

THIRD DIVISION

G.R. No. 255567 – PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,
v. JULIANA ACUIN VILLASIN, Accused-appellant.

Promulgated:
January 29, 2024

MicDCB-ff

X-----X

DISSENTING OPINION

SINGH, J.:

Public bidding is governed by the principles of transparency, competitiveness, simplicity and accountability. Verily, competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. **It aims to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.**¹

The majority decision resolves to acquit accused-appellant Juliana Acuin Villasin (**Villasin**) for failure of the prosecution to establish that Villasin acted with evident bad faith, manifest partiality, or gross inexcusable negligence and that the violation of the procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage, or preference.

I respectfully dissent from the *ponencia* and vote to deny the appeal.

In her Brief, Villasin maintained that the fact that the fertilizers have all been delivered to the farmer-beneficiaries belie the claim that she acted with manifest partiality, evident bad faith[,], or gross inexcusable negligence.²

Moreover, she claimed that the negligence attributed to her “were not of such nature and degree so as to be considered brazen, flagrant, and palpable”³ to be considered gross inexcusable negligence contemplated under

¹ *Subic Bay Metropolitan Authority v. Commission on Audit*, 845 Phil. 982, 998 (2019) [Per CJ Gesmundo, *En Banc*].

² *Rollo*, p. 104.

³ *Id.* at 112



Section 3 (e) of Republic Act No. 3019.⁴ Villasin further claimed that she insisted on following the regular procurement procedure. However, she should not be faulted for failure to follow the minute details, such as the preparation of bidding documents, as this pertains to the Bids and Awards Committee (**BAC**) Secretariat and not the Municipal Mayor.⁵ She further asserted that the choice of “Fil-Oil” brand was due to the recommendation of Department of Agriculture-Regional Field Unit 8.

Additionally, she alleged she only relied on Ala, her municipal accountant, who convinced her that direct contracting is allowed, and is thus protected by the *Arias* doctrine. As the documents provided to her did not appear spurious at face value and were given along with the recommendation of her subordinate, her acts should be considered made in good faith.⁶

Finally, Villasin asserted that she could not be blamed for non-compliance with a newly enacted law, such as Republic Act No. 9184,⁷ enacted on January 26, 2003, and its Implementing Rules and Regulations (**IRR**) -A, issued on October 8, 2003.

I respectfully disagree.

It is my considered view that the Sandiganbayan correctly found that all elements of violation of Section 3 (e) of Republic Act No. 3019 are present in this case.

Section 3 (e) of Republic Act No. 3019 reads as follows:

Sec. 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:

....

(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 [or her] official, administrative[,] or judicial functions through manifest partiality, evident bad faith[,] or gross inexcusable negligence. This provision shall apply to

⁴ Republic Act No. 3019 (1960), Anti-Graft and Corruption Act.

⁵ Rollo, p. 114.

⁶ *Id.* at 120.

⁷ Republic Act No. 9184 (2003), Government Procurement Reform Act.



officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Jurisprudence has established the following essential elements for the violation of Section 3 (e):

1. The accused must be a public officer discharging administrative, judicial[,] or official functions;
2. He [or She] must have acted with manifest partiality, evident bad faith[,] or [gross] inexcusable negligence; and
3. That his [or her] action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage[,] or preference in the discharge of his [or her] functions.⁸

In the case of *Cabrera v. People*,⁹ the Court had occasion to illustrate the applicability of each of the elements of the crime.

The *first* element need not be explained. In this case, there is no doubt that petitioners are public officers of Taal, Batangas, during the material time and date of the commission of the alleged violation. Librado was the mayor from January 30, 1998 to June 30, 1998 and his wife, Fe, was the incumbent Mayor from July 28, 1998 to July 6, 1999.

The *second* element provides the modalities by which a violation of Section 3(e) of [Republic Act] No. 3019 may be committed. It must be stressed that these three modes, namely “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence” are not separate offenses, and proof of the existence of any of these three in connection with the prohibited acts committed, is sufficient to convict. As explained by this Court:

[. . .] There is “manifest partiality” when there is clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. **“Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting[,] or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.**

The *third* element refers to two (2) separate acts that qualify as a violation of Section 3(e) of [Republic Act] No. 3019. An accused may be

⁸ *Cabrera v. Sandiganbayan*, 484 Phil. 350, 360 (2004) [Per J. Callejo, Sr., *En Banc*].

⁹ *Cabrera v. People*, 858 Phil. 14 (2019) [Per J. Reyes, Jr., Second Division].



charged with the commission of either or both. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e) of [Republic Act] No. 3019.

The *first* punishable act is that the accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." Aside from this, the loss or damage must be substantial. It must be "more than necessary, excessive, improper[,] or illegal."

The *second* punishable act is that the accused is said to have given unwarranted benefits, advantage, or preference to a private party. Proof of the extent or *quantum* of damage is not thus essential. It is sufficient that the accused has given "unjustified favor or benefit to another."¹⁰ (Emphasis supplied, citations omitted)

In this case, there is no question that Villasin is a public officer and that the act in question stemmed from the exercise of her official functions as Municipal Mayor and thereby, head of the procuring entity.

As aptly found by the Sandiganbayan, her patent failure to comply with procurement rules and regulations constitute gross negligence as contemplated under Section 3 (e). In *Ombudsman v. De Leon*,¹¹ the Court differentiated between gross and simple neglect.

Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.

In contrast, **simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."¹² (Emphasis supplied, citations omitted)**

It bears stressing that this case stemmed from an Audit Observation Memorandum issued by the Commission on Audit, flagging the Municipality of Barugo, Leyte's failure to comply with procurement rules and regulations

¹⁰ *Id.* at 23–24.

¹¹ 705 Phil. 26 (2013) [Per J. Bersamin, First Division].

¹² *Id.* at 37–38.



in its procurement of fertilizers from Bal's Enterprises. The transaction was likewise covered by an undated and unnumbered disbursement voucher and a check, dated May 26, 2004. The Sandiganbayan observed irregularities not only in specifying the fertilizer brand in the Invitation to Apply for Eligibility and to Bid (IAEB) but also in its posting, as directed by the Office of the Mayor, without the knowledge of the BAC of the said transactions,¹³ the lack of other supporting bidding documents, and the fact that the Purchase Request was prepared by the Mayor's Office and only sent to the office of co-accused Bodo for his signature. Moreover, direct contracting was pursued as an alternative method of procurement without the requisite BAC Recommendation. As resorting to alternative methods of procurement, such as direct contracting, is an exception to the general rule, it behooves Villasin to prove that the circumstances warrant resorting to such alternative procurement. Here, Villasin utterly failed to establish this.

Contrary to Villasin's assertion that the negligence if at all is simple and is not tantamount to gross negligence contemplated under Section 3 (e), the foregoing circumstances leave no doubt that Villasin has been seriously negligent in the discharge of her functions. The irregularities are not just lapses in minute details but actually span several aspects of the transaction, from specifying the fertilizer brand, which is in the IAEB and Purchase Request, all the way to the disbursement of the payments to the supplier through undated and unnumbered vouchers. This is not just simple neglect, all these point to a wanton disregard of procurement and accounting rules.

In *Ampil v. Ombudsman*,¹⁴ this Court found that a local chief executive's failure to comply with pertinent procurement rules and regulations could render him or her liable for violation of Section 3 (e) through gross negligence. The same conclusion cannot be avoided in this case.

Villasin cannot take refuge in *Arias v. Sandiganbayan*¹⁵ where this Court acknowledged that to a certain extent, heads of offices must rely in good faith on the recommendations of his or her subordinates.

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. **All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations.** If a department secretary entertains important visitors, the auditor is not ordinarily expected

¹³ *Rollo*, pp. 55-56.

¹⁴ 715 Phil. 733 (2013) [Per J. Perez, Second Division].

¹⁵ 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., *En Banc*].

to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.¹⁶ (Emphasis supplied)

The ruling in *Arias* is premised on the lack of any circumstances which should otherwise prompt the officer to further investigate or inquire. *Abubakar v. People*¹⁷ is thus instructive:

[t]he application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. **In a number of cases, this Court refused to apply the *Arias* doctrine considering that there were circumstances that should have prompted the government official to inquire further.**¹⁸ (Emphasis supplied)

Moreover, *Arias* finds no application considering that the Sandiganbayan's findings show that Villasin did not rely on her subordinates. On the contrary, she imposed upon them as the IAEB posting was directed by the Office of the Mayor. There was also no BAC recommendation for the resort to direct procurement, nor were there bid documents erroneously prepared by subordinates as the documents in Rule VI, Section 17 of IRR-A of Republic Act No. 9184 were absent in the first place.

Indeed, the Court, in *Martel v. People*¹⁹ held that the violation of procurement laws does *not ipso facto* give rise to violation of Republic Act No. 3019. However, *Martel* should be understood in light of the circumstances in that case as follows:

Petitioners' averments are well-taken. The records show that petitioners, as BAC members, did conduct a study, albeit limited and not reduced to writing. Moreover, as earlier discussed, they no longer considered public bidding based on their past experiences and the belief that

¹⁶ *Id.* at 801–802.

¹⁷ 834 Phil. 435 (2018), [Per SAJ Leonen, Third Division]

¹⁸ *Id.* at 485.

¹⁹ G.R. Nos. 224720-23 & 224765-68, February 2, 2021 [Per J. Caguioa, *En Banc*].



direct purchase was availing. While it is arguable that a more thorough study would have led petitioners to conclude that direct purchase was not proper for the subject procurements, their actions cannot be characterized as without even slight care and conscious indifference as to the compliance with their duties so as to make them liable for gross inexcusable negligence. Hence, they cannot be held liable for violation of Section 3 (e) of [Republic Act No.] 3019 on this account.²⁰

Thus, in *Martel*, the resort to direct procurement in lieu of competitive public bidding was actually approved by the members of the BAC. In stark contrast to the present case, the Sandiganbayan found that the decision to pursue direct contracting was not recommended by the BAC.

Hence, the totality of the irregularities cannot be appreciated as mere minor infractions, but evince a public officer's utter lack of disregard for procurement rules and regulations, among the very laws she has sworn to uphold.

The non-preparation of the bidding documents is not a trivial detail that could be easily set aside. Regardless of the mode of procurement, a set of prescribed documents must be prepared for the transaction to push through. While it is true that Villasin, as the head of the procuring entity, is not expected to be an expert on the procurement process, or of the specification of the products/items to be procured, she should be reasonably expected to check that the attached documents/attachments are regular on their face, that they are actually attached or appended to the action documents, and more importantly, that they have actually been prepared. I cannot concede that the approval of a transaction without the requisite procurement documents is not gross negligence as it clearly evinces recklessness and utter indifference on the part of Villasin.

In *Martel*, the Court also emphasized that “the relevant rules on the procurement of goods sold by an exclusive dealer or manufacturer through direct contracting, as well as the manner by which the specifications of the goods to be procured are presented, are essentially similar under the LGC and [Republic Act No.] 9184.”²¹ Thus, there is no need not belabor why Villasin's plea that during the time of the transaction, Republic Act No. 9184 and its implementing rules have only been recently enacted and issued fails to persuade.

As to the third element—the action of the accused caused undue injury to the government or gave a private party unwarranted benefits, advantage, or

²⁰ *Id.*

²¹ *Id.*



preference in the discharge of his functions—the undersigned is convinced that Villasin gave Bal’s Enterprises unwarranted benefit when it was chosen to supply the liquid fertilizers without the benefit of conducting a fair vetting system to determine the best possible price for the government. As found by the Sandiganbayan as follows:

Records disclose and the testimony of Villasin shows that as early as [April 26,] 2004, when the Invitation to Apply for Eligibility and to Bid was posted and the Purchase Request was prepared, Villasin already knew that Bal’s Enterprises was the sole distributor of Fil-Ocean liquid fertilizers[.]²²

Thus, Villasin allowed Bal’s Enterprises to profit from the transactions without adducing proof that its prices were the most beneficial to the government. In other words, Bal’s Enterprises never had to offer the most advantageous bid in order to be selected as a supplier.²³

It is not difficult to perceive that Bal’s Enterprises effectively cut out competition that were offering similar products which could have likewise been considered by the local municipality. Similar to Bal’s Enterprises, all these competitors are invested in machinery, human resources, and other costs necessary for their business. Having been unduly cut out from bidding, these competitors were not given the opportunity to gain profit.

In holding that the level of negligence committed by Villasin cannot be characterized as “gross inexcusable negligence,” the *ponente* cited the case of *People v. Januto*.²⁴ As aptly synthesized in the majority, this case involved the procurement without public bidding of foliar fertilizer amounting to PHP 1.8 million from Reynato C. Sarmiento Trading. Allegedly, the accused immediately resorted to direct contracting and branding of the fertilizer even though this was prohibited by the procurement law. In *Januto*, the Court acquitted the accused for the failure of the prosecution, among others, to prove beyond reasonable doubt the existence of the third element, i.e., manifest partiality, evident bad faith, or gross inexcusable negligence.

At first glance, the circumstances in *Januto* seems to be on all fours as in the present case. A careful reading of *Januto*, however, reveals that the accused therein honestly believed that the alternative mode of direct contracting was warranted. Moreover, there was an immediate need to purchase fertilizers since it was already planting season.

²² *Rollo*, p. 60.

²³ *Id.* at 62.

²⁴ G.R. No. 252973, March 1, 2023 [First Division].



In stark contrast to the present case, Villasin knew all along that competitive bidding was required. In fact, as found by the Sandiganbayan, Villasin alleged that she initially decided to conduct public bidding for the procurement of the subject fertilizers.²⁵ To my mind, this cannot be categorized as a mere procedural lapse since she knew that competitive bidding was required by law.

It cannot be overemphasized that several irregularities, constituting gross negligence, were committed by Villasin as follows:

1. The transaction was covered by an undated and unnumbered disbursement voucher and a check dated, May 26, 2004;
2. The brand "Fil-Ocean" liquid fertilizer was specified in both the Invitations to Apply for Eligibility and to Bid and the Purchase Request in direct violation of Section 18 of Republic Act No. 9184;
3. There was no proper bidding as none of the documents provided under Rule VI, Section 17 of IRR-A of Republic Act No. 9184 were prepared;
4. Even assuming that the transaction fell under direct contracting, the requirements for direct contracting were not complied with.

All told, the undersigned is of the view that the guilt of Villasin is beyond reasonable doubt and that the Sandiganbayan did not err in its conclusion. Taken all together, the facts and circumstances clearly demonstrate that she is guilty of violating Section 3 (e) of Republic Act No. 3019.

Public officers are charged to follow procurement rules to the letter to ensure that the use of the government's finite resources is maximized for the common good. The rules allow for exceptions owing to the demands of government, however, the procedures for availing such exceptions must likewise be strictly adhered to.

ACCORDINGLY, I vote to **DISMISS** the Appeal and **AFFIRM** the conviction.


MARIA FILOMENA D. SINGH
Associate Justice

²⁵ *Rollo*, p. 52.