PEOPLE OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN (FIRST DIVISION), DOMINADOR T. BELAC, NOE V. DANNANG, JUAN M. BOGUEN AND THOMAS B. TUBBAN, JR., RESPONDENTS.

G.R. NOS. 168188-89. June 16, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, as amended, for the reversal of the Decision[1] of the Sandiganbayan acquitting the accused in Criminal Case Nos. 25391, 25392, and 25393 for violation of Articles 171 and 220 of the Revised Penal Code, and Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

The Antecedents

Dominador T. Belac (then Provincial Governor of Kalinga) and Noe V. Dannang (then Provincial Budget Officer) were charged with falsification of an official document as defined in Article 171 of the Revised Penal Code. The inculpatory portion of the Information reads:

> That on or about 03 September 1998, or sometime prior or subsequent thereto, in the Municipality of Tabuk, Province of Kalinga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, both public officers, accused Dominador T. Belac, being then the Provincial Governor, and accused Noe V. Dannang, being the Provincial Budget Officer of the Province of Kalinga, respectively, committing the crime herein charged in relation to, while in the performance and taking advantage of their official functions, and mutually conspiring and confederating with each other, did then and there, willfully, unlawfully, and feloniously falsify the Advice of Allotment dated 03 September 1998 by making it appear that the amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000.00) was appropriated under Appropriation Ordinance No. 97-04 for payment of equipment, when, in truth and in fact, no such appropriation ordinance was passed for the payment of equipment and the aforesaid Appropriation Ordinance No. 97-04 which was indicated therein pertains to "An Ordinance Providing for the Salaries of Officials and Personnels (sic) of the Province of Kalinga for the Period of January 1, 1998 to December 31, 1998, and for other purposes.
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> CONTRARY TO LAW.[2]

The case was docketed as Criminal Case No. 25391.

The said accused, together with Juan M. Boguen (then Provincial Treasurer of Kalinga) and Thomas B. Tubban, Jr. (Officer-In-Charge of the Office of the Provincial Accountant), were charged with technical malversation under Article 220 of the Revised Penal Code, to wit:

> That on or about 04 September 1998, or sometime prior or subsequent thereto, in the Municipality of Tabuk, Province of Kalinga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused: Dominador T. Belac, then Provincial Governor; Juan M. Boguen, then Provincial Treasurer; Noe V.

> Dannang, then Provincial Budget Officer, and Thomas B. Tubban, Jr., then OIC Office of the Provincial Accountant, respectively (sic), all of the Provincial Capitol of Kalinga, while in the performance of their official functions, committing the offense in relation to their office, taking advantage of their official positions, conspiring and confederating with each other, did then and there, willfully, unlawfully, and feloniously divert and apply General Fund 1011 of the Provincial Government of Kalinga which was under their administration to some purpose or use other than that provided by law, by purchasing or approving to purchase Nissan Safari Vehicle amounting to ONE MILLION SEVENTY-SIX THOUSAND PESOS AND ONE HUNDRED TWENTY-SEVEN PESOS/SEVENTY CENTS (P1,076,127.70) as evidenced by Check No. 126591 dated 04 September 1998 and corresponding voucher therefor.
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> CONTRARY TO LAW.[3]

This case was docketed as Criminal Case No. 25392.

These four officials were also charged with violation of Section 3(e) of Rep. Act No. 3019. The accusatory portion of the Information reads:

> That on or about 04 September 1998, or sometime prior or subsequent thereto, in the Province of Kalinga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused: Dominador T. Belac, then Provincial Governor; Juan M. Boguen, then Provincial Treasurer; Noe V. Dannang, then Provincial Budget Officer, and Thomas B. Tubban, Jr., then OIC, Office of the Provincial Accountant, respectively (sic), all of the Provincial Capitol of Kalinga, committing the crime (offense) herein charged in relation to and taking advantage of their official functions, conspiring and confederating with each other, and through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there, willfully, unlawfully, and criminally cause the approval and subsequent release of the amount of ONE MILLION SEVENTY-SIX THOUSAND PESOS AND ONE HUNDRED TWENTY-SEVEN PESOS/SEVENTY CENTS (P1,076,127.70) (sic) Philippine currency, as partial payment of the NISSAN SAFARI vehicle of the Provincial Governor purchased from ROYCE MOTOR CENTER, INC. said accused knowing fully well that said approval and release had no corresponding appropriation or resolution by the Sangguniang Panlalawigan, thus causing undue injury to the Provincial Government of Kalinga in the amount aforestated and giving unwarranted benefits, advantage, or preference in favor of ROYCE MOTOR CENTER, INC.
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> CONTRARY TO LAW.[4]

The case was docketed as Criminal Case No. 25393.The trial of the three cases was consolidated. During pre-trial, the prosecution and the accused stipulated on the following:

