



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 12 May 2021 which reads as follows:

“G.R. No. 250158 (*Carolyn U. Tabora v. People of the Philippines*).

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The petition raises questions of fact pertaining to the lower courts’ appreciation of the evidence on record. Specifically, it asks the Court to recalibrate the evidence and give more weight to the evidence of the defense with the end in view of sustaining his plea for acquittal. But the Court does not review factual questions under Rule 45 of the Rules of Court. Its appellate jurisdiction over decisions and final orders of the Sandiganbayan is limited only to questions of law.¹ The Court is not even obliged to weigh the evidence once again² as the factual findings of the trial court are conclusive on this Court, especially when they carry the full concurrence of the Sandiganbayan on appeal.³

In any event, the Sandiganbayan did not commit reversible error in affirming Carolyn U. Tabora’s (petitioner) conviction for six (6) counts of violation of Section 3(e) of Republic Act No. 3019 (RA 3019).⁴

The prosecution has established all the elements of Violation of Section 3(e) of RA 3019

¹ See *Zoleta v. Sandiganbayan*, 765 Phil. 39, 52 (2015).

² See *Sosmeña v. Bonafe*, G.R. No. 232677, June 8, 2020.

³ See *Lee v. Sandiganbayan First Division*, G.R. Nos. 234664-67, January 12, 2021.

⁴ “ANTI-GRAFT AND CORRUPT PRACTICES ACT,” approved on August 17, 1960.

Petitioner was charged with six (6) counts of violation of Section 3(e) of RA 3019 otherwise known as the “*Anti-Graft and Corrupt Practices Act*,” 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

(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.

To sustain a conviction for violation of Section 3(e) of RA 3019, the following elements must be established: (1) the offender is a public officer; (2) the act was done in the discharge of the public officer’s official, administrative, or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the government, or gave any unwarranted benefits, advantage or preference.⁵

These elements are all present here.

First, petitioner was a public officer at the time material to the case. Specifically, she was the barangay secretary of Barangay Kamuning, Quezon City from 1989 to 2007.

Second, petitioner was performing her official functions when she signed the daily wage payrolls of the barangay officials from June 2004 to December 2004 and the barangay resolutions authorizing the barangay treasurer to withdraw funds for the payment of wages of the barangay officials named in said payrolls.

Third, petitioner committed gross and inexcusable negligence when she signed the payrolls and barangay resolutions and certified that Barangay Kagawad Raymond Allan D. Ronario (Ronario) rendered services for the covered period, knowing full well that the latter was then in Japan and did not actually render services, hence, he was not entitled to receive his salary.

⁵ See *People v. Bacaltos*, G.R. No. 248701, July 28, 2020.

Petitioner already noticed the irregularity in the payrolls as she even asked the barangay captain if Ronario's name should be removed from the payroll for the months of July 2004 to December 2004, to which the barangay captain replied in the affirmative. Even after discovering that the liaison officer continued to print the payrolls without excluding Ronario's name, petitioner did not rectify the error. Before signing the payrolls, she could have simply crossed out Ronario's name using a pen. Instead, she allowed and tolerated the erroneous inclusion of Ronario's name in the payrolls for six (6) months (from July 2004 to December 2004) and signed the payrolls and barangay resolutions, thereby allowing Ronario to collect his salaries for the said period. To evade liability, she simply passed the blame on to the barangay captain and liaison officer for their alleged inaction. She also claimed that she only signed the payrolls and barangay resolutions relying on the existing signatures of the other barangay officials who signed ahead of her.

Notably, when petitioner signed the payrolls, she also certified that "*each person whose names appears in this payroll had rendered services for the time stated.*" Having been the barangay secretary for almost twenty (20) years, petitioner should have known the consequences of her signature and certification in the payrolls and board resolutions. With due diligence, she could have rectified the apparent error or irregularity in the payrolls to avoid causing undue injury to the government. But, petitioner simply turned a blind eye. Her admission that she did not rectify the error because the liaison officer was the one who forwarded the payrolls for signature and the barangay captain himself did not take the initiative to have Ronario's name removed only proves her indifference and utter disregard of the consequences of her actions. By signing the barangay resolutions, petitioner authorized the treasurer to disburse the corresponding funds to pay for the salaries of the barangay employees, including Ronario.

Fourth, petitioner's acts gave Ronario unwarranted benefit as the latter was not entitled to receive salaries for the period that he did not actually render work (from July 2004 to December 2004). Too, the government suffered undue injury in the amount of ₱52,379.70, representing the salaries illegally paid to Ronario.

