

## **LIBERTY B. TIONGCO, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

*G.R. Nos. 218709-10. November 14, 2018*

Ponente: CARPIO, J.

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### **CARPIO, J.:**

#### The Case

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by Liberty B. Tiongco (Tiongco) assailing the Decision[2] dated 18 February 2015 and the Resolution[3] dated 18 June 2015 of the Sandiganbayan in Case Nos. SB-08-CRM-0414 and SB-08-CRM-0415. The Sandiganbayan found Tiongco guilty of (1) Usurpation of Official Functions, or violation of Article 177 of the Revised Penal Code; and (2) violation of Section 3(e) of Republic Act No. 3019 (R.A. 3019), otherwise known as the Anti-Graft and Corrupt Practices Act.

#### The Facts

Tiongco is a former Vice President of the Philippine Crop Insurance Corporation (PCIC), a government-owned and controlled corporation. Following the retirement of Benito F. Estacio, Jr. (Estacio) as PCIC president, Lamberto R. Barbin (Barbin) assumed the post on 21 April 2006.[4]

#### Tiongco's Version

According to Tiongco, on the day Barbin assumed office, Barbin called all the officers and employees of PCIC for a meeting. After that meeting, Barbin asked Tiongco, Nilo Mordeno (Mordeno), and Jaime Padilla (Padilla) to stay. Barbin then asked the three to help him manage the office since he was still new to its operations. Tiongco and Mordeno asked for authorization to help him with all the aspects of PCIC's operations. Said authorization came on 24 April 2006 in the form of Special Order No. 06-008[5] where Tiongco was designated as Acting Senior Vice President.

On 25 April 2006, Tiongco received Estacio's Request for Clearance for her signature. Said request already contained the signatures of the pertinent department heads, including the head of the Office of the General Counsel, Atty. Francisco Cantre.[6] Tiongco averred that she signed the clearance on the basis of the department heads' signatures, thinking that they were the most knowledgeable of his accountabilities and liabilities. She then forwarded the request to the Administrative Department.[7]

On 28 April 2006, PCIC's Board of Directors approved[8] the application for Estacio's retirement in Board Resolution No. 2006-012, which states:

RESOLVED to approve, as it hereby approves the application for retirement of Mr. BENITO F. ESTACIO, JR. former PCIC President, effective the close of office hours of April 20, 2006 under RA 1616, subject to the submission of clearance from money and property accountabilities from the PCIC, clearance from the GSIS, submission of statement of assets and liabilities in accordance with the Anti-Graft and Corrupt Practices Act

and clearance from the Office of the Ombudsman.[9]

On 3 May 2006, Tiongco signed the disbursement voucher and check representing Estacio's retirement gratuity. According to her, she based her authority to sign on PCIC's Codified Approving and Signing Authorities (CASA)[10] which provides, among others, that in the absence of the president or in urgent matters, any two Class "A" signatories may sign for the agency.[11] Since she falls under a Class "A" signatory, Tiongco, together with Acting Assistant Vice President Mordeno, signed the disbursement voucher and check because, according to her, Barbin was "always absent." She claimed that, as far as she knew, Barbin would only come to work early in the morning and then leave immediately after because he was still working on his clearance from Malacañang.[12]

She further claimed that she informed Barbin of her actions and the latter did not voice any objections at that time. It was only when she failed to give her assent to Barbin's "questionable acts" that the latter turned sour on her.[13]

#### Complaints Before the Office of the Ombudsman

In a Memorandum[14] dated 4 July 2006, PCIC Corporate Secretary Mario A. Encinareal (Encinareal) informed the Board of Directors of the violations committed by Tiongco, Mordeno, Combatir, and Padilla, specifically, "the payment of the retirement gratuity and terminal leave of [Estacio] xxx without the knowledge and without the authority of the President, without Ombudsman Clearance and without the required Certification that the payee/retiree has no pending criminal or administrative case." [15] The concerned officers were given 90 days to explain.