> The parties have agreed that the purchase of the motor vehicle in question herein has been regular in all aspects insofar as the mechanical procedures for the purchase of the motor vehicle is concerned, including the fact that the vehicle itself is registered in the name of the Province of Kalinga. The only issue is whether or not the funds used to purchase the motor vehicle subject matter of the accusation herein was authorized by the Provincial Board of the existing fund of the Provincial Government of Kalinga in 1998.[5]

The parties also agreed, "without prejudice to whatever other action the accused might take on the earlier cancellation [by the court] of the last sentence of the first paragraph on page 2 of the Pre-Trial Order dated September 22, 1999," to dispense with the testimony of Vice-Governor Jocel Baac and that of Provincial Secretary James Alunday, upon the following stipulation of facts:

> 1) The Vice-Governor would have testified that, outside of the resolutions stipulated upon in the "Stipulation of Documents" dated October 19, 1999, no other written resolutions of the Sangguniang Panlalawigan exists with respect to the purchase of the Nissan Safari motor vehicle by the Province of Kalinga. x x x
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> 2) The Provincial Secretary would have testified as to the meaning of the text in the minutes of the meeting of

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> August 24, 1998 which reads: "... to cut the Gordian knot on purchasing procedures, sources of funds, etc. and on the speculations of its repercussions on the Sangguniang Panlalawigan and Provincial Government by consulting with the local banks for a loan by the Governor ..." The accused has objected and the Court has supported the objection of the accused to the effect that any statement as to the meaning of the sentence to be rendered by the Secretary of the Sangguniang Panlalawigan is inappropriate, more particularly, since the document is the best evidence of what happened during this proceedings. "[6]

The Antecedents

When Dominador T. Belac assumed office on July 1, 1998 as Governor of Kalinga, his office was not provided with a service vehicle. His predecessor's service vehicle, which had been purchased from Royce Motor Center, Inc. in Tuguegarao, Cagayan, had been assigned to the Provincial Cooperative Development Office in March 1988. Belac decided to purchase a Nissan Safari using his personal funds, and negotiated with Royce Motors' sales representative, Edwin Gumiran. The vehicle was priced at P1,585,000.00, with a downpayment of P600,000.00, the balance to be payable in 12 monthly installments of P130,000.00, without interest. Belac paid the P600,000.00 downpayment using his personal check. However, Royce Motor later required him to pay the balance in six (6) monthly installments of P164,000.00 each, the first installment to be due on August 6, 1998. Since he could not meet the obligation in such a short period of time, he offered to transfer the vehicle in the name of the Province of Kalinga, which would pay the balance of the purchase price.[7]

Belac thereafter requested the Sangguniang Panlalawigan to realign P200,000.00 from the roads and bridges fund of the Office of the Provincial Engineer so that the first installment of P164,000.00 could be paid. The request was referred to the Committee on Finance and Appropriation (CFA) headed by Sanggunian member William Puday.

During the session of the Sanggunian on August 24, 1998, the members agreed that the simplest and effective way to resolve the matter was to order the Provincial Treasurer and Provincial Accountant to "consult with the local banks for a loan by the governor." The request was then referred to the CFA and the Committee on General Services. When apprised of the Sanggunian resolution, Belac, in a Letter dated August 26, 1998, requested Vice-Governor Baac, also the Presiding Officer of the Sanggunian, for authorization "to secure a loan from the Development Bank of the Philippines [DBP] for the purchase of one service vehicle."[8]

What transpired on September 2, 3 and 4, 1998, is the bone of contention between petitioner, on the one hand, and respondents, on the other.

CFA Chairman William Puday and members Andres B. Ngao-l, Ruben Tuazon, and Richard Abadilla were one in claiming that the Sanggunian and the CFA did not meet on September 2 and 3, 1998, but held only "informal meetings" in the Office of Victor Tanggawon, Officer-in-Charge, Office of the Vice-Governor and also a Sanggunian member. The four Sanggunian members declared, inter alia, that they were in Tanggawon's office on September 2, 1998, during which they officially discussed the request of Belac for authorization to secure a loan to pay for the vehicle. Provincial Budget Officer Noe Dannang and Officer-in-Charge Thomas B. Tubban, Jr., also of the Provincial Budget Office, were summoned to assist them in figuring out where to source the funds to pay the vehicle. The CFA, nevertheless, discovered that there was no appropriation for capital outlay, hence, no fund to realign.

After lunch, Puday went to the DBP Tabuk Branch and conferred with Pacita T. Castillo and Cashier Rodolfo Supnet. He invited them to attend the CFA meeting at 2 p.m. that day. During the meeting, the DBP officials assured the conferees that the P1,500,000.00 loan would be processed and released immediately as soon as the following requirements were in order: (1) Resolution from the Sanggunian authorizing the treasurer and the governor to undertake a deposit and borrow from the DBP; and (2) the opening of a special credit deposit account.

