SPECIAL SECOND DIVISION

G.R. Nos. 191611-14 – LIBRADO M. CABRERA and FE M. CABRERA, *petitioners*, ***versus*** **PEOPLE OF THE PHILIPPINES,** *respondent.*

Promulgated:

APR 0 6 2022

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CONCURRING OPINION

CAGUIOA, *J.*:

I fully concur with the *ponencia* in acquitting petitioners Librado M. Cabrera (Librado) and Fe M. Cabrera (Fe) (collectively, petitioners). I submit this separate Concurring Opinion if only to stress anew that a violation of a procurement law does not *ipso facto* translate into a violation of Section 3(e) of Republic Act No. (RA) 3019.

Brief review of the facts

Petitioners are charged separately with two counts each of violation of Section 3(e) of RA 3019 for similar acts committed during their respective terms as municipal mayor of Taal, Batangas.

The first charge against petitioner Librado, as Municipal Mayor of Taal, Batangas and in alleged conspiracy with the Municipal Councilor Luther Leonor (Leonor), pertains to the direct purchase of medicines on several occasions from Diamond Laboratories, Inc. (DLI), a corporation owned by relatives by consanguinity of petitioner Librado, without the benefit of public bidding or canvass. The second charge against him arose from reimbursements of expenses he incurred during allegedly unauthorized travels.

Similarly, the first charge against petitioner Fe, as Municipal Mayor of Taal, Batangas and in alleged conspiracy with Municipal Councilor Leonor, also pertains to the direct purchase of medicines on several occasions from DLI, a corporation owned by relatives by affinity of petitioner Fe, without the benefit of public bidding or canvass. The second charge against her likewise arose from reimbursements of expenses she incurred during allegedly unauthorized travels.

Petitioners interposed identical defenses. With respect to the direct purchase of medicines from DLI, petitioners averred that the purchases were in the nature of emergency purchases from a duly licensed manufacturer; hence, there is no need to conduct a competitive public bidding under the

Local Government Code (LGC). As to the supposedly improper reimbursements of their travel expenses, petitioners claimed that they had been verbally authorized by then Governor Hermilando I. Mandanas (Governor Mandanas) in compliance with the LGC. In fact, then Governor Mandanas subsequently ratified such authorization in writing.

Leonor, on the other hand, alleged that his participation in the illegal procurement was limited to the collection of payments from DLI.

The Sandiganbayan acquitted Leonor on both counts but found that petitioners acted with manifest partiality in causing the direct purchase of medicines from DLI and with evident bad faith and gross inexcusable negligence in reimbursing their travel expenses without prior written authorization.

In a Decision dated July 29, 2019, the Court affirmed the findings of the Sandiganbayan. Petitioners thereafter sought reconsideration, which the Court now grants upon further review.

At the outset, I observe that the Information filed against petitioners employed a shotgun method of listing the three modes by which Section 3(e) may be violated, *i.e.*, through evident bad faith, manifest partiality, and gross inexcusable negligence, despite the fact that the first two are committed by means of *dolo* while the third is by *culpa*; therefore, making it illogical for all three modes to be simultaneously present.

The prosecution was not able to prove beyond reasonable doubt the element of manifest partiality in the purchase of medicines

There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are."[1] Mere partiality is not sufficient — the same must be manifest.

In the case at bar, the *ponente* correctly found that the evidence on record is *not sufficient to prove beyond reasonable doubt* that there was manifest partiality on the part of petitioners when they caused medicines to be purchased directly from DLI. Section 366[2] of the LGC allows procurement

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1 *Villarosa v. Ombudsman*, G.R. No. 221418, January 23, 2019, 891 SCRA 244, 263.

2 SECTION 366. *Procurement Without Public Bidding.* – Procurement of supplies may be made without the benefit of public bidding under any of the following modes:
(a) Personal canvass of responsible merchants;
(b) Emergency purchase;
(c) Negotiated purchase;
(d) Direct purchase from manufacturers or exclusive distributors; and

without public bidding in case of an emergency purchase and/or direct purchase from a manufacturer. To prove their genuine belief that the purchases of the medicine could be made without public bidding, petitioners presented a Purchase Request from the Head of the Municipal Health Office of Taal, Batangas, certifying the exceptional urgency for the purchased medicines "to prevent [an] imminent and real danger to, or loss of, life or property."[3] Petitioners likewise presented a resolution from the Office of the Deputy Ombudsman for Luzon showing that DLI is a duly licensed manufacturer. These pieces of evidence, unrebutted by the prosecution, create reasonable doubt on the guilt of petitioners.[4]

Clearly, petitioners had basis to believe that there was no need to conduct a public bidding because the purchase of the medicines fell under emergency purchase and/or direct purchase from a manufacturer. Petitioners' good faith belief, which finds basis in Section 366 of the LGC, negates the element of manifest partiality.