One month after, or on 8 August 2006, Encinareal filed a Complaint[16] before the Office of the Ombudsman accusing Tiongco and Mordeno of Usurpation of Official Functions, and violation of Section 3(e) and (f) of R.A. 3019.[17]

On 3 April 2007, former PCIC employee Doroteo Celis III (Celis), who was terminated from the service by Tiongco for "poor performance and fraudulent practices," also filed a complaint before the Office of the Ombudsman against Tiongco and Mordeno for the same charges and based on the same circumstances.[18]

#### Resolution of the Office of the Ombudsman

In its Resolution dated 15 October 2007, the Office of the Ombudsman found probable cause against Tiongco, Mordeno, Combatir, and Padilla and recommended the filing of an Information for Usurpation of Authority or Official Function against Tiongco and Mordeno; Falsification of Public Documents against Combatir and Padilla; and violation of Section 3(e) of R.A. 3019 against the four accused.[19]

#### Trial

Shortly after the filing of the Information, Tiongco filed a Motion for Reinvestigation in Case No. SB-08-CRM-0415, praying for an opportunity to move for the reconsideration of the resolution of the Office of the Ombudsman. The motion was denied in a Resolution dated 2 March 2009.[20] Tiongco then filed an Urgent Motion to Quash in Case No. SB-08-CRM-0414, arguing that said case violated her right against double jeopardy because of the pendency of a purportedly identical case for violation of Section 3(e) of R.A. 3019. Meanwhile, she also filed a Motion to Dismiss in Case No. SB-08-CRM-0415 alleging that there is a separate pending case involving the same transaction.

The Sandiganbayan's Fifth Division denied Tiongco's Urgent Motion to Quash, while the First Division denied her Motion to Dismiss.[21] Meanwhile, Tiongco, Combatir, and Padilla voluntarily appeared before the Sandiganbayan. Mordeno remained at large. On 19 May 2014, Padilla died, and the cases against him were

dismissed.[22]

On 18 January 2010, Tiongco filed a Motion to Consolidate the two cases against her, conceding that the charges arose from the same transaction. The motion was granted and joint trial ensued before the Sandiganbayan's Fifth Division.[23]

During pre-trial, the parties stipulated, among others, on the following:

- 1.) The identity of the accused as the same persons charged in the Information;
- 2.) Accused Liberty [B]. Tiongco occupied the position of Acting Senior Vice President for Regional Management Group of the [PCIC] with the corresponding Salary Grade 27 at the time of the commission of the crime stated in the Information;

x x x x

- 5.) On April 20, 2006, Benito T. Estacio retired from his position as PCIC President and he was replaced by Lamberto R. Barbin, who assumed office on April 21, 2006.

6.) Disbursement Voucher No. 05-06-05-461 with the following particulars: the amount of One Million Five Hundred Twenty Two Thousand and Eight Hundred Forty Nine Pesos and 48/100 (Php1,522,849.48) representing the payment of Retirement Benefits of Benito Estacio signed and approved by Liberty Tiongco and Noel Mordeno.

(Not admitted by accused Combatur & Padilla) (Admitted by accused Tiongco with qualification that the approval of payment of benefits was made by the Board of Directors)

- 7.) Landbank Edsa Greenhills Branch Check No. 0000318783 dated May 3, 2006 pay to the order of Benito F. Estacio Jr. in the amount of Php 1,522,849.48 signed by Liberty Tiongco and Noel Mordeno.[24]

During the trial, the prosecution presented Celis. Claiming to be one of PCIC's "pioneer employees" familiar with its internal procedures, he said he took it upon himself to secure documents from the Commission on Audit where he allegedly noticed the anomalies in Estacio's application for retirement.[25] Based on these documents, Celis pointed out that Tiongco signed Estacio's Request for Clearance as approving authority even though she was not the head of the agency.[26] Celis further opined that Tiongco violated PCIC's Manual on Systems and Procedures in issuing the clearance because the Certification from the Office of the Ombudsman submitted by Estacio is not the clearance required under said Manual.[27]