After the conference, the CFA members present resolved to recommend to the Sanggunian the following options during its September 7, 1998 session: (1) to open a credit account deposit under the name of the Province with the DBP with an initial deposit of P2,000,000.00; (2) to authorize Belac to secure a P1,500,000.00 loan with DBP; and (3) to realign the amount of P200,000.00 from any service to augment the monthly installments due on August 6, 1998. However, no formal resolution was approved by the CFA.

Momentarily, Provincial Treasurer Juan M. Boguen arrived with Gumiran and Wilfredo Tacod, the Sales Representative and the Manager of Royce Motor Center, Inc., respectively. Boguen introduced Gumiran and Tacod who informed the CFA members about the terms of payment, which included a P93,400.00 discount if the balance would be paid in cash. After the briefing, Boguen and Tacod left, and later returned with a check in payment of the balance of the purchase price, which Boguen turned over to Gumiran and Tacod. Although surprised at the development, the CFA members did not object to the remittance of the check to Gumiran and Tacod. Puday rendered a report which was incorporated in the minutes of the meeting.

In contrast, Rodolfo Supnet, the Cashier of the DBP Tabuk Branch, declared that Sanggunian members Puday and Ngao-l meet with him and Pacita T. Castillo, another bank employee, and asked about the requirements of a bank loan. He informed Puday that the loan application would be processed and the proceeds released upon the opening of a special credit deposit account with an initial deposit of P2,500,600.00 and a resolution of the Sanggunian authorizing the loan by the Province. Puday assured him that the requisite resolution would be approved the next day.

According to Noe V. Dannang, the Provincial Budget Officer, he saw Supnet along the Session Hall of the Sanggunian in the Provincial Capitol in the afternoon of September 2, 1998. Supnet told him that he had just met with the Sanggunian members in the Office of the Vice-Governor in connection with the loan of the Province with the DBP. Supnet was also told that the loan would be approved and formalized on September 7, 1998.

Dannang further declared that, the next day, September 3, 1998, he attended an informal conference upon the invitation of Sanggunian member Ngao-l in the Office of the Acting Vice-Governor Victor Tanggawon with Sanggunian members Puday, Tuazon, Abadilla, Wagaso, Donqui-is, and Ex-Officio member Froilan Belac. Also in attendance was Provincial Treasurer Juan M. Boguen who was instructed by Ngao-l to prepare an advice allotment for the purchase of the governor's service vehicle. He assured Dannang that the resolution authorizing the loan of the province from the DBP would be formalized and authorized by the Sanggunian during its September 7, 1998 session. Boguen recommended that the purchase price of the vehicle be paid to avoid accumulating penalties. He thus instructed one of the clerks in his office to prepare the necessary advice of allotment on the standard allotment form already encoded in the office computer. It turned out that the entries "Expense Code 4-36" and "Appropriations Ordinance No. 97-04" were already printed in the form. The account code "4-36" meant that the funds would be taken from capital outlay.[9] Dannang did not notice the entry "97-04" under the column of the appropriation ordinance number and signed the advice allotment. He then went to Belac's office and informed the latter that the document had been prepared per instructions of the Sanggunian members. Belac was happy at the development and thus signed the advice of allotment. Belac also signed the Purchase Request, Purchase Order, and Inspection Request of the vehicles certified in the Request for Allotment of Obligations, the existence of appropriation for the expenditures, and the respective accounts.

Boguen testified that, at about 1:00 p.m. on September 4, 1998, Edwin Gumiran, the salesman of Royce Motor Center, Inc., and Wilfredo Tacod, the messenger of the corporation, met with him at his office. They then proceeded to the Office of the Acting Vice-Governor, where Gumiran explained to the Sanggunian members that if the Province paid the balance of P1,109,410.00 for the vehicle that day, net of the P600,000.00 earlier paid by Belac, they would get a P93,400.00 discount. The Sanggunian members then ordered Boguen to prepare the check

for the amount due. Boguen went to Belac's office and instructed one of the latter's clerks to prepare a Purchase Request, Voucher and Release of Allotment (ROA). Belac signed the documents and transmitted them to Thomas Tubban, Jr., the Officer-in-Charge of the Office of the Provincial Accountant, who was informed that there was already an advice of allotment and a request therefor. Tubban then signed the request for allotment and certified in the disbursement voucher that adequate funds were available. The papers were returned to Boguen who prepared and signed the check for P1,076,127.70, net of 4% tax (P33,282.30). Belac also affixed his signature on the document. Boguen then brought the check to Gumiran and to the Sanggunian members in the Office of the Acting Vice-Governor. Gumiran issued a receipt and told Boguen that the Sanggunian members wanted to get the P93,400.00 discount. However, Boguen refused, insisting that "the discount should go to the province and not to the Sanggunian members."

During the session of the Sanggunian on September 4, 1998, the CFA submitted the following recommendation on Belac's request for authority to secure a loan: (1) to authorize the Provincial Treasurer to open a treasury account in the amount of P2.5 million at the DBP Tabuk Branch; (2) to authorize Governor Belac to secure a P1.5 million loan from DBP to pay the service vehicle; and (3) to realign P200,000.00 from any available source to augment the proposed loan to cover the registration of the vehicle and other expenses to complete the purchase.[10] However, the Sanggunian rejected the recommendation on the following grounds: (1) the balance of the purchase price of the vehicle had already been paid; (2) the vehicle was not yet owned by the province; and (3) the vehicle was not an income-generating equipment. An administrative complaint was thereafter filed against Boguen, Tubbon, Jr., Dannang and Belac.[11]

When he testified for the prosecution, Provincial Auditor Dionisio Bernal declared that he conducted an investigation of the payment of the vehicle and found that the transaction lacked the following supporting documents: 1) exemption/clearance on the prohibition of Administrative Order No. 101 of the Office of the President; 2) Sangguniang Panlalawigan Resolution appropriating an amount for the purpose; 3) Price Quotation of dealers and abstract of proposals or proof showing that no dealers offered the same item and quality at lower price; 4) Certificate of Award; 5) Sales Invoice with complete list of car accessories; and 6) Certificate of Warranty. He then issued a notice of suspension to the Provincial Governor, the Office of the Provincial Accountant, and the Office of the Provincial Treasurer, to suspend the liquidation of the amount disbursed.[12] He required Belac to submit his explanation as well as furnish copies of the original receipt.[13] Belac submitted an explanation but failed to submit the required documents, particularly the Appropriation Ordinance, the exemption or clearance and the Certificate of Award.

In the course of his review, Bernal came across the request for obligation of allotment with account code "Allotment plus 4-36" with the entry "Appropriation Ordinance No. 97-04" written thereon. He stated that the said ordinance, the budget ordinance for 1998, covered not only the salaries of officials and provincial personnel but also other purposes. Bernal stated that the entry "97-04" in the advice of allotment was a correct entry, meaning that there is an appropriation for the purchase indicated in the Advice of Allotment as found in Ordinance 97-04 except "(a)s for the object of expenditures, it does not appear in the Appropriation Ordinance"; and that Appropriation Ordinance 97-04 was not the correct ordinance from which the amount was taken because there was no appropriation therein for the transaction.[14]

Bernal testified further that, in October 1999, he was given a copy of Appropriation Ordinance No. 99-03 entitled "An Ordinance Enacting the Annual Budget for the Province of Kalinga for Calendar Year 1999 Providing Funds for the Operations Thereof," whereby the Province of Kalinga had a total budget of P189,552,261.00 for 1999, with a total capital outlay of P1,011,000.00, and an unappropriated surplus of P1,991,102.00. The "Program Appropriation and Obligation by Object, General Fund 1011," which was the general fund for the Office of the

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Governor, did not contain any appropriation for capital outlay that included the motor vehicle.[15]

After trial, the Sandiganbayan rendered judgment acquitting all the accused of the crimes charged. It gave credence and probative weight to the following explanation of Dannang: he prepared the advice of allotment as instructed by Sanggunian member Ngao-l during the meeting of September 3, 1998 because it was agreed that the Sanggunian would adopt a Resolution on September 7, 1998 formally authorizing the governor to obtain a loan from the DBP in the name of the province; he then returned to his office and had one of his staff members prepare the advice of allotment on the Standard Allotment Form already encoded in the office computer; and nobody typed the entry "97-04" appearing under the column for the appropriation ordinance number contained in the advice of allotment because that entry was already stored in the computer. According to the anti-graft court, this was the appropriation ordinance of the Province of Kalinga's annual budget for 1998; unless a new appropriation ordinance had been passed by the Sanggunian, all advices of allotment to be extracted for that year would fall under the same appropriation ordinance (thus, all authorizations to disburse emanated from ordinance "97-04"). Belac signed the advice of allotment upon a cursory review of its contents, and in his hurry, did not notice that entry "97-04" was still in the column for appropriation ordinance number, since it was near closing time and he still had to catch up with Governor Belac.

According to the Sandiganbayan, Dannang's explanation was not far-fetched and was, in fact, reasonable. The entry "97-04" was clearly an ordinary mistake that often befalls the bureaucracy due to reliance on templates embedded in computer software, intended to ensure speed and convenience in the preparation of frequently-used forms and documents, in this case, the advise of allotment. No malice can be inferred from the entry since neither Dannang nor Governor Belac stood to profit from the error. The anti-graft court believed that Dannang did not notice the error because all entries were to him routinary and error-free, de kahon, and also because he had trusted his personnel.

The Sandiganbayan also ruled that the intent to gain or to injure another is unnecessary to commit the felony under Article 171 of the Revised Penal Code, for what is punished is the violation of public faith and the perversion of the truth in the documents solemnly proclaimed. The felony, being malum in se, requires malice; hence, good faith, or the absence of malice or bad faith, prevents incipient criminality from arising. The anti-graft court cited cases where this Court held that good faith is a valid defense for it negates criminal intent on the part of the accused.

The Sandiganbayan absolved Belac, declaring that if Dannang had no criminal intent due to his good faith, then Belac should not be treated differently since it was the former and not the latter who had been responsible for the preparation of the advise of allotment. It acquitted the accused of technical malversation, on its finding that the responsible members of the Sangguniang Panlalawigan of Kalinga, particularly of the CFA, namely, Tanggawon, Ngao-l, Tuazon, and Puday, their convenient assertions to the contrary notwithstanding, had themselves expressly ordered and authorized the preparation of the check that was to be delivered to Gumiran (salesman/representative of Royce Motor), in payment for the balance on the purchase price of the vehicle. At the time of the delivery, the accused were acting upon the assurance of said Sanggunian members that the necessary appropriation ordinance would be adopted on September 7, 1998. It is of no moment that the ordinance was not issued in the end, for the accused had already acted upon their honest belief, engendered by their reliance on the word of the said officers, that the delivery would be validated and authorized through the resolution. The reliance of the accused on the Sanggunian members who composed the Committee on Finance and Appropriation manifested their good faith; hence, they should not be held criminally liable. The Sandiganbayan pointed out that Article 3 of the Revised Penal Code, defines a felony as malum in se. According to the anti-graft court, even if there was resulting damage or embarrassment to public service, the accused should still be acquitted, as the Sanggunian membersmade

assurances that the resolution would be passed by September 7, 1998. The situation comes within the ambit of justification under Article 11(6) of the Revised Penal Code, because the accused thereby acted in obedience to an order issued by a superior, that is, the Sangguniang Panlalawigan, for some lawful purpose.

The Sandiganbayan also ruled that the prosecution failed to prove the guilt of all the accused for violation of Section 3(e) of Rep. Act No. 3019. Aside from assurances that the said resolution would be adopted by September 7, 1998, the Sangguniang Panlalawigan, by its actuation, recognized the actual need for the service vehicle; hence, no undue injury resulted to the Province of Kalinga by its purchase. Secondly, the payment of P1,076,127.00 did not give Royce Motor any unwarranted benefits, advantage, or preference. Royce Motor was the same seller that had previously sold the vehicles that the Province of Kalinga had set aside for Governor Belac's two predecessors in office. There was, likewise, no showing that the vehicle did not meet government standards or specifications.

The anti-graft court thus found that the accused were not actuated by evident bad faith. It likewise ruled that the prosecution failed to prove that gross inexcusable negligence was attendant to the act complained of, since they acted in good faith in preparing the check and delivering the same to Royce Motor, particularly as the same was made in compliance with the order of the Sanggunian members.[16]

Outraged by the acquittal of all the accused, the People of the Philippines, through the Office of the Special Prosecutor, sought relief from this Court via a petition for review on certiorari under Rule 45 of the Rules of Court, alleging that the Sandiganbayan acted contrary to law and applicable jurisprudence and with grave abuse of its discretion amounting toexcess or lack of jurisdiction in acquitting all the accused of all the charges, considering that proof beyond reasonable doubt had been adduced to prove the guilt of the accused for all the crimes charged.[17]

The People justifies its plea for the reversal of the decision of the Sandiganbayan, on its claim that Appropriation Ordinance No. 97-04, on which the Advice of Allotment dated September 3, 1998 bases its support, is not for expenditures of the Office of the Provincial Governor for executive services or for the payment of equipment. Rather, it was earmarked for the salaries of officials and personnel of the Province of Kalinga for January 1, 1998 to December 31, 1998, and for other purposes, as evidenced by the Excerpt from the Minutes of the Regular Session of the Sanggunian held on December 16, 1997. Certainly, the purchase of the governor's Nissan Safari vehicle could not even be included in the phrase "other purposes," since the breakdown of such appropriation under the Office of the Provincial Governor did not show any allotment for the purchase of a vehicle. There was likewise no appropriation in the entire breakdown of Appropriation Ordinance No. 97-04, as testified to by Provincial Auditor Dionisio Bernal. More so, General Fund 1011, from where the amount was allegedly sourced, did not include any item for the purchase of a government vehicle.

Petitioner asserts that its evidence shows that the Sanggunian never appropriated the sum of P1,076,127.70. Respondents could not find solace in the August 24, 1998 Sanggunian proceedings because respondents Boguen and Dannang were ordered to merely consult with the local banks for a possible loan by the governor, which request was referred to the CFA and the Committee on General Services.

