

THIRD DIVISION

[G.R. No. 248710. March 29, 2023]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICASIO M. PEÑA AND CAMACHO L. CHIONG, ACCUSED-APPELLANTS.

G.R. No. 250685

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EUGENIO L. FAMOR, ACCUSED-APPELLANT.

D E C I S I O N

INTING, J.:

Before the Court are two appeals assailing the Decision^[1] dated March 29, 2019 and the Resolution^[2] dated June 19, 2019 of the Sandiganbayan – Second Division (Sandiganbayan) in Criminal Case No. SB-06-CRM-0453. The first appeal^[3] was filed by Nicasio M. Peña (Peña) and Camacho L. Chiong (Chiong) and docketed as G.R. No. 248710, while the second appeal^[4] was filed by Eugenio L. Famor (Famor) and docketed as G.R. No. 250685 (collectively, accused-appellants). The Sandiganbayan found accused-appellants guilty of violation of Section 3(e)^[5] of Republic Act No. (RA) 3019,^[6] otherwise known as the Anti-Graft and Corrupt Practices Act.

The Antecedents

The corporate existence of the Provincial Government of Zamboanga Sibugay (Zamboanga Sibugay LGU) commenced on July 1, 2001^[7] by virtue of RA 8973.^[8]

Famor, who was then the Vice Governor of the Zamboanga Sibugay LGU,^[9] appointed Peña as Secretary of the *Sangguniang Panlalawigan* on July 2, 2001.^[10] Upon the recommendation of Peña, he appointed Chiong as Board Secretary IV on October 1, 2001^[11] under the Office of the Provincial Board Secretary (OPBS).^[12] Chiong used to occupy the position of Draftsman III at the Office of the Municipal Engineer, Titay, Zamboanga Sibugay before he applied for the position of Board Secretary IV.

It is undisputed that the position of Board Secretary IV requires at least a bachelor's degree;^[13] thus, Chiong, a college undergraduate,^[14] does not possess all the prescribed qualification standards for the position of Board Secretary IV.^[15]

Sometime in January 2002, Chiong asked for his service record from the Provincial Human Resource Management Office (PHRMO) of the Zamboanga Sibugay LGU through his daughter.^[16] However, Assistant PHRM Officer Nelsie Patriarca Lazo (Lazo) failed to find Chiong's 201 file. Upon Lazo's inquiry, Chiong's daughter answered that Chiong was already appointed and in support thereof, she submitted a photocopy of the front-page of her father's appointment paper the following day.^[17]

Lazo and Ester Yukoya (Yukoya), the Personnel Officer of the Zamboanga Sibugay LGU, inquired about Chiong's appointment with the Civil Service Commission (CSC) and they found out that his appointment paper was not submitted to the CSC.^[18]

Thereafter, Governor George T. Hofer (Gov. Hofer) received an anonymous letter dated May 2, 2002 which contained allegations of irregularities in the Zamboanga Sibugay LGU. In response, Gov. Hofer directed Atty. Macalawan M. Maca-ampao (Atty. Maca-ampao) to conduct a fact-finding investigation.^[19]

In the meantime, Chiong resigned from his position as Board Secretary IV on May 3, 2002^[20] and was appointed as coterminous Private Secretary II on May 6, 2002 to Famor.^[21]

In his Fact-Finding Investigation Report^[22] dated September 6, 2002, Atty. Maca-ampao found that: (1) Chiong's appointment as Board Secretary IV was spurious; (2) Chiong was not qualified for the Board Secretary IV position; (3) through abandonment or negligence, Famor, as appointing authority, and Peña, as recommending authority, consented to or permitted Chiong to collect and appropriate funds in the total amount of P161,565.30,^[23] representing his salaries; and (4) Famor signed the vouchers, payrolls, and checks which caused Chiong to receive the amount of P161,565.30 to the injury of the Zamboanga Sibugay LGU.^[24]

Subsequently, Gov. Hofer endorsed Atty. Maca-ampao's Fact-Finding Investigation Report to the Office of the Ombudsman (Ombudsman) in a Complaint-Affidavit^[25] dated November 12, 2002.

In the Resolution^[26] dated March 17, 2003, the Ombudsman found probable cause to indict accused-appellants with violation of Section 3(e) of RA 3019. Thereafter, an Information^[27]

dated June 6, 2006 was filed against accused-appellants:

“That during the period of October 2001 or prior or subsequent thereto in the Province of Zamboanga-Sibugay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused public officers, EUGENIO L. FAMOR, a high-ranking public official, being the Vice-Governor, NICASIO PEÑA, Secretary of the Sangguniang Panlalawigan, and CAMACHO L. CHIONG, Private Secretary, all of the Province of Zamboanga-Sibugay, while in the performance of their official functions and committing the offense in relation to office, conspiring and confederating with each other, with evident bad faith and manifest partiality, did then and there willfully, unlawfully and criminally issue a permanent appointment to CAMACHO L. CHIONG as Board Secretary IV without passing through the Personnel Selection Board, the Provincial Human Resource Management Office and the Civil Service Commission as required by law, thus, granting CAMACHO L. CHIONG unwarranted benefits in the total amount of ONE HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED SIXTY THREE PESOS and 30/100 (P161,563.30) representing the seven (7) months salaries and allowances of accused CAMACHO L. CHIONG as Board Secretary IV, to the damage and prejudice of the Provincial Government of Zamboanga-Sibugay in the aforestated amount.

CONTRARY TO LAW.^[28]

Upon arraignment, Chiong, Peña, and Famor, pleaded “not guilty” on August 17, 2011, November 9, 2012, and January 9, 2014, respectively.^[29]

On February 17, 2014, the Sandiganbayan issued the Pre-Trial Order with the following stipulations: (1) from October 2001 to May 2002, there were only two filled-up positions in the OPBS, those occupied by Peña and Chiong; (2) it is Yukoya’s duty to determine whether an applicant is qualified for the position applied for and to refer the application to the Provincial Selection Board (PSB); (3) the identities of accused-appellants; and (4) accused-appellants were all public officers at the time of the alleged commission of the crime.^[30]

Trial ensued.

Version of the Prosecution

Lazo, Yukoya, and Rosanna T. Palalon (Palalon), the Provincial Budget Officer of Zamboanga Sibugay, testified for the prosecution.

Lazo testified as follows: (1) Chiong's appointment paper was not submitted to the PHRMO for review; (2) she learned of Chiong's appointment from the latter's daughter in January 2002; (3) the OPBS prepared Chiong's disbursement voucher and payroll; (4) all the supporting documents for the payment of Chiong's first salary were submitted to the Provincial Budget Office (PBO) and the Provincial Accountant's Office but did not pass through the PHRMO; (5) Palalon prepared the Personnel Schedule^[31] sometime in October 2001; and (6) Chiong rendered actual service at the OPBS.^[32]

On cross-examination, Lazo said that Chiong's appointment paper was given to her office. On re-direct examination, however, she clarified that the PHRMO never saw the original copy of Chiong's appointment paper and what they received is a mere photocopy thereof sometime in January 2002.^[33]

Yukoya revealed that when she informed Famor about Chiong's appointment as Board Secretary IV, Famor angrily replied, "*hindi ko ibibigay kay [Chiong] ang mataas na posisyon na iyan dahil hindi ko sya tao, tao lang sya ni [Peña]*,"^[34] and thereafter, Famor instructed the PHRMO to prepare another appointment paper for Chiong, this time, as his coterminous Private Secretary. Anent the Personnel Schedule, Yukoya maintained that it was prepared by the PBO sometime in October 2001. She averred that she did not sign it at first because her office has not yet reviewed the document but upon the prodding of a PBO staff and upon seeing that it was already signed by her co-signatories, she acceded and signed each page while the PBO staff flipped the pages.^[35]

On cross-examination, Yukoya further revealed that she prepared her own appointment paper and at that time, the PSB was not yet constituted. To Yukoya, Chiong's appointment was not proper because it was not submitted to the CSC—not because it did not pass through the PSB.^[36]

The third witness, Palalon, disclosed the following: (1) from the creation of the Zamboanga Sibugay LGU until 2013, the payrolls and disbursement vouchers were prepared by the office concerned; (2) payroll preparation was centralized beginning 2014; and (3) as a matter of procedure, it was Yukoya, the Personnel Officer, who signs the Personnel Schedule first, followed by the Budget Officer, and finally by the Governor.^[37]

