecessarily burdened by the prior payment of the said amount. Suffice it to state that insofar as the quality of the delivered item is concerned, the duly authorized appraiser himself who inspected the item confirmed that it was in good condition.¹³⁶ That the item may have been delivered late, again, was not alleged in the Information, hence cannot be taken against accused-appellants who were not priorly apprised thereof during their respective arraignments.

In another vein, we note that the **Application and Agreement for Commercial Letter of Credit (Exhibit “D-5” of the Prosecution)** was signed on **November 28, 2006** by **B/Gen. Danilo Augusto B. Francia, General Manager of the MCIAA**, not by **Yap** who was removed by the MCIAA Board of Directors effective July 31, 2006. No participation therein could be attributed to **Dublin** either since, like **Yap**, he also resigned as MCIAA legal officer effective July 31, 2006. Nor did **Ordoñez** have anything to do with the

¹³³ *Intestate Estate of Carungcong v. People*, 626 Phil. 177 (2010) [Per J. Corona, Third Division].

¹³⁴ *Centeno v. Villalon-Pornillo*, 306 Phil. 218 (1994) [Per J. Regalado, Second Division].

¹³⁵ *People v. Urzais*, 784 Phil. 561 (2016) [Per J. Perez, Third Division].

¹³⁶ Exhibit “O-12” of the Prosecution; Inspection Report dated March 14, 2011.

opening of the credit line since she served as Manager of the MCIAA's Finance and Accounting Department and as concurrent Chairperson of the BAC only until July 2006.

With respect to **Casas**, then Manager of the Accounting Division of the MCIAA, all she did was sign the **Disbursement Voucher No. 101-2006-03118** issued in favor of AsiaBorders not by her own choice or decision but simply pursuant to paragraphs 1 and 2 of Article V of the **Contract** and upon instruction to her by Yap. Incidentally, going back to the Information, even this singular act of **Casas** was not specifically alleged therein.

Lastly, with respect **Barillo**, the Information was likewise bereft of any particular acts he had done or his specific participation in the alleged conspiracy to cause undue injury to the government or give unwarranted benefits to AsiaBorders. In any event, his request for the release of the PHP 6 million, standing alone, could hardly be characterized as unlawful, much less, tainted with evident bad faith or gross inexcusable negligence.

In fine, the application here of Section 88¹³⁷ of Presidential Decree No. 1445, or the Government Auditing Code of the Philippines which prohibits the advance payment for services not yet rendered or for supplies and materials not yet delivered is at best misplaced. **Even then, a violation of this provision does not *ipso facto* indicate the presence of manifest partiality, evident bad faith, or gross inexcusable negligence.** The Court has consistently ordained that bad faith does not simply connote bad judgment or negligence but imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong or a breach of a sworn duty through some motive or intent, or ill-will to partake the nature of fraud.¹³⁸ As shown, this has not been established in the present case.

Third element – any undue injury caused to any party, including the government, or any unwarranted benefits, advantage, or preference given to any private party

¹³⁷ Section 88. Prohibition against advance payment on government contracts.

1. Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

2. Notwithstanding the foregoing paragraph, any government agency, with the approval of the proper department head, may furnish supplies and materials to any party who has a contract with that agency if the supplies and materials are needed in the performance of the services being contracted for and the value thereof does not exceed in any one month ten percent of the value of the services already rendered due and unsettled as computed by the agency concerned.

¹³⁸ *Ysidoro v. Leonardo-De Castro*, 681 Phil. 1 (2012) [Per J. Brion, Second Division].

In the absence of the requisite mental element of manifest partiality, evident bad faith, or gross inexcusable negligence, there can be no resulting undue injury to any party, specifically to the government. Nor can it be said that the **Contract** accorded some unwarranted benefit, advantage, or preference to AsiaBorders, particularly when the number of years of experience required of participating entities was reduced from five years to one year only.

On this score, we keenly note the explanation of **Ordoñez and Dublin**, both members of the BAC, that the aforesaid modification was due to the apprehension of the BAC that based on the feedback of interested bidders, the five-year requirement was too strict, and consequently, majority, if not all, would not be able to muster this requirement. Another explanation was the focus of the BAC on the qualification of the foreign supplier as the principal rather than its local agent such as AsiaBorders. It turned out later that two out of three participating bidders would have been disqualified for falling short of the five-year requirement had it not been reduced. The prosecution has not adduced any evidence to counter the soundness of these reasons.

Perceptibly, Article VIII, Section 23 of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, mandates:

**ARTICLE VIII
RECEIPT AND OPENING OF BIDS**

Section 23. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects.- **The BAC or, under special circumstances specified in IRR, its duly designated organic office shall determine the eligibility of prospective bidders for the procurement of Goods and Infrastructure Projects, based on the bidders' compliance with the eligibility requirements within the period set forth in the Invitation to Bid. The eligibility requirements shall provide for fair and equal access to all prospective bidders.** The documents submitted in satisfaction of the eligibility requirements shall be made under oath by the prospective bidder or by his duly authorized representative certifying to the correctness of the statements made and the completeness and authenticity of the documents submitted. x x x (Emphasis supplied)

The BAC here had the authority to modify the eligibility requirements of the bidders, i.e., *required number years in the business* in order to provide fair and equal access to all prospective bidders. This is an exercise of wisdom and discretion, if not a business judgment geared towards upgrading our airport facilities in accordance with international standards.

Indeed, we have decreed that “the discretion given to the authorities on this matter is of such wide latitude that the courts will not interfere therewith, unless it is apparent that it is issued as a shield to a fraudulent award. The exercise of this discretion is a policy decision that necessitates prior inquiry,



investigation, comparison, evaluation, and deliberation.”¹³⁹ This task can best be discharged by the government agencies concerned, not by the courts.¹⁴⁰ In fine, “the role of the courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.”¹⁴¹

Significantly, **Ordoñez and Dublin** clarified in open court that the modification was made in the exercise of the BAC’s discretionary functions to set the minimum qualification standards of the prospective bidders. The records in fact show that **both Pelican Bay and AsiaBorders benefitted from the modification of the required number of years for local agents/representatives from five years to one year.** At the time of the bidding on February 2, 2006, AsiaBorders had been existing for one year and seven months since it was issued a Certificate of Incorporation¹⁴² by the Securities and Exchange Commission (SEC) on July 28, 2004. Meanwhile, Pelican Bay had been existing for two years and one month considering that its corporate existence commenced on January 21, 2004 per its Certificate of Incorporation¹⁴³ issued by the SEC.

In sum, the decision of the BAC to reduce the five-year requirement was not shown to have been made purposely to favor AsiaBorders.

We emphasize anew that **to successfully prosecute the accused under Section 3(e) of Republic Act No. 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 still 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.¹⁴⁴ As shown, the prosecution failed to muster the requisite quantum of evidence to sustain a verdict of conviction against accused-appellants for violation of Section 3(e) of Republic Act No. 3019. Hence, a verdict of acquittal is in order.

¹³⁹ *Veritas v. Office of the President*, 282 Phil. 734 (1992) [Per J. Melencio-Herrera, En Banc].

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Exhibit “O-33” of the Prosecution

¹⁴³ SB *rollo*, Vol. VII, p. 131.

¹⁴⁴ *People v. Martel*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021 [Per J. Caguioa, En Banc].

II.

SB-16-CRM-1077 (Violation of Section 3[g] of Republic Act No. 3019)

We reproduce anew the charge against accused-appellant Yap, *viz.*:

“That on 1 March 2006 or sometime prior or subsequent thereto, in the City of Lapu-Lapu, Province of Cebu, Philippines, accused ADELBERTO F. YAP, a high-ranking public officer, being then the General Manager of Mactan Cebu International Airport Authority (MCIAA), while in the performance of official functions and committing the offense in relation to his office, unlawfully and wilfully entered, on behalf of the government, into a contract manifestly and grossly disadvantageous to the same with Asiaborders Philippines, Inc. for the supply of one unit Aircraft Rescue Fire Fighting Truck (ARFF) for the sum of US\$732,000.00 of Php38, 137,200 when the ARFFV has a value of only US\$61, 836.86 or Php30, 903,526.69.

CONTRARY TO LAW.”¹⁴⁵

The applicable provision is Section 3(g) of Republic Act No. 3019, *viz.*:

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

The elements of the crime are: *first*, the offender is a public officer; *second*, he or she enters into a contract or transaction on behalf of the government; and *third*, the contract or transaction is grossly and manifestly disadvantageous to the government.¹⁴⁶ The presence of the first and second elements is undisputed. Yap was the General Manager of the MCIAA when he signed the **Contract for the Procurement of the ARFFV** as the duly authorized representative of the MCIAA, a government-owned and controlled corporation.

We discuss the **third element**. In *Morales v. People*,¹⁴⁷ the Court ordained that with respect to the third element of violation of Section 3(g) of

¹⁴⁵ *Rollo*, p. 5.

¹⁴⁶ *Valencia v. Sandiganbayan*, 477 Phil. 103 (2004) [Per J. Ynares-Santiago, First Division].

¹⁴⁷ 434 Phil. 471 (2002) [Per J. Panganiban, Third Division].

Republic Act No. 3019, '*manifest*' means "obvious to the understanding, evident to the mind . . . and is synonymous with open, clear, visible, unmistakable, indubitable, evident and self-evident." '*Gross*,' on the other hand, means "flagrant, shameful, such conduct as is not to be excused."

The Sandiganbayan held that **Yap** approved the transaction on behalf of the MCIAA and signed the **Contract** "show[ing] that the price for the ARFFV was USD 732,000.00 or PHP 38,137,200.00 when the ARFFV only has a value of USD 616,836.86 or PHP 30,903,526.69. The CIF value of the ARFFV per Commercial Invoice No. 061148/EXP/INV/ZI/XI/06 dated November 30, 2006 issued by Ziegler Indonesia was USD 616,836.14. However, the declared value of the ARFFV under BOC Import Entry and Internal Revenue Declaration No. NGA 0165-06 was only USD 80,105.00 (or PHP 4,013,260.50) or roughly 10% of its invoice price." The Sandiganbayan thus concluded that "the customs duty assessed in the amount of PHP 503,673.00 was less than 1/5 of the expected taxes which the government could have collected had the true value of the importation been declared."¹⁴⁸

It was the MCIAA Board of Directors which approved the increased budget for the procurement of the ARFFV and authorized the procurement in the amount of USD 732,000.00 or PHP 38,137,200.00

The records, however, show that it was not **Yap**, but the MCIAA Board of Directors which approved the increased budget for the acquisition of one ARFFV in the amount of USD 785,000.00 per its Resolution No. 2006-1028.¹⁴⁹ Further, it was also the MCIAA Board of Directors which authorized the MCIAA Management headed by Yap to issue a Notice of Award to AsiaBorders, being the winning bidder for the supply and delivery of one ARFFV, and to enter into the Contract for procurement in the amount of USD 732,000.00 or PHP 38,137,200.00.¹⁵⁰

As for the supposed discrepancy between the CIF value of the ARFFV per Commercial Invoice No. 061148/EXP/INV/ZI/XI/06 dated November 30, 2006, on the one hand, and the declared value of the ARFFV under BOC Import Entry and Internal Revenue Declaration No. NGA 0165-06, on the other, there is simply no proof that **Yap** had any participation in the preparation of these documents since obviously the same came into existence only **long after** he had already vacated the position of General Manager of the MCIAA on July 31, 2006.

¹⁴⁸ *Rollo*, p. 40.

¹⁴⁹ *SB rollo* Vol. VI, p. 101; Exhibit "O-7" of the Prosecution; Minutes of the MCIAA Board Meeting No. 2006-219 on January 25, 2006.

¹⁵⁰ *SB rollo* Vol. VII, p. 149; MCIAA Board Resolution No. 2006-1038; See Secretary's Certificate dated December 13, 2018.

Consequently, it is the height of injustice to make Yap criminally liable for an act he did not officially or personally perform; nor in any way have any participation therein. The prosecution's evidence simply failed to establish that he committed the act described in the Information as an alleged violation of Section 3(g) of Republic Act No. 3019.

Conviction must rest on evidence showing that the accused is guilty of the crime charged to a moral certainty. Short of this quantum of evidence, the presumption of innocence in favor of **Yap** remains in place and consequently compels a verdict of acquittal in his favor.¹⁵¹


ACCORDINGLY, the Appeal is **GRANTED**. The Decision dated February 14, 2020 and Resolution dated October 21, 2020 in Criminal Case Nos. SB-16-CRM-1076 and SB-16-CRM-1077 are **REVERSED**.

1. In **Criminal Case No. SB-16-CRM-1076**, accused-appellants **ADELBERTO FEDERICO YAP, VERONICA S. ORDOÑEZ, SIGFREDO V. DUBLIN, MA. VENUS B. CASAS, and MARLON E. BARILLO** are **ACQUITTED** of violation of Section 3(e) of Republic Act No. 3019 for failure of the prosecution to prove their guilt beyond reasonable doubt.

2. In **Criminal Case No. SB-16-CRM-1077**, accused-appellant **ADELBERTO FEDERICO YAP** is **ACQUITTED** of violation of Section 3(g) of Republic Act No. 3019 likewise for failure of the prosecution to prove his guilt beyond reasonable doubt.

Let an entry of judgment be issued immediately.

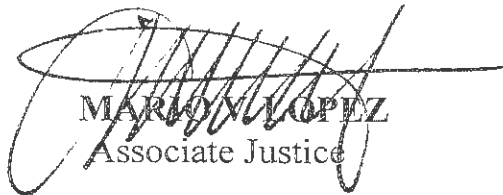
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

¹⁵¹ *Evangelista v. People*, 392 Phil. 449 (2000) [Per J. Ynares-Santiago, First Division], citing *People v. Legaspi*, 387 Phil. 108 (2000) [Per J. Buena, Second Division].

WE CONCUR:

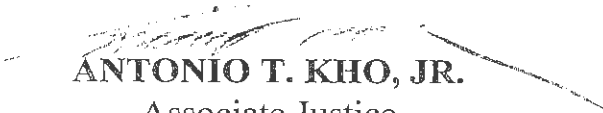
(On Leave)
MARVIC M. V. F. LEONEN
Senior Associate Justice



MARIO V. LOPEZ
Associate Justice



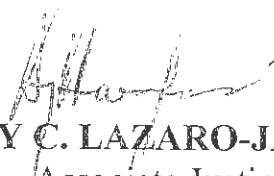
JHOSEP Y. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

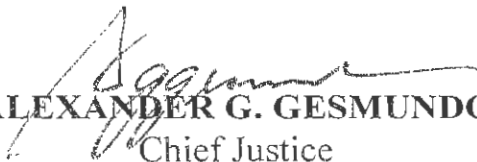
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



AMY C. LAZARO-JAVIER
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the above Division Acting 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