Petitioner avers that the culpability of respondents for technical malversation can be seen from their certifications and signatures on the Advice of Allotment and Disbursement voucher which were used to settle the payment for the Nissan Safari vehicle. Respondent Dannang was the one who prepared the Advice of Allotment, and certified in the Request for Obligation of Allotment as to the existence of appropriations for the expenditure and the amount thereof; respondent Boguen was the one who certified as to the availability of funds therein and signed the Land Bank Check; respondent Tubban was the one who signed in behalf of Provincial Accountant Virginia U. Puyoc in the Disbursement Voucher, who certified that there was "adequate available funds/budgetary allotment,

expenditure properly certified and supported by document and account codes proper"; and respondent Belac was the one who signed all the said documents including the purchase request, purchase order, and inspection report. Hence, petitioner contends, there was grave abuse of discretion on the part of public respondent when it merely brushed aside the presence of all the elements of technical malversation in this case, and ruled that respondents merely acted in good faith when they paid in full the purchase price of the subject vehicle.

Petitioner maintains that the good faith of respondent is, likewise, negated by the fact that the Advice of Allotment dated September 3, 1998 was, on its face, falsified. It was made to appear that the amount of P1,500,000.00 was appropriated under Appropriation Ordinance No. 97-04 for the payment of the subject vehicle, when no such appropriation ordinance was passed for the purpose. Respondent Dannang, who recommended the approval of the advice of allotment, and respondent Belac, who approved the same, do not deny their signatures thereon; hence, they are clearly liable for falsification of a public or official document.

Petitioner further asserts that the Provincial Government of Kalinga suffered undue injury in the amount of P1,076,127.70, representing funds intended for the payment of the salaries of officials and employees, maintenance and other operating expenses of the Provincial Government of Kalinga, as the said fund was unduly diverted to finance the purchase of respondent Belac's Nissan Safari vehicle. Bad faith on the part of respondents was clearly evident when they immediately prepared the voucher and handed the payment of the purchase price to the Royce Motor representative even if they knew that no corresponding appropriation ordinance had yet been issued by the Sanggunian for that purpose. The intent to defraud can, likewise, be gleaned from respondents' use of the Advice of Allotment dated September 3, 1998 to make it appear that the amount of P1,500,000.00 was appropriated under Appropriation Ordinance No. 97-04.[18]

Petitioner prays (1) that the decision of the Sandiganbayan be reversed; (2) that another judgment be rendered finding all private respondents guilty beyond reasonable doubt of the crimes charged; and (3) that they be sentenced accordingly.

For their part, private respondents aver that, although petitioner states that its petition was filed under Rule 45 of the Rules of Court, it is, in fact, a petition for certiorari under Rule 65, in which questions of fact are raised. In any event, respondents insist, the petition should be dismissed outright since the judgment of the Sandiganbayan acquitting them of all the charges can no longer be reversed or even modified on appeal under Rule 45 or even in a petition for certiorari under Rule 65 without placing them in double jeopardy.

In reply, petitioner avers that, in exceptional cases, this Court has taken cognizance of questions of fact in petitions under Rule 45 of the Rules of Court in order to resolve the legal issues, such as where there was palpable error or grave abuse or misapplication of facts by the lower court. It also insists that a judgment of acquittal may be reversed without violating the constitutional right of the accused against double jeopardy on the ground that the trial court committed grave abuse of discretion amounting to excess or lack of jurisdiction. Petitioner cites the ruling of this Court in Filoteo, Jr. v. Sandiganbayan.[19]

The petition has no merit.

As gleaned from the material averments in the petition as well as in the other pleadings of petitioner, the present action appears to be one under both Rule 45 and Rule 65 of the Rules of Court. However, the prosecution cannot simultaneously avail of the remedies of a special civil action for certiorari, petition for review on certiorari, or appeal in civil cases.[20] A petition for review on certiorari under Rule 45 of the Rules of Court and a petition for certiorari under Rule 65 of the Rules of Court are two and separate remedies. A petition under Rule 45 brings up for review errors of judgment, while a petition for certiorari under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable

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ground under Rule 45.[21] A petition for review under Rule 45 of the Rules of Court is a mode of appeal. Under Section 1 of the said Rule, a party aggrieved by the decision or final order of the Sandiganbayan may file a petition for review on certiorari with this Court:

> Section 1. Filing of petition with Supreme Court. - A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court, or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." The judgment that may be appealed by the aggrieved party envisaged in the Rule is a judgment convicting the accused, and not a judgment of acquittal. The State is barred from appealing such judgment of acquittal by a petition for review.

Section 21, Article III of the Constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense." The rule is that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy.[22] Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the CA.[23] Thus, the State is proscribed from appealing the judgment of acquittal of the accused to this Court under Rule 45 of the Rules of Court.