Although the purchase did not comply strictly with the procurement laws, such does not automatically lead to a violation of Section 3(e) of RA 3019. It is simply absurd to criminally punish every official who violates procurement laws. For a violation of the procurement laws to give rise to a violation of Section 3(e) of RA 3019, it is not enough for the prosecution to show that irregularities attended the procurement. The prosecution must further prove each and every element of Section 3(e) of RA 3019. In other words, the prosecution must establish that such irregularities were animated with *corrupt intent*.

The element of evident bad faith is absent in the reimbursement of travel expenses

Evident bad faith "contemplates a 'state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.'"[5] Evident bad faith "does not simply connote bad judgment or negligence"[6] but of having a "palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes."[7] Simply put, it partakes of the nature of fraud.[8]

(e) Purchase from other government entities.

3 *Ponencia*, p. 10. Emphasis omitted.

4 Id. at 11.

5 *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).

6 *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994).

7 *Fuentes v. People*, 808 Phil. 586, 594 (2017).

8 *Fonacier v. Sandiganbayan*, supra note 6, at 693.

In this case, I agree with the *ponencia*'s finding[9] that petitioners honestly believed that a verbal authorization is sufficient to permit their travels outside the municipality. The relevant provision of the LGC states:

> SECTION 96. *Permission to Leave Station.* — (a) Provincial, city, municipal, and barangay appointive officials going on official travel shall apply and secure **written permission** from their respective local chief executives before departure. The application shall specify the reasons for such travel, and the permission shall be given or withheld based on considerations of public interest, financial capability of the local government unit concerned and urgency of the travel. Should the local chief executive concerned fail to act upon such application within four (4) working days from receipt thereof, it shall be deemed approved.
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> (b) **Mayors of component cities and municipalities shall secure the permission of the governor concerned for any travel outside the province.**
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> (c) Local government officials traveling abroad shall **notify** their respective sanggunian: *Provided*, That when the period of travel extends to more than three (3) months, during periods of emergency or crisis or when the travel involves the use of public funds, **permission** from the Office of the President shall be secured.
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> (d) Field officers of national agencies or offices assigned in provinces, cities, and municipalities shall not leave their official stations without giving prior **written notice** to the local chief executive concerned. Such notice shall state the duration of travel and the name of the officer whom he shall designate to act for and in his behalf during his absence. (Emphasis and underscoring supplied)

A reading of Section 96 of the LGC reveals that paragraphs (a) and (d) require a "written permission" and "written notice" from provincial, city, municipal, and barangay appointive officials and field officers of national agencies or offices assigned in provinces, cities, and municipalities only. Both paragraphs even discussed the details that should be found in the written authorization.

On the other hand, paragraphs (b) and (c) state that only a "permission" is required of covered officials, without indicating the nature of such permission and without stipulating the details that should be included in said permission, as similarly pointed out by the *ponencia*.[10] This omission lends credence to the honest belief of petitioners that they need not have obtained a *written* permission from then Governor Mandanas. It must be emphasized that the four paragraphs pertain to different categories of public officials. Accordingly, the written permission required of *appointive* officials falling under paragraph (a) does not automatically apply to *elective* mayors of component cities and municipalities covered by paragraph (b). Evidently,

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9 *Ponencia*, p. 12.

10 See id.

Section 96 itself makes a distinction as to the nature of the permission required of the public officials falling thereunder.

When a law leaves room for interpretation, misinterpretation is inevitable. Petitioners cannot be faulted for interpreting Section 96 the way they did. Their interpretation is not entirely baseless as to amount to a deliberate misapplication of the law. Petitioners' genuine belief that the verbal permission of then Governor Mandanas is sufficient authorization for their travels, which finds basis in Section 96, negates wrongful or malicious intent. To stress, when the accused is alleged to have acted with evident bad faith under Section 3(e) of RA 3019, the crime alleged is a crime of *dolo*[11] — an offense committed with *wrongful or malicious intent.*[12] The same cannot be said of petitioners who believed in good faith that they only needed a verbal authorization from then Governor Mandanas for their travels outside the province.