There, too, was sufficient evidence showing Ronario's receipt of the salaries in question. Under Section 43, Rule 130 of the Rules of Court,⁶ entries in the payroll, being entries in the course of business, enjoy the presumption of regularity. Ideally, the employees' signatures should appear in the payroll as evidence of actual payment.⁷ Here, the payrolls bear Ronario's signatures which signify his receipt of the corresponding

⁶ Section 43. *Entries in the course of business.* – Entries made at, or near the time of transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

⁷ 480 Phil. 627, 636 (2004).

salary. Petitioner also confirmed their authenticity when she testified that she noticed Ronario's signatures when she saw the payrolls at the Office of the Ombudsman (Ombudsman).⁸ More, petitioner testified that she heard Ronario admit during the preliminary hearing before the Ombudsman that he (Ronario) "signed and received the payroll."⁹

Finally, petitioner's allegation of denial of her right to due process and to be informed of the nature and cause of the accusation against her must fail. For one, this issue was never raised below, hence, it cannot be belatedly raised, let alone, considered here and now. To do otherwise violates the basic tenets of due process.

At any rate, the fact that the Information alleges the three (3) modalities of committing a violation of Section 3(e) of RA 3019 does not mean that three (3) distinct offenses are being charged against the accused.¹⁰ And even when the Information alleges only one of these modes, the other mode or modes are deemed included in the accusation to allow proof thereof.¹¹ *Sistoza v. Desierto*¹² is *apropos*:

We note that the *Information* against petitioner Sistoza, while specifying *manifest partiality* and *evident bad faith*, does not allege *gross inexcusable negligence* as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the *Information*, it was evidently the intention of the Ombudsman to take petitioner to task for *gross inexcusable negligence* in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), RA 3019, is committed either by *dolo* or *culpa* and although the *Information* may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.

Here, both the trial court and the Sandiganbayan found that petitioner's acts amounted to gross inexcusable negligence. Although the Information did not specifically allege this modality, the same is deemed included in the allegation of "bad faith" borne by the Information. For in the context of Article 2220 of the Civil Code,¹³ bad faith includes gross negligence.¹⁴

⁸ *Rollo*, p. 46.

⁹ *Id.* at 45-46.

¹⁰ See *Jaca v. People*, 702 Phil. 210, 239 (2013) citing *Gallego v. Sandiganbayan*, 201 Phil. 379 (1982); *Bacamas v. People*, 713 Phil. 639 (2013).

¹¹ See *Sistoza v. Desierto*, 437 Phil. 117 (2002).

¹² *Id.* at 130-131.

¹³ **Article 2220.** Willful injury to property may be legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

¹⁴ 745 Phil. 31, 36 (2014).

Too, *Albert v. Sandiganbayan*¹⁵ decreed that “a conviction for a criminal negligent act can be had under an information exclusively charging the commission of a willful offense upon the theory that the greater includes the lesser offense.” Petitioner was, therefore, validly convicted of violation of Section 3(e) of RA 3019 through gross inexcusable negligence, the modality supported and established by evidence.

Proper Penalty

Under Section 9 of RA 3019,¹⁶ violation of Section 3(e) of RA 3019 is punishable with imprisonment of not less than six (6) years and one (1) month but not more than fifteen (15) years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary or other lawful income.

Hence, the Sandiganbayan correctly imposed the indeterminate penalty of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, for each count of violation of Section 3(e) of RA 3019, and perpetual disqualification from holding public office.

ACCORDINGLY, the petition is **DENIED**. The Decision dated August 14, 2019 and the Resolution dated October 29, 2019 of the Sandiganbayan in Case No. SB-17-A/R-0034 to 0039 are **AFFIRMED**. Petitioner **Carolyn U. Tabora** is found **GUILTY** beyond reasonable doubt of six (6) counts of violation of Section 3(e) of Republic Act No. 3019 and sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, for each count, with perpetual disqualification from holding public office.

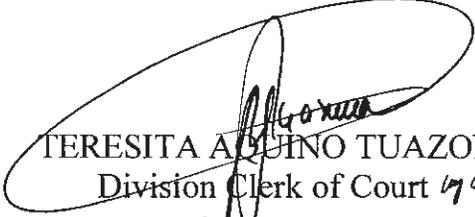
SO ORDERED.” (J. Lopez., *J.*, designated additional member per Special Order No. 2822 dated April 7, 2021)

¹⁵ 599 Phil. 439, 452 (2009).

¹⁶ **Section. 9. Penalties for violations.** (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

By authority of the Court:


TERESITA AQUINO TUAZON
Division Clerk of Court *by 6/11*
11 JUN 2021

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HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 98
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(Crim Case Nos. Q-11-170653 to 658)

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GR250158. 5/12/2021(54)URES