The early development of the principle can be traced through a variety of sources ranging from legal maxims to casual references in contemporary commentary. Although the form and breadth of the prohibition varied widely, the underlying premise was generally that a defendant should not be twice tried or punished for the same offense.[24] Writing in the 17th century, Lord Coke described the protection afforded by the principle of double jeopardy as a function of three related common-law pleas: autrefois acquit, autrefois convict, and pardon. Blackstone later used the ancient term "jeopardy" to characterize the principle underlying the two pleas of autrefois acquit and autrefois convict. He stated that the principle was a "universal maxim of the common law of England that no man is to be brought into jeopardy of his life more than once for the same offense."[25]

In criminal law, the principle is expressed in the Latin maxim: "Nemo bis punitur pro eodem delicto," or, as Coke says, "Nemo debet bis puniri pro uno delicto" (No one can be twice punished for the same crime or misdemeanor). The United States Supreme Court declared that at the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to a second judgment for the same offense would arm thegovernment with a potent instrument of oppression. The provision therefore guarantees that the State shall not be permitted to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense, and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.[26] Society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant is manifested in the willingness to limit the government to a single criminal proceeding to vindicate its very vital interest in the enforcement of criminal laws.[27]

The policies underlying the Double Jeopardy Clause militate against permitting the government to appeal after a verdict of acquittal. Granting such broad appeal rights to the government would allow the prosecutor to seek to persuade a second trier of fact of defendant's guilt after having failed with the first; it would permit him to re-examine the weaknesses in his first presentation in order to strengthen the second; and it would disserve the defendant's legitimate interest in the finality of a verdict of acquittal.[28] The underlying idea is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an

alleged offense, thereby subjecting him to embarrassment, expense, and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty. Thus, the State is prevented from honing its trial strategies and perfecting its evidence through successive attempts at conviction. Repeated prosecutorial sallies would unfairly burden defendant and create a risk of conviction through sheer governmental perseverance.[29] For this reason, when a reversal rests upon the ground that the prosecution has failed to produce sufficient evidence to prove its case, the Double Jeopardy Clause bars the prosecutor from making a second attempt at conviction.

When a defendant has been acquitted of an offense, the clause guarantees that the State shall not be permitted to make repeated attempts to convict him, thereby subjecting him to embarrassment, expense, and ordeal, and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.[30]

Thus, it is one of the elemental principles of criminal law that the government cannot secure a new trial by means of an appeal even though an acquittal may appear to be erroneous.[31] That judgment of acquittal, however erroneous, bars further prosecution on any aspect of the count, and consequently, bars appellate review of the trial court's error.[32] Unless grave abuse of discretion amounting to lack of jurisdiction is shown, the errors committed by the trial court in the exercise of its jurisdiction, or even the legal soundness of such decision, errors of judgment, mistakes in its findings and conclusions, are not proper subjects of appeal under Rule 45 of the Rules of Court.[33]

An acquittal represents the factfinder's conclusion that, under the controlling legal principles, the evidence does not establish that defendant can be convicted of the offense charged in the indictment. An acquittal is a resolution, correct or not, some or all of the factual elements of the crime charged. For a ruling to be considered a functional acquittal, it must speak of the factual innocence of the accused.[34] However, the judgment does not necessarily establish the criminal defendant's lack of criminal culpability. The acquittal may result from erroneous evidentiary rulings or erroneous interpretations governing legal principles introduced by the defense, yet the Double Jeopardy Clause bars an appeal.[35]

One other reason why further prosecution is barred to appeal an acquittal is that the government has already been afforded one complete opportunity to prove a case of the criminal defendant's culpability and, when it has failed for any reason to persuade the court not to enter a final judgment favorable to the accused, the constitutional policies underlying the ban against multiple trials become compelling. It matters not whether the final judgment constitutes a formal "acquittal." What is critical is whether the accused obtained, after jeopardy attached, a favorable termination of the charges against him. If he did, no matter how erroneous the ruling, the policies embodied in the Double Jeopardy Clause require the conclusion that further proceedings devoted to the resolution of factual issues on the elements of the offense charged are barred.[36]

The public interest in the finality of criminal judgments is so strong that an acquitted defendant may not be retried even though the acquittal was based upon an egregiously erroneous foundation. If the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair. Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant's valued right to have his trial completed by a particular tribunal. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial.[37] The reason is not that the first trial established the defendant's factual innocence, but rather that the second trial would present all the untoward consequences that the clause was designed to prevent. The government would be allowed to seek to persuade a second trier of the fact of the defendant's guilt, to strengthen any weaknesses in its first presentation, and to subject the defendant to the expense and anxiety of a second trial.[38]

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In the present case, the only errors ascribed by petitioner to the Sandiganbayan pertained to alleged errors in its appreciation of the evidence on record, and the probative weight and the sufficiency thereof to prove the elements of the crime charged, such as whether respondents acted in good or bad faith, or whether the State sustained injury or damage while acting in the exercise of its jurisdiction. Whether or not the Sandiganbayan erred in its factual findings and its conclusion that the evidence of the People did not amount to proof beyond reasonable doubt of guilt of respondents of the crimes charged, such findings and conclusion cannot be the subject for review in this Court under Rule 45 of the Rules of Court. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court a quo, the constitutional right of the accused against double jeopardy would be violated.[39]

A judgment of acquittal may be assailed by the People in a petition for certiorari under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court a quo, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. No grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence. Certiorari will issue only to correct errors of jurisdiction, and not errors or mistakes in the findings and conclusions of the trial court.[40]

In this case, the Sandiganbayan had jurisdiction over the crimes charged. The People had its day in court and adduced its evidence. There was no collusion between the prosecutor and respondents. The anti-graft court extensively analyzed the evidence of the parties and made its findings and conclusions based thereon. Assuming that any error was committed in the Sandiganbayan's review of the evidence and the records, such errors are mere errors of judgment and not errors of jurisdiction.