The Sandiganbayan also heard testimony from Barbin. He claimed that he was always at the office even when he was newly appointed. He also maintained that he never saw the documents pertaining to Estacio's retirement and only later learned that the latter's retirement gratuity had already been paid. He later received a Memorandum signed by Tiongco, Mordeno, Padilla, and Combatur which, among others, informed him of the same fact. The Corporate Secretary later informed him of the irregularity in this, which prompted him to form a committee to investigate. The result of said investigation was referred to the Office of the Government Corporate Counsel for proper action.[28]

For the defense, Tiongco testified on her own behalf. She claimed that when she received Estacio's Request for Clearance, she noticed that the concerned department heads had already signed, including Office of the General Counsel head Atty. Cantre. While she may have seen the notation "no pending cases except OMB-0-00-0898, 0-00-1697,"[29] she still signed the request knowing that the department heads were more knowledgeable of Estacio's pending accountability and liabilities. She also assumed that since Atty. Cantre had signed on the request, his department had cleared Estacio for retirement.[30] She made no further inquiries and did not impose

any safeguards to ensure restitution in case Estacio would be found guilty in his pending cases. She maintained that she had authority to sign based on the PCIC CASA. As Acting Senior Vice President, she is classified as a Class "A" signatory. Since she knew Barbin was not around at that time because he was busy fixing his clearance and appointment documents, she did not ask his office if he was coming in.[31] She insisted that signing was within the authority delegated to her by Barbin in Special Order No. 06-008.[32] She further pointed out that Barbin was later informed of the retirement payment to Estacio and he did not object to the same.[33]

Meanwhile, Estacio also testified on the propriety of Tiongco's action. According to him, former PCIC officials have had their retirement pay approved despite having pending cases. He also pointed out that COA's post-audit investigation showed that it found payment of his retirement benefits in order.[34] He also supported Tiongco's claim of authority to sign his Request for Clearance, arguing that the same was already signed by the proper heads of pertinent departments.[35]

#### The Decision of the Sandiganbayan

In its 18 February 2015 Decision, the Sandiganbayan found Tiongco guilty of Usurpation of Official Functions and violation of Section 3(e) of R.A. 3019:

WHEREFORE, in Criminal Case No. SB-08-CRM-0414, this Court finds accused LIBERTY TIONGCO y BACCAY GUILTY beyond reasonable doubt x x x of Usurpation of Official Functions defined and penalized under Article 177 of the Revised Penal Code. Considering the Indeterminate Sentence Law, and where no aggravating nor mitigating circumstance was proven, accused is imposed the indeterminate penalty of SIX (6) MONTHS of arresto mayor in its maximum period as minimum to TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS of prision correccional in its medium p[e]riod as maximum.

In Criminal Case No. SB-08-CRM-0415, this Court finds accused LIBERTY TIONGCO y BACCAY GUILTY beyond reasonable doubt of a violation of Section 3(e) of Republic Act No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act and is sentenced to suffer an indeterminate penalty of IMPRISONMENT of SIX (6) YEARS and ONE (1) MONTH as minimum to TEN (10) YEARS as maximum, with perpetual disqualification to hold public office.

x x x x[36]

The Sandiganbayan held that all the elements of the crime of Usurpation of Official Functions were present in this case.[37] First, Tiongco is concededly a public officer at the time of the commission of the crime.

