

EUFROCINA N. MACAIRAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 215104. March 18, 2021

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CAGUIOA, J:

Before the Court are consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] dated April 29, 2014 (assailed Decision) and the Resolution[2] dated October 24, 2014 of the Sandiganbayan Special Fifth Division, finding petitioners Rosalinda U. Majarais (Majarais), Horacia D. Cabrera (Cabrera), Philip F. Du (Du), Imelda Q. Agustin (Agustin), Enrique L. Perez (Perez) and Anthony M. Ocampo (Ocampo) in Criminal Case No. 26492; and petitioners Majarais, Cabrera, Agustin, Perez, Priscilla G. Camposano (Camposano) and Eufrocina N. Macairan (Macairan), in Criminal Case No. 26493, guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

The Facts

The consolidated petitions involve the purchase made by the Department of Health - National Capital Region (DOH-NCR) sometime in May 1996 of 10,000 bottles of Paracetamol Suspension 60ml 125mg/5ml (Paracetamol Suspension) and 1,500 bottles of Ferrous Sulfate 250mg with Vitamin B Complex and Folic Acid (Ferrous Sulfate with Vitamin B Complex and Folic Acid). The Office of the Ombudsman received an Anonymous Letter[3] dated May 15, 1996 complaining about the alleged irregularity in these purchases of DOH-NCR and implicating four pharmaceutical companies including Aegis Pharmaceuticals (Aegis) and Lumar Pharmaceutical Laboratory (Lumar).

On December 4, 1996, the Office of the Ombudsman issued a Resolution finding probable cause to charge petitioners of violation of Section 3(e) of R.A. No. 3019.

Subsequently, an Information charging petitioner Majarais, Camposano, Cabrera, Du, Agustin, Perez, and Ocampo for violation of Section 3(e) of R.A. No. 3019, in relation to the purchase of 10,000 bottles of Paracetamol Suspension by the DOH-NCR from Aegis, was filed with the Sandiganbayan. The Information, docketed as Criminal Case No. 26492, reads:

That on or about May 4, 1996, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of the Honorable Office, the above-named accused Rosalinda U. Majarais, Priscilla G. Camposano, Horacia D. Cabrera, Philip F. Du, Imelda Q. Agustin and Enrique L. Perez, all public officer[s] being the Director IV, Financial Management Chief II, Administrative Officer III, Accountant III, Accountant I and Supply Officer III, respectively, of the Department of Health, National Capital Region, while in the performance of their official functions, together with ANTHONY M. OCAMPO, owner of Aegis Pharmaceuticals, conspiring and confederating and mutually helping one another, acting with evident bad faith, did then and there willfully, unlawfully and criminally give unwarranted benefits to Aegis Pharmaceuticals, by awarding to Aegis Pharmaceuticals the contract for the supply of 10,000 bottles of Paracetamol Suspension, 60ml., 125mg. at a price of Php 25.00 per bottle or a total of Php 250,000.00 despite the fact that the prevailing

price of Paracetamol Suspension, 60ml., 125mg., is Php 5.63 as quoted in the price list for the eleven (11) hospitals in 1996 obtained from DOH-Procurement and Logistics Services or a total amount of [Php 56,300.00] and thereafter, did and there facilitate the release of payment for the said contract to the damage and prejudice of the government in the amount of [Php] 193,700.00.

CONTRARY TO LAW.[4]

Except for Du and Ocampo, the aforementioned petitioners, together with Macairan, were also charged before the Sandiganbayan with the same offense but in connection with the purchase by the DOH-NCR of 1,500 bottles of Ferrous Sulfate with Vitamin B Complex and Folic Acid from Lumar. The Information, docketed as Criminal Case No. 26493, reads:

That on or about May 13, 1996, or sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of the Honorable Office, the above-named accused Rosalinda U. Majarais, Priscilla G. Camposano, Horacio D. Cabrera, Imelda Q. Agustin and Enrique L. Perez, all public officer[s] being then the Director IV, Financial Management Chief II, Administrative Officer III, Accountant I and Supply Officer III, respectively, of the Department of Health, National Capital Region, while in the performance of their official and administrative functions and acting with evident bad faith and manifest partiality, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally give unwarranted benefits to Eufrocina N. Macairan, doing business under the name Lumar Pharmaceutical Laboratory, by awarding Lumar Pharmaceutical Laboratory the contract for the supply of 1,500 bottles of Ferrous Sulfate with Vitamin Band Folic Acid at the amount of Php220.00 per bottle or a total price of Php330,000.00 without any public bidding, in violation of existing government rules and regulations, and thereafter did then and there facilitate the release of the payment for the said contract in the amount of Php330,000.00 despite the fact that another supplier offered the same product at a price of Php73.37 per bottle or a total price of Php110,055.00 and, thereafter, did then and there facilitate the release of the payment for the said contract to the damage and prejudice of the government in the amount of [Php]219,945.00.

CONTRARY TO LAW.[5]

The cases were jointly tried before the Fifth Division of the Sandiganbayan.

Upon arraignment, petitioners separately entered a plea of not guilty.

During the pre-trial, the parties entered into the following stipulation of facts:

For Criminal Case No. 26492

- During the material time alleged in the Information, the following accused were public officers occupying the following positions in the Department of Health (DOH):

Rosalinda U. Majarais Director IV

Horacia D. Cabrera Administrative

Officer III

Priscilla G. Camposano Financial

Management Chief II

Imelda G. Agustin Accountant I

Philip F. Du Accountant III

Enrique Perez Supply Officer

- On March 4, 1996, a Requisition and Issue Voucher (RIV) was prepared for 10,000 bottles of Paracetamol suspension 125mg/5ml 60ml bottles for the use of different districts under the DOH-NCR;
- On May 3, 1996, Purchase Order No. 96-97 was prepared in favor of Aegis Pharmaceuticals for the procurement of 10,000 bottles of Paracetamol suspension 60ml 125mg/5ml at a price of P25.00 per bottle, or a total of P250,000.00;
- On May 10, 1996, Aegis Pharmaceuticals delivered 10,000 bottles of Paracetamol Suspension 125mg/5ml and a certificate of acceptance was executed on May 13, 1996;
- Disbursement Voucher (DV) No. D1269-96-0572 was prepared and the corresponding check (Check No. 0000032668) was released on May 13, 1996; and
- Accused Ocampo is the owner of Aegis Pharmaceuticals.

For Criminal Case No. 26493

- During the material time alleged in the Information, the following accused were public officers occupying the following positions in the Department of Health (DOH);

Rosalinda U. Majarais Director IV

Horacia D. Cabrera Administrative

Officer III

Priscilla G. Camposano Financial

Management Chief II

Imelda G. Agustin Accountant I

Enrique Perez Supply Officer

- Accused Eufrocina N. Macairan is the owner/proprietor of Lumar Pharmaceutical Laboratory;
- On March 4, 1996, a Requisition and Issue Voucher (RIV) was prepared in connection with the purchase of 1,500 bottles of Ferrous Sulfate capsule with Vitamin B Complex and Folic Acid;
- On May 3, 1996, the DOH-NCR proceeded to purchase 1,500 bottles of Ferrous Sulfate capsule with Vitamin B Complex and Folic Acid at a price of P220.00 per bottle or a total of P330,000.00;
- On May 10, 1996, Lumar Pharmaceutical Laboratory delivered 1,500 bottles of Ferrous Sulfate 250mg with Vitamin B Complex and Folic Acid Capsules 100s and a certificate of acceptance was executed on May 13, 1996. (Accused Agustin admitted this stipulation with qualification that he had no participation in said delivery and execution of certificate of acceptance); and
- DV No. D1269-96-05-78 was prepared and the corresponding check (Check No. 0000032670) was released on May 13, 1996.[6]

Evidence for the Prosecution

The prosecution presented Purita S. Danga (Danga), Rogelio A. Ringpis (Ringpis) and Normita A. Palisoc (Palisoc) as its witnesses. Their testimonies were summarized by the Sandiganbayan as follows:

1. x x x [Danga was] the Regional Director of the Department of Health (DOH) Center for Health

Development, Region II, Cagayan Valley. Prior to her designation as such, she was assigned as a District Health Officer in Makati City from March 1988 to 1997. On May 16, 1996, while being assigned as a district health officer, she was also designated as officer-in-charge (OIC) of the DOH-National Capital Region (NCR) because of accused Majarais' suspension from office for alleged overpricing of medicine. She identified accused Majarais, Cabrera and Du in court. She also identified a photocopy of the Memorandum dated September 11, 1995 issued by accused Majarais.

When she was the OIC at the DOH-NCR, Danga recalled reading some documents signed by accused Majarais such as the two (2) Requisition and Issue Vouchers (RIVs) both dated March 4, 1996 which [were] also signed by accused Cabrera and Disbursement Voucher (DV) No. D1269-95-05-78.

According to Danga, the usual mode of procurement in the purchase of medicine by the DOH-NCR is public bidding which is conducted by the Committee on Bids and Awards.

On cross examination, she admitted that she does not have personal knowledge of the transactions which are the subject matter of these cases. She knew that accused Majarais was suspended due to overpricing based on the suspension order which she had read. She also said that what she meant was that accused Majarais was suspended because an Information was filed against her.

2. x x x

x x x [Ringpis testified that] [i]n 1996, he was assigned as a resident Ombudsman in the DOH. As such, he conducted fact-finding investigations of cases assigned to him. While assigned as a resident Ombudsman, he received an anonymous letter dated May 15, 1996 requesting him to conduct an investigation on the DOH-NCR's procurement of medicine including Paracetamol suspension and Ferrous Sulfate.

As a first step of his investigation, he obtained the following documents from the Procurement and Logistics Service of the DOH-NCR relating to subject transactions which he identified in Court: RIV dated March 4, 1996, purchase order (PO) for the 10,000 bottles of Paracetamol suspension, delivery receipt issued by Aegis Pharmaceuticals, Invoice No. 0129, descriptive inspection report, narrative report and certificate of acceptance by accused Perez.

Ringpis also identified the following documents he obtained with regard to the purchase of Ferrous Sulfate with Vitamin B complex and folic acid: PO dated May 3, 1996, RIC dated May 4, 1996, sales invoice, descriptive inspection report, narrative inspection report, certificate of acceptance signed by accused Perez and [Du].

Based on the documents and result of his interview with Danga and accused Du, Ringpis found that the price of Paracetamol suspension 60ml 125mg/5ml at P25.00 per bottle purchased from Aegis Pharmaceuticals was overpriced. As quoted in the "Price List for the eleven (11) Hospitals (January to June, 1996) December 19, 1995 Bidding," the previous price of Paracetamol suspension 125mg/5ml 60ml suspension/syrup alcohol-free was P5.63 per bottle. Ringpis secured a copy of the said price list (Exhibit H) from the Procurement and Logistics Service of the DOH because the PO for the Paracetamol suspension indicates that it was subject to the terms and conditions of the public bidding held in 1995. The overprice amount[s] to P193,700.00. His findings were reduced in his Fact-Finding Report dated August 6, 1996.

With regard to the purchase of 1,500 bottles Ferrous Sulfate 250mg with Vitamin B complex and folic acid capsule, Ringpis prepared another fact-finding report. Therein he stated that the price of P224.00 per bottle of said medicine purchased from Lumar Pharmaceuticals was grossly overpriced based on the abstract of bids for drugs/medicines in the 1994 public bidding where Foramen Products offered the same item at the price of P73.37 per bottle. A comparison shows that there is price difference of P146.63 per bottle or a total of P219,945.00. Ringpis also found out that the purchase of Ferrous [Sulfate] was done without a public bidding.

In both fact-finding reports, Ringpis recommended the filing of criminal and administrative complaints against

the persons involved in the two (2) transactions.

On cross examination, Ringpis declared that he did not send notice of investigation to the accused because he was informed that some of the accused were under preventive suspension and it is their Office's policy to avoid contact with [the] subject of their fact-finding investigation. He also clarified that a fact-finding investigation is different from a preliminary investigation conducted by the Office of the Ombudsman where the respondents are required to submit their counter-affidavits.

Ringpis obtained a copy of the 1994 abstract of bids because the PO for the Ferrous Sulfate contains a notation which states that it was subject to the terms and conditions of the 1994 bidding. Based on the said abstract of bids, there was a[n] overprice in the purchase of Ferrous Sulfate from Lumar. Said abstract of bids indicates that for the item Ferrous Sulfate, Foramen offered the price of P73.37 and Lumar offered the same item at P220.00. According to Ringpis, a copy of the abstract of bids is sufficient for him to conclude that there was an overprice because what was stated in the abstract of bids should be given credit unless there is a report that the contents of the abstract is different from the results of the bidding.

Ringpis further discovered that the purchase of the 1,500 bottles of Ferrous Sulfate in May 1996 was unnecessary because the 1996 Procurement Plan authorized only the purchase of 2,000 bottles which was already procured in February 1996.

He does not know the difference between Paracetamol syrup and Paracetamol suspension. However, based on said price list, a supplier offered P5.63 for either syrup or suspension which was lower than the one offered by Aegis which is at P25.00 for Paracetamol suspension. He did not look into the record of the DOH-NCR regarding its previous purchases of paracetamol suspension.

On further cross-examination, Ringpis maintained that based on the 1994 abstract of bids, Lumar and Foramen offered the same product which is Ferrous Sulfate with Vitamin B Complex and folic acid. He did not examine each bid of the participating bidders because the abstract itself clearly states that both Lumar and Foramen offered the same product. He was not aware of any information regarding Foramen's disqualification in the 1994 public bidding allegedly because its Certificate of Product Registration (CPR) already expired or that Lumar is the exclusive distributor of Ferrous Sulfate with Vitamin B complex and folic acid or that the DOH had made previous purchases of the same product with the same price of P220.00 per bottle from Lumar.

3. x x x [Palisoc testified that she] was an accountant of the San Lazaro Hospital since 1995 and was designated as one [of] the members of the Committee on Public Bidding for Drugs and Medicines of the DOH. As a member of said committee, she participated in the examination of the bidding requirements and evaluated bids; she signed bidding documents such as abstract of bids, resolutions and tabulations of the final results of the bidding. She explained that the procedure for public bidding in the DOH Central Office and Regional Offices of the DOH is the same. The DOH will announce and conduct a public bidding through the Bids and Awards Committee (BAC) based on the approved annual procurement plan. The bidding results will be evaluated and forwarded to the Technical Evaluation Committee. Thereafter, it will be returned to the BAC for comments, if any, and finalized for recommendation to the head of the agency.

In 1995, Palisoc declared that the DOH Central Office conducted two (2) public biddings. One was conducted in June 1995 to govern the purchases from July to December 1995 and another one in December 1995 to govern purchases from January 1996 to June 1996.

She recalled having signed the tabulated results of the public bidding conducted in December 1995 which is captioned as "price list for the eleven (11) hospitals January 1996 to June 1996, December 19, 1995 public bidding." She explained that said pricelist indicates the winning bidders for the eleven (11) hospitals for the purchases covering the period January 1996 to June 1996. The DOH Secretary then prepared the notice of award. The copies of said price list are made available to the eleven (11) hospitals, the district offices and other offices under the DOH which may be used as reference or guidelines in their own procurement or as guidelines

in case there is no public bidding so that the purchases will be most advantageous to the government.

Referring to said pricelist, Palisoc declared that Item No. 278 shows that there was a bid offer of P9.50 for paracetamol acetaminophen, oral 125mg for 5ml 60ml syrup/suspension alcohol free. The BAC, however, did not award said item because it considered the price of P9.50 excessive as it was more than 10% of the allowable price when compared to the previous price of P5.63. She also confirmed that the price list for the eleven (11) hospitals, x x x, is the same document which she signed with respect to the result of the public bidding conducted in December 1995.

x x x Palisoc declared that the BAC of the DOH Central Office, of which she was a member, is only concerned with the procurement of medicine and drugs of the DOH and the eleven (11) hospitals under it and has no supervisory control over the BAC of the DOH Regional Offices. The BAC of the DOH Regional Offices may have their own mode of procurement separate and different from the BAC DOH.

x x x x

Palisoc explained that while the DOH concerned agencies may or may not consider the price list as their reference in their procurement, they still furnish the concerned agencies copies of the price list because the prices therein are competitive and advantageous to the government.

The said price list for eleven (11) hospitals, which was the result of the bidding conducted on December 19, 1995 to govern purchases from January 1996 to July 1996, was prepared on May 24, 1996; hence, it was not yet available on May 10, 1996. Said price list shows that the price offered for Paracetamol syrup/suspension is P9.50 and that the previous bid price of the same medicine was P5.63. According to Palisoc, should there be a delay in the issuance of a price schedule, the price list is automatically extended until such time that a new price schedule shall have become available. Thus, the price of Paracetamol suspension on May 10, 1996 was P5.63, which is the price during the last bidding or the public bidding prior to December 19, 1995 public bidding.[7]

Evidence for the Defense

The defense presented Ocampo and his wife Ma. Teresita Ocampo (spouses Ocampo), Engr. David Masiado, Jr., Jesusa Cirunay, and petitioners Majaraiz and Camposano. Their testimonies were summarized by the Sandiganbayan as follows:

1. [Ma. Teresita Florentino Ocampo (Ma. Teresita), wife of accused Ocampo and the Assistant General Manager of Aegis Pharmaceuticals] testified that on May 9, 1996, Aegis was notified of the PO dated May 3, 1996 for Paracetamol suspension 60ml/125mg for P25.00/bottle. They subsequently delivered after verifying that they had enough stocks to service the PO. Said PO contained a notation which states, "subject to the terms and conditions of RFO NCR public bidding for drugs and medicines 1995 public bidding." According to Ocampo, the notation means that they have to serve the PO based on reorder or for them to deliver Paracetamol suspension 125mg/5ml pursuant to the terms and conditions of the July 10, 1995 public bidding conducted by the DOH NCR. In said July 10, 1995 public bidding, seven (7) items including Paracetamol suspension 125mg/5ml at P25.00 per 60ml bottle, were awarded to Aegis.

[Ma. Teresita] recalled that on July 7, 1995, or three (3) days before the said public bidding, the DOH NCR issued a bid bulletin to clarify the final list of the pharmaceutical products subject for bidding. Some of these products were either deleted or corrected or other products were added. [Ma. Teresita] declared that item 89 of the invitation to bid, which refers to Paracetamol 100mg/5ml drops, 120mg/5ml syrup, 250mg/5ml 60ml syrup alcohol-free, 250mg tablet, 100/bottle was deleted from the said bid bulletin. This deleted item was replaced with Paracetamol 60mg/0.6ml, 30ml drops bottle, 125mg/5ml 60ml suspension and Paracetamol 325mg tablet. After the July 10, 1995 public bidding, Aegis was given a Notice of Award dated August 16, 1995. One of the products listed in said notice was 62,310 bottles of Paracetamol 125mg/60ml suspension, alcohol-free at

P25.00/bottle. After posting a performance bond, Aegis delivered the products from August or September 1995 until the end of the year 1995. As proof that it delivered said products, [Ma. Teresita] presented copies of PO dated May 3, 1996 with the corresponding Invoice No. 129 and Delivery Receipt No. 055 dated May 10, 1996, the descriptive inspection report, narrative inspection report and certificate of acceptance. [Ma. Teresita] explained that it is the practice of the DOH NCR and eleven (11) hospitals to require the submission of only one (1) performance bond per notice of award and not per PO; hence, Aegis used the same performance bond in 1995 for the 1996 delivery or transaction.

[Ma. Teresita] likewise identified DV No. P-126991-05-72 issued by the NCT Accounting division. The amount stated therein was only 80% of the total price or P492,727.27. The balance [would] be paid only after the products passed the analysis conducted by the BFAD. [Ma. Teresita], however, [could not] remember the date when full payment was made to Aegis.

[Ma. Teresita] declared that Paracetamol syrup is different from suspension because each was issued separate [CPR] and that Paracetamol syrup was deleted and replaced with Paracetamol suspension in the list for the 1995 public bidding.

[Ma. Teresita] presented a copy of the document [titled] "various drug requirements for the DOH Central Office June 26, 1995 bidding." She prepared this on behalf of Delamo Pharmaceia where Delamo quoted the price of P5.63 for Paracetamol 125mg/5ml 60ml syrup. She also brought to court two (2) 60ml bottles which are labelled analgesic/antipyretic. One bottle is Paracetamol 125mg/5ml syrup and the other one is Paracetamol 120mg/5ml suspension. She declared that Delamo previously delivered to the DOH several bottles of Paracetamol syrup P5.63 on February 21, 1996.

x x x x

According to [Ma. Teresita], there were three (3) biddings held at the DOH: (1) public bidding in the eleven (11) hospitals where Aegis and Delamo did not participate; (2) public bidding conducted by the DOH Central Office where Delamo submitted a bid for Paracetamol syrup at P5.63 per bottled of 60ml; and (3) public bidding conducted by the DOH NCR on July 10, 1995 where Aegis submitted a bid for Paracetamol suspension 125mg/5ml at P25.00.

[Ma. Teresita] declared that Paracetamol suspension was only [bid] in the NCR main office for the use of its four (4) districts. Aegis delivered to [DOH-NCR] 10,000 bottles of 125mg/5ml Paracetamol suspension at P25.00 per bottle on March 9, 1996 and to the District Health Office No. 1 on April 8, 1996. She insisted that Delamo's bid for the price of P5.63 during the DOH Central Office bidding referred to paracetamol syrup 125mg/5ml.

x x x x

[Ma. Teresita] maintained that although Aegis and Delamo did not participate in the bidding for the eleven (11) hospitals, the price of P5.63 for Paracetamol syrup/suspension written in the eleven (11) hospitals price list refers to Paracetamol syrup which Delamo won in the DOH Central Office public bidding. This is because the chairperson of the bidding committee in the eleven (11) hospitals and the DOH is the same. The said price list for eleven (11) hospitals does not indicate that Delamo won [the bid in] said Paracetamol syrup but many people allegedly know that it did. She insisted that Ringpis' interpretation of the eleven (11) hospitals price list is erroneous because the processing and formulation involved in syrup [are] different from suspension which account for its price difference.

x x x x

2. [David P. Masiado, Jr, the Officer-in-Charge of the Material Management Division of the DOH] testified that the Material Management Division receives procured and donated goods such as medicine, supplies and equipment of the DOH and keeps records of the same. He received two (2) letters both dated December 12,

2005 from accused Ocampo. These letters requested copies of bidding documents of Aegis in connection with the December 19, 1995 bidding of DOH eleven (11) hospitals and pricelist for 1995 and 1996 for DOH-Central Office and eleven (11) hospitals. These letters likewise requested copies of the bidding documents of Delamo relative to the DOH Central Office bidding on June 26, 1995, NCR-RFU bidding on July 10, 1995 and DOH eleven (11) hospitals bidding on December 19, 1995. He tried to find said requested documents but they have no such documents. Their office policy is to dispose of documents after five (5) or ten (10) years from the time the documents were issued. He also identified his letter dated November 9, 2009 in reply to accused Ocampo's letters.

x x x x

The defense manifested their intent to present a representative from the BFAD for the purpose of testifying on the difference of paracetamol syrup and paracetamol suspension. The prosecution, however, admitted that paracetamol syrup and suspension are two (2) different medicines but it qualified that their prices were the same during the December 19, 1995 public bidding.

3. Accused Majarais was the third witness of the defense. She identified a photocopy of her Memorandum dated September 11, 1995, endorsing a copy of the pricelist for drugs and medicines in the public bidding conducted by the [DOH-NCR] on July 10, 1995 to serve as basis for the procurement. She also identified a photocopy of the pricelist referred to in her memorandum. According to her, the original copy of her memorandum is on file with the records of the DOH NCR.

On cross examination, Majarais declared that as the Regional Director, she did not participate in the July 10, 1995 public bidding but she endorsed the result of the same to serve as basis for the procurement. When they purchased Paracetamol suspension in May 1996, there was no result yet of the 1996 public bidding if ever there was one. The price of Paracetamol suspension which they purchased was based on [the] result of the July 1995 public bidding which is P25.00 per bottle. She was not aware of the result of the public bidding conducted by the eleven (11) hospitals because the DOH central office did not furnish them a copy of the same.

On re-direct examination, accused Majarais identified a photocopy of Resolution No. 001-95 dated September 10, 1995 issued by the BAC, which, among others, states that the price list for the drugs and medicine for 1995 will be used as basis for procurement of all offices under the RFO for NCR.

On re-cross examination, accused Majarais declared that the DOH NCR conducts a public bidding every six (6) months but because of the tedious process, their usual practice is to conduct public bidding once a year. She was very sure that there was no public bidding in 1996 in the DOH NCR and if there was one, the results were not out yet when the questioned procurement was made. Thus, they used the results of the previous year's public bidding when they purchased Paracetamol suspension in 1996.

4. The defense presented accused Ocampo as its fourth witness. He testified that he was the general manager of Delamo and Aegis and he was also in charge of product pricing. Delamo was a manufacturing company which manufactured pharmaceutical products specifically antibiotics, analgesics, antipyretics and multivitamin[s] while Aegis was a distributor of Delamo.

According to him, the DOH Central Office or the Regional Health Units' (RHUs) public bidding is the biggest or bulk bidding. In its 1995 public bidding, Delamo's bid for Paracetamol syrup 60ml 125mg/5ml bottle was P5.63. Aegis, on the other hand, participated in the 1995 DOH NCR public bidding where its bid for Paracetamol suspension was P25.00. He explained that the cost of the raw materials used, the process involved in the manufacturing and the "bulk bidding" are factors which account for the difference in the prices of Paracetamol syrup and Paracetamol suspension. He concluded that it is impossible that the price of syrup could be higher than the price of suspension.

x x x x

On cross examination, accused Ocampo said that Delamo offered the price of P5.63 during the 1995 DOH Central RHU public bidding. This was the biggest public bidding of the DOH and attended only by manufacturers and exclusive distributors of multinational companies and that distributors were not allowed to bid. They do not attend the bidding for eleven (11) hospitals because it is a minor bidding. He insisted that the words "syrup/suspension" in item [278] in the pricelist of the eleven (11) hospitals, x x x, should read as syrup or suspension depending on the CPR submitted by the bidder. He did not seek clarification from the BAC with regard to item 278 because it had been discussed in the pre-bid conference for the public bidding on the DOH Central Office that the item 278 refers to Paracetamol syrup or Paracetamol suspension. As proof that P5.63 refers to the price of paracetamol syrup only, accused Ocampo said that the COA never filed any charges against them.

x x x x

On questions from [the court], accused Ocampo said that he had been engaged in the pharmacy business since the 1960s. When he got married, he separated from his father and put up his own pharmaceutical facilities. He directly manufactured all their products and imported all raw materials. In explaining the difference between a syrup and a suspension, accused Ocampo said that syrup is transparent while suspension is opaque because it has more sugar, more flavors and it undergoes a "cold process." In terms of production, suspension is more expensive because they have to use brand new bottles unlike in syrup where recycled bottles may be used because of its alcohol content. x x x

5. As its fifth witness, the defense presented Jesusa Joyce Cirunay, a pharmacist and the chief of the product services division of the BFAD. She declared that she received a subpoena issued by the court requiring her to present CPRs of Lumar Pharmaceutical Incorporated and Foramen Products Corporation from 1993 to 1996. However, their record section informed her that despite their efforts, they could no longer find said documents. She also said that they have an existing office policy that documents that are five (5) years or older are forwarded to the archive section for appropriate disposal.

x x x She declared that a CPR is valid for five (5) years. If it is not renewed, the product cannot be marketed to the general public.

x x x She also declared that they have a database for the CPRs which start from the year 2000 onward but the records before the year 2000 are no longer available. If the product was registered for a long time and was not renewed, then the CPRs are no longer available except for CPRs in the year 2000 and onwards where the same were scanned and stored in the database.

6. As its last witness, the defense presented accused Camposano who was then the Financial and Management Officer of DOH NCR. She declared that her initials below the name of accused Majaraiz on the PO dated May 3, 1996 was the basis in including her in the subject cases. According to her, she placed her initials on said PO for Ferrous Sulfate with Vitamin B complex and folic acid because there was a valid requisition, the accountant certified that funds were available and the stock position sheet of said medicine indicates it was already zero. She explained that the stock position sheet indicates the status of the medicine in the stockroom. She further declared that there was no public bidding at that time but that the PO indicates that it was "subject to the terms and conditions of RFO NCR public bidding for drugs and medicines 1994 public bidding." She claimed that she was designated chairperson of the BAC in 1994. The BAC considered the bid of Lumar Pharmaceutical instead of Foramen's bid because the latter offered Ferrous Fumarate which is a different drug and that its CPR for Ferrous Fumarate already expired or was valid only until May 14, 1994. Since Foramen was disqualified in the 1994 bidding, its bid cannot be used or considered in the future biddings.

Accused Camposano testified that they have been purchasing Ferrous Sulfate with Vitamin B complex and folic acid from Lumar since 1992 to 1996 at the same price. She could not recall any adverse findings or disallowance issued by the COA regarding said purchases.

She further testified that no public bidding was conducted when they procured Ferrous Sulfate in 1995 because it was not included in the work plan for drugs and medicine. The following year, or in 1996, a public bidding was not yet conducted when they purchased said Ferrous Sulfate because the list of drugs and medicine subject to a bidding was not yet completed.

x x x x

Accused Camposano further declared that after the 1994 public bidding, the BAC came up with a price list of the drugs and medicine which was posted on the ground floor of the DOH NCR. It is the practice of the DOH to consider the results of the previous public bidding when no new public bidding has been conducted yet. Their previous purchases of Ferrous Sulphate with Vitamin B complex and folic acid from Lumar were through negotiation because Lumar is the sole distributor of the product as certified to by their supply officer.

x x x She testified that there was no public bidding when they purchased Ferrous Sulfate in 1996 because it was an emergency purchase as the said medicine had zero balance in the stock. She also testified that the purchase of the Ferrous Sulfate is in the nature of repeat order because it came from the same supplier and with the same price when they purchased the same two (2) years earlier.

x x x x

On questions from [the court], she said that the copies of the result of the 1994 public bidding might have been destroyed or lost but she was sure that it was indicated in said result that Foramen was disqualified.[8]

The Sandiganbayan Ruling

On April 29, 2014, the Sandiganbayan convicted Majaraiz, Cabrera, Du, Agustin, Perez and Ocampo, in Criminal Case No. 26492, for violation of Section 3(e) of R.A. No. 3019. The Sandiganbayan found that all elements of the crime were present. The Sandiganbayan held that Majaraiz and Cabrera, acted with evident bad faith in purchasing 10,000 bottles of overpriced 125mg/5ml 60ml Paracetamol Suspension at P25.00 from Aegis, owned by Ocampo, when the January 1996 to June 1996 price list for 11 hospitals issued by the DOH Central Office (DOH-Central) indicates that the price of Paracetamol Syrup/Suspension is P5.63. According to the Sandiganbayan, their actions gave Aegis unwarranted benefits and caused undue damage to the government in the amount of P193,700.00.

The Sandiganbayan further held that Du, Perez and Agustin acted in conspiracy with Majaraiz, Cabrera and Ocampo. The Sandiganbayan explained that the signatures of Du, Perez and Agustin on the Requisition and Issue Vouchers (RIV), Purchase Orders (PO) and Disbursement Vouchers (DV), which made possible the payment to Aegis, unquestionably signify their assent to the transaction, a conspiracy to disburse public fund despite the fact that there was no necessity to purchase the same at that time and despite the overprice.

The Sandiganbayan, however, found no sufficient evidence to link Camposano to the questioned transaction.

In Criminal Case No. 26493, Majaraiz, Cabrera, Camposano, Agustin, Perez and Macairan were also found guilty of violating Section 3(e) of R.A. No. 3019. The Sandiganbayan held that they acted with evident bad faith when they allowed the purchase, without public bidding, of 1,500 bottles of overpriced Ferrous Sulfate with Vitamin B Complex and Folic Acid from Lumar, owned by Macairan, at P220.00/bottle, when the 1994 Abstract of Bids from the DOH-NCR shows that Ferrous Sulfate with Vitamin B Complex and Folic Acid is priced at P73.37. According to the Sandiganbayan, their actions gave Lumar unwarranted benefits and caused undue damage to the government in the amount of P219,945.00.

The Sandiganbayan explained that Perez, as the supply officer; Agustin, who certified on the availability of funds; Camposano, who admitted placing her initials on the PO; and Majaraiz, who approved the same, ought to have

known that there was no justification for not conducting the public bidding; and that the Ferrous Sulfate purchased from Lumar was overpriced. The Sandiganbayan further held that petitioners' respective signatures on the POs and the DVs, which made possible the payment to Lumar despite the irregularity in the supporting documents, indicate a conspiracy to disburse public fund to pay Lumar the overpriced amount.

Accordingly, the dispositive portion of the assailed Decision[9] reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows -

1. In Criminal Case No. 26492, this Court finds accused ROSALINDA U. MAJARAIS, HORACIO D. CABRERA, PHILIP F. DU, IMELDA Q. AGUSTIN, ENRIQUE L PEREZ and ANTHONY M. OCAMPO GUILTY beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, as amended, and are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office; and PRISCILLA G. CAMPOSANO is ACQUITTED for failure of the prosecution to prove her guilt beyond reasonable doubt.

2. In Criminal Case No. 26493, this Court finds accused ROSALINDA U. MAJARAIS, PRISCILLA G. CAMPOSANO, HORACIO D. CABRERA, IMELDA Q. AGUSTIN, ENRIQUE L. PEREZ and EUFROCINA N. MACAIRAN; and ANTHONY M. OCAMPO GUILTY beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019, as amended, and are hereby sentenced to suffer the indeterminate penalty of imprisonment for six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

The hold departure order issued against accused Priscilla G. Camposano in Criminal Case No. 26492 is accordingly lifted, and her cash bond in said case released.

SO ORDERED.[10]

In the Resolution[11] dated October 24, 2014, the Sandiganbayan denied petitioners' respective motions for reconsideration.

Hence, the present consolidated petitions.

Petitioners claim that the Sandiganbayan committed a grave and serious error in finding them guilty beyond reasonable doubt of the crime charged when the evidence adduced by the prosecution does not conclusively prove all the elements of the crime of violation of Section 3(e) R.A. No. 3019.

In G.R. No. 215104, petitioner Macairan contends that her conviction in Criminal Case No. 26493 was based on a single document - the 1994 Abstract of Bids - which is a mere secondary source of evidence.[12] She claims that such Abstract of Bids, being a mere summary, did not indicate that the Foramen's bid price of P73.37 pertains to a medicine different from that prescribed by the DOH-NCR and that Foramen was, in fact, disqualified in the said 1994 public bidding because its Certificate of Product Registration had already expired.[13]

Macairan further argues that from the prosecution's own evidence it is clear that there was no overprice and that the subject purchase was pursuant to the established practice at the DOH that if there was no public bidding, the intended purchase would be subject to the terms and conditions of the last public bidding,[14] i.e., the 1994 public bidding of the DOH-NCR where the Notice of Award was issued in favor of Lumar for the supply of the same product at the same price of P220.00.[15]

Lastly, Macairan contends that the prosecution utterly failed to prove conspiracy in the present case.[16]

In G.R. Nos. 215120 & 215147, Agustin argues that she did not commit any prohibited act in the performance of official duties because the failure to conduct a public bidding is not a criminal act.[17] She claims that the subject purchases were made in accordance with the existing policy of not just the DOH-NCR but of the entire DOH, that

in the event that there is no public bidding, the price of the previous winning bidder shall be used as reference or guideline in the subsequent purchases.[18] Agustin further claims that no evident bad faith or manifest partiality may be attributed to them, nor can there be a granting of unwarranted benefits to Aegis and Lumar to the damage of the government, because the subject transactions followed the regular procedure as verified by the State Auditor.[19] Also, Agustin contends that the price list of the 11 hospitals which was prepared on May 24, 1996 by the DOH-Central and distributed in the early part of June, 1996 cannot be used as the basis for the alleged overpricing of Paracetamol Suspension purchased from Aegis because: 1) the said price list was intended for the 11 hospitals under the control of DOH-Central and not for DOH-NCR; and 2) said document was prepared after the DOH-NCR had already purchased on May 10, 1996, the 10,000 bottles of Paracetamol Suspension.[20] On the other hand, the lowest price indicated in the 1994 Abstract of Bids cannot be used as basis to determine overpricing for the purchase of Ferrous Sulfate with Vitamin B Complex and Folic Acid because the said price pertains to a different drug and the bidder thereof - Foramen Pharmaceuticals - was in fact disqualified in that 1994 public bidding conducted by the DOH-NCR.[21]

Agustin also argues that conspiracy cannot be established by the mere signing of a document. Her signatures in the POs and DVs, to attest to the availability of funds, which she carried out with diligence and reliance upon appropriate and complete documents, are in fact insufficient to hold her liable for the crime charged.[22]

In G.R. No. 215212, Du argues that his participation in the procurement of 10,000 bottles of Paracetamol Suspension, being only at the tail end thereof when he certified as to the availability of funds, is insufficient to hold him liable for the crime charged.[23] He further claims that the price list for the 11 hospitals issued by the DOH-Central cannot be used as basis for overpricing because the same was prepared only after the DOH-NCR had completed the purchase of the Paracetamol Suspension.[24] Thus, no evident bad faith may be imputed to him because he had no knowledge of the said price list when he signed the DVs for the procurement of Paracetamol Suspension.[25]

Ocampo, Camposano and Majarais, in their Joint Petition for Review,[26] on the other hand, argue that they did not commit any prohibited act in the performance of their official duties. According to them, the lack of public bidding is not penalized by law and the fact of overpricing, as embedded in the third criminal element of the unlawful act covered by Section 3(e) of R.A. No. 3019 and upon which the charge against them was based, had not been established beyond reasonable doubt.[27] They also assert that the evidence clearly shows that they did not act with evident bad faith in the purchase of the subject medicines and that they did not commit any act which is grossly disadvantageous to the government.[28] Finally, said petitioners claim that, contrary to the Sandiganbayan's finding, they properly laid down the basis for presentation of secondary evidence relative to their Exhibits "18," "19," "31," "32" and "33." On the contrary, it was the prosecution who miserably failed to justify its introduction of photocopies to support its case.[29]

In G.R. Nos. 215377 & 215923, petitioners Cabrera and Perez assert that the absence of public bidding does not make their actions criminal. According to said petitioners, the Sandiganbayan failed to note that the questioned transactions in these cases are procurement of medicines that are not only necessary but are also supported by the existing policy, both of the DOH-NCR and DOH-Central, of utilizing the result of the previous winning bidder until a new price schedule is available.[30] Thus, evident bad faith and manifest partiality cannot be attributed to them; neither can there be unwarranted benefits or damage to the government.[31] The Sandiganbayan also erred in relying on the price list for the 11 hospitals issued by the DOH-Central in ruling that there was an overprice when such price list was not even existent when the questioned transaction was made.[32]

In its consolidated Comment,[33] the Office of the Solicitor General (OSG) insists that the prosecution established all the elements of the unlawful act covered by Section 3(e) of R.A. No. 3019 and proved that

petitioners are guilty beyond reasonable doubt. According to the OSG, the Sandiganbayan correctly ruled that petitioners committed a prohibited act while exhibiting evident bad faith and manifest partiality. Their individual and concerted actions gave Aegis and Lumar unwarranted benefits and caused undue injury to the government in the amounts of P193,000.00 for the purchase of Paracetamol Suspension and P219,945.00 for the purchase of Ferrous Sulfate with Vitamin B Complex and Folic Acid.[34] The OSG further argues that the overpriced amount of the subject medicines further supports the finding of evident bad faith and manifest partiality.[35] Moreover, the OSG contends that Sandiganbayan correctly denied the admission of petitioners' exhibits which are mere photocopies because they failed to lay the basis for the presentation and admission of secondary evidence.[36] Finally, the OSG claims that conspiracy among petitioners was sufficiently proven in this case. Their respective signatures in the RIVs, POs and vouchers, indicate that they willingly participated in the illegal practice.[37]

Issue

Whether the Sandiganbayan erred in finding petitioners guilty of the crime of violation of Section 3(e) of R.A. No. 3019.

The Court's Ruling

The consolidated petitions are meritorious.

In a previous case, this Court has emphasized the need to stamp out graft and corruption in the government. Indeed, the tentacles of greed must be cut and the offenders punished. However, this objective can only be accomplished if the evidence adduced by the prosecution, which must closely be scrutinized under the lens of the spirit that animates R.A. No. 3019, passes the test of moral certainty. Where doubt lingers, as in this case, the Court is mandated to uphold the presumption of innocence guaranteed by our Constitution to the accused.[38]

As a rule, findings of fact of the Sandiganbayan, as a trial court, are accorded great weight and respect. However, in cases where there is a misappreciation of facts, the Court will not hesitate to reverse the conclusions reached by the trial court. At all times, the Court must be satisfied that in convicting the accused, the factual findings and conclusions of the trial court meet the exacting standard of proof beyond reasonable doubt.[39] Otherwise, the presumption of innocence must be favored, and exoneration must be granted as a matter of right.[40]

After a judicious examination of the records and submissions of the parties in this case, the Court finds that the facts and evidence presented by the prosecution failed to prove the guilt of petitioners beyond reasonable doubt.

The prosecution failed to establish conspiracy among petitioners.

As can be read from the Information, petitioners in the instant consolidated cases, allegedly conspired and confederated with one another in giving unwarranted benefits to Aegis and Lumar to the damage and prejudice of the government.

The prosecution hinges its theory of conspiracy solely on petitioners' respective signatures appearing on the following documents: RIVs, POs, Certificate of Acceptance, DVs.[41] To the Sandiganbayan, this was sufficient to make petitioners liable as co-principals by reason of conspiracy and thus ruled in the assailed Decision as follows:

In Criminal Case No. 26492:

Accused Cabrera certified that the supplies requisitioned were necessary and [would] be used solely for the purposed stated and the same RIV was approved by accused Majarais. x x x

Clearly, accused Cabrera and Majarais' requisition for the procurement of 10,000 bottles of paracetamol suspension for distribution to different cities was not justified. The purchase was unnecessary and unauthorized. Accused Perez, as the supply officer, and accused Agustin, as Accountant I, should have known of the same before signing the PO for said medicine and certifying to the availability of funds, respectively.

On the other hand, accused Du signed the DV certifying that "adequate available funds/budgetary allotment in the amount of P192,727.27; expenditure properly certified; supported by documents marked (x) per checklist on back hereof; account codes proper; previous cash advance liquidated/accounted for." Accused Cabrera signed the DV certifying that the expenses/cash advance necessary, lawful and incurred under his direct supervision while accused Majarais as the Director of the RFO-NCR approved the same DV.

x x x x

The signatures of the accused on the RIV, the PO and the DV made possible the payment to Aegis of Paracetamol suspension. Clearly, their signatures unquestionably signify their assent to the transaction, a conspiracy to disburse public fund to pay Aegis 10,000 bottles of Paracetamol suspension at P25.00 despite the fact that there was no necessity to purchase the same at that time and despite the overprice.[42]

In Criminal Case No. 26493:

Clearly, accused Perez, as the supply officer, accused Agustin, who certified on the availability of funds, accused Camposano who admitted placing her initials on the PO and accused Majarais who approved the same ought to have known that there was no justification for not conducting the public bidding relative to said purchase. Moreover, they should have known the price of Ferrous Sulphate based on the 1994 public bidding before signing the PO.

Further, accused Agustin, Cabrera, Majarais, who are all signatories of the DV for the payment to Lumar, should have raised the issue on the regularity or necessity of the expenditure.

x x x x

Clearly, the signatures of the accused on the PO and the DV indicate conspiracy to disburse public fund to pay Lumar 1,500 bottles of Ferrous Sulphate with Vitamin B Complex and folic acid at overpriced amount. The signatures of the accused made possible the payment to Lumar despite the irregularity in the supporting documents. Taken collectively, their acts sufficiently prove the existence of conspiracy.[43]

The Court totally disagrees.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[44] While direct proof is not necessary to establish conspiracy, it is vital for the prosecution to show, at the very least, with the same degree of proof required to establish the crime - proof beyond reasonable doubt, that all participants performed overt acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.[45] The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators or by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[46] The Court further emphasizes that the community of design to commit an offense must be a conscious one.[47] Mere knowledge, acquiescence, or agreement to cooperate, mere presence at the scene of the crime at the time of its commission, and mere companionship, are insufficient to constitute one as part to a conspiracy.[48]

Thus, in a catena of cases decided by the Court, it has been consistently ruled that a mere signature or approval appearing on a document does not meet the required quantum of proof to establish the existence of conspiracy.

In *Arias v. Sandiganbayan*,[49] the Court ruled that to sustain a conspiracy charge and conviction, there should be

grounds other than the accused's mere signature or approval appearing on a voucher. The prosecution must be able to clearly show the accused's participation in the planning, preparation and perpetration of the alleged conspiracy to defraud the government.[50]

In *Magsuci v. Sandiganbayan*,[51] the Court also found insufficient the accused's signature appearing on the check, accomplishment report and disbursement voucher in relation to a fictitious transaction to hold him liable as a co-conspirator for the crime of estafa through falsification of public document. The Court explained that conspiracy cannot solely be predicated on the very functions that a public officer had to discharge in the performance of his official duties, especially when there is no indication that he had foreknowledge of the irregularity committed by his co-accused. Indeed, a public officer may have been lax and administratively remiss in his duty by relying too much on the reports submitted by his co-accused, "but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the part of cohorts." [52]

Similarly, in *Sabiniano v. Court of Appeals*,[53] the Court again reiterates that a mere signature or approval appearing on a voucher, check or warrant is not enough to sustain a finding of conspiracy among public officials and employees charged with defraudation. There must be proof to indicate that the accused had taken part in "planning, preparation and perpetration of the alleged conspiracy to defraud the government." Otherwise, any "careless use of the conspiracy theory (can) sweep into jail even innocent persons who may have (only) been made unwitting tools by the criminal minds" really responsible for that irregularity.[54]

In the case of *Maamo v. People*,[55] the Court further held that in order to successfully prove conspiracy among the accused, the prosecution must present evidence other than the mere fact that the accused are at the opposite ends of the chain in the disbursement process. To sustain a conviction based on such fact alone would necessarily require the aid of conjecture and assumptions in order to establish conspiracy.[56]

Thus, it was a grievous and egregious error for the Sandiganbayan to sweepingly conclude that petitioners in this case were animated by the same purpose of defrauding the government based solely on their respective signatures appearing on the disbursement documents.

Du and Agustin correctly assert that their signatures appearing in the PO and DV, with proper documentation, to simply signify the availability of funds, do not, as they cannot, satisfy the requisite quantum of proof to hold them as co-conspirators, much less hold them liable for the crime charged. Similarly, Perez's signature as supply officer, to signify that there are no more available stocks for the said medicines, or Camposano's initials in the PO, which was supported by proper documents and was but part of the standard procedures, cannot be the sole basis to conclude that they intentionally took part in the planning, preparation and execution of the alleged conspiracy to defraud the government.

To stress anew, not every person who signs documents required in standard operating procedures automatically becomes a conspirator in a crime. There must be other positive and clear evidence showing each of the accused's conscious and intentional participation in the planning, preparation and execution of crime charged.[57] However, from the evidence adduced by the prosecution, the Court finds that no clear nexus exists to prove a unity of action and purpose between and among petitioners to defraud the government.

Apart from failing to establish conspiracy among petitioners, the prosecution also failed to discharge its burden to prove the elements of the unlawful act covered by of Section 3(e) of R.A. No. 3019.

The prosecution failed to prove all the elements of the crime penalized under Section 3(e) of R.A. No. 3019.

Section 3(e) of R.A. No. 3019 states:

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.

In order to convict an accused for violation of the aforequoted provision, each of the following essential elements must be proven beyond reasonable doubt:

(1)

the accused must be a public officer discharging administrative, judicial, or official functions;

(2)

he must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and

(3)

his action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[58]

The Court finds that the second and third elements were not established beyond reasonable doubt.

Evident bad faith and manifest partiality.

Jurisprudence instructs that a violation of Section 3(e) may be committed in three modes - by "manifest partiality," "evident bad faith," or "gross inexcusable negligence." [59] Each modality is distinct from the others and must be alleged in the Information as basis for conviction. [60]

In the present consolidated cases, petitioners in Criminal Case No. 26492 were charged with violating Section 3(e) through evident bad faith; while in Criminal Case No. 26493, petitioners allegedly violated Section 3(e) both through evident bad faith and manifest partiality.

Evident bad faith, as understood under the law, partakes the nature of fraud. It "does not simply connote bad judgment or negligence" but of having a "palpably and patently fraudulent and dishonest purpose to do moral obliquity or a conscious wrong doing for some perverse motive or ill will." [61] Evident bad faith "contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes." [62] On the other hand, partiality is synonymous with bias which "excites a disposition to see and report matters as they are wished for rather than as they are." There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. [63]

In other words, to constitute evident bad faith or manifest partiality, it must be proven that the accused acted with malicious motive or fraudulent intent. It is not enough that the accused violated a law, committed mistakes or was

negligent in his duties. There must be a clear showing that the accused was spurred by a corrupt motive or a deliberate intent to do wrong or cause damage.[64] Thus, as the Court explained about 20 years ago in *Sistoza v. Desierto*[65] (*Sistoza*), mere bad faith or partiality per se is not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest.[66]

In the assailed Decision, the Sandiganbayan held that petitioners acted with evident bad faith and manifest impartiality based on the following findings:

In Criminal Case No. 26492, the procurement of 10,000 bottles of Paracetamol Suspension from Aegis in May 1996 was done without public bidding and based on the price list issued by the DOH-Central, the subject Paracetamol suspension bought from Aegis was overpriced.[67]

Similarly, in Criminal Case No. 26493, the purchase of 1,500 bottles of Ferrous Sulfate with Vitamin B Complex and Folic Acid from Lumar was made without public bidding and was overpriced based on the 1994 Abstract of Bids.[68]

In other words, the Sandiganbayan's finding of evident bad faith and manifest partiality on the part of petitioners was primarily anchored on the procurement of allegedly overpriced medicines without the benefit of a public bidding.

The Court, however, finds these grounds insufficient to prove beyond reasonable doubt that petitioners are indeed guilty of evident bad faith and manifest partiality.

First, it has been settled that the absence of public bidding in the procurement of goods does not automatically equate to evident bad faith and manifest partiality. The guilt of an accused charged with violation of R.A. No. 3019 must be determined through the lens of the anti-graft and corruption law and not the procurement law.[69]

In *Sabaldan, Jr. v. Office of the Ombudsman for Mindanao*[70] (*Sabaldan*), the Court clarified that a violation of procurement law does not mean that all the elements of a violation of R.A. No. 3019 are present:

x x x [E]ven granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3 (e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3 (e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

x x x x

Verily, since the elements of Section 3 (e) of R.A. No. 3019 must still be established to warrant conviction under the said law despite findings of violations of applicable procurement laws, the instant case must be carefully examined through the lens of these elements. This is true despite the fact that the case only deals with a finding of a probable cause.[71]

As held 20 years ago in *Sistoza*:

Clearly, the issue of petitioner *Sistoza*'s criminal liability does not depend solely upon the allegedly scandalous irregularity of the bidding procedure for which prosecution may perhaps be proper. For even if it were true and proved beyond reasonable doubt that the bidding had been rigged, an issue that we do not confront and decide in the instant case, this pronouncement alone does not automatically result in finding the act of petitioner similarly culpable. It is presumed that he acted in good faith in relying upon the documents he signed and thereafter endorsed. To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), RA 3019,

the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of petitioner in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.[72]

In the recent case of *Martel v. People*[73] (*Martel*), the Court explained that while *Sabalдан* and *Sistoza* involve the existence of probable cause, the pronouncements therein very much apply, if not more so, in determining the guilt or innocence of an accused in a criminal case for violation of Section 3(e) of R.A. No. 3019. Thus, in order to successfully prosecute the accused under Section 3(e) of R.A. No. 3019 based on a violation of procurement laws, the prosecution cannot solely rely on the fact that a violation of procurement laws has been committed. The prosecution must prove beyond reasonable doubt that: (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.[74]

Here, even if it were to be conceded that the failure to conduct the requisite public bidding for the questioned transactions was unjustified, no other evidence was presented to establish that petitioners' actions were animated by malicious motive or fraudulent intent to defraud the government.

To begin with, petitioners were able to show that their resort to direct purchase for the questioned transactions was based on their honest belief that the same was warranted under the circumstances. Petitioners explained that the questioned transactions were emergency purchases,[75] and that following DOH-NCR's policy of adopting the results of the previous winning bidder, the subject medicines were procured from Aegis and Lumar, who were the winning bidders in the bidding conducted by DOH-NCR for the years 1995 and 1994, respectively. Hence, the PO for Paracetamol Suspension clearly stated that the purchase from Aegis was "subject to the terms and conditions of RFO-NCR public bidding for drugs and medicines 1995 public bidding"[76] and the PO for Ferrous Sulfate with Vitamin B Complex and Folic Acid indicates that the purchase from Lumar was "subject to the terms and conditions of the RFO/NCR 1994 public bidding." [77]

This practice or policy of adopting the results of the previous bidding for future procurements or subsequent purchases was in fact acknowledged by the one of the prosecution witnesses as one of the reasons why the DOH prepares a price list of the previous winning bidders. According to Palisoc, the DOH tabulates the results of a public bidding, which are then distributed to district offices and other offices, to be used as reference in the latter's own procurement or in case no public bidding is conducted, to serve as guidelines for purchases that would be advantageous to the government.[78]

Despite the foregoing explanation, which was never rebutted by the prosecution as indeed one of its witnesses admitted the same, the Sandiganbayan nonetheless still held petitioners liable on the reasoning that petitioners should have referred to the price list issued by the DOH-Central since there was no public bidding in DOH-NCR in 1996.[79]

This is but one of the egregious errors committed by the Sandiganbayan as it overlooks the established and undisputed fact that the "Price List for the 11 hospitals (January 1996 to June 1996) December 19, 1995 public bidding" (DOH-Central Price List), which petitioners "should have supposedly used as reference" in the procurement of 10,000 bottles of Paracetamol Suspension, was prepared by the DOH-Central only on May 24, 1996.[80] In plain terms, the said price list could not have been used as reference for the simple fact that it was inexistent when the DOH-NCR purchased from Aegis 10,000 bottles of Paracetamol Suspension on May 9, 1996. This error of the Sandiganbayan becomes more manifest considering that there is absolutely nothing on record

which shows that the said price list was actually sent to and received by the DOH-NCR.[81] Thus, since petitioners had no knowledge of the said DOH-Central Price List when the questioned transaction was made, no bad faith or partiality may be imputed to them for not using the supposedly lower prices suggested in the DOH-Central Price List.

Clearly, it cannot be said that petitioners' acts of procurement of Paracetamol Suspension from Aegis and Ferrous Sulfate with Vitamin B Complex and Folic Acid from Lumar, without the benefit of a public bidding, were spurred by a corrupt or ill motive. Petitioners' reliance on the policy of adopting the results of the previous public bidding, does not satisfy that patent and palpable fraudulent purpose necessary to constitute evident bad faith and manifest partiality under Section 3(e) of R.A. No. 3019. It bears to note that this policy was adopted by the agency to ensure that future purchases would be beneficial to the government. Indeed, mistakes committed by a public officer, no matter how patently clear, are not actionable under R.A. No. 3019, absent any clear showing that they were motivated by malice or some perverse motive or ill will.[82]

Second, the Court also finds that the prosecution failed to sufficiently establish the so-called "overpricing" of the purchased medicines.

Jurisprudence teaches that in assessing whether there was overpricing, a specific comparison with the same brand, features and specifications as those purchased in the questioned transaction should be made.[83] Further, the report upon which the proof of overpricing is based should include a canvass of the different suppliers of the identical product with their corresponding prices.[84] Absent this evidence, the Court cannot reasonably conclude that the price of the goods subject of the questioned transaction was actually exorbitant.[85]

In this regard, the Court finds the case of *Caunan v. People*[86] (*Caunan*) instructive.

Caunan involved Parañaque City's alleged overpriced procurement of walis tingting for the years 1996-1998 without the benefit of public bidding. In convicting former Paranaque City Mayor Joey P. Marquez (Marquez) and his co-accused for violation of Section 3(g) of R.A. No. 3019, the Sandiganbayan relied heavily on the report of the Commission on Audit Special Audit Team for its finding of overpricing. In ruling in favor of Marquez and his co-accused, the Court dismissed the claim of overpricing because the prosecution failed to prove the actual price of the identical goods subject of the questioned transaction.

In finding that the walis tingting purchase contracts were grossly and manifestly disadvantageous to the government, the Sandiganbayan relied on the COA's finding of overpricing which was, in turn, based on the special audit team's report. The audit team's conclusion on the standard price of a walis tingting was pegged on the basis of the following documentary and object evidence: (1) samples of walis tingting without handle actually used by the street sweepers; (2) survey forms on the walis tingting accomplished by the street sweepers; (3) invoices from six merchandising stores where the audit team purchased walis tingting; (4) price listing of the DBM Procurement Service; and (5) documents relative to the walis tingting purchases of Las Piñas City. These documents were then compared with the documents furnished by petitioners and the other accused relative to Parañaque City's walis tingting transactions.

Notably, however, and this the petitioners have consistently pointed out, the evidence of the prosecution did not include a signed price quotation from the walis tingting suppliers of Parañaque City. In fact, even the walis tingting furnished the audit team by petitioners and the other accused was different from the walis tingting actually utilized by the Parañaque City street sweepers at the time of ocular inspection by the audit team. At the barest minimum, the evidence presented by the prosecution, in order to substantiate the allegation of overpricing, should have been identical to the walis tingling purchased in 1996-1998. Only then could it be concluded that the walis tingting purchases were disadvantageous to the government because only then could a determination have been made to show that the disadvantage was so manifest and gross as to make a public

official liable under Section 3 (g) of R.A. No. 3019.

x x x x

x x x The audit team reached a conclusion of gross overpricing based on documents which, at best, would merely indicate the present market price of walis tingting of a different specification, purchased from a non-supplier of Parañaque City, and the price of walis tingting purchases in Las Piñas City. Effectively, the prosecution was unable to demonstrate the requisite burden of proof, i.e., proof beyond reasonable doubt, in order to overcome the presumption of innocence in favor of petitioners.[87] (Emphasis supplied).

Citing Caunan, the Court, in *Miranda v. Sandiganbayan*,^[88] also found insufficient the allegation of overpricing because the evidence showing the prices of other suppliers did not pertain to the very same item subject of the assailed transaction.

A review of the exhibits attached to the report readily evinced that, contrary to the team's claim, no samples of the SLTDs were actually obtained from DECS-Davao Oriental, the subject of its audit. Exhibits 1 and 2 referred to in 1.6.1 of the report were the Memorandum Receipt for Equipment, Semi-Expandable and Expandable Property, respectively, issued by the Schools Division Superintendent of Digos, Davao del Sur, and Davao City, for the SLTDs received by the team and which were intended to be used for the canvass; while Exhibit 3 was the Invoice-Receipt for Property issued by the Superintendent of Tagum, Davao Province.

Because the sample SLTDs came from the divisions of Davao del Sur, Davao City, and Tagum, Davao Province, it was implausible to ascertain whether the tools and devices delivered by D'Implacable to DECS-Davao Oriental were exactly the same as those that were allegedly canvassed by the team. Consequently, it was improbable to determine whether the SLTDs of D'Implacable would have commanded equivalent or higher prices than those shown by the team during the "canvass." Significantly, the different DECS divisions of Region XI procured SLTDs also from Joven's Trading thus reinforcing the doubt as to the sameness of the brand and quality of the tools and devices delivered by D'Implacable to DECS-Davao Oriental with those that were presented for "canvassing" by the team.

It must be stressed that, pursuant to COA Circular No. 85-55A, the term "excessive expenditure" pertains to the variables of price and quality. As to the price, the circular provides that it is excessive if "it is more than the 10% allowable price variance between the price for the item bought and the price of the same item per canvass of the auditor." Undoubtedly, what was required to be canvassed was the very same item subject of the assailed transaction. Evaluated against this COA definition, it cannot be validly maintained that the prices of D'Implacable were excessive considering that the items bought by DECS-Davao Oriental were obviously not the very same items "canvassed" by the team.[89] (Emphasis supplied)

Further, in *Sajul v. Sandiganbayan*^[90] (*Sajul*), the Court found a quotation from only one enterprise insufficient to establish that the price of the purchased goods was exorbitant. According to the Court, to establish overpricing, there must be a canvass of different suppliers showing their respective prices of the goods subject of the transaction.

The comparison of prices between Bato-[B]ato Enterprises with that of Zodiac Trading is rather unacceptable. In the first place, Zodiac [T]rading was not properly identified as a company dealing with fire extinguishers or a leading company selling fire extinguishers, for that matter. Nobody from the company appeared in court to testify about [the] company or its product. The components of its fire extinguishers were not actually proven to be the same as that of Bato-Bato Enterprises. The quotation of Zodiac Trading was merely solicited and stated in the briefing memorandum of Cadore dated May 8, 1985 submitted to Director Andres Sajul. The veracity of such quotation was not proven. Considering all these circumstances, it is rather unfair to compare the prices of Bato-Bato Enterprises with that of Zodiac Trading when the basis of the comparison has not been established. The respondent court hastily concluded that there was an overpricing of the fire extinguishers

when there was only one company singled out which apparently quoted a lower price than that of Bato-Bato Enterprises. x x x

x x x x

It must be noted that Bato-Bato Enterprises had long been supplying the Central Office since 1982 after winning in a competitive bidding. Its price in 1982 and that in 1985 remained the same. No evidence was adduced to show that there were other fire extinguishers which cost less than that of Bato-Bato Enterprises in 1982. In order to show that there was an overpricing in the subject transaction, a canvass of different suppliers with their corresponding prices should have been procured which could readily show the differences in the price quotations. Absent this competent evidence, it is rather unfair to conclude that the price of Bato-Bato Enterprises was exorbitant on the basis alone of a submitted quotation of one company and to further rule that the contract was grossly injurious to the government.[91]

Similar to the foregoing cases, the prosecution in the present consolidated cases also failed to establish the allegation of overpricing.

To prove that the Paracetamol Suspension purchased from Aegis was overpriced, the prosecution presented the DOH-Central Price List. Palisoc testified that the DOH-Central Price List reflects the result of the public bidding conducted by the agency in December 1995. This price list served to guide purchases of the 11 hospitals under the jurisdiction of the DOH-Central for January 1996 to June 1996.

Item 278 of the DOH-Price List reads:

278 Paracetamol (Acetaminophen)

Oral: 125mg/5ml EXCESSIVE PRICE INCREASE

60ml syrup/suspension, alcohol free
10,000 [bottles] NO AWARD

PREVIOUS PRICE 5.63

ERMA 9.50 (68% increase)[92]

On the other hand, to prove that the Ferrous Sulfate with Vitamin B Complex and Folic Acid purchased from Lumar was overpriced, Ringpis testified that he obtained a copy of the 1994 Abstract of Bids of the public bidding conducted by the DOH-NCR in 1994 because the PO contained a notation that the purchase of Ferrous Sulfate with Vitamin B Complex and Folic Acid was subject to the terms and conditions of the 1994 public bidding. Said Abstract of Bids indicates that Foramen offered a lower price of P73.37 compared to the offer of Lumar of P220.00; thus, Ringpis concluded that there was an overprice.[93]

The Court, however, notes that these documents are mere reports of the result of a public bidding conducted by the DOH for years not covered by the questioned transactions. Also, these reports do not reflect an actual canvass of the prices from different suppliers of the same medicines purchased by DOH-NCR in 1996. Without said canvass, it would be hasty for the Court to conclude that the medicines subject of the questioned transactions were indeed overpriced.

Moreover, the DOH-Central Price List is a mere photocopy. The records also show that the prosecution did not invoke any of the exceptions to justify the admission of a secondary evidence in lieu of the original. Thus, the DOH-Central Price List submitted by the prosecution cannot even be given any probative value.[94]

In addition, even if the Court disregards this procedural rule, the DOH--Price List still fails to establish that the Paracetamol Suspension purchased from Aegis was exorbitant. There is no indication whatsoever whether the prices in Item No. 278 of the DOH-Central Price List - that is, P5.63 and P9.50 - pertain to the same brand, features, specifications as those actually purchased by the DOH-NCR from Aegis. For one, the price list does not clearly show the suppliers of the medicine with the prices of P5.63 and P9.50. Also, while the price list indicates paracetamol syrup/suspension, it is highly improbable that the prices P5.63 and P9.50 pertain to both when the prosecution itself admitted that Paracetamol Syrup is different from Paracetamol Suspension.[95]

The Court, in fact, finds that petitioners were able to sufficiently establish that Paracetamol Syrup and Paracetamol Suspension have different specifications, which could account for the difference in their prices. Ma. Teresita Florentino Ocampo, wife of petitioner Ocampo and the Assistant General Manager of Aegis in charge of product research, formulation and registration with the Bureau of Food and Drugs, clarified the difference between the two. Relevant portions of her testimony were summarized by the Sandiganbayan as follows:

x x x [Ma. Teresita] further declared that Paracetamol syrup differs from Paracetamol suspension in terms of price, appearance and form. As to form, the raw materials are dissolve[d] in syrup while in suspension, the materials are dissolved in hot temperature or are suspended.[96]

x x x x

On re-direct examination, x x x [s]he explained that compared to syrup, Paracetamol suspension is harder to prepare because "they are solids suspend[ed] in syrup and they use more expensive materials and it is at cold process wherein no crystals must be dissolved," which accounts for its higher price.[97]

Further, on questions from the Sandiganbayan, petitioner Ocampo, the General Manager of Aegis in charge of product pricing, testified:

x x x [T]hat he had been engaged in the pharmacy business since the 1960s. x x x He directly manufactured all their products and imported all raw materials. In explaining the difference between a syrup and suspension, accused Ocampo said that syrup is transparent while suspension is opaque because it has more sugar, more flavors and it undergoes a "cold process." In terms of production, suspension is more expensive because they have to use brand new bottles unlike in syrup where recycled bottles may be used because of its alcohol content. Both have the same shelf life and efficacy but syrup has more side effects because of its alcohol contents. More doctors prescribe suspension because of its palatability and safe use. Flavors are not used in syrup because it makes the alcohol more evident.[98]

The prosecution failed to adduce any clear and convincing proof to controvert the spouses Ocampo's testimony. Apart from insisting that Paracetamol Syrup and Paracetamol Suspension have the same price in the DOH-Price List, no other evidence was offered by the prosecution to show that Paracetamol Syrup and Paracetamol Suspension actually have the same specifications and features. Again, it must be stressed that the determination of overpricing must be based on a canvass or comparison of the prices of goods identical to that purchased in the questioned transaction.

As regards the prices indicated in the 1994 Abstract of Bids, the Court finds the same unreliable considering that petitioners were able to establish that Lumar in fact won in the 1994 public bidding conducted by the DOH-NCR. Camposano testified that she was designated chairperson of the BAC in 1994. She explained that Lumar's bid was considered because Foramen did not qualify because it offered Ferrous Fumarate which is a different drug and that its Certificate of Product Registration was already expired. Camposano's testimony is supported by the Notice of Award dated October 21, 1994 issued in favor of Lumar.[99]

The prosecution, however, failed to controvert petitioners' claim that Lumar in fact won the 1994 public bidding

of DOH-NCR and that Foramen was not qualified. Thus, following the Court's ruling in *Sajul*, it would be unfair to conclude that Lumar's medicines were overpriced on the basis alone of the bid price of only one company, the qualifications of which have not been sufficiently established. It is worse, as the Sandiganbayan held, to conclude an overprice by using as comparison the price of one who was disqualified, i.e., Foramen.

These pieces of evidence presented by petitioners - all unrebutted and unrefuted by the prosecution - cast serious doubt on the sufficiency of the prosecution's evidence and should have led the Sandiganbayan to question the veracity of the prosecution's allegation that the purchased medicines were overpriced. Indeed, "[t]he legal teaching in our jurisprudence is that the evidence adduced must be closely examined under the lens of the judicial microscope" such that conviction must rest no less than on hard evidence showing that the accused, with moral certainty, is guilty of the crime charged.[100] If the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, then the Court is duty bound to acquit the accused. The overriding consideration in criminal cases is not whether the Court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt - if there exists even one iota of doubt, this Court is "under a long-standing legal injunction" to resolve the doubt in favor of the accused.[101]

Verily, considering the evidence presented by both parties, the Court is unconvinced that petitioners' actuations were motivated by malicious and corrupt intent to defraud the government.

Causing undue injury to the government and giving unwarranted benefits, advantage and preference to a private party.

The third element of Section 3(e) of R.A. No. 3019 was also not proven in the instant consolidated cases.

The words "unwarranted," "advantage" and "preference" were defined by the Court in this wise:

"[U]nwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[102]

On the other hand, jurisprudence clarifies that the term undue injury in the context of Section 3(e) "has a meaning akin to [the] civil law concept of actual damage." [103] Undue means "more than necessary, not proper or illegal;" while injury refers to "any wrong or damage done to another, either in his person, rights, reputation or property[; that is, the] invasion of any legally protected interest of another." [104] Since the causing of undue injury, through evident bad faith or manifest partiality, constitutes the very act punished under Section 3(e), undue injury cannot be presumed even after a wrong or violation of a right has been established.[105] Undue injury has to be specified, quantified and proven to the point of moral certainty.[106]

In addition, the granting of unwarranted benefits, advantage or preference or the causing of undue injury to the government must be inextricably linked to the existence of fraudulent or corrupt motive on the part of the accused. Thus, in *Rivera v. People*, [107] the Court found that the third element was satisfied due to the deliberate and manifest partiality exhibited by the accused in favor of the private party:

The accused gave unwarranted benefits to PAL Boat through manifest partiality.

x x x PAL Boat was not financially and technically capable of undertaking the floating clinics project. The

court a quo believed that the petitioners knew that and still awarded the project to PAL Boat. They also failed to follow the proper procedure and documentations in awarding a negotiated contract. These unwarranted benefits were due to the manifest partiality exhibited by them in numerous instances.

x x x x

This Court is convinced that all these circumstances taken together clearly demonstrate the manifest partiality of the petitioners towards PAL Boat, giving the latter unwarranted benefits to obtain the government project.[108]

Conversely, in the recent case of *Villarosa v. People*,[109] the Court found the third element wanting because the accused therein was shown to have acted in good faith. The Court in that case held that no sufficient evidence exists to prove that the persons in whose favor therein accused issued the subject extraction permits received unwarranted benefits, advantage or preference because at the time of issuing the subject permits, therein accused was justified by his honest belief that he is authorized by law to issue the said pennits.[110]

Applying the foregoing to the instant case, it cannot reasonably be said that the purchase of 10,000 bottles of Paracetamol Suspension and 1,500 bottles of Ferrous Sulfate with Vitamin B Complex and Folic Acid gave Aegis and Lumar unwarranted benefits because, as discussed, the prosecution failed to prove evident bad faith and manifest partiality on the part of petitioners. Neither is there proof beyond reasonable doubt of the undue injury or damage caused to the government in the amounts of P193,700.00 and P219,945.00, as alleged in the Informations, because the prosecution also failed to establish with moral certainty that the questioned transactions were actually overpriced. It bears emphasis that the evidence in this case supports petitioners' assertion that their acts were simply based on their honest belief that the questioned transactions were warranted. The procurement of 10,000 bottles of Paracetamol Suspension and 1,500 bottles of Ferrous Sulfate with Vitamin B Complex and Folic Acid were emergency purchases and were based on the results of the previous bidding conducted by the DOH-NCR - a policy adopted by the agency to ensure that all future purchases are advantageous to the government.

The Court further notes that there is no iota of proof that petitioners in this case profited from the questioned transactions. In *Martel*, the Court En Banc highlighted the intent of R.A. No. 3019 in this wise:

As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under R.A. 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized." Graft entails the acquisition of gain in dishonest ways.[111]

Thus, following *Martel*, it is not enough that unwarranted benefits were given to another or that there was damage to the government as a result of a violation of a law, rule or regulation. The acts constituting the elements of a violation of R.A. No. 3019 must be effected with corrupt intent, a dishonest design, or some unethical interest - which are clearly wanting in the instant case.

WHEREFORE, in view of the foregoing, finding the evidence insufficient to establish guilt beyond reasonable doubt, petitioners are hereby **ACQUITTED**. The Decision dated April 29, 2014 and the Resolution dated October 24, 2014 of the Sandiganbayan Special Fifth Division in Criminal Cases Nos. 26492 & 26493, finding petitioners guilty of violation of Section 3(e) of Republic Act No. 3019, are hereby **REVERSED** and **SET ASIDE**.

Let an entry of judgment be issued immediately.

SO ORDERED.

Peralta, C. J., Carandang, Zalameda, and Gaerlan, JJ., concur.

[1] Rollo (G.R. No. 215104), Vol. I, pp. 41-104. Penned by Presiding Justice Amparo M. Cabotaje-Tang with Associate Justices Roland B. Jurado and Alexander G. Gesmundo (now a Member of the Court) concurring.

[2] Id. at 105-131. Penned by Presiding Justice Amparo M. Cabotaje-Tang with Associate Justices Roland B. Jurado and Maria Cristina J. Cornejo concurring.

[3] See id. at 51.

[4] Id. at 42-43.

[5] Id. at 43.

[6] Id. at 45-46.

[7] Id. at 50-57.

[8] Id. at 62-81.

[9] Supra note 1.

[10] Rollo (G.R. No. 215104) Vol. I, pp. 102-103.

[11] Supra note 2.

[12] Rollo (G.R. No. 215104) Vol. I, pp. 25-31.

[13] Id. at 31-34.

[14] Id. at 35.

[15] Id. at 12.

[16] Id. at 35-36.

[17] Rollo (G.R. Nos. 215120 & 215147), pp. 22-31.

[18] Id. at 28.

[19] Id. at 31-34.

[20] Id. at 35-38.

[21] Id. at 41-44.

[22] Id. at 46-50.

[23] Rollo (G.R. No. 215212), pp. 17-30.

[24] Id. at 30-31.

[25] Id. at 31-34.

[26] Rollo (G.R. No. 215541), pp. 262-354.

[27] Id. at 279-338.

- [28] Id. at 338-343.
- [29] Id. at 340-350.
- [30] Rollo (G.R. Nos. 215377 & 215923), pp. 27-28.
- [31] Id. at 24-27.
- [32] Id. at 20-22.
- [33] Rollo (G.R. No 215104) Vol. II, pp. 524-561.
- [34] Id. at 545.
- [35] Id. at 547-550.
- [36] Id. at 552-554.
- [37] Id. at 554-559.
- [38] *Monteverde v. People*, G.R. No. 139610, August 12, 2002, 387 SCRA 196, 200.
- [39] *Maamo v. People*, 801 Phil. 627, 652 (2016).
- [40] *Arriola v. Sandiganbayan*, 526 Phil. 822, 835-836 (2006).
- [41] See Prosecution's Formal Offer of Exhibits in Criminal Case Nos. 26492 & 26493.
- [42] Rollo (G.R. No. 215104) Vol. I, pp. 91-92.
- [43] Id. at 99-100.
- [44] *Ofiasa v. People*, 73 Phil. 87 (1941), citing REVISED PENAL CODE, Art. VIII.
- [45] *Cruz v. People*, G.R. Nos. 197142 & 197153, October 9, 2019, accessed at .
- [46] Id.
- [47] See *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740, 755.
- [48] Id.
- [49] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309.
- [50] See id. at 316.
- [51] G.R. No. 101545, January 3, 1995, 240 SCRA 13.
- [52] Id. at 18.
- [53] G.R. Nos. 76490 & 76558, October 6, 1995, 249 SCRA 24.
- [54] Id. at 29.
- [55] Supra note 39.
- [56] Id. at 666.
- [57] See *Albert v. Gangan*, G.R. No. 126557, March 6, 2001, 353 SCRA 673, 681.
- [58] *Rivera v. People*, G.R. No. 228154, October 16, 2019, accessed at .

- [59] See *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020, accessed at .
- [60] *Id.*
- [61] *Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002, 388 SCRA 307, 326.
- [62] *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).
- [63] *People v. Bacaltos*, G.R. No. 248701, July 28, 2020, accessed at .
- [64] See *Republic v. Desierto*, G.R. No. 131397, January 31, 2006, 481 SCRA 153, 161; See also *Collantes v. Marcelo*, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA, 142, 155.
- [65] *Supra* note 61.
- [66] *Id.* at 324.
- [67] *Rollo* (G.R. No. 215104) Vol. I, pp. 87-96.
- [68] *Id.* at 99-102.
- [69] *Martel v. People*, G.R. Nos. 224720-23 & 224765-68, February 2, 2021.
- [70] G.R. No. 238014, June 15, 2020, accessed at .
- [71] *Id.*
- [72] *Supra* note 61, at 326-327.
- [73] *Supra* note 69.
- [74] *Id.*
- [75] *Rollo* (G.R. No. 215104) Vol. I, p. 73 citing TSN dated April 7, 2010, pp. 12-17; and p. 79 citing TSN dated February 24, 2011, p. 33; See also TSN dated February 23, 2011, pp. 8-9, 11, 20-21.
- [76] *Rollo* (G.R. No. 215104) Vol. I, p. 87, citing Exhibit "H" and Exhibit "8" of petitioner Ocampo.
- [77] *Id.* at 99, citing Exhibit B and Exhibit 1.
- [78] See *rollo*, pp. 55, citing TSN dated November 6, 2006, pp. 25-26.
- [79] See *id.* at 96.
- [80] See *id.* at 57.
- [81] See TSN dated November 8, 2006, p. 18.
- [82] See *Collantes v. Marcelo*, 556 Phil. 794, 806 (2007) and *Reyes v. People*, 641 Phil. 91, 104 (2010).
- [83] See Dissenting Opinion of Justice Velasco in *Verzosa, Jr. v. Carague*, 681 Phil. 128, 166 (2012), citing *Arriola v. Commission on Audit*, 279 Phil. 156 (1991).
- [84] See *Sajul v. Sandiganbayan*, G.R. No. 135294, November 20, 2000, 345 SCRA 248, 262.
- [85] *Id.*
- [86] G.R. Nos. 181999 & 182001-04 & 182020-24, September 2, 2009, 597 SCRA 538.
- [87] *Id.* at 554-556.

- [88] 815 Phil. 123 (2017).
- [89] Id. at 150, 151.
- [90] Supra note 84.
- [91] Id. at 261-263. (Emphasis supplied)
- [92] Prosecution's Formal Offer of Exhibits in Criminal Case Nos. 26492 & 26493, Exhibit H, p. 26.
- [93] Rollo (G.R. 215104) Vol. I, p. 53.
- [94] See *Young Builders Corp. v. Benson Industries, Inc.*, G.R. No. 198998, June 19, 2019, 904 SCRA 489.
- [95] Rollo (G.R. 215104) Vol. I, pp. 73-74.
- [96] Id. at 64-65.
- [97] Id. at 70.
- [98] Id. at 76.
- [99] Id. at 84; Exhibit "1" of Macairan.
- [100] *Miranda v. Sandiganbayan*, supra note 88, at 154.
- [101] *Maamo v. People*, supra note 39, at 666.
- [102] *Cabrera v. People*, G.R. Nos. 191611-14, July 29, 2019, accessed at .
- [103] *Guadines v. Sandiganbayan*, 665 Phil. 563, 577 (2011).
- [104] Id.
- [105] *Tiongco v. People*, G.R. Nos. 218709-10, November 14, 2018, 885 SCRA 480, 509-510.
- [106] Id. at 510.
- [107] 749 Phil. 124 (2014).
- [108] Id. at 144-148. (Emphasis supplied)
- [109] G.R. Nos. 233155-63, June 23, 2020, accessed at .
- [110] Id.
- [111] Supra note 69.

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