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED. No costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

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[1] Penned by Associate Justice Roland B. Jurado, with Associate Justices Teresita L. Leonardo-De Castro (Presiding Justice) and Diosdado M. Peralta, concurring; rollo, pp. 92-132.

[2] Rollo, pp. 13-14.

[3] Id. at 14.

[4] Id. at 14-15.

[5] Id. at 15.

[6] Id. at 15-16.

[7] The balance, amounting to P1,109,410.00, included comprehensive insurance (P60,000.00), dual airconditioning (P25,000.00), and interest (P39,410.00).

[8] Rollo, p. 122.

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[9] Appropriation Ordinance 97-04 was the ordinance providing for the salaries of officials and personnel of the Province for the period from January 1, 1998 to December 31, 1998 and for other purposes which had been prepared earlier in 1997, which, however, did not provide for any outlay for the purchase of a vehicle.

[10] Rollo, pp. 95-96.

[11] Id. at 96.

[12] Id. at 96-97.

[13] Id. at 97.

[14] Id.

[15] Id.

[16] Id. at 46-53.

[17] Id. at 79-80.

[18] Id. at 80-85.

[19] 331 Phil. 531 (1996).

[20] People v. Court of Appeals, G.R. No. 103613, February 23, 2001, 352 SCRA 599, 606.

[21] People v. Court of Appeals, 438 Phil. 215, 231 (2002).

[22] Barbers v. Laguio, Jr., A.M. No. RTJ-00-1568, February 15, 2001, 351 SCRA 606, 617-618.

[23] People v. Court of Appeals, G.R. No. 142051, February 24, 2004, 423 SCRA 605, 616.

[24] 340 J. Sigler, Double Jeopardy 2-16 (1969).

[25] Green v. U.S., 355 U.S. 184, 187-188, 78 S.Ct. 221, 223, 2 L.Ed.2d 199 (1957), citing 4 Blackstone's Commentaries 335.

[26] Green v. U.S., supra; see also Downum v. U.S., 372 U.S. 734, 736, 83 S.Ct. 1033, 1034 (1963).

[27] U.S. v. Jorn, 400 U.S. 470, 479, 91 S.Ct. 547, 554 (1971).

[28] U.S. v. Wilson, 420 U.S. 332, 353, 95 S.Ct. 1013, 1026 (1975).

[29] See Green v. U.S., supra; U.S. v. DiFrancesco, 449 U.S. 130, 101 S.Ct. 433 (1980).

[30] Green v. U.S., supra.

[31] U.S. v. Ball, 163 U.S. 662, 16 S.Ct. 1192 (1896); Peters v. Hobby, 349 U.S. 331, 344-345, 75 S.Ct. 790, 796 (1955); Kepner v. U.S., 195 U.S. 100, 24 S.Ct. 797 (1904); U.S. v. Sanges, 144 U.S. 310, 12 S.Ct. 609 (1892).

[32] U.S. v. Martin Linen Supply Co., 430 U.S. 571, 97 S.Ct. 1349 (1977); Fong Foo v. United States, 369 U.S. 141, 82 S.Ct. 671 (1962); Green v. U.S., supra; U.S. v. Ball, supra.

[33] People v. Court of Appeals, supra note 22, at 613; People v. Court of Appeals, supra note 20, at 475; Metropolitan Bank & Trust Company v. Veridiano, 412 Phil. 795, 803 (2001); People v. Velasco, 340 SCRA 207 (2000); People v. Court of Appeals, 368 Phil. 164, 180-181 (1999).

[34] Scott v. U.S., 95 S.Ct. 2149.

[35] U.S. v. Lanzotti, 90 F.3d 1217 (1996).

[36] U.S. v. Jenkins, 420 U.S. 358, 95 S.Ct. 1006 (1975); see Lee v. U.S., 432 U.S. 23, 97 S.Ct. 2146 (1977); Kepner v. U.S., supra; Fong Foo v. U.S., supra.

[37] Arizona v. Washington, 434 U.S. 497, 503-505, 98 S.Ct. 824, 829 (1978).

[38] Id.[39] People v. Court of Appeals, supra note 22, at 614.

[40] People v. Court of Appeals, supra note 32, at 181.

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