Second, the Sandiganbayan held that the specific duties for Tiongco's position, as laid down in BC-CSC Form No. 1 (Revised 23 June 1976), do not include the authority to determine the release of retirement benefits to a prospective retiree. Likewise, based on her own testimony, Tiongco believed signing the Request for Clearance was merely ministerial after all the department heads had already affixed their signature. However, the Sandiganbayan ruled that, under Ombudsman Memorandum Circular No. 10 (OMB MC No. 10),[38] said authority is not ministerial but discretionary.[39] The Sandiganbayan also ruled that discretion to release retirement benefits was not included in the authority delegated by Barbin.[40]

Third, the Sandiganbayan held that it is the payment and release of Estacio's retirement gratuity that is the essence of the crime since the authority for this exclusively pertains to the head of the agency. In this case, Barbin was even "left in the dark" on the release of Estacio's retirement benefits.[41]

Fourth, the Sandiganbayan brushed aside Tiongco's argument that Section 20.4 of the PCIC CASA granted her the power to allow the disbursement of Estacio's retirement gratuity. The Sandiganbayan held that this provision speaks only of the absence of the president. Barbin may have been out of the office most of the time but he was

expected to come in albeit at odd hours. It was still physically possible for Tiongco to consult with Barbin and give him the discretion on the release of Estacio's retirement pay, the Sandiganbayan ruled.[42]

The Sandiganbayan further held that Tiongco cannot use good faith as a defense since she "certainly knew at the outset that it was possible that the payment of Estacio's retirement gratuity and terminal leave benefits may be delayed if the 'head' of the agency, being then [Barbin], would otherwise determine that he would not release such payment." [43] It also emphasized that payment of retirement benefits did not qualify as an "urgent/quick action" that would justify overriding the need for the PCIC president's signature given the tedious procedure the same has to go through before the same can be approved.[44]

As to the charge for violation of Section 3(e) of R.A. 3019, the Sandiganbayan emphasized Tiongco's act of approving the payment and release of Estacio's retirement gratuity and terminal leave benefits, ruling that "[considering that such act did not qualify as one of her function[s] and duties, but is relegated only to the head of the agency, her usurpation of official functions is visibly a showing of manifest partiality to [Estacio]." [45] Likewise, "Tiongco's act caused undue injury to the Government since no necessary safeguards for restitution were made." [46]

Tiongco filed a Motion for Reconsideration, which the Sandiganbayan denied in its 18 June 2015 Resolution.

On 22 June 2015, or four days after the resolution denying her motion for reconsideration was promulgated, Tiongco, filed a Manifestation and Motion[47] praying for a hearing for the Sandiganbayan to consider a letter from the Office of the Ombudsman informing Tiongco's counsel that the cases against Estacio, namely OMB-0-00-1697 and OMB-ADM-0-00-0898, subject of the Ombudsman certification attached to his application for retirement, were dismissed on 29 June 2007 and 30 July 2007, respectively.

The Office of the Solicitor General opposed the Motion, arguing that Tiongco is no longer allowed to present additional evidence at that stage of the proceedings. It also pointed out that during the hearing on the Manifestation and Motion, Tiongco's counsel manifested in open court that she was withdrawing the Manifestation and Motion.[48]

In its 4 August 2015 Resolution,[49] the Sandiganbayan denied Tiongco's 22 June 2015 Motion. It found that the Ombudsman Certification was not being presented as "newly discovered evidence where she could seek a new trial or the re-opening of the case pursuant to Section 2, Rule 121, [nor would it] pass as one. By the exercise of due diligence alone, the dismissal of the cases before the Office of the Ombudsman should have been discovered during the progress of the trial." [50] The same was also not mentioned in the Motion for Reconsideration. Since the document has not been formally offered in evidence, nor made a part of the records of the case at the time they were submitted for decision, the Sandiganbayan held that the same "is merely a scrap of paper barren of probative [value]." [51]

#### The Present Petition

Tiongco is now before the Court praying for the reversal of the decision of the Sandiganbayan, which allegedly committed the following errors:

### FIRST ASSIGNMENT OF ERROR

The Sandiganbayan erred in ruling that petitioner Tiongco usurped the functions of Lamberto Barbin, President of PCIC in SB-08-CRM-0414. On the contrary, petitioner Tiongco was authorized under the PCIC [CASA], signing together with Nilo Mordeno, in lieu of President Barbin.

## SECOND ASSIGNMENT OF ERROR

The Sandiganbayan erred in holding that the elements of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act were present in SB-08-CRM-0415 as:

- (a) There was not a single piece of evidence that proved undue injury or damage to the government; and
- (b) Petitioner Tiongco could not have acted with manifest partiality in the release of the retirement gratuity and terminal leave pay of Estacio considering that there was no evidence that Estacio was favored by petitioner over other persons similarly situated.

## THIRD ASSIGNMENT OF ERROR

The Sandiganbayan misapprehended the facts of the case when it ruled that petitioner Tiongco did not act in good faith and without criminal intent in signing the request for clearance, and in signing the disbursement voucher and check.

## FOURTH ASSIGNMENT OF ERROR

The Sandiganbayan erred in not appreciating the mitigating circumstance of voluntary surrender in favor of petitioner Tiongco.[52]

Tiongco maintains that she was justified in signing the clearance because of Barbin's absence and refusal to act.[53] She points to Section 20.4 of the PCIC's CASA as authorizing her to act in Barbin's absence and when the situation requires quick and urgent action, which, she claims, was required in this case.[54] She further claims that Barbin refused to sign any documents at PCIC, leaving the task to her as Acting Senior Vice President.[55] Since Barbin gave no qualification to the delegated authority, she was within her authority to sign the clearance.[56]

As to her second assignment of error, Tiongco avers that there was no proof of undue injury, damage to the government, or unwarranted benefit given to Estacio.[57] Tiongco argues that whatever Estacio received was due and proper – as evidenced by the fact that the same was not disallowed by COA – earned by him for his service to the PCIC. Moreover, the cases then pending at the Office of the Ombudsman were eventually dismissed.[58]

Next, Tiongco claims that there is no manifest partiality in the release of Estacio's retirement gratuity since it was not proven that he was favored over other persons similarly situated.[59] Since she was convicted of committing a violation of Section 3(e) of R.A. 3019 through manifest partiality, it was imperative that it be proven she favored Estacio over another person. In this case, however, there was no other person over whom Estacio was favored. Thus, the prosecution failed to prove all the elements of the crime.[60]

For her third assignment of error, she argues that she should now be acquitted as she was charged with conspiracy but none was proven. Hence, she can rely on her good faith.[61] She further states that it is impossible for her to have caused the preparation, approval, and release of retirement gratuity alone. She points to the convoluted process of securing said gratuity, which requires the signature of department heads and approval of the Board of Directors.

Tiongco also underscores the finding of the Sandiganbayan that there was no collusion between Tiongco and Estacio for the latter to obtain unwarranted benefits.[62] She reiterates her authority to sign and that her duty was "merely to check and see whether all the other department heads had signed the clearances for their respective offices." [63]

At the very least, Tiongco avers that she was faced with a difficult question of law (whether she had authority to sign) and acted in good faith. But since the head of the Office of the General Counsel signed the document, it was

understandable that she believed she had such authority.[64]

Finally, her fourth assignment of error emphasized that the mitigating circumstance of voluntary surrender should have been construed in her favor.[65] She reiterates that since she surrendered and posted bail, her surrender was voluntary and spontaneous and should be considered in the computation of penalties.[66]

#### Arguments of the Office of the Special Prosecutor

Initially, the Office of the Special Prosecutor argues that the issues raised in this petition are the same ones raised in Tiongco's Motion for Reconsideration before the Sandiganbayan, which had thoroughly discussed and adjudicated all of these in its assailed Resolution. Likewise, respondent avers that the issues raised are factual in nature and, therefore, beyond the ambit of a Rule 45 petition for review.[67] Further, the petition should be dismissed for failure to indicate the date of receipt of the assailed decision.[68]

Respondent argues that Tiongco was not authorized under the PCIC CASA to approve the request for clearance and the subsequent release of Estacio's retirement gratuity.[69] Moreover, her argument that she signed because the same required quick action, which Barbin could not provide as he was out of the office, was belied by her own testimony in open court.[70] In her testimony, Tiongco admitted that she did not ascertain if Barbin was in his office or if he was reporting for work that day, and simply assumed that he was not around.[71] Meanwhile, Barbin provided evidence that he reported for work regularly and that he did not give Tiongco "authority to act for and in his behalf." [72]

Next, respondent argues that Tiongco's act of approving the release of Estacio's retirement gratuity was tainted with manifest partiality and caused injury to the government or gave unwarranted benefit, advantage, or preference to Estacio.[73] According to respondent, such partiality, bad faith, and gross inexcusable negligence were evident in Tiongco's actions, namely, that she had to overstep the authority designated to her in order to accommodate Estacio's retirement, that she disregarded the condition imposed by the PCIC Board of Directors in approving Estacio's clearance, and that she failed to institute safeguards to protect the PCIC's funds as required under OMB MC No. 10.[74] Thus, Tiongco's partiality towards Estacio resulted in unwarranted benefit, preference, or advantage to the latter.[75]

Respondent then argues that neither good faith nor her voluntary surrender can be appreciated in Tiongco's favor.[76] As to her argument of good faith, respondent contends that Tiongco's claim that she was faced with a difficult question over her authority to sign should have put her on inquiry as to her authority and the presence of the PCIC President. Further, she herself admitted that she was aware that OMB MC No. 10 prescribed precautionary measures for approving retirement gratuity but she "willfully overlooked the prescription and proceeded to approve the release." [77] Likewise, the haste with which she signed the request militates against her assertion of good faith. Respondent avers that, considering that she herself claims that she was faced with a "difficult question of law," good faith should have prompted her to act with caution and prudence.[78]

Lastly, respondent argues against appreciating "voluntary surrender" as a mitigating circumstance in favor of Tiongco. Respondent points out that voluntary surrender can only be appreciated if it is "alleged, invoked and proved during trial." [79] Tiongco failed to do that.

#### The Issue

The issue in this case is whether the Sandiganbayan correctly found Tiongco guilty of (1) Usurpation of Official Functions and (2) violation of Section 3(e) of R.A. 3019.

#### The Ruling of the Court

The petition has no merit and should be denied.

### Usurpation of Official Functions

Article 177 of the Revised Penal Code defines Usurpation of Official Functions:

Article 177. Usurpation of authority or official functions. — Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of prison correccional in its minimum and medium periods.

This provision actually speaks of two ways of committing the offense under Article 177. Tiongco is charged with Usurpation of Official Functions. As established by this Court in *Ruzol v. Sandiganbayan*,<sup>[80]</sup> usurpation of official functions is committed when "under pretense of official position, [a person] shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so."

To put simply, Usurpation of Official Functions has the following elements:

- The offender may be a private person or public officer.
- The offender performs any act pertaining to any person in authority or public officer of the Philippine government, any of its agencies, or of a foreign government.
- The offender performs the act under pretense of official function.
- The offender performs the act without being legally entitled to do so.

First, it has been conclusively established that Tiongco was a public officer at the time of the commission of the crime. She herself admitted such in her Counter-Affidavit<sup>[81]</sup> dated 10 October 2006, where she stated that she was then "currently the Acting Senior Vice President of the [PCIC] with a salary grade of 27."<sup>[82]</sup>

Second, she performed an act that rightfully pertained to the President of PCIC as head of the agency, and not to her as Acting Senior Vice President.

Based on evidence she herself presented, Tiongco's designation as Acting Senior Vice President, Regional Management Group, carried with it the following responsibilities:

- Plans, organizes, directs and controls the activities and operations of the Regional Management Group;
- Exercises direct supervision over the operation of the Regional Offices;
- Directs the conduct of actuarial studies and research on risk, loss rates, adequacy of premiums, re-insurance and other pertinent information on existing coverage;
- Directs the preparation of expansion/feasibility studies and insurance packages for new product lines;
- Directs the development of corporate plans and programs including marketing plans and promotional activities in line with the priorities and policies defined by the President and Board of Directors;
- Prepares and submits for consideration of the Board, President, and operational plans and programs for the Regional Offices;
- Prepares and submits reports of corporation's operation of the Regional Offices to the President; and

- Performs other related functions as may be assigned by the Board/President.[83]

None of the functions pertain to approving the release of retirement gratuity.

While Tiongco's claim that Barbin "asked for help" in running the agency, which was the reason for her designation as Acting Senior Vice President, she has not shown any specific assignment or conferment of authority related to approving release of retirement benefits. Meanwhile, OMB MC No. 10 specifically states:

In the event the certification presented states that the prospective retiree has a pending case, the responsibility of determining whether to release his retirement benefits, as well as the imposition of necessary safeguards to ensure restitution thereof in the event retiree is found guilty, rests upon and shall be left at the sound discretion of the head of the department, office or agency concerned.[84] (Emphasis supplied)

Hence, the assignment cannot be presumed or inferred from the general statement in number 8 of the above-quoted list of responsibilities. It must be specifically granted in light of the explicit mandate of OMB MC No. 10 and that conferment of authority must be clearly shown. Tiongco has not done so.

Third, that Tiongco signed Estacio's disbursement voucher "under pretense of official function" is clear. Tiongco argues that she believed she had the authority to sign and that her acts "are indicative of good faith"[85]

The Court, in *Ruzol*, recognized good faith as a defense in prosecutions for usurpation of official functions. However, the Court also ruled that:

It bears stressing at this point that in *People v. Hilvano*, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. The term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render the transaction unconscientious." Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts.[86] (Emphasis supplied)

Tiongco cannot claim good faith because it has been established that she had "knowledge of circumstances which ought to put [her] upon inquiry." She admitted that she saw the notation "no pending cases except OMB-0-00-0898 and 0-00-1697" in Estacio's request for clearance.

Tiongco also admitted that she was well aware of the provisions of OMB MC No. 10. She said she did it because Barbin was always absent, an admission that she knew the authority was vested in the PCIC President. She nonetheless arrogated such authority unto herself, justifying her action with urgency of the situation bringing Section 20.4 of the PCIC CASA into effect. However, even acting under that authority was wrong, as will be discussed later.

Next, PCIC Board Resolution No. 2006-012 states:

RESOLVED to approve, as it hereby approves the application for retirement of Mr. BENITO F. ESTACIO, JR. former PCIC President, effective the close of office hours of April 20, 2006 under RA 1616, subject to the submission of clearance from money and property accountabilities from the PCIC, clearance from the GSIS, submission of statement of assets and liabilities in accordance with the Anti-Graft and Corrupt Practices Act and clearance from the Office of the Ombudsman.[87]

While OMB MC No. 10 requires only certification, the PCIC Board required a clearance from the Office of the Ombudsman. In other words, the approval of Estacio's retirement was conditional – "subject to" fulfillment of the requirements the Board of Directors set. Since Estacio only presented a certification, which stated that he had two

pending cases, he had not met the requirements of the Board of Directors.

In cases of such non-fulfillment, OMB MC No. 10 gives the discretion to allow a prospective retiree to retire and receive benefits only to the "head of the department, office or agency." Thus, in cases where the head is absent or the agency currently has no president, the authority is granted to whoever is designated officer-in-charge or acting as head of agency, not to the one designated merely as Acting Senior Vice President.

Fourth, Tiongco was legally not entitled to act on the release of Estacio's retirement gratuity. As discussed above, the authority was vested in Barbin as head of PCIC under OMB MC No. 10.

Tiongco, however, argues that she acted pursuant to PCIC's CASA, Section 20.4, which states that in case the President is absent or an urgent matter needs his signature, "any two Class A signatories or any Class A signatory signing with any Class B signatory may approve/sign the transaction in behalf of the President."

As will be discussed later, the absence of Barbin was not such that he could no longer exercise his discretionary powers. He continued to perform his functions, although he admitted that he was not physically present at the PCIC premises at times. He, however, testified that he regularly went to the PCIC office during that period.

Further, the release of Estacio's retirement gratuity was not an urgent matter. At that time, he was not yet entitled to its release pending compliance with the Board's requirement of an Ombudsman clearance.

Based on the foregoing, the undeniable conclusion is that Tiongco is guilty of the crime of Usurpation of Official Functions.

Violation of Section 3(e) of R.A. 3019

In *Rivera v. People*,<sup>[88]</sup> the Court discussed the two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions:

x x x (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference.

It is not enough that undue injury was caused or unwarranted benefits were given as these acts must be performed through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.<sup>[89]</sup>

The elements<sup>[90]</sup> of the offense are as follows:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

The prohibited act of either causing undue injury or giving unwarranted benefits, advantage, or preference may be committed in three ways: through (1) manifest partiality, (2) evident bad faith, or (3) gross inexcusable negligence.

In *People v. Atienza*,<sup>[91]</sup> the Court defined these elements:

x x x. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor

one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

The Court finds that Tiongco acted with manifest partiality and evident bad faith in this case.

#### Manifest Partiality

Tiongco's partiality is clear. Her willingness to disregard the PCIC Board's directive and OMB MC No. 10 in order to grant Estacio's request speaks of such partiality. Her actions all point to facilitating whatever course of action would be favorable to Estacio.

The Court also finds, in this case, an inclination by Tiongco to take advantage of Barbin's absence from the premises of PCIC to accommodate Estacio, who is, not insignificantly, her former boss. Tiongco made her own determination and characterized Estacio's request for retirement gratuity as urgent, knowing that doing so, taken with Barbin's absence, would trigger the mechanism under Section 20.4 of the PCIC CASA that would allow her and another Class "A" signatory (in this case, Mordeno, who had fled and left her to suffer the consequences) to sign on the request.

#### Evident Bad Faith

In *Antonino v. Desierto*,<sup>[92]</sup> the Court held that "[b]ad faith per se is not enough for one to be held liable under the law; bad faith must be evident. Bad faith does not simply connote bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will."

As discussed above, Tiongco's bad faith was clearly exhibited in her willful disregard for OMB MC No. 10 and for the requirements of the PCIC Board. It is clear as well that she knowingly encroached on Barbin's authority to approve the payment of retirement gratuity to one who has pending cases before the Ombudsman.

She herself admitted that she was faced with a difficult question of law. Yet, instead of seeking guidance from PCIC's legal counsel or from Barbin himself, she simply decided on her own and took her own course of action that did not conform to established rules.

Moreover, her failure to ensure restitution from Estacio in case he is found guilty in his pending cases is clearly a breach of her sworn duty as a government official tasked with safeguarding the interest of the service.

#### Undue Injury or Unwarranted Benefit, Advantage or Privilege

For violation of Section 3(e) of R.A. 3019, "what contextually is punishable is the act of causing undue injury to any party, or giving to any private party of unwarranted benefits, advantage or preference in the discharge of the public officer's functions."<sup>[93]</sup>

The Court has clarified that "the use of the disjunctive word 'or' connotes that either act of (a) 'causing any undue injury to any party, including the Government'; [or] (b) 'giving any private party any unwarranted benefits, advantage or preference,' qualifies as a violation of Section 3(e) of R.A. 3019, as amended."<sup>[94]</sup> Thus, an accused "may be charged under either mode or both, x x x. In other words, the presence of one would suffice for conviction."<sup>[95]</sup>

The Court has treated undue injury in the context of Section 3(e) of