Republic of the Philippines
Supreme Court
Manila

SPECIAL FIRST DIVISION

TITO S. SARION,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. Nos. 243029-30

Present:

CAGUIOA, *J.*,
Chairperson,
ZALAMEDA,
GAERLAN,
DIMAAMPAO, and
KHO, JR., *JJ.*

Promulgated:
AUG 22 2022

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RESOLUTION

GAERLAN, *J.*:

This resolves the Motion for Reconsideration[1] of the Court's March 18, 2021 Decision[2] which denied the petition for review on *certiorari* under Rule 45 of the Rules of Court of petitioner Tito S. Sarion (petitioner), thereby affirming the Decision[3] dated September 29, 2017, and Resolution[4] dated November 8, 2018, of the *Sandiganbayan* in SB-11-CRM-0256 to 0257, convicting the petitioner of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) and of violating Section 3(e) of Republic Act (R.A.) No. 3019.

In the assailed Decision, the Court ruled that the issues raised by the petitioner are factual in nature, and as such beyond the province of a petition for review on *certiorari*. As none of the jurisprudentially established

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[1] *Rollo*, pp.762-790.
[2] Id. at 709-732.
[3] Id. at 95-119b. Penned by Associate Justice Sarah Jane T. Fernandez, with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez, concurring.
[4] Id. at 121-130.

exceptions obtain in this case, the Court concluded that there is no reason to deviate from the factual findings of the *Sandiganbayan*.[5]

Just the same, the Court delved into the merits of the charges and found that the *Sandiganbayan* correctly convicted the petitioner of the charges.

Addressing the petitioner's defense in the crime of Malversation, the Court opined that the petitioner, by the nature of his functions as then Mayor, is an accountable officer of the public funds of the Municipality of Daet. As such, petitioner must ensure that these funds are disbursed only for their "intended municipal use."[6]

In the case of the petitioner, the Court found that Malversation was committed through gross inexcusable negligence when the petitioner permitted Markbilt Construction (Markbilt) to receive payment of the price escalation despite not being entitled thereto. The Court explained that by approving the disbursement voucher and signing the Landbank check, despite the absence of appropriation and failure to comply with the requirements of Section 61 of Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, the petitioner facilitated the illegal release of public funds to Markbilt.[7]

Notably, contrary to the findings of the *Sandiganbayan*, the Court found that the petitioner is guilty of two acts both constitutive of malversation: 1) failure to comply with the requirements of R.A. 9184, and 2) the payment of price escalation despite the absence of appropriation.[8] The Court ruled that the petitioner cannot claim good faith as a defense, in view of the existence of circumstances which should have alerted petitioner to inquire further before approving the payment to Markbilt.[9]

With respect to the charge for violation of Section 3(e) of R.A. No. 3019, the Court likewise affirmed the petitioner's conviction after finding that he is guilty of gross inexcusable negligence when he violated basic rules in disbursement, thus causing undue injury to the Municipality of Daet.[10]

Aggrieved, the petitioner filed the instant Motion for Reconsideration. In his motion, the petitioner argued that he is not guilty of gross inexcusable

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[5] Id. at 716-717.
[6] Id. at 717-718.
[7] Id. at 719-723.
[8] Id. at 723-724.
[9] Id. at 726-728.
[10] Id. at 728-730.

negligence. In support thereof, he quoted the Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa which stated in gist that the Information violated the petitioner's constitutional right to information as it alleged "the absence of CAF, not irregularity";[11] that in fact there is no irregularity in the CAF as the price escalation claim of Markbilt contained in Supplemental Budget No. 01 was approved by Appropriation Ordinance No. 1.[12] In so far as non-compliance with Section 61 of R.A. No. 9184, that the same did not pertain to the petitioner, but to "Architect Itturalde for Aceron"; and that even assuming that it pertains to him, R.A. No. 9184 does not penalize the said irregularity.[13] Ultimately, the petitioner argues that he exerted the required diligence under the circumstances.[14]

In further support of his motion, the petitioner cited the legal opinion of Legal Officer Edmundo R. Deveza II (Legal Officer Deveza II), stating that the Municipal Engineering Office had been consulted and found no irregularity in the computation of the price escalation. And that the petitioner, in signing the disbursement voucher "relied in good faith on the diligent exercise of functions of the municipal officers who were primarily tasked with accounting, budgeting, and addressing legal matters." Hence, there is no "patent irregularity" which should have prompted him to inquire further.[15]

The Court **denies** the motion.

The petitioner in entreating that this Court review the factual findings of the *Sandiganbayan* under the instant petition for review on *certiorari* must demonstrate and prove that the case clearly falls under the exceptions to the rule.[16] In this case, the petitioner failed to discharge this burden. In his petition for review, the petitioner directly proceeded with the discussion of the alleged errors committed by the *Sandiganbayan* in evaluating the evidence and eventually in finding that they establish the elements of the crime charged. It is only in the instant motion for reconsideration, after the Court has pointed out the error, that the petitioner alleged that this case falls under the exceptions, and specified what these exceptions are. This, the Court cannot countenance.

Even then, the Court sees no reason to reverse the judgment of conviction.

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[11] Id. at 763, 775-779.
[12] Id. at 764, 772-774.
[13] Id. at 764-765.
[14] Id. at 765-771, 780-789.
[15] Id. at 767, 780-789.
[16] *Pascual v. Burgos*, 776 Phil. 167, 184 (2016).

The thrust of the instant motion for reconsideration centered on the Court's finding that the petitioner committed gross inexcusable negligence, a common element of the charges for Malversation and Section 3(e) of R.A. No. 3019. The same is a mere reiteration of his arguments in the petition for review and already passed upon by the Court in arriving at its Decision dated March 18, 2021.

There is no violation of the petitioner's constitutional right to information. There is indeed, as alleged in the Information, an absence of appropriation, not with respect to the entire project, as the same has admittedly been provided for with the statement of the contract price, *but specifically for the payment of price escalation.*

To recall, the *Contract Agreement*[17] entered into on December 29, 2003, provided only for one specific appropriation, that is for the amount of ₱71,499,875.29, relative to the Phase II construction of the Daet Public Market. Such contract price had already been fully released, and the payment of price escalation to Markbilt and subject of this case is over and beyond such amount.

The source of Markbilt's right to claim for price escalation is also based on the same contract, albeit contrarily, without any mention as to the source of funds for its satisfaction, *viz.*:

> 4. The Implementing Rules and Guidelines regarding Adjustment of contract prices adopted and approved by the Government will be applied in this contract.[18]

To authorize payment, there must **initially** be a statement of source of funding for the price escalation in accordance with the requirement of Section 86 of P.D. No. 1445; there is none in this case. As such the aforequoted clause in the *Contract Agreement* cannot be a source of an enforceable right on the part of Markbilt. As the Court elucidated in its decision:

> Section 85 in relation to Section 86 of P.D. No. 1445, requires the existence of a prior sufficient appropriation, as certified by the proper accounting official, before any contract for expenditure of public funds is authorized, *viz.*:
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> **Section 85. Appropriation before entering into contract.**

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[17] *Rollo*, pp. 169-172.
[18] Id. at 170.

> (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.
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> **Section 86. Certificate showing appropriation to meet contract.** Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate, signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Underscoring supplied.)

> The only appropriation in this case is the original contract price of Php 71,499,875.29. Consequently, no payment can be made beyond such amount. In the same way, as there is no funding to support the price escalation clause in the said *Contract Agreement,* no public funds can be disbursed in payment thereof. The clause is void and of no effect.[19] It cannot be enforced and the public officer who entered into the contract without such appropriation and certification shall be liable for any resulting damage to the government.[20]

At the risk of repetition, if only to emphasize the point, Section 86 of P.D. No. 1445 requires the existence of a **prior specific appropriation**, as certified by the proper accounting official, before any contract for expenditure of public funds is authorized. In this case, there is no such prior specific appropriation for the satisfaction of price escalation at the time the parties agreed to its payment on December 29, 2003, which renders such undertaking in the *Contract Agreement*, void and of no effect. To the Court, this is the "absence" referred to in the Information.

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19 **Section 87. Void contract and liability of officer.** Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

20 Id.

At any rate, even granting for the sake of argument that the failure of the Information to employ the word "irregularity" violated the petitioner's constitutional right to information, and as such may not be considered in determining the offense with which the petitioner may be prosecuted, the decision would remain the same.

The petitioner may still be convicted of the crime of Malversation and for violation of Section 3(e) of the R.A. No. 3019 on account of his approval of the disbursement voucher without first referring the matter to the National Economic and Development Authority (NEDA) for the determination of the of the existence of extraordinary circumstances and securing the approval of the Government Procurement Policy Board (GPPB). The petitioner's failure to comply with these requirements were clearly stated and alleged in the subject Informations. While it is true that non-compliance with these requirements under Sec. 61 of R.A. No. 9184 is not penalized under the Act, the inaction may, however, constitute a different offense. In fine, the imposition of penalty is not on account of R.A. No.9184, but of his acts that translate into violation of R.A. 3019 and the RPC.

The petitioner cannot rely on the doctrine in *Arias v. Sandiganbayan*[21] to exculpate himself from liability. As the Court stated in its Decision,

> "[t]he *Arias* doctrine is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability." When there are circumstances that should have alerted heads of offices to exercise a higher degree of circumspection in the performance of their duties, they cannot invoke the doctrine to escape liability. In this scenario, heads of offices are expected to exercise more diligence and go beyond what their subordinates have prepared.
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> In this case, the Court finds the existence of such circumstances which could have alerted the petitioner to inquire further prior to his approval of the disbursement voucher, beyond the certifications and documents issued by municipal officials.
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> To recall, the *Contract Agreement* for the construction of the Daet Public Market (Phase II) was entered into on December 29, 2003, during the petitioner's term as Municipal Mayor. Actual construction commenced in January 2005. Months thereafter or in December 2005, allegedly on account of spiraling costs of materials during the construction period, Markbilt filed a claim for the adjustment of contract price pursuant to the price escalation clause of the *Contract Agreement.* This was followed by successive requests for price escalation, *viz.*:

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21 259 Phil. 794(1989).

Billing Date	Amount	Period Covered
April 25, 2004	₱ 76,282.99	February 19, 2004-April 16, 2004
July 15, 2004	2,041,842.15	April 17, 2004-July 13, 2004
September 26, 2004	1,647,087.36	July 14, 2004-September 23, 2004
February 28, 2005	1,457,700.24	September 24, 2004-February 23, 2005
Total	**₱5,222,903.74**	

During the intervening period or in May 2004, Mayor Panotes was elected as Municipal Mayor of Daet. It was sometime in June 2005, during his term that the Phase II construction project was completed. Thereafter, Markbilt continued to file several letter-requests reiterating its claim for price escalation. However, then Mayor Panotes refused to act upon the claims until the end of his term in June 2007. It was when the petitioner was re-elected that Markbilt's claim was processed and eventually paid in May 2008.

Considering that two years has passed since the project's completion and more than three years since the first demand for payment of price escalation was made by Markbilt, the petitioner could have inquired into the circumstances attending the demand and the construction project and why the same was unacted upon by his predecessor. Instead of immediately instructing Administrator Nagera to look for sources of funds, he should have sought the opinion of the Municipal Engineer. Petitioner should have at the very least referred the documents relative to construction project to the appropriate municipal officials for study in order to verify the basis of Markbilt's claim. This is particularly relevant as majority of the project was undertaken and ultimately completed prior to his term. As well, the amount appropriated for the Daet Public Market (Phase II) construction project has already been fully released. Markbilt's demand is over and beyond the contract price and dependent upon the cost of materials almost three (3) years passed. Simply, the propriety of Markbilt's additional claim depends upon the prevailing market prices at the time they were purchased vis-à-vis the costs when the contract was entered into. In this regard, prudence dictates that further verification be conducted as to the veracity of the amount claimed by Markbilt. The amount involved is by no means trivial; it involves millions of pesos of public funds. Petitioner, as head of office, should have taken this precaution in order to safeguard the government funds for which he is responsible and protect the interests of the municipality.[22] (Citations omitted.)

Notably, it was not the petitioner who sought the opinion of Municipal Legal Officer Deveza II which he now strongly relies upon to prove that he exercised the diligence demanded by the circumstances. It was Accountant Robles, acting on the advice of the COA Auditor assigned to the municipality, who sought the opinion of Legal Officer Deveza II.[23] What is

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22 *Rollo*, pp. 726-728.
23 Id. at 109.

clear from the records is that the petitioner, immediately upon receiving the request of Markbilt for payment of price escalation, immediately ordered Administrator Nagera to look for sources of funds to satisfy the claim, thus prompting the creation and approval of Supplemental Budget No. 1, and the preparation of the disbursement voucher payable to Markbilt, ***all prior to the referral of the propriety of the additional claim to the concerned municipal officials.***[24] Verily, the petitioner already approved the amount of Markbilt's claim without first verifying whether the same is the correct amount, as he already authorized the release of *partial payment* covered by Disbursement Voucher No. 08041239. Contrary to his claim therefore, petitioner failed to exert diligence demanded by the circumstances in this case.

The petitioner holds the position of Municipal Mayor, he is not an ordinary public official. He occupies the highest position in the municipality; as such head of office, he exercises administrative supervision over all officials and employees in the locality. His *imprimatur* to the disbursement is not ministerial. It is incumbent upon him to ensure compliance with the basic requirements of the law prior to authorizing payment, particularly as the *Contract Agreement* which served as basis for the claim for price escalation was entered into during his prior term as Municipal Mayor. His gross inexcusable negligence in this case is therefore manifest when he immediately gave his *imprimatur* to Markbilt's claim by directing Administrator Nagera to look for funds for its satisfaction.

As the Court stated in its decision, a simple consultation and/or verification could have alerted the petitioner of the fact that Markbilt's claim for price escalation was not supported by a separate funding at the time it was made, and of the requirements that must be complied with under Sec. 61 of R.A. No. 9184, before any approval and payment of price escalation can be made.

The petitioner's failure to observe sufficient diligence under the circumstances coupled by and resulting to violation of the law and rules relating to disbursement of public funds amount to gross inexcusable negligence.

WHEREFORE, premises considered, petitioner Tito S. Sarion's Motion for Reconsideration is hereby **DENIED**. Consequently, the Court's Decision dated March 18, 2021 is **AFFIRMED**.

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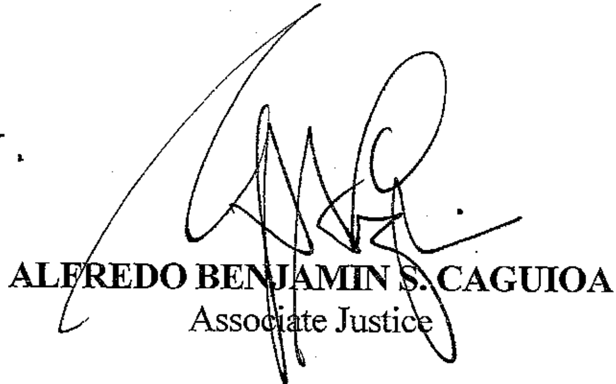
24 Id. at 108b-109, 176, 710-711.

SO ORDERED.

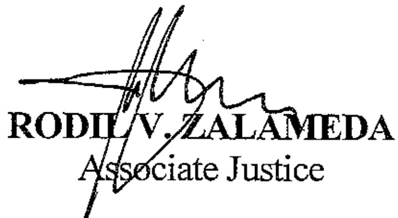
SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

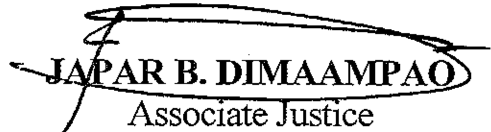
I Dissent. See dissenting opinion



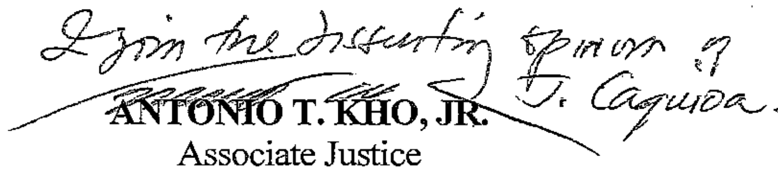
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice