

CAMILO VILLA, PETITIONER, VS. SANDIGANBAYAN AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 87186. April 24, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

The herein petitioners' basic contention is that as their alleged co-conspirators have been acquitted by the Court of Appeals, they too should have been absolved by the Sandiganbayan under the doctrine of "the law of the case." They also submit that, in any event, the evidence against them was insufficient to prove their guilt and, on that ground, they should have also been presumed innocent and acquitted.

These are the relevant facts.

Investigation of alleged anomalous transactions at the Civil Aeronautics Administration (CAA), Mactan International Airport, led to the filing in 1975 of criminal charges in the Circuit Criminal Court of Cebu City against Casimiro David, administrative assistant at CAA, Mactan, and chairman of the Bidding Committee; Estanislao Centeno, cash aide; Fernando Dario, airport attendant; and Serafin Robles, janitor, for violation of Section 3, paragraphs (a)[1] and (h)[2] of R.A. 3019 in relation to the Unnumbered Presidential Memorandum dated April 22, 1971,[3] as well as Sec. 12, Rule XVIII of the Civil Service Rules[4] and Section 1(x) of Presidential Decree No. 6 dated September 27, 1972.[5]

The case involved questionable payments made by the CAA Mactan to Rocen Enterprises and Sprayway Corp., dealers in paper products and printed matter, for the purchase of electrical items and the cost of their installation, in the total amount of P299,175.00.

Dario, Centeno and Robles represented these firms in the transaction. Another accused, Mactan Airport General Manager Arturo Jimenez, was dropped from the amended information after a reinvestigation.

On October 20, 1978, the Circuit Criminal Court of Cebu City then presided by Judge Romeo Escareal (now Associate Justice and Chairman of the Second Division of the Sandiganbayan) rendered a decision finding all the accused guilty beyond reasonable doubt of violation of Section 3, paragraphs (a), (e),[6] (h), and (i)[7] of R.A. 3019. All the accused appealed the judgment of conviction to the Court of Appeals.

The decision of the trial court included findings that Arturo Jimenez; Rodolfo Montayre, assistant airport general manager for operations; Camilo Villa, chief, logistics section; Josefina Socalit, technical inspector, COA, assigned at CAA Mactan; Hereto Leonor, acting chief accountant; and Manuel Bustamante, regional auditor of Region 7, COA, conspired and were equally liable with the convicted accused.

Accordingly, Judge Escareal directed Chief State Prosecutor Juan A. Sison of the Ministry of Justice to assign a State Prosecutor to conduct an investigation for possible violations of the Anti-Graft and Corrupt Practices Act, falsification of public documents, malversation of public funds, overpricing, unexplained wealth, and violation of accounting and auditing rules and regulations, and to file the corresponding charges if warranted.

The investigation was conducted as directed and led to the filing of an information with the Sandiganbayan, where it was docketed as Criminal Case No. 5915, against Jimenez, Montayre, Villa, Bustamante, Leonor and Socalit for violation of Section 3, R.A. 3019. The information read as follows:

That during the period from June 9 to 30, 1975, or thereabout, at Lapu-Lapu City, Philippines, and within the jurisdiction of this Honorable Sandiganbayan, the accused Arturo Somosa Jimenez, then Airport General Manager, Mactan International Airport; Rodolfo Evangelista Montayre, Assistant Airport General Manager; Camilo Gido Villa, Chief of the Logistics Section, CAA Mactan; Josefina Sanchez Socalit, Technical Inspector of the COA, Cebu City; Manuel Raneses Bustamante, Regional Auditor, Cebu City; and Hereto Cabrera Leonor, Chief Accountant, CAA, Manila, taking advantage of their public positions and while in the performance of the duties of their office, together with Fernando Dario, Estanislao Centeno, Serafin Robles and Casimiro David, who had already been convicted in the Criminal Circuit Court of Cebu in Criminal Case No. CCC-XIV-1457-Cebu, entitled "People v. Casimiro David, et al.," confederating together and mutually helping one another or otherwise, acting in concert, with intent to defraud and gain, did then and there, wilfully, unlawfully and feloniously cause to influence other public officials, or allow to be influenced, to violate rules and regulations duly promulgated by competent authority relative to their respective duties, and for financial and pecuniary interest, by then and there permitting, promoting and approving the negotiation, perfection and consummation of the purchase and payments of the Civil Aeronautics Administration (CAA), Mactan International Airport, of which the accused are by law called upon to officially intervene and take part, the following items or articles, to wit:

1 set three phase primary metering 13.8 KV 400 KVA, 60 cycles complete with demand metering, voltage and current transformers valued at P30,000.00;

3 pieces 150KVA Distribution Transformers, single phase, 60 cycles 2400 volts-240 V/120V oil cooled valued at P69,000.00;

3 pieces 150 KVA Power transformers, single phase, 60 cycles, 138 KV/2400 volts oil cooled valued at P90,000.00;

4 sets high voltage change over switch 3 poles double throw KV valued at P12,050.00;

6 sets high voltage use cut-outs valued at P33,000.00; and

cost of installation - P9,000.00

costing all in all P299,175.00, Philippine Currency, from "Rocen Enterprises" knowing fully well that the said entity is not a reputable manufacturer and/or supplier of the above-enumerated articles, thus, giving said "Rocen Enterprises" unwarranted benefits, advantage or preference, in violation of prohibitions of the Presidential Memorandum, dated April 22, 1971, Sec. 2, Rule XVIII of the Civil Service Rules and Regulations and of Sec. 1(x), of Presidential Decree No. 6, dated September 27, 1972, to the damage and prejudice of the Philippine Government.

CONTRARY TO LAW.

Upon arraignment, all the accused pleaded not guilty. The case against Manuel Bustamante was, on motion of the prosecution, dismissed without prejudice for lack of a prima facie case. Jimenez, Montayre, Villa and Socalit were later suspended from public office during the pendency of the case.

Through the testimonial and documentary evidence it presented at the trial, the prosecution sought to establish the following facts:

Dario Centeno and Robles negotiated with Jimenez for the purchase of transformers and electrical supplies for the

Mactan International Airport. The three were on leave during that time. On June 1, 1975, Montayre issued Requisition and Issue Voucher 6-513-75 for the following articles:

- 1 set three phase primary metering 13.8 KV 400 KVA, 60 cycles complete with demand metering, voltage and current transformers;
- 3 piece 150 KVA Distribution Transformers, single phase, 60 cycle 2400 volts-240 V/120V oil cooled;
- 3 pieces 150 KVA Power transformers, single phase, 60 cycles, 138 KV/2400 Volts oil cooled;
- 4 sets high voltage Changeover Switch, 3 poles double throw 15 KV;
- 6 sets High Voltage fused cut outs, 15 KV;
- 750 feet of 750 MCMTHW 600 Volts Copper conductor.

Purpose: For installation of commercial power at Mactan Centralized Emergency Power STM.

Jimenez approved the requisition and Leonor certified to the availability of funds. Jimenez signed Advertisement No. 16-75, and in due time the required invitations to bid calling for sealed proposals for the furnishing and delivery of the supplies were issued.

On June 15, 1975, Jimenez sent Socalit to Manila to canvass the subject supplies at various reputable dealers or manufacturers in Manila. Socalit delivered Advertisement Forms to Rocen Enterprises in Pasay City, Utilities Equipment and Supply Corporation (UTESCO) in Quezon City, and Intrade Corporation in Makati.

On June 25, 1975, the sealed bids were opened by the Bidding Committee. The Committee prepared an Abstract of Bids signed by David, Villa, Socalit, Wigberto Fuentebella, Leonardo Mahinay, and Fermin Beltran, approving the lowest bid, which was that of Rocen Enterprises. On the same day, a Purchase Order addressed to Rocen Enterprises was prepared and signed by David and approved by Jimenez, with Leonor certifying to the availability of funds.

From June 25-30, 1975, four reports of inspection were prepared and signed by Socalit, Villa and Montayre; four certificates of delivery were signed by Montayre and Villa; and four general vouchers for P70,180, P75,900, P99,000 and P53,020 respectively were prepared and signed by Villa, Montayre, Leonor and Jimenez.

On June 30, 1975, four treasury warrants in the amounts respectively of P70,180, P57,980, P99,000, P53,020, all payable to Rocen Enterprises and/or Fernando Dario, were issued in payment for the articles requisitioned. The Warrant Register at the airport shows that five checks in the separate amounts of P70,180, P99,000, P53,020, P57,980, P17,920, were delivered to Centeno.

It turned out that the requisitioned articles were delivered at Cebu City only on July 6, 1975, and were shipped by UTESCO, a losing bidder, to Rocen Enterprises, c/o Mrs. Remedios Centeno via the vessel Sweet Faith. The freight and handling charges of P5,500.00 incurred in connection with the delivery were reimbursed under a General Voucher signed by Jimenez, Montayre and Leonor to Rocen Enterprises.

Rocen Enterprises, the winning bidder, was ostensibly owned by Remedios Centeno, wife of Estanislao Centeno. Its line of business, as registered with the Bureau of Domestic Trade on August 9, 1974, was "paper products and printed matters." On August 11, 1975, the firm was incorporated and registered with the Securities and Exchange Commission as "Rocen Trading Incorporated" with an authorized capital stock of P100,000, P20,000 of which had been subscribed and P5,000 paid up. The incorporators were Remedios Centeno, Priscilla Robles, Glicerio Efren, Rogelio Santos, Estanislao Centeno and Serafin Robles.

The common defense of all the accused was as follows:

The acquisition of the electrical items was an emergency measure necessitated by the brownout at Mactan Airport on the night of June 1, 1975. Incoming flights had to be diverted as the runway and taxiway lights necessary for a proper landing were all out. Jesus Singson, CAA Director, directed Mactan officials to implement a plan to install commercial power at Mactan Airport which at that time depended on the Mactan Electric Company and the Philippine Air Force for its power source. For this purpose, Cash Disbursement Ceilings (CDC) in the total amount of P310,000.00 were released.

As the CDCs would expire on June 30, 1975, it was necessary to make it appear in the vouchers, supporting documents, reports of inspection, and certificates of delivery that the items requisitioned were delivered and inspected on or before June 30, 1975. The CDCs had to be utilized before the end of the fiscal year as otherwise they would revert to the general fund. In view of the emergency nature of the purchase, there was no time to advertise and the Bidding Committee had to adopt the more expeditious mode of procurement. Anyway, the prices paid by the government were reasonable.

Jimenez testified that he approved the vouchers after verifying that all the supporting documents were in order and duly certified by the proper officers. He disclaimed responsibility in determining the reputability of the supplier. He admitted he knew Dario, Centeno and Robles but denied that they were in his office at Mactan Airport to follow up the transaction.

Montayre contended that his participation in the transaction was limited to requisitioning the electrical items. He was not a member of the Bidding Committee and so had nothing to do with the canvassing of the prices, the determination of the winning bidder, and the verification of reputability of the supplier.

Villa, a member of the Bidding Committee, argued that he did not participate in the canvass of the requisitioned items. As chief of the logistics section, it was his duty to determine the items needed for the airport but not the availability of funds for their acquisition. He processed the vouchers before June 30, 1975, because the funds needed for the items requisitioned would not be available if not disbursed before that date. He did this upon Montayre's direction.

Sucalit testified that she made a canvass of the items requisitioned independent of the Bidding Committee, to use as a basis for determining the reasonableness of the prices quoted by suppliers. She acted pursuant to the National Accounting and Auditing Rules. She added that she went to Manila to make the canvass because there was no supplier in Cebu City that could furnish the needed items. She had no responsibility to determine who were qualified to participate in the bidding as she was not a member of the Bidding Committee. She pre-audited and initialed the vouchers after verifying all supporting documents and certifications. She also said she signed the inspection reports ahead of the actual delivery of the items because the CDCs would expire on June 30, 1975.

In its decision dated July 28, 1988, the First Division of the Sandiganbayan found all the accused guilty beyond reasonable doubt of violating Section 3, paragraphs (a), (c)[8] (h), and (i) of R.A. 3019, in relation to the Unnumbered Memorandum of the President dated April 22, 1971, Section 12, Rule XVIII of the Civil Service Rules and Section 1(x) of P.D. No. 6.

Each of the accused was sentenced to suffer an indeterminate penalty ranging from a minimum of 3 years to a maximum of 6 years imprisonment and perpetual disqualification from public office.

The Sandiganbayan said:

Carefully evaluating the evidence on record, it has become abundantly clear to Us that accused Arturo S. Jimenez, Rodolfo E. Montayre, Camilo G. Villa, Josefina S. Sucalit, and Hereto C. Leonor had conspired with

Fernando Dario, Estanislao Centeno, Serafin Robles and Casimiro David in the commission of the crime for which the last four were convicted by the Circuit Criminal Court in Case No. CCC-XIV-1457, namely, "Violation of Section 3, paragraphs (a), (c), (h), and (i), of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in relation to the Unnumbered Memorandum of the President of the Philippines dated April 22, 1971, Section 12, Rule XVIII of the Civil Service Rules, and Section 1(x) of Presidential Decree No. 6."

We are not disposed to disregard the finding of the court in that case that "a massive and gigantic conspiracy existed between and among the four accused herein, namely, David, Centeno, Dario, and Robles, as well as practically all of the high-ranking officials of CAA Mactan" (namely, Airport General Manager Arturo S. Jimenez, Asst. Airport General Manager Rodolfo E. Montayre, Camilo G. Villa as Chief of the Logistics Section, Mrs. Josefina S. Socalit, Technical Property Inspector of the COA detail, and Chief Accountant Hereto C. Leonor), the purpose of which was to corner and monopolize all requisitions and purchases of supplies and equipment at CAA Mactan, regardless of the source or the reputability of the suppliers.

The Sandiganbayan observed that there was an overcharge in the four vouchers between the prices quoted by Rocen as reflected in the Abstract of Bids and the amounts actually paid. The overcharge, totaling P27, 100, was meant to represent the cost of installation, but there was no justification for including this item in the vouchers and no proof either that Rocen undertook the installation. On the contrary, this work appeared to have been undertaken by Montayre and personnel from the Bureau of Air Transportation.

The Sandiganbayan held:

From all facts and circumstances, admitted or undisputed, as well as those inferences, deductions, and conclusions logically and reasonably proceeding therefrom, We are drawn into the conclusion that accused Arturo S. Jimenez, Rodolfo E. Montayre, Camilo G. Villa, Josefina S. Socalit and Hereto C. Leonor, indeed, had conspired with Casimiro David, Estanislao Centeno, Fernando Dario and Serafin Robles in a dastardly scheme to defraud the government.

When accused Jimenez, Montayre, Villa, Socalit and Leonor signed, approved and/or executed the documents that facilitated the consummation of the transaction in question, in conspiracy with David, Centeno, Dario and Robles, in direct violation of existing rules and regulations promulgated by competent authority, they have become criminally liable under Section 3, paragraph (a), of Republic Act No. 3019, as amended. They not only persuaded, induced, or influenced each other as public officers to commit such flagrant violations, but also allowed themselves to be so persuaded, induced or influenced to railroad the transaction in question. They had wittingly allowed the questioned purchase from Rocen Enterprises, an entity which is not a reputable manufacturer or a duly registered and licensed distributor of the equipment purchased, the same being engaged in the business only of "paper products and printed matters."

By the questioned transaction, Rocen Enterprises was also given unwarranted benefits, advantage, or preference, to the exclusion of more established and/or reputable establishments manufacturing or dealing in the kind of equipment purchased. There was manifest partiality, evident bad faith, and inexcusable negligence in accepting the bid of Rocen Enterprises and approving the same within a period of only one day, in accomplishing the purchase order and general vouchers in payment of the requisitioned equipment within a period of one week, and delivering the corresponding warrants or checks in payment of the same, through a CAA employee, even before delivery of said equipment. Section 3, paragraph (3) of Republic Act No. 3019, as amended, was thereby violated.

By combining, confederating, and conspiring with Centeno, Dario, and Robles to promote or facilitate efforts that led to the violation of Section 3, paragraph (h) of Republic Act No. 3019, for which Centeno, Dario, and Robles were convicted, accused Jimenez, Montayre, Villa, Socalit and Leonor rendered themselves equally liable.

Finally, there can be no doubt at all that Jimenez, Montayre, Villa, Socalit and Leonor are liable under Section 3, paragraph (i) since they participated in or were responsible for the approval of a manifestly unlawful, inequitable, or irregular transaction, by which actuations interest for personal gain shall be presumed against them.

While the Sandiganbayan case was pending, the Court of Appeals, in a decision promulgated on January 29, 1988, reversed the judgment of conviction rendered by the Circuit Criminal Court, on the ground of insufficient evidence. This decision was subsequently, and quite understandably, invoked by the herein petitioners in their separate motions for reconsideration of the decision of the Sandiganbayan.

In a resolution dated February 17, 1989, the Sandiganbayan denied all these motions for reconsideration. Hence, four separate petitions for review were filed with this Court, by Villa, in G.R. No. 87186; Montayre, in G.R. No. 87281; Socalit, in G.R. No. 87466; and Jimenez, in G.R. No. 87524. Leonor did not appeal.

On May 4, 1989, G.R. No. 87466 was dismissed for non-compliance with Circular No. 1-88. Socalit filed a motion for reconsideration, which was denied with finality. On October 3, 1989, however, this Court resolved to hold in abeyance enforcement of final judgment on the petition pending resolution of the other petitions. On August 22, 1989, we resolved to consolidate these cases upon motion of the Solicitor General, who was directed to file a Consolidated Comment on all the cases.

The common issues raised in these petitions are:

1. Whether or not the decision of acquittal of the Court of Appeals promulgated 6 months before the decision of the Sandiganbayan bars their conviction pursuant to the doctrine of "the law of the case."
2. Whether or not the testimonies of prosecution witnesses, which were discredited by the Court of Appeals as biased, merit belief by the Sandiganbayan.
3. Whether or not there was conspiracy among the petitioners.

The petitioners contend that since their cases in the Sandiganbayan were merely an offshoot of Criminal Case No. CCC-XIV-1457 in the Circuit Criminal Court of Cebu City, which was reversed by the Court of Appeals in CA-G.R. No. 24142, the decision of the Court of Appeals has become the "law of the case" which cannot now be overturned by any court and should be applied in the case at bar. Accordingly, they should also be acquitted.

This contention is erroneous.

The doctrine has been defined as "that principle under which determinations of questions of law will generally be held to govern a case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort. It is merely a rule of procedure and does not go to the power of the court, and will not be adhered to where its application will result in an unjust decision. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case."

In *Jarantilla v. Court of Appeals*,^[9] we held:

"Law of the case" has been defined as the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established, as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court (21 C.J.S. 330) (*Italics supplied*). It need not be stated that the Supreme Court being the court of last resort, is the final arbiter of all legal questions properly brought before it and that its decision in any given case constitutes the law of that particular case. x x x (*Emphasis supplied*). It is a rule of general application that the decision of an appellate court in a case is the law of the case on the points presented throughout all the subsequent

proceedings in the case in both the trial and the appellate courts, and no question necessarily involved and decided on that appeal will be considered on a second appeal or writ of error in the same case, provided the facts and issues are substantially the same as those on which the first question rested and, according to some authorities, provided the decision is on the merits.

In light of these definitions, we find that the Sandiganbayan did not err in holding as follows:

The decision of the Court of Appeals reversing the judgment of the Circuit Criminal Court in Case No. CCC-XIV-1457, was not, however, a determination of a question of law. The present case is not merely a stage or subsequent proceedings of that case. Although related, they are entirely distinct and separate cases. While in both cases, the transaction involved, the charges laid, and the persons alluded to as co-conspirators are one and the same there is definitely no identity of parties between the two cases. The persons accused in one differ from those in the other. There is, therefore, no way whereby the doctrine of the law of the case would apply. If ever the findings of the Court of Appeals in the case decided by it would be considered operative as the "law of the case," the same would be confined in its operations solely to the case and to those accused therein.

The petitioners also invoke *res judicata*, pointing out that in Criminal Case No. CCC-XIV-1457 and the case at bar, there was identity of the transaction involved, the witnesses and documentary evidence presented, and the offenses charged.

The judgment of acquittal in CA G.R. No. 24142 does not constitute *res judicata* so as to bar a judgment of conviction in Criminal Case No. 5915. One of the requisites of *res judicata* is that there must be substantial identity of parties,[10] which is not present in the instant case.

The petitioners claim that the Sandiganbayan "relied very heavily, if not mainly" on and has merely adopted the findings of facts of the Circuit Criminal Court in arriving at its judgment of conviction. With the reversal of the decision of the Circuit Criminal Court, the Sandiganbayan decision has also lost its basis.

This argument is also unacceptable.

While the Sandiganbayan did consider the decision of the Circuit Criminal Court in finding the petitioners guilty, this was not the sole reason for their conviction. Apart from the conclusions of that court, the Sandiganbayan made its own findings of fact based on the testimony of witnesses and documentary evidence submitted to it during the trial. In fact, the major part of its decision dwelt on its own analysis of such evidence.

The petitioners also invoke the decision of the Court of Appeals rejecting the charge of conspiracy and contend that its finding that David, Centeno, Dario and Robles did not conspire among themselves or with the herein petitioners precluded the Sandiganbayan from arriving at a contrary conclusion.

This defense is also untenable. In *United States v. Remigio*,[11] the Court held that although "a conspiracy is in its nature a joint offense . . . it does not follow that one person only cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases for a charge of conspiracy, one defendant may be found guilty of the offense."

Notably, the judgment of acquittal of the Court of Appeals invoked by the herein petitioners was based on the insufficiency of the evidence of guilt of the accused therein and not on a finding that no offense had been committed.

The petitioners complain that the Sandiganbayan erred in giving credence to the testimony of the prosecution witnesses who had earlier been disbelieved by the Court of Appeals as biased. The answer to this is that the findings of fact of the Sandiganbayan in the cases before us are binding on this Court in the absence of a showing that they come under the established exceptions. It is also worth noting that the Sandiganbayan, being a trial court,

was in a position to observe the demeanor of the witnesses, unlike the Court of Appeals which had to rely only, in the words of the Solicitor General, "on a mute transcript of stenographic notes."

It is asserted that the omission to ascertain the reputability of the supplier would result only in administrative and not criminal liability, as held by the Court of Appeals. We do not think so. Not only administrative but also criminal liability under the aforementioned paragraphs (a) and (e), Section 3, of R.A. 3019 was incurred. The failure to ascertain the reputability of Rocen Enterprises constituted a violation of the rules and regulations promulgated by competent authority and comes under paragraph (a). The manifest partiality that resulted in unwarranted benefits to Rocen was in contravention of paragraph (e).

Also invoked is our ruling in *Bayot v. Sandiganbayan*,^[12] to wit:

Petitioner herein, Reynaldo R. Bayot, together with his co-accused Lorenzo Ga. Cesar, was one of the those charged and convicted in a joint decision by the Sandiganbayan, of the crime of estafa thru falsification of public documents. Both were sentenced to a total of 577 years imprisonment by the Sandiganbayan on exactly the same evidence which this Court had pronounced as "woefully inadequate" and "too conjectural and presumptive to establish personal culpability." (*Cesar v. Sandiganbayan*, 134 SCRA 105). The petition for review filed by Lorenzo Ga. Cesar was granted by this Court and in the decision rendered on January 17, 1985 in G.R. Nos. L-54719-50, 134 SCRA 105, the Court en banc, reversed the decision of the Sandiganbayan and acquitted Lorenzo Ga. Cesar. The charge and the evidence submitted against Lorenzo Ga. Cesar being one and the same against the herein petitioner Reynaldo R. Bayot, the Court should do no less with respect to the latter.

In *Cesar v. Sandiganbayan*,^[13] it was this Court en banc that reversed the decision convicting the accused of estafa through falsification of public documents because it had not been proved that Cesar signed the questioned vouchers. This served as the basis for acquitting Bayot in his own petition for review as they were charged under identical informations and convicted in a joint decision based on the same evidence presented before Sandiganbayan.

In the case at bar, the first three accused were convicted by the Circuit Criminal Court and later acquitted by the Court of Appeals. The second batch of accused, the petitioners herein, were convicted directly by the Sandiganbayan.

Obviously, we cannot rule on the decision of the Court of Appeals because it is not before us. What is is the decision of the Sandiganbayan, which is the case we can review. In so doing, we are not bound by the findings of the Court of Appeals, which have not been appealed to this Court. We are confined only to the examination of the proceedings in the Sandiganbayan because it is its decision that has been elevated to us. From the records of that case, to repeat, we are satisfied that there was a conspiracy among some of the petitioners.

The failure to show that the petitioners profited from the transaction would not necessarily result in acquittal. In *Luciano v. Estrella*,^[14] Justice J.B.L. Reyes, in interpreting paragraph (g), Section 3 of R.A. 3019, said:

" x x x the act treated thereunder partakes of the nature of malum prohibitum; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been violated. And this construction would be in consonance with the announced purpose for which Republic Act 3019 was enacted, which is the repression of certain acts of public officers and private persons constituting graft or corrupt practices or which may lead thereto. Note that the law does not merely contemplates repression of acts that are unlawful or corrupt per se, but even of those that may lead to or result in graft and corruption x x x."

The petitioners stress that the investigating fiscal who conducted the preliminary investigation cleared them of liability (while Tanodbayan Fernandez maintained there was conspiracy) and argue that the findings of the former

should prevail pursuant to *Quizo v. Sandiganbayan*.^[15] That case, in fact, argues against them. In *Quizo*, it was the Tanodbayan himself who moved for the dismissal of the information with the Sandiganbayan which denied the same and which denial we set aside. The investigating fiscal being the subordinate of the Tanodbayan, the latter's decision should prevail.

Also cited is the case of *Pajaro v. Sandiganbayan*,^[16] where it was held:

In view of the findings of the Court of Appeals in CA-G.R. No. SP-07493, April 30, 1987, the prosecution of petitioner in the Sandiganbayan should be discontinued for the Sandiganbayan may not review, revise or reverse the findings of the Court of Appeals in relation to which the Sandiganbayan, a special court with special and limited jurisdiction, is inferior.

In that case, Pajaro, as officer-in-charge of the Office of the City Treasurer of Dagupan City, was charged before the Tanodbayan with violation of R.A. 3019 for having given undue advantage and benefits to a delinquent taxpayer by allowing it to pay in installments instead of collecting the taxes due within the period fixed in the Local Tax Code. While the case was pending, Llamas filed a petition for mandamus to compel Pajaro to collect the delinquent's tax liabilities. The trial court dismissed the suit and on appeal was upheld by the Court of Appeals on the ground that no prejudice had been caused to the city, which in fact stood to gain more from the promissory note than the amount awarded by the trial court.

The Tanodbayan filed the information against Pajaro but later recommended its dismissal, which the Sandiganbayan denied. Citing the Court of Appeals decision, Pajaro moved for reconsideration, which the Sandiganbayan also denied. This prompted the petition for certiorari and prohibition, where we ruled in favor of Pajaro.

The Pajaro Case is not applicable because, as correctly observed by the Solicitor General, one and the same act of the same party was the subject of separate cases before the Court of Appeals and the Sandiganbayan. In the cases before us, the parties absolved by the Court of Appeals are different from the parties in the Sandiganbayan case and the acts committed by the accused in this case are different from the acts committed by the accused in Criminal Case No. CCC-XIV-1457.

Lastly, it is contended that there was denial of due process because the case against them was heard by several sets of justices as follows:

Nov 8, 1983 Pamaran Molina Purisima
Jan. 30, 1984 Pamaran Consolacion Jabson
Jan. 31, 1984 Pamaran Consolacion Quimbo
Mar. 26, 1984 Pamaran Molina Consolacion
Sept. 25, 1984 Pamaran Escaral Molina
Mar. 11, 1985 Pamaran Molina Amores
May 28, 1985 Pamaran Jabson Amores
Sept. 23, 1985 Pamaran Amores Vera Cruz
July 1-2, 1986 Garchitorena Jabson Joson
Sept. 8-10, 1986 Garchitorena Jabson Joson
Nov. 4-6, 1986 Garchitorena Jabson Joson

Moreover, the decision of conviction was signed by Justices Joson, Garchitorena and Chua while the resolution on the motion for reconsideration was signed by Justices Joson, Garchitorena and Hermosisima.

Invoked is the case of *Cabigao vs. Sandiganbayan*,^[17] where this Court held:

At the same time, the too frequent rotation of Justices hearing this particular case borders on unfairness. The Sandiganbayan should devise a better system whereby, as much as possible, the same Justices who hear a case shall be the ones to decide it. The procedure in the Court of Appeals cannot be used as a precedent. Except in some isolated instances provided in Batas Pambansa Blg. 129, the Court of Appeals reviews and decides cases on the basis of the records and does not conduct trials. In reducing temporary changes in its divisions to the barest minimum, the Sandiganbayan also reduces the possibility of one Justice who hears all the witnesses, influencing the findings of the Justices who did not have the same opportunity.

In that case, we set aside the decision of the Sandiganbayan and ordered a new trial not solely on the basis of the "too frequent rotation of justices" but also because "in addition to the newly-discovered evidence, there (were) serious allegations which call(ed) for a more thorough examination."

Furthermore, temporary vacancies in a division of a collegiate court are to be expected and unavoidable. The "frequent rotation of justices" decried by the petitioners was not deliberately done to prejudice them. It must also be noted that there was no categorical statement in *Cabigao* that "frequent rotation of justices" would result in the nullity of the proceedings.

We now proceed to the liabilities of the petitioners.

The petitioners submit that their acts of requisitioning the items, approving and signing documents relative to the transaction and issuing the checks in payment of the items requisitioned were made in good faith to beat the expiry date of the CDCs on June 30, 1975, and allow their utilization before their reversion to the general fund.

We agree that the issuance of and signatures on the reports of inspection, certificates of delivery and general vouchers, all before June 30, 1975, prior to the actual delivery of the requisitioned items, were innocent and justified by the emergency nature of the purchase and the need to beat the expiry dates of the CDCs. What we cannot come to terms with, however, is the glaring fact that the winning bidder, Rocen Enterprises, which was represented by Centeno, Robles and Dario, deals only in paper products and printed matter and merely procured the electrical items it supplied to CAA Mactan from UTESCO, one of the losing bidders. This transaction reveals that unwarranted advantage through manifest partiality were accorded Rocen notwithstanding its lack of reputability as a supplier of electrical equipment.

Who and what made this possible?

A close scrutiny of the circumstances of this case clearly indicates that Jimenez and Socalit were indeed involved in a scheme violative of the Anti-Graft and Corrupt Practices Act.

Dario, Centeno and Robles were CAA Manila employees and were on leave during the period of the questioned transaction. They were seen by prosecution witnesses at Mactan Airport in the company of Jimenez, who admitted he knew the three. Robles and Centeno are incorporators of Rocen Trading, Inc., which was the Rocen Enterprises at the time the transaction was consummated. This was a sole proprietorship registered in the name of Remedios Centeno, wife of Estanislao Centeno, and engaged only in the business of dealing in "paper products and printed matter."

When the requisition of the items was made, Socalit went to Manila pursuant to a travel order issued by Jimenez to canvass prices of the articles. It is not explained why she delivered an advertisement form to Rocen Enterprises, which was a supplier only of paper products and printed matter but not of the needed electrical items. Curiously,

Rocen submitted the lowest quotation for the items requisitioned. When the contract was awarded to it, Rocen merely procured the items requisitioned from UTESCO, a losing bidder.

Arturo Jimenez, Airport General Manager, had the responsibility, as head of office, to see to it that the purchases made were from reputable suppliers pursuant to the Unnumbered Presidential Memorandum dated April 22, 1971. Instead of discharging this responsibility, Jimenez approved the award to Rocen Enterprises, which was represented by Centeno, Robles and Dario.

Josefina Socalit, who was sent by Jimenez to Manila to make a canvass, inexplicably delivered an advertisement for Rocen Enterprises, which was not a reputable supplier of the needed items. In her Travel Report, she certified that she made a canvass from reputable suppliers.

These acts and omissions of Jimenez and Socalit violated paragraph (a) of Section 3 of R.A. 3019 in relation to the Unnumbered Presidential Memorandum. They were persuaded, induced or influenced, and persuaded, induced or influenced each other, to award the purchase of electrical items to an entity which was not even a supplier of electrical items in disregard of the Presidential Memorandum directing that procurement of supplies by government offices should be from reputable suppliers. Rocen was not a "reputable supplier" as it was dealing only in paper products and printed matter at the time of the transaction in question.

Paragraph (e) was likewise violated by Jimenez and Socalit because, with manifest partiality in the discharge of their official and administrative functions, they gave unwarranted benefits, advantage or preference to Rocen Enterprises.

The circumstances of this case are sufficient to establish conspiracy between Jimenez and Socalit in violating the pertinent provisions of R.A. 3019 adverted to above. Direct evidence is not necessary to prove such conspiracy, for as we held in *People vs. Roa*:^[18]

A resort to circumstantial evidence is in the very nature of things, a necessity. Crimes are usually committed in secret and under conditions where concealment is highly probable; and to require direct testimony would in many cases result in freeing criminals and would deny proper protection to society. (20 Am. Jur. 261).

We believe, however, that Montayre and Villa are not criminally liable.

Montayre was convicted as a conspirator for having signed the reports of inspection, certificates of delivery, and general vouchers before delivery of the items requisitioned. As already stated, these were innocent acts in view of the emergency nature of the purchase and the need to beat the expiry date of the CDCs. No criminal intent can be imputed to his having made the requisition because the same was necessary. He had no responsibility in determining the reputability of the supplier and did not take part in making the canvass and awarding the purchase to Rocen.

Villa was likewise convicted as involved in the conspiracy for having signed invoices, reports of inspection, certificates of delivery and general vouchers before delivery of the items requisitioned. He is absolved of this charge like Montayre, for the same reasons. Villa, moreover, did not take part in the canvassing of supplies.

It is true that he was a member of the Bidding Committee and he signed the Abstract of Bids and the approval of the lowest bid to Rocen Enterprises. However, this act cannot be considered criminal as he relied in fact on the canvass made and sealed bids procured by Socalit in Manila. Such reliance may have constituted negligence but certainly not the gross inexcusable negligence punishable by law.

Regarding the offenses involved, the Court finds that only paragraphs (a) and (e) of Section 3, R.A. 3019, in relation to this Unnumbered Presidential Memorandum dated April 22, 1971, were violated.

There was no violation of paragraph (h) of R.A. 3019 as proof of financial or pecuniary interest in the transaction on the petitioners' part did not follow from the Sandiganbayan finding that there was overpricing.

Paragraph (i) was also not violated because the Bidding Committee did not exercise discretion in the award of the contract for purchase of the equipment, which had to be given to the lowest bidder.

WHEREFORE, the appealed judgment of the Sandiganbayan is **AFFIRMED** insofar as petitioners Jimenez and Sucalit are concerned. Petitioners Villa and Montayre are hereby **ACQUITTED**.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Romero, Nocon, and Bellosilo, JJ., concur.

Davide, Jr., J., no part as one of the parties, Mr. Montayre used to be his client.

[1] (a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense (Sec. 3(a), R.A. 3019).

[2] (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest (Sec. 3[h], R.A. 3019.)

[3] Effective immediately, in order to preclude overpricing, it is directed that all government offices shall purchase their supplies, materials, equipment and the like directly from reputable manufacturers or their duly registered and licensed distributors in the Philippines, to the exclusion of middlemen.

The Department of General Services is directed to make a list of such manufacturers and their duly registered or licensed distributors in the Philippines.

In the event that the needed materials, supplies and equipment and the like are not available in stock, a certification to that effect issued by the General Manager of reputable manufacturers or his duly authorized representative or the firm's duly registered and licensed distributor shall be the basis to procure thru competitive public bidding of the materials, supplies, equipment, etc. The certification shall be included in the claim for payment.

Any purchase of supplies, materials, equipment and the like in violation of this Memorandum shall be considered irregular and shall not be passed in audit.

[4] SECTION 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural or industrial undertaking without a written permission from the head of Department: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of agency to the end that it will not impair in any way the efficiency of the officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors. (Rule XVIII of

the Civil Service Rules)

[5] SECTION 1. Grounds for disciplinary action. - The following shall be grounds for disciplinary action:

x x x

(x) Pursuit of private business, vocation or profession without the permission required by these rules or existing regulations. (P.D. No. 6)

[6] (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. (Sec. 3[e], R.A. 3019)

[7] (i) Directly or indirectly interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong. (Sec. 3 [i], R.A. 3019)

[8] Paragraph C should be considered par. e, per body of the decision.

[9] 171 SCRA 429.

[10] Smith Bell & Co., Inc. v. Court of Appeals, 190 SCRA 362.

[11] 37 Phil. 599.

[12] 146 SCRA 304.

[13] 134 SCRA 105.

[14] 34 SCRA 769.

[15] 149 SCRA 108.

[16] 160 SCRA 763.

[17] 150 SCRA 483.

[18] 167 SCRA 116.

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