Indeed, to criminally punish public officials for misunderstanding a law susceptible to misinterpretation is counterproductive. Public officials would have to consult with a lawyer for their every move to avoid criminal suits. This would unnecessarily impede the actions of an institution that is already unwieldy to begin with. Undue delay in the delivery of government services will become the norm, instead of the exception.

When the language of the law is vague and open to interpretation, as in this case, there is all the more basis to give petitioners the benefit of the doubt for their interpretation.

The element of gross inexcusable negligence is absent in the reimbursement of travel expenses

Gross inexcusable negligence under Section 3(e) of RA 3019, a culpable felony, does not require fraudulent intent or ill will. It is defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless persons never fail to take on their own property.[13]

Petitioners obtained a verbal permission from then Governor Mandanas authorizing their travels. Their act of securing a verbal permission cannot be characterized as one *want of even slight care and willfully and intentionally with conscious indifference to the consequences of their failure to act in accordance with the law.* As discussed, petitioners had basis to believe that

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11 *Uriarte v. People*, 540 Phil. 477, 494 (2006).

12 See *Beradio v. Court of Appeals*, 191 Phil. 153, 163 (1981).

13 *Roy III v. Carpio-Morales*, G.R. No. 225718, March 4, 2020, 934 SCRA 392, 402-403.

they only needed to secure a verbal permission — which they did. Hence, petitioners cannot be held liable for Section 3(e) under the mode of gross inexcusable negligence.

That then Governor Mandanas testified that he carried out a "freedom to travel" policy, giving mayors under him blanket authority to travel outside their respective municipalities, and even subsequently ratified in writing the travels of petitioners, bolsters the honest belief of petitioners that they only needed verbal authorization for their travels.

Mistakes, no matter how patently clear, committed by a public officer are not actionable "absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."[14]

A Final Word

I reiterate my position in *Martel v. People.*[15] A violation of the procurement laws does not *ipso facto* lead to a violation of RA 3019. This was established as early as 2002 in *Sistoza v. Desierto*[16] where the Court ruled that even if the irregularities in the bidding were true and proved beyond reasonable doubt, the same does not automatically result in finding the act of the accused as culpable under RA 3019.[17]

I cannot, in good conscience, agree to punishing with imprisonment any and all violations of procurement laws. The adage that public office is a public trust is and always will be true. Yet, I cannot subscribe to the thinking that every irregularity in government transactions constitutes manifest partiality, evident bad faith, or gross inexcusable negligence that is criminally punishable. If that is the case, then we might as well dispense with administrative proceedings against public officials, for what is the sense of having a distinction between administrative and criminal cases when every single misstep merits a criminal sanction.

The pernicious practice of convicting public servants for violation of procurement laws — where there is no showing of *fraudulent and corrupt intent* — must be stopped if only to permit duly elected officials to do what they are mandated, that is, render public service or, in this case, respond to an imminent medical emergency. The sword of Damocles hanging over every public servant, hounding their every step with the threat of criminal action, must be banished once and for all.

RA 3019 was crafted as an anti-graft and corruption measure. The crux of the acts punishable under RA 3019 is corruption. As explained by one of

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[14] *Collantes v. Marcelo*, 556 Phil. 794, 806 (2007).
[15] G.R. Nos. 224720-23 and 224765-68, February 2, 2021.
[16] 437 Phil. 117 (2002).
[17] *Martel v. People*, supra note 15, at 32.

the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized."[18] Graft entails the acquisition of gain in *dishonest* ways.[19] **For an act to fall under Section 3(e) of RA 3019, the same must be done with *fraudulent and corrupt intent*.** Such is the purpose of RA 3019 which this Court is mandated to uphold.

Based on the foregoing, I vote to **ACQUIT** petitioners Librado M. Cabrera and Fe M. Cabrera of the crime of violation of Section 3(e) of RA 3019.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[18] Id. at 29, citing Senate Deliberations on RA 3019 dated July 1960.
[19] Id., citing BLACK'S LAW DICTIONARY 794 (9th ed. 2009).