Version of the Defense

Famor recalled that in 2001, the Zamboanga Sibugay LGU did not have a capitol building yet and that his office was located at the municipal building of the Municipality of Ipil. He narrated that: (1) he met Chiong for the first time when the latter submitted his application; (2) at that time, Famor would ask applicants to accomplish their own Personal Data Sheet (PDS) and other needed documents; (3) he would sign their appointment papers then instruct them to submit these to the PHRMO; (4) the PHRMO would determine whether the appointees are qualified for the positions they respectively applied for; (5) after signing Chiong's appointment paper, Famor asked Chiong to submit it to the PHRMO; and (6) Famor did not know whether Chiong brought his appointment paper to the PHRMO.^[38]

Famor alleged that he was under the impression that there was no problem with Chiong's appointment because Chiong reported for work and his name was included in the Personnel Schedule which was prepared by Yukoya. He further alleged that he did not know the minimum qualifications for the position of Board Secretary IV at the time he signed Chiong's appointment paper. He stressed, however, that he did not receive any notice or memorandum from the PHRMO that Chiong's appointment was defective.^[39]

Lastly, he identified a letter written by Provincial Board Member Olimpia R. Mañalac (Mañalac).^[40] In Mañalac's letter dated August 15, 2001, he requested an exemption from the requirements under Section 1,^[41] Rule V, of CSC Memorandum Circular No. 40, Series of 1998^[42] (1998 CSC Omnibus Rules on Appointments). He likewise presented a certified true copy of the Decision^[43] dated August 12, 2012 of the Sandiganbayan - First Division in Criminal Case No. (28428) SB-06-CRM-0023^[44] wherein the Sandiganbayan - First Division acquitted accused-appellants of the charge of *Estafa* through Falsification of Public Documents which stemmed from the same set of facts, that is, Chiong's appointment paper as Board Secretary IV.^[45]

On cross-examination, Famor added that he never knew that Chiong's appointment paper as Board Secretary IV was not submitted to the PHRMO and the CSC.^[46]

Chiong corroborated Famor's testimony that they did not personally know each other before he applied for the position of Board Secretary IV on July 1 or July 2, 2001. Contrary to Lazo's testimony, Chiong insisted that after Famor signed his appointment paper, he forwarded it to the PHRMO and argued that his name will not appear in the Personnel Schedule otherwise.^[47]

When asked whether he knew that his appointment paper did not reach the CSC, he replied that it was the PHRMO's duty to submit his appointment paper to the CSC. He lamented that the PHRMO failed to inform him of this matter and that he only learned that his appointment was being questioned when a complaint was already filed with the Ombudsman.^[48]

Ruling of the Sandiganbayan

In the Decision^[49] dated March 29, 2019, the Sandiganbayan found accused-appellants guilty as charged, the dispositive portion of which reads:

WHEREFORE, this Court finds accused EUGENIO L. FAMOR, NICASIO M. PEÑA, and CAMACHO L. CHIONG guilty beyond reasonable doubt of having violated Sec. 3(e), RA 3019, and are each sentenced to suffer the indeterminate penalty of six (6) years and one (1) month, as minimum to eight (8) years, as maximum; perpetual disqualification from public office; and, to indemnify, jointly and severally, the Government of the Republic of the Philippines in the amount of One Hundred Sixty-One Thousand Five Hundred Sixty Three Pesos and 30/100 (P161, 563.30).

SO ORDERED.^[50]

The Sandiganbayan summarized its findings as follows: (1) Chiong, an undergraduate, was recommended by Peña to the position of Board Secretary IV which requires among others, a bachelor's degree; (2) Famor blindly appointed Chiong without bothering to know the minimum qualifications for the position, and upon a prepared appointment paper bearing the unusual remarks: "RECOMMENDED by: NICASIO M. PEÑA, AB, LLB, Provincial Secretary;" (3) Chiong collected salaries through payrolls signed by Peña and disbursement vouchers signed by both Famor and Peña; and (4) Chiong concealed his appointment paper from the PHRMO.^[51]

The Sandiganbayan ruled that Peña and Famor acted in evident bad faith in recommending and appointing Chiong, respectively, which gave Chiong unwarranted benefit and advantage. It noted that at the time Chiong was appointed, the PSB has not yet convened; hence, Chiong was not screened by the PSB. Citing the 1998 CSC Omnibus Rules on

Appointments and CSC Memorandum Circular No. 3, Series of 2001,^[52] (2001 Revised Policies on Merit Promotion Plan) the Sandiganbayan ruled that Famor should have convened the PSB for the screening and evaluation of Chiong's appointment.^[53]

It further noted that Pena's recommendation was a flagrant violation of the rule on merit system which is embedded in Section 2(2),^[54] Article IX-B of the Constitution, Section 21(1),^[55] Chapter 5, Title I-A, Book V of Executive Order No. (EO) 292, or the Administrative Code of 1987, and Article 165^[56] of Administrative Rule No. 270 or the Rules and Regulations Implementing the Local Government Code of 1991.^[57] Lastly, the Sandiganbayan held that Chiong's salaries should not have been sourced from the Zamboanga Sibugay LGU but from the appointing authority; thus, the province suffered damage in the amount of P161,563.30 representing Chiong's salaries for seven months.^[58]

In view of the foregoing, the Sandiganbayan concluded that there was a concerted effort among accused-appellants to give Chiong unwarranted benefit and advantage to the damage and prejudice of the government.^[59]

Arguments of the Parties

In G.R. No. 248710, Peña argues, among others, that his recommendation is not illegal *per se* and that his recommendation was an utter superfluity.^[60]

As to the lack of PSB screening prior to Chiong's appointment, Peña maintains that he was not and could not have been a member of the PSB; hence, whatever injury caused by the failure to constitute the PSB should not be attributed to him. He emphasized that all the other employees of the Zamboanga Sibugay LGU were appointed without passing through the PSB as it was not yet constituted at that time considering that the province was newly organized. He concluded that the Sandiganbayan erred when it concluded that the PSB proceedings were dispensed with just to give Chiong an advantage.^[61]

Citing the Court's ruling in *Obiasca v. Basallote*,^[62] Peña maintains that the policy to submit an appointment to the CSC within 30 days under Section 9(h)^[63] of Presidential Decree No. 807 has been amended by Section 12(14) and (15),^[64] Book V of EO 292 by deleting such requirement.^[65] Citing Sections 17^[66] and 19,^[67] Rule VI of the 2017 Omnibus Rules on Appointments and Other Human Resource Actions^[68] (2017 Omnibus Rules on Appointments), he avers that Chiong was legally entitled to his salaries for actual services rendered and consequently, his salaries cannot be considered as injury or damage on the

part of the Zamboanga Sibugay LGU.^[69]

Lastly, Peña argues that his recommendation could not have been the source of injury on the part of the Zamboanga Sibugay LGU considering that further acts were needed to consummate Chiong's appointment.^[70]

Meanwhile, Chiong submits that he is a de facto officer, and thus, his salaries were authorized, legal, and justified. He likewise cited Sections 17 and 19 of Rule VI of the 2017 Omnibus Rules on Appointments and argues that he is entitled to his salaries.^[71] Chiong further submits that as a public officer, the second mode of violating Section 3(e) of RA 3019—by giving *any private party* any unwarranted benefit, advantage, or preference—is absent in the case at bar.^[72]

In G.R. No. 250865, Famor contends that he did not act with evident bad faith when he signed Chiong's appointment paper^[73] and denied extending unwarranted benefit to Chiong.^[74] He argues that: (1) he did not even know Chiong prior to signing his appointment paper; (2) it was the PHRMO's duty to process and evaluate Chiong's application; (3) he did not influence anyone from the PHRMO or any concerned office to give Chiong any favor; (4) he signed Chiong's appointment paper without anything in return;^[75] (5) Chiong's direct testimony that he submitted his appointment paper to the PHRMO should prevail over Yukoya's mere denial;^[76] and (6) Chiong's appointment was not the only appointment which did not go through PSB screening as shown in Mañalac's letter dated August 15, 2001.^[77]

Famor further contends that he did not cause undue injury to the government considering that Chiong reported for work and assumed his functions as Board Secretary IV. He argues that unlike ghost or bogus employees who are not entitled to receive any salaries, Chiong—a de facto officer—is entitled to receive salaries and allowances for actual services rendered.^[78] He pointed out that Chiong was a public officer even before his appointment as Board Secretary IV;^[79] hence, the element of giving unwarranted benefit to a private party is absent.^[80] Finally, he argues that his conviction cannot be based on an unsubstantiated allegation of conspiracy.^[81]

Plaintiff-appellee People of the Philippines, represented by the Ombudsman, through the Office of the Special Prosecutor, maintains that: (1) Famor's false notion that his signature was meant only as an endorsement does not exculpate him; (2) as the chairperson of the PSB, Famor can convene the PSB; (3) Peña and Famor ignored long established rules and regulations on appointment in the civil service; (4) Chiong's failure to submit his

appointment paper to the PHRMO evinced his complicity in the offense; (5) Chiong collected his salaries through payrolls signed by Peña and disbursement vouchers signed by both Famor and Peña; and (6) Famor and Peña have consented to, or through abandonment or gross negligence, have permitted Chiong to collect the total amount of P161,563.30 to the damage and injury of the government.^[82]

Plaintiff-appellee contends that the 2017 Rules on Appointments is not applicable in the case as it took effect after Chiong's appointment. It argues that Section 1,^[83] Rule IV of the 1998 CSC Omnibus Rules on Appointments is the prevailing rule at that time. It maintains that Chiong was not entitled to his salaries because his appointment was not issued in accordance with the pertinent civil service rules^[84] and that Famor is personally liable for Chiong's salaries. As to accused-appellants' contention that Chiong is a *de facto* officer, it avers that he failed to meet the requirements of *de facto* officer because he was never in good faith throughout his appointment as Board Secretary IV.^[85]

Issue

Whether the Sandiganbayan erred in finding accused-appellants guilty beyond reasonable doubt for violation of Section 3(e) of RA 3019.

Our Ruling

The Court grants the appeals.

To sustain a conviction for violation of Section 3(e) of RA 3019, all the following elements must be present: "(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."^[86] It is a stipulated fact that accused-appellants were all public officers;^[87] hence, the first element is settled.

Violations of Section 3(e) of RA 3019 may be categorized into two classifications, those committed by *dolo*, that is, through evident bad faith or manifest partiality, and those committed by *culpa*, that is, through gross inexcusable negligence.^[88] The language of the Information indicates that accused-appellants were accused of violating Section 3(e) of RA

3019 by *dolo* through evident bad faith and manifest partiality.^[89]

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.”^[90] In determining whether an act is done in bad faith, the courts should keep in mind the settled rule that good faith is always presumed and that a public officer is presumed to have acted in good faith in the performance of his or her duties.^[91] “Mistakes 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.”^[92]

Meanwhile, manifest partiality is defined as one’s “clear, notorious, or plain inclination or predilection to favor one side or person rather than another.”^[93]

A “private party” within the meaning Section 3(e) of RA 3019 includes a public officer.

In *Cabrera v. Sandiganbayan*,^[94] the Court enumerated the two modes by which a public official violates Section 3(e) of RA 3019 in the performance of one’s functions, “namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage, or preference.”^[95]

Chiong and Famor contend in their respective appeals that Chiong’s status as a public officer negates the second mode by which a public official violates Section 3(e)—by giving *any private party* any unwarranted benefit, advantage, or preference.

The Court disagrees.

In *Ambil, Jr. v. Sandiganbayan*^[96] (*Ambil, Jr.*), the Court explained that a private party under Section 3(e) of RA 3019 is not the same as a private person:

In drafting the Anti-Graft Law, the lawmakers opted to use “private party” rather than “private person” to describe the recipient of the unwarranted benefits, advantage or preference for a reason. *The term “party” is a technical word having a precise meaning in legal parlance as distinguished from “person” which, in general usage, refers to a human being. Thus, a private person simply pertains to one who is not a public officer. While a private party is more comprehensive in scope to mean either a private person or a public officer acting in a private*

capacity to protect his personal interest.

In the present case, when petitioners transferred Mayor Adalim from the provincial jail and detained him at petitioner Ambil, Jr.'s residence, they accorded such privilege to Adalim, not in his official capacity as a mayor, but as a detainee charged with murder. Thus, for purposes of applying the provisions of Section 3 (e), RA 3019, Adalim was a private party.^[97] (Citations omitted; italics supplied.)

Although Chiong was a public officer at that time, he was acting in his personal capacity and advancing his own interest when he applied for the position of Board Secretary IV. Applying the Court's pronouncement in *Ambil, Jr.*, Chiong is considered a private party within the meaning of Section 3(e) of RA 3019. Nonetheless, the evidence on record does not support the Sandiganbayan's finding of guilt beyond reasonable doubt.

The existence of conspiracy among the accused-appellants was not proven beyond reasonable doubt.

There is conspiracy when "two or more persons come to an agreement concerning the commission of a felony and decide to commit it."^[98] A finding of conspiracy entails that the agreement among the accused concerning the commission of an offense *must be a conscious one.*^[99] To stress, "[c]onspiracy is not the product of negligence but of intentionality on the part of cohorts."^[100] Absent any active participation in the commission of the crime with a view to the furtherance of a common criminal design and purpose, an accused cannot be said to be a conspirator to a crime.^[101] Although a conspiracy may be implied from the conduct of the accused before, during, and after the commission of the crime and need not be established by direct evidence,^[102] it must be stressed, however, that the evidence therefor must be strong enough to show a community of criminal design.^[103] Similar to the elements of violation of Section 3(e) of RA 3019, the existence of conspiracy among accused-appellants must also be proven beyond reasonable doubt.^[104]

Here, the Sandiganbayan found that accused-appellants conspired together in order to give unwarranted benefit to Chiong's to the injury of the government. This finding, however, was belied by Yukoya's testimony:

PROS. GRUTA

So, when you learned that the appointment issued to Camachio Chiong to the position of Board Secretary IV was not submitted to the Civil Service Commission Regional Office, what did you do?

[A] I went to then Vice-Governor Famor, Ma'am and informed his (*sic*) about it.

Q. You talked with Vice-Governor Famor?

A. Yes. Ma'am.

Q. What did he say?

A. Can I translate in Tagalog? It was actually said in Visaya but it was something like this, "*hindi ko ibibigay kay Camacho ang mataas na posisyon na iyan dahil hindi ko sya tao, tao lang sya ni Pepot (the nickname of Mr. Nicasio Peña)*", Ma'am.^[105]

The spontaneous angry remarks made by Famor proved that he had no intention to appoint Chiong as Board Secretary IV. Famor explained that his signature on the appointment paper prepared by Chiong was a mere endorsement to the PHRMO; thus, when he saw Chiong's name in the Personnel Schedule, which was supposedly prepared by Yukoya, he assumed that the PHRMO evaluated Chiong's qualifications.^[106]

To reiterate, for conspiracy to exist, the prosecution must establish a conscious design to commit an offense on the part of the conspirators.^[107]

Here, the prosecution failed to allege any overt act on the part of Famor and Peña which would indicate that they knew that the Board Secretary IV position requires a bachelor's degree before they respectively recommended and appointed Chiong for the position, or that they tried to cover up the fact that he does not have the required bachelor's degree for the said position.

Lastly, the Court noted that the disbursement of Chiong's salary as Board Secretary IV would not have been possible if not for Palalon, Yukoya, former Provincial Budget Officer Estela Z. Torres (Torres), Gov. Hofer, and the unnamed PBO staff who, according to Yukoya, prodded her to sign the Personnel Schedule without giving her sufficient time to review its contents. None of them, however, were indicted in the case. The Ombudsman's failure to implead them in the case further negates any finding of conspiracy considering that the actions of the aforementioned individuals were indispensable in the release of Chiong's salaries.

In fine, the Sandiganbayan's finding of conspiracy among accused-appellants is not supported by the evidence on record. Thus, accused-appellants can only be held criminally

liable for their own acts—Chiong, for allegedly concealing his appointment paper as Board Secretary IV from the PHRMO; Peña, for recommending Chiong as Board Secretary IV; and Famor, for appointing Chiong as Board Secretary IV without convening the PSB.

The Court finds, however, that accused-appellants' individual acts do not constitute a violation of Section 3(e) which the Court shall discuss *seriatim*.

a. Chiong

The Sandiganbayan opined that Chiong concealed his appointment paper from the PHRMO in bad faith which caused undue injury to the government in the amount of P161,563.30 representing his salaries and allowance as Board Secretary IV.^[108] The Court finds, however, that the Sandiganbayan's finding had no factual basis and legal basis, and is even contrary to the 1998 CSC Omnibus Rules on Appointments.

First, it is not Chiong's duty, as an appointee, to prepare his own appointment paper, submit it to the PHRMO and thereafter, to the CSC.

Although Chiong took it upon himself to prepare his own appointment paper, the following responsibilities under Rule VII of the 1998 CSC Omnibus Rules on Appointments remain with the PHRMO:

SECTION 1. The Human Resource Management Officer (HRMO), Personnel Officer (PO) or the duly authorized personnel in charge of personnel matters shall:

- a. Review thoroughly and check the completeness of all the requirements and supporting papers in connection with all cases of appointments before submission to the Commission.
- b. Sign the following certifications at the back of the appointment.
 - i. Certification as to the completeness of the requirements
 - ii. Certification that the vacant position to be filled has been duly published
- c. Ensure that the Chairman of the Personnel Selection Board (PSB) has signed the certification at the back of the appointment, when applicable. The Human Resource Management Officer shall be a regular member of the PSB.
- d. Ensure that all questions in the Personal Data Sheet (CS Form 212) of the

appointee are answered properly and completely with his recent photograph attached, his right thumbmark affixed and his current Community Tax Certificate indicated therein.

e. Furnish appointee with a photocopy of his appointment for submission to the Commission. Ensure that appointee acknowledges receipt of a photocopy of said appointment by signing on the duplicate and other copies thereof.

f. Submit appointments with the prescribed transmittal form indicating the names of the appointees, their position and the corresponding date of issuance.

g. Officially transmit to the appointee original copy of his appointment acted upon by the Commission.

h. Submit a quarterly report of employee accession and separation to the Commission.

i. Submit ROPA, copies of appointments with supporting documents within fifteen (15) days of the succeeding month for accredited agencies.

j. Submit certified copies of licenses and ensure that the same are renewed.

k. Ensure the oath taking of concerned appointees.

In addition, it is not Chiong' s duty, as an appointee, to ensure that he met all the qualification standards for the Board Secretary IV position. Section 1, Rule X of the 1998 CSC Omnibus Rules on Appointments provides that it is the PHRMO which is responsible in making sure that an appointee meets all the qualification standards for the position he or she is being appointed to:

SECTION 1. The appointee must meet the approved qualification standards for the position for which he is being appointed. *The HRMOs must be guided with the common requirements of the approved qualification standards:*

a. The position involved in the appointment, if unique in the agency, should have an approved qualification standards or has been included in the approved

Qualification Standards Manual of the agency concerned.

b. An appointment to a position without an approved qualification standards shall be disapproved.

c. The appointee should meet the approved qualification standards of the position to which he is being appointed.

d. No substitution shall be allowed for deficiencies in education and experience requirement.

e. Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC MC 1, s. 1997. The civil service eligibility, experience, training and other requirements are dispensed with. (*Italics supplied.*)

Even assuming that the PSB screening is applicable to Chiong's appointment, the responsibility of ensuring that the Chairperson of the PSB signed it lies with the PHRMO.^[109]

Verily, the second element of Section 3(e)—that the act was done in the discharge of the public officer's official, administrative or judicial functions—is absent with respect to Chiong.

Second, the Sandiganbayan's finding that Chiong purposely concealed his appointment paper from the PHRMO in order to prevent the CSC from disapproving his appointment is illogical and contrary to human experience.

The release of an appointee's initial salary is conditioned upon the complete submission of his requirements and supporting documents to the PHRMO.^[110] Hence, Chiong would not have received a single cent under normal circumstances if his appointment paper was concealed from the PHRMO. The fact that Chiong's appointment was not with the PHRMO fell through the cracks because Palalon erroneously included his name in the Personnel Schedule. As a result, Chiong, an employee without a 201 file, was included in the Personnel Schedule. Relying on this Personnel Schedule, Famor and Peña prepared and approved the payroll and disbursement vouchers for Chiong's salaries as Board Secretary IV. Notably, the whole debacle could have been avoided if the Personnel Schedule was prepared by Yukoya from the PHRMO pursuant to the prescribed procedure instead of Palalon from the PBO. All the parties concerned would have learned as early as October 2001 that Chiong's

appointment paper was not with the PHRMO.

From the foregoing, it can be reasonably inferred that the proximate cause of the untimely release of Chiong's salary was the erroneous Personnel Schedule prepared by Palalon—not Chiong's missing appointment paper. It is likewise worthy to note that the PHRMO neither issued any memorandum to Chiong containing a list of the requirements and supporting papers which he had to submit nor informed Chiong that there are problems with his appointment. As aptly pointed out by Chiong, it is indeed lamentable that the first time he learned of his disqualification and the fact that his appointment paper was not with the PHRMO is when a complaint was already filed against him before the Ombudsman.

The Court opines that Chiong had no reason to conceal his appointment paper from the PHRMO considering that the back portion thereof still had to be signed by Yukoya or the duly authorized personnel in charge of personnel matters.^[111] More, it is inconceivable that Chiong somehow predicted that the PBO, instead of the PHRMO, will prepare the Personnel Schedule, and thus, his salaries would be released. Furthermore, Chiong would not have asked for a copy of his service record from the PHRMO if he indeed purposely concealed his appointment paper from both the PHRMO and the CSC.

It is a time-honored principle that “[f]raud cannot be presumed.”^[112] Absent any evidence that Chiong contrived an intricate plan with the foreknowledge that Palalon—not Yukoya—will prepare the Personnel Schedule, the Court finds that the Sandiganbayan's finding that Chiong purposely concealed his appointment was built on mere surmises and conjectures.

More, it is possible that Yukoya and Lazo were motivated by the instinct of self-preservation into denying receipt of Chiong's appointment paper.

To recall, the Sandiganbayan took Yukoya's and Lazo's versions of events as gospel truth, to wit:

Chiong claimed that he submitted his appointment paper to the PHRMO; on the contrary, the prosecution said that the PHRMO did not receive Chiong's appointment paper. As between the two versions, the prosecution's version rings true. Recall that PHRMO Officer Yukoya, exposing herself to possible liability, admitted making a mistake in signing the Personnel Schedule. She said that before signing the Personnel Schedule which apparently lists Chiong as Board

Secretary IV, she was not able to review the same.

Moreover, Chiong could not ascribe ill motive on the part of prosecution witnesses Lazo and Yukoya to falsely testify against him. Thus, “[a]bsent a showing that the prosecution witnesses were actuated by any improper motive, their testimony is entitled to full faith and credit.”^[113]

The Sandiganbayan failed to consider, however, that by denying receipt of Chiong’s appointment paper, Yukoya and Lazo, who were both from the PHRMO, gave themselves an excuse as to why the PHRMO failed to submit Chiong’s appointment paper to the CSC and a way out of a possible administrative action under Section 2, Rule VIII of the 1998 CSC Omnibus Rules on Appointments:

SECTION 2. Failure of the HRMO, PO, or the duly authorized personnel in charge of personnel matters to perform any of the above responsibilities shall be a ground for administrative disciplinary action for neglect of duty which the head of agency or the Commission can initiate. (Italics supplied.)

In addition to a possible administrative action, Yukoya and Lazo could also be liable for the payment of Chiong’s salaries if it turned out that they caused the delay in the submission of Chiong’s appointment paper to the CSC.^[114] With their bare denials, Yukoya and Lazo were able to wash their hands off Chiong’s questionable appointment and diminish their accountability for their dereliction of duty.

In view of the foregoing, the Sandiganbayan should not have easily dismissed Chiong’s positive testimony and should have taken Yukoya’s and Lazo’s denial with a grain of salt. *In dubio pro reo*. The slightest doubt should be resolved in favor of the accused.^[115]

Assuming *arguendo* that Lazo and Yukoya were truthful in their testimonies, this does not militate against Chiang’s testimony that he forwarded his appointment paper to the PHRMO. A perusal of the records would show that there were other PHRMO personnel aside from Yukoya and Lazo who may have received Chiang’s appointment paper and that it is highly probable that the same may have been lost or misplaced under the given circumstances.

In a letter^[116] dated March 25, 2009, Yukoya explained that their records “*may have been*

inadvertently misplaced or lost” when they transferred their office thrice; hence, she cannot give an answer as to when the PSB was first convened to screen applicants in the OPBS. Yukoya’s statement as to the impermanence of their office during that period was bolstered by the Affidavit dated July 10, 2007 executed by Anita Berdon, another PHRMO Personnel:^[117]

7. That the available records in our office are only those appointments and PSB documents during the time of the new Vice-Governor Rey Andre Olegario who was elected last May elections *because the said documents, particularly in the Office of the Secretary to the Sanggunian were either lost or misplaced because we have no permanent office then;*^[118]

In determining the reason as to why Lazo and Yukoya have not seen Chiang’s appointment paper, the Sandiganbayan should have applied the equivoque rule. Under this rule, if 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, the court should decide in favor of the accused as this would mean that the evidence was not sufficient to support a finding of guilt beyond reasonable doubt.^[119] Considering that Chiong’s missing appointment paper admits two possible explanation, *i.e.*, intentional concealment on his part or the PHRMO’s inadvertence, the Sandiganbayan should have ruled in favor of Chiong.

In fine, the third element of Section 3(e) as alleged in the Information—that the act was done with evident bad faith—is likewise absent with respect to Chiong.

Third, the question of whether Chiong is a de facto officer is of no moment as he is entitled to receive compensation for the actual services he rendered despite the fact that he does not possess a bachelor’s degree. This can be inferred from the plain language of Section 3, Rule VI of the 1998 CSC Omnibus Rules on Appointments:^[120]

SECTION 3. x x x x

If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the Commission or any of its regional or field

offices. The appointee is meanwhile entitled to payment of salaries from the government. (Italics supplied.)

Applying the foregoing provision in the case at bar, Chiong’s appointment as Board Secretary was effective immediately upon issuance until disapproved by the CSC considering that his failure to meet the qualification standards prescribed for the Board Secretary IV position does not constitute a violation of civil service law.

In the case, however, the CSC was deprived of the opportunity to act on Chiong’s appointment as Board Secretary IV in view of his resignation. This, however, should not be taken against Chiong as it was the duty of the PHRMO to submit it to the CSC. Nonetheless, applying the rationale in Section 3, Rule VI of the 1998 CSC Omnibus Rules on Appointments, Chiong’s appointment is considered effective until his reemployment^[121] as Private Secretary II.^[122] Thus, his salaries are not “unwarranted benefits” within the meaning of Section 3(e) of RA 3019. It cannot also be said that he caused undue injury to the Zamboanga Sibugay LGU considering that he simply collected the salaries he is entitled to.

In fine, the fourth element of violation of Section 3(e) is absent with respect to Chiong.

b. Peña

To recall, the Sandiganbayan held that the “unusual remarks” contained in Chiong’s appointment paper—“RECOMMENDED by: NICASION M. PEÑA, AB, LLB, Provincial Secretary”—is a flagrant violation of the rule on merit system, particularly, Section 2(2),^[123] Article IX-B of the Constitution, Section 21(1),^[124] Chapter 5, Title I-A, Book V of the Administrative Code of 1987, and Article 165^[125] of Administrative Rule No. 270 or the Rules and Regulations Implementing the Local Government Code of 1991.^[126] It further held that Chiong’s lacking qualifications for the Board Secretary IV position gave the impression that Peña, together with Famor, “purposely chose to ignore the long established rules and regulations on appointment in the civil service.”^[127]

The Sandiganbayan is gravely mistaken.

First, as previously discussed, failure of the appointee to meet the qualification standards prescribed for the position does not constitute a violation of civil service law. Thus, the Sandiganbayan’s characterization of Chiong’s appointment is overblown and unwarranted.

Verily, the Sandiganbayan gravely abused its discretion in ruling that accused-appellants are criminally liable for violating motherhood statements such as “appointments in the civil service shall be made only according to merit and fitness,” “opportunity for government employment shall be open to all qualified citizens”, and “utmost effort shall be exerted to attract best qualified to enter the local government service” when this misconception can easily be debunked by a cursory reading of the 1998 CSC Omnibus Rules on Appointments.

More, the laws cited by the Sandiganbayan—1987 Constitution, the Administrative Code of 1987, and the Rules and Regulations Implementing the Local Government Code of 1991—do not outlaw the practice of recommending an applicant to an appointing authority. The Court likewise pored over the 1998 CSC Omnibus Rules on Appointments but found that the practice is not among the prohibited acts enumerated in Rule XIII thereof. On the contrary, the practice was given tacit approval under Section 59, Chapter 8, Title I-A, Book V of the Administrative Code of 1987 subject, however, to the rule on nepotism:

SECTION 59. *Nepotism*. — (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or *recommending authority*, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited. (Italics in the original and supplied.)

Thus, the Court finds that the Sandiganbayan unduly expanded the prohibited acts enumerated in Chapter 8, Title I-A, Book V of the Administrative Code of 1987 and Rule XIII of the 1998 CSC Omnibus Rules on Appointments in violation of the basic principle that “penal laws are to be construed against the state and liberally in favor of the accused.”^[128] To stress, “acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such.”^[129]

Furthermore, the remark on Chiong’ s appointment that he was recommended by Peña has a practical purpose and is neither unusual nor illegal considering that the practice of recommending applicants to an appointing authority is widely-accepted.

As a brief background, an appointee is required to disclose in his or her PDS if he or she was related to the recommending authority; however, he or she is not required to disclose

the name of the recommending authority if he or she answered “No”.^[130] Thus, indicating the name of the recommending authority in the appointment paper is practical as it would aid the CSC in determining whether a recommendation was made in violation of the rule on nepotism in cases wherein the appointee answered “No.” In *Biteng v. Department of the Interior and Local Government (Cordillera Administrative Region)*,^[131] the CSC readily found that Alex A. Biteng’s appointment was made in violation of the rule on nepotism despite his act of indicating “No” in Item No. 23^[132] of his PDS because his sister was named as the recommending authority in his appointment paper.^[133]

All things considered, the third element of violation of Section 3(e) as alleged in the Information—that Peña’s recommendation was an act done in evident bad faith—is patently absent in the case at bar. Manifest partiality within the meaning of Section 3(e) of RA 3019 is not present in Peña’s case: *first*, partiality is an inherent quality of recommendations; and *second*, Peña’s partiality cannot be characterized as manifest considering that the prosecution did not allege that another qualified applicant, whom Peña personally knew possesses a good work ethic, asked for Peña’s recommendation aside from Chiong.

Second, Peña’s recommendation was not the proximate cause of the payment of Chiong’s salaries.

As aptly pointed out by Peña, his recommendation was a mere superfluity. A careful review of the 1998 CSC Omnibus Rules on Appointments would show that the role of a recommending authority is dispensable as it appears only in Section 9, Rule XIII, the rule on nepotism. It is also worthy to note that in *Fariñas vs. Barba*,^[134] the Court ruled that the appointing authority is not bound to appoint anyone recommended by the recommending authority because the power of appointment is a discretionary power.^[135]

In *Collantes v. Marcelo*,^[136] the Court acquitted the accused-appellant therein after finding that his function is merely recommendatory.

The Court is mindful that Peña signed the payroll and disbursement vouchers for Chiong’s salaries; however, his act is not, by any means, irregular or illegal given the circumstances. *First*, Palalon testified that the payroll and disbursement vouchers were prepared by the office concerned and that payroll preparation was centralized only in 2014; hence, it cannot be said that Peña went out his way when he signed the payroll and disbursement vouchers in question. *Second*, it is the PHRMO’s duty to check the completeness of Chiong’s requirements and supporting papers which were the prerequisites to the release of Chiong’s

initial salary; however, the PHRMO did not issue any notice or memorandum informing the OPBS that Chiong have not yet submitted all his requirements. *Lastly*, Peña cannot be faulted for relying on the Personnel Schedule which was, on paper, prepared by Yukoya and assuming that the PHRMO duly processed Chiong' s appointment considering that the PHRMO did not issue any notice or memorandum to the contrary.

Lastly, as discussed beforehand, Chiong is entitled to his salaries, and thus, the government did not sustain an undue injury as it is obligated to pay Chiong for actual services rendered.

In fine, the last element of violation of Section 3(e) of RA 3019 is likewise absent in Peña's case.

c. Famor

The Sandiganbayan held that the following acts were done by Famor in evident bad faith: (1) appointing Chiong to the Board Secretary IV position despite his lack of bachelor's degree; (2) readily signing Chiong's appointment paper without a PSB screening;^[137] and (3) signing the disbursement vouchers for Chiong's salaries. It further held Famor displayed partisanship when he appointed Chiong who was recommended by Peña^[138] which gave Chiong unwarranted benefits and caused undue injury to the government. Lastly, it ruled that Famor, the appointing authority, is liable for the payment of Chiong's salaries considering that the latter's appointment was illegal and was not submitted to the CSC.

Again, the Sandiganbayan is gravely mistaken.

To recall, the Court ruled earlier that: (1) Chiong' s appointment, despite the fact that he failed to meet the prescribed qualification standards, does not constitute a violation of civil service law; (2) it is the PHRMO's duty to prepare Chiong's appointment, check whether he possessed all the prescribed qualification standards, and thereafter, submit the latter's appointment paper to the CSC; (3) Chiong is entitled to the payment of his salaries for the actual services he rendered as Board Secretary IV; and (4) Peña's recommendation is neither unusual or illegal nor among the prohibited acts enumerated in Chapter 8, Title I (A), Book V of the Administrative Code of 1987 and Rule XIII of the 1998 CSC Omnibus Rules on Appointments.

Similar to Peña, Famor cannot be faulted for assuming that the PHRMO duly processed Chiong's appointment paper considering that the latter's name was included in the Personnel Schedule. To reiterate, the PHRMO has the duty of ensuring the completeness of

Chiong's requirements and supporting papers.^[139] Records reveal that indeed, the PHRMO did not issue any notice or memorandum directing Famor to withhold Chiong's initial salary as the latter had not yet submitted all the supporting papers for his appointment. Regardless of whether the preparation of payrolls is centralized or not, this duty still remains with PHRMO.

The following circumstances further militate against the Sandiganbayan's finding of evident bad faith and manifest partiality on the part of Famor: (1) Famor and Chiong met each other for the first time when Chiong applied for the Board Secretary IV position; (2) Famor had no participation in the erroneous Personnel Schedule which, on its face, was prepared by Yukoya, reviewed by Torres, and approved by Gen. Hofer; and (3) upon learning that Chiong was ostensibly holding the position of Board Secretary IV, Famor immediately directed Yukoya to prepare Chiang's appointment as Private Secretary II.

Lastly, Famor's mere decision to appoint Chiong should not be characterized as an act done with manifest partiality within the meaning of Section 3(e) of RA 3019 considering that partiality is inherent in the power of appointment. Further, the prosecution did not allege that there was another applicant for the Board Secretary IV position who was more qualified than Chiong.

PSB screening is not a condition precedent to the exercise of the power of appointment.

The Sandiganbayan held that Famor, the appointing authority, should have convened the PSB pursuant to the 2001 Revised Policies on Merit Promotion Plan. Paragraph 8^[140] of the Revised Policies on Merit Promotion Plan states that "[a]ll candidates first and second level positions^[141] shall be screened by the PSB." Thus, the Sandiganbayan came to the conclusion that Famor should not have appointed Chiong as the latter's application was not screened by the PSB.

In addition, Part VIII (4) of the Merit Selection Plan Model provides that it is the responsibility of the appointing authority to establish a PSB, to wit:

4. The appointing authority shall have the following functions and responsibilities:

a. *Establish a Personnel Selection Board and see to it that all PSB members undergo orientation and workshop on the selection/promotion process and CSC policies on appointments.* The agency head shall, as far as practicable, ensure equal opportunity for men and women to be represented in the PSB for all levels; x x x (Italics supplied.)

The Court opines that the Sandiganbayan's ruling as to the nature of the PSB's role in the appointment process is erroneous.

First, the foregoing paragraph was from a mere Merit Selection Plan Model which was annexed to the 2001 Revised Policies on Merit Promotion Plan. Absent any showing that the Zamboanga Sibugay LGU adopted the CSC's Merit Selection Plan Model *in toto* prior to Chiong's appointment, the Sandiganbayan's ruling that Famor should have convened the PSB has no legal basis.

Second, paragraph 8 of the of the 2001 Revised Policies on Merit Promotion Plan should be read in conjunction with Sections 466(2)^[142] of the Local Government Code of 1991 which states that it is the vice-governor who shall appoint all officials and employees of the OPBS and Section 80 of the same statute which provides that the role of the PSB in the appointment process is simply *to assist the local chief executive* in the selection of the personnel for employment or promotion, and formulation of policies for employee welfare, to wit:

SECTION 80. *Public Notice of Vacancy; Personnel Selection Board.* — (a) Whenever a local chief executive decides to fill a vacant career position, there shall be posted notices of the vacancy in at least three (3) conspicuous public places in the local government unit concerned for a period of not less than fifteen (15) days.

(b) *There shall be established in every province, city or municipality a personnel selection board to assist the local chief executive in the judicious and objective selection of personnel for employment as well as for promotion, and in the formulation of such policies as would contribute to employee welfare.*

(c) The personnel selection board shall be headed by the local chief executive, and its members shall be determined by resolution of the Sanggunian concerned.

A representative of the Civil Service Commission, if any, and the personnel officer of the local government unit concerned shall be *ex officio* members of the board. (Italics supplied.)

In *Sinon v. Civil Service Commission*,^[143] the Court clarified that “to assist” simply means “to lend an aid to, or to contribute effort in the complete accomplishment of an ultimate purpose intended to be effected by those engaged.”^[144]

Evidently, nowhere in the Local Government Code was it stated that the vice-governor is prohibited from exercising his or her power of appointment without the assistance of the PSB. Ironically, even the prosecution’s own witness, Yukoya, opined that the absence of PSB screening is irrelevant on the issue of whether Chiong’s appointment as Board Secretary IV is proper.^[145]

It is understandable that the use of the word “shall” in paragraph 8 of the 2001 Revised Policies on Merit Promotion Plan may have confused the Sandiganbayan into thinking that PSB screening is mandatory and a condition precedent before any appointing authority can exercise his or her power of appointment. It is a basic principle in administrative law, however, that the CSC cannot amend the law which it seeks to implement.^[146]

*The acts allegedly committed by
Famor are of the administrative kind
which should have been brought
before the CSC—not before the
Ombudsman and certainly not
before the Sandiganbayan.*

Assuming *arguendo* that Famor is personally liable for the payment of Chiong’s salaries,^[147] his liability does not constitute undue injury within the meaning of Section 3(e) as it is akin to actual damage in civil law.^[148] Pertinent in the case is the Court’s ruling in *Posadas v. Sandiganbayan*^[149] (*Posadas*).

In *Posadas*, the petitioners therein were similarly charged with violation of Section 3(e) of RA 3019 for the concurrent appointments of Dr. Roger R. Posadas as project director and consultant in violation of the prohibition against multiple positions and double compensation. In the Decision^[150] dated July 17, 2013 penned by then Associate Justice S. Martin Villarama, Jr., the Court found the petitioners therein guilty of violation of Section

3(e) of RA 3019. On motion for reconsideration, however, the Court, through then Associate Justice Roberto A. Abad, reversed its previous decision and held that the petitioners' misstep was of the administrative kind and can hardly be regarded as a cause for the filing of criminal charges of corruption against the authorities that granted the benefits and those who got paid.^[151] The Court likewise noted that the petitioners therein were not given the chance to restore the amounts that were paid:

Section 4 of the COA Revised Rules of Procedure merely provides for an order to return what was improperly paid. And, only if the responsible parties refuse to do so, may the auditor then (a) recommend to COA that they be cited for contempt; (b) refer the matter to the Solicitor General for the filing of the appropriate civil action; and (c) refer it to the Ombudsman for the appropriate administrative or criminal action. Here, Dr. Dayco and Dr. Posadas were not given the chance, before they were administratively charged, to restore what amounts were paid since the Resident Director withdrew his notice of disallowance after considering the view of the UP Diliman Legal Office.

If the Court does not grant petitioners' motions for reconsideration, the common disallowances of benefits paid to government personnel will heretofore be considered equivalent to criminal giving of "unwarranted advantage to a private party," an element of graft and corruption. This is too sweeping, unfair, and unwise, making the denial of most benefits that government employees deserve the safer and better option.^[152]

In the same vein, it is unwise for both the Ombudsman and the Sandiganbayan to treat the salaries justly paid to a government employee as unwarranted benefits, an element of graft and corruption, on the ground that the employee does not possess all the prescribed qualification standards for his or her position.

Notably, there is no graft case to speak of if Famor was given an opportunity to reimburse the Zamboanga Sibugay LGU for the salaries paid to Chiong if he is indeed liable for the payment thereof pursuant to Section 4,^[153] Rule VI of the 1998 CSC Omnibus Rules on Appointments. However, there is no showing that the Zamboanga Sibugay LGU ever demanded reimbursement from Famor. Thus, it cannot be said that the government sustained undue injury considering that Famor was never even given an opportunity to settle his alleged liability.

It is inconceivable how the events that transpired in the case led to the conviction of accused-appellants for violation of Section 3(e) of RA 3019. Similar to *Posadas*, it is regrettable that the Ombudsman and the Sandiganbayan allowed the case to snowball from a purely administrative matter to a graft and corruption case.

A Final Word

Time and time again, the Court held that “the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for the prosecution.”^[154] The Sandiganbayan should always be mindful that “there is no such thing as presumption of bad faith in cases involving violations of the Anti-Graft and Corrupt Practices Act”^[155] and should refrain from convicting an accused for violation of Section 3(e) simply because the accused gave an “impression”^[156] that he “purposely chose to ignore established rules and regulations.”^[157] The burden is and will always be on the prosecution to prove the accused’s guilt beyond reasonable doubt.^[158]

WHEREFORE, the Decision dated March 29, 2019 and the Resolution dated June 19, 2019 of the Sandiganbayan - Second Division in Criminal Case No. SB-06-CRM-0453 are hereby **REVERSED** and **SET ASIDE**. Accused-appellants Nicasio M. Peña, Camacho L. Chiong and Eugenio L. Famor are **ACQUITTED** of the charges against them.

Let an entry of final judgment be issued immediately.

SO ORDERED.

Caguioa (Chairperson), Gaerlan, Dimaampao and Singh, JJ., concur.

^[1] *Rollo* (G.R. No. 248710), pp. 128-151. Penned by Associate Justice Lorifel L. Pahimna and concurred in by Associate Justices Oscar C. Herrera, Jr. and Michael Frederick L. Musngi.

^[2] *Id.* at 152-158.

^[3] *Id.* at 90-124.

^[4] *Rollo* (G.R. No. 250685), pp. 33-72.

^[5] Section 3(e) of Republic Act No. 3019 provides:

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 pennits or other concessions.

^[6] Approved on August 17, 1960.

^[7] *Rollo* (G.R. No. 248710), p. 129.

^[8] Charter of the Province of Zamboanga Sibugay.

^[9] *Rollo* (G.R. No. 248710), p. 142.

^[10] *Id.* at 143.

^[11] *Id.* at 143-144. Chiong's appointment paper was dated October 1, 2001.

^[12] *Id.* at 130.

^[13] *Id.* at 146. See also Sandiganbayan *rollo*, pp. 1233-1234.

^[14] Although Chiong possessed career service professional (second level) eligibility, his highest educational attainment was 2nd year college. See Sandiganbayan *rollo*, pp. 1264-1265.

^[15] *Rollo* (G.R. No. 248710), p. 149.

^[16] Records reveal that Chiang's daughter did not request for her father's service record on her own volition. She was sent by her father to the Provincial Human Resource Management Office on an errand as his "emissary." See Sandiganbayan *rollo*, p. 1261.

^[17] *Rollo* (G.R. No. 248710), pp. 129-130.

^[18] *Id.* at 130.

^[19] Sandiganbayan *rollo*, pp. 318-319.

^[20] *Id.* at 65.

^[21] *Rollo* (G.R. No. 248710), p. 130.

^[22] Sandiganbayan *rollo*, pp. 33-39.

^[23] In the Fact-Finding Investigation Report dated September 6, 2002, the amount of damage suffered by the Zamboanga Sibugay LGU is P161,565.30; however, in the Information dated June 6, 2006 filed against accused-appellants, the amount provided is P161,563.30.

^[24] Sandiganbayan *rollo*, pp. 38-39.

^[25] *Id.* at 31-32.

^[26] *Id.* at 10-19.

^[27] *Id.* at 1-4.

^[28] *Id.* at 2.

^[29] *Rollo* (G.R. No. 248710), p. 129.

^[30] *Id.*

^[31] Sandiganbayan *rollo*, pp. 330 and 725.

^[32] *Rollo* (G.R. No. 248710), pp. 130-131.

^[33] *Id.* at 131.

^[34] *Id.* at 132.

^[35] *Id.*

^[36] *Id.* at 132-133.

^[37] *Id.* at 133.

^[38] *Id.* at 136-137.

^[39] *Id.*

^[40] Sandiganbayan *rollo*, p. 830.

^[41] Section 1, Rule V, of CSC Memorandum Circular No. 40, Series of 1998 provides:

SECTION 1. In addition to the common requirements and procedures, the following requirements and guidelines shall also be observed and the necessary documents submitted, when applicable.

x x x x

e. *LGU Appointment.* Appointment in local government units for submission to the Commission shall be accompanied, in addition to the common requirements, by the following:

- i. Certification by the proper appointing authority that such appointment is issued in accordance with the limitations provided for under Section 325, RA 7160.
- ii. Certification by the Municipal/City/Provincial Accountant/Budget Officer that funds are available.
- iii. For appointment to department head, Sanggunian Resolution embodying the concurrence of the majority of its members as provided for under Section 443 (d), RA 7160; provided, that if said appointment is not concurred in by the Sanggunian within fifteen (15) days, certification to that effect by the HRMO shall be issued in lieu of the required resolution.

x x x x

^[42] Revised Omnibus Rules on Appointments and Other Personnel Actions, approved on December 14, 1998.

^[43] Sandiganbayan *rollo*, pp. 778-831. Penned by Associate Justice Rafael R. Lagos and concurred in by Associate Justices Efren N. Dela Cruz and Rodolfo A. Ponfeneda.

^[44] *Rollo* (G.R. No. 248710), p. 138.

^[45] *Id.* at 137-138.

^[46] *Id.* at 138.

^[47] *Id.*

^[48] *Id.* at 139.

^[49] *Id.* at 128-151.

^[50] *Id.* at 150.

^[51] *Id.* at 149.

^[52] Approved on January 26, 2001.

^[53] *Rollo* (G.R. No. 248710), pp. 145-147.

^[54] Section 2(2), Article IX-8 of the Constitution provides:

Section 2. x x x x

(2) Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policydetermining, primarily confidential, or highly technical, by competitive examination.

x x x x

^[55] Section 21(1), Chapter 5, Title I-A, Book V of Executive Order No. (EO) 292 provides: Section 21. Recruitment and Selection of Employees. - (1) Opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service. Employees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the positions.

x x x x

^[56] ARTICLE 165. Recruitment and Selection. Opportunity for employment in an LGU shall be open to all qualified candidates. Utmost effort shall be exerted to attract best qualified to enter the local government service. Employees shall be selected on the basis of merit and

fitness.

^[57] *Rollo* (G.R. No. 248710), pp. 144-145.

^[58] *Id.* at 149-150.

^[59] *Id.* at 149.

^[60] *Id.* at 109-110.

^[61] *Id.* at 112-115.

^[62] 626 Phil. 775 (2010).

^[63] Section 9(h) of Presidential Decree No. 807 provides:

Section 9. Powers and Functions of the Commission. The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. *All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter.* (Italics supplied.)

^[64] Section 12(14) and (15), Book V of EO 292 provides:

Section 12. *Powers and Functions.* – The Commission shall have the following powers and functions:

x x x

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service, including extension of Service beyond retirement age;

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units and other instrumentalities of the government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary.

x x x x

^[65] *Rollo* (G.R. No. 248710), p. 116.

^[66] Sections 17, Rule VI of the 2017 Omnibus Rules on Appointments and Other Human Resource Actions provides:

SECTION 17. *An appointment issued in accordance with pertinent laws and rules shall take effect immediately on the date it was signed by the appointing officer/authority. The date of signing shall be indicated below the signature of the appointing officer/authority in the appointment form. xxx (Italics supplied)*

^[67] Sections 19, Rule VI of the 2017 Omnibus Rules on Appointments and Other Human Resource Actions provides:

SECTION 19. An appointment shall be submitted to the Commission within thirty (30) calendar days from the date of issuance. In case of appointments issued by accredited/deregulated agencies, the Report on Appointments Issued (RAI) together with the original CSC copy of appointments issued during the month and the required attachments shall be submitted on or before the 30th day of the succeeding month.

The delay in the submission of appointment or RAI to the CSCFO or CSCRO shall

not be taken against the appointee. The effective date of appointment shall not be adjusted based on the delay, thus the original date of appointment shall be retained. However, the responsible official/s who caused the delay in the submission or non-submission of the appointment may be held administratively liable for neglect of duty. (Italics supplied.)

^[68] CSC Resolution No. 1701009 (2017 Omnibus Rules on Appointments), approved on June 16, 2017.

^[69] *Rollo* (G.R. No. 248710), pp. 119-121.

^[70] *Id.* at 121.

^[71] *Id.* at 56.

^[72] *Id.* at 47-48.

^[73] *Rollo* (G.R. No. 250865), p. 175.

^[74] *Id.* at 179.

^[75] *Id.* at 176-178.

^[76] *Id.* at 184.

^[77] *Id.* at 185.

^[78] *Id.* at 187.

^[79] *Id.* at 190.

^[80] *Id.*

^[81] *Id.* at 191-195.

^[82] *Rollo* (G.R. No. 248710), pp. 261-263.

^[83] Section 1, Rule IV of the 1998 CSC Omnibus Rules on Appointments provides:

SECTION 1. An appointment issued in accordance with pertinent laws and rules

shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. In no case shall an appointment take effect earlier than the date of its issuance.

In case of local government unit appointment requiring concurrence of the Sangguniang Bayan, effectivity thereof shall not be earlier than the date of such concurrence.

^[84] *Rollo* (G.R. No. 248710), pp. 265-267.

^[85] *Id.* at 270-271.

^[86] **Sison v. People**, 628 Phil. 573, 583 (2010), citing **Bautista v. Sandiganbayan**, 387 Phil. 872, 883-884 (2000).

^[87] *Rollo* (G.R. No. 248710), p. 129.

^[88] **Buencamino v. People, G.R. Nos. 216745-46**, November 10, 2020, citing **People v. Atienza**, 688 Phil. 122, 132 (2012).

^[89] See Sandiganbayan *rollo*, p. 2.

^[90] **Uriarte v. People**, 540 Phil. 477, 494 (2006), **Sistoza v. Desierto**, 437 Phil. 117, 132 (2002), further citing **Llorente, Jr. v. Sandiganbayan**, 350 Phil. 820, 843 (1998).

^[91] **Collantes v. Hon. Marcelo**, 556 Phil. 794, 806 (2007), citing **Saber v. Court of Appeals**, 480 Phil. 723 (2004).

^[92] *Id.*

^[93] **Uriarte v. People**, *supra*, citing **Alvizo v. Sandiganbayan**, 454 Phil. 34, 72 (2003), citing WEBSTER, THIRD NEW INTERNATIONAL DICTIONARY 1646 and BOUVIER'S LAW DICTIONARY, 3rd ed., p. 2083.

^[94] 484 Phil. 350 (2004).

^[95] *Id.* at 360.

^[96] 669 Phil.32 (2011).

^[97] *Id.* at 55.

^[98] Article 8, Revised Penal Code.

^[99] **Bahilidad v. People**, 629 Phil. 567 (2010).

^[100] **Magsuci v. Sandiganbayan**, 310 Phil. 14, 20 (1995).

^[101] See **Fuertes v. Senate of the Philippines, G.R. No. 208162**, January 7, 2020.

^[102] **Yapyuco v. Sandiganbayan**, 689 Phil. 75 (2012).

^[103] **Magsuci v. Sandiganbayan**, supra at 19, citing **People v. Manuel**, 304 Phil. 698 (1994).

^[104] *Id.*

^[105] TSN, July 24, 2014, pp. 22-23.

^[106] TSN, June 15, 2016, pp. 13-14.

^[107] **Bahilidad v. People**, 629 Phil. 567 (2010).

^[108] *Rollo* (G.R. No. 248710), pp. 148-149.

^[109] Section 1 (c), Rule VII, 1998 Omnibus Rules on Appointments.

^[110] *Sandiganbayan rollo*, p. 1235. It is the duty of the PHRMO to ensure that Chiong have submitted all his requirements and supporting documents pursuant to Section 1 (a), Rule VII of the 1998 CSC Omnibus Rules on Appointments.

^[111] Section 1(b), Rule VII, 1998 Omnibus Rules on Appointments.

^[112] **Carreon v. Agcaoili**, 111 Phil. 119 (1961).

^[113] *Rollo* (G.R. No. 248710), p. 148.

^[114] Section 5, Rule VI, 1998 CSC Omnibus Rules on Appointments provides:

SECTION 5. The appointee whose appointment was approved but made effective thirty (30) days prior to date of submission to the Commission shall be entitled to payment of salary from the government immediately following the effectivity of the appointment. The salaries of the appointee for actual services rendered before the approved effectivity date shall be the liability of whoever caused the delay.

^[115] **People v. Salcena**, 676 Phil. 357 (2011).

^[116] Sandiganbayan *rollo*, p. 1501.

^[117] *Id.* at 365.

^[118] *Id.*

^[119] **Tin v. People**, 415 Phil. 1 (2001).

^[120] Although the 2017 Omnibus Rules on Appointments has repealed the 1998 Omnibus Rules on Appointments, the governing rule at the Chiong was appointed was the 1998 Omnibus Rules on Appointments. Hence, Sections 17 and 19, VI of the 2017 Omnibus Rules on Appointments, which were cited by Pena and Chiong in their respective appellant's brief, are not applicable in the case at bar.

^[121] 1998 Rules on Appointments, Rule II, Section 4 (e):

SECTION 4. Nature of Appointment. — The nature of appointment shall be as follows:

x x x x

e. Reemployment — is the reappointment of a person who has been previously appointed to a position in the career service under permanent status but was separated therefrom as a result of reduction in force, reorganization, retirement, *voluntary resignation* or of any non-disciplinary actions such as dropping from the rolls. Reemployment presupposes a gap in the service. (Italics supplied.)

^[122] See also **Obiasca v. Basallote**, *supra* note 62.

^[123] Section 2(2), ^[123] Article IX-8 of the Constitution provides:

Section 2. (1) x x x x

(2) Appointments in the civil service shall be made only according to merit and fitness to be detennined, as far as practicable, and, except to positions which are policy detennining, primarily confidential, or highly technical, by competitive examination.

x x x x

^[124] Section 21(1), 124 Chapter 5, Title I-A, Book V of the Administrative Code of 1987 provides:

Section 21. *Recruitment and Selection of Employees.* -

(1) Opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service. Employees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the positions.

^[125] ARTICLE 165. Recruitment and Selection. Opportunity for employment in an LGU shall be open to all qualified candidates. Utmost effort shall be exerted to attract best qualified to enter the local government service. Employees shall be selected on the basis of merit and fitness.

^[126] *Rollo* (G.R. No. 248710), pp. 144-145.

^[127] *Id.* at 147.

^[128] See **People v. Palabrica III**, G.R. Nos. 250590-91, November 17, 2021, citing **Centeno v. Judge Villalon-Pornillos**, 306 Phil. 219, 230 (1994).

^[129] **Centeno v. Judge Villalon-Pornillos**, 306 Phil. 219, 230-231 (1994).

^[130] See page 4 of CS Form 212 (Revised 2017).

^[131] 491 Phil. 693 (2005).

^[132] Now Item No. 34 in CSC Fonn 212 (Revised 2017).

^[133] Supra note 129.

^[134] 326 Phil. 416 (1996).

^[135] *Id.* at See also **Mathay, Jr. v. Court of Appeals**, 378 Phil. 466 (1999).

^[136] 556 Phil. 794 (2007).

^[137] *Rollo* (G.R. No. 248710), pp 144 and 146.

^[138] *Id.* at 146.

^[139] Section 1 (a), Rule VII, 1998 Omnibus Rules on Appointments.

^[140] Paragraph 8 of the Revised Policies on Merit Promotion Plan provides:

8. All candidates for appointment to first and second level positions shall be screened by the PSS. Candidates for appointment to third level positions shall be screened by the PSB for third level positions composed of at least three (3) career executive service officials as may be constituted in the agency. Appointment to the following positions shall no longer be screened by the PSB:

- a. Substitute appointment due to their short duration and emergency nature. However, should the position be filled by regular appointment, candidates for the position should be screened and passed upon by the PSB;
- b. Appointment of faculty members and academic staff of state universities and colleges who belong to the closed career service;
- c. Appointment to entry laborer positions;
- d. Appointment to personal and primarily confidential positions; and
- e. Renewal of temporary appointment issued to the incumbent personnel.

^[141] The Sandiganbayan aptly held that the Board Secretary IV position is a second level position. See *rollo* (G.R. No. 248710), 146.

^[142] Sections 466(2) of the Local Government Code of 1991 provides:

SECTION 466. *Powers, Duties, and Compensation.*—(a) The vice-governor shall:

x x x x

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the sangguniang panlalawigan, except those whose manner of appointment is specially provided in this Code;

x x x x

^[143] 289 Phil. 887 (1992).

^[144] *Id.* at 895. Citations omitted.

^[145] *Rollo* (G.R. No. 248710), pp. 132-133.

^[146] See **Toledo v. Civil Service Commission**, 279 Phil. 560 (1991).

^[147] Section 4, Rule VI, 1998 Omnibus Rules on Appointments provides:

SECTION 4. The appointing authority shall be personally liable for the salary of appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041.

^[148] **Coloma, Jr. v. Sandiganbayan**, 744 Phil. 214 (2014).

^[149] 722 Phil. 118 (2013).

^[150] 714 Phil. 248 (2013).

^[151] **Posadas v. Sandiganbayan**, *supra* at 125.

^[152] *Id.* at 125-126.

^[153] Section 4, ^[153] Rule VI of the 1998 CSC Omnibus Rules on Appointments provides:

SECTION 4. The appointing authority shall be personally liable for the salary of appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041.

^[154] **People v. Enojo, G.R. No. 252258**, April 6, 2022, citing **People v. Lumikid, G.R. No. 242695**, June 23, 2020.

^[155] **Suba v. Sandiganbayan First Division, G.R. No. 235418**, March 3, 2021.

^[156] *Rollo* (G.R. No. 248710), p. 147.

^[157] *Id.*

^[158] **Suba v. Sandiganbayan First Division**, *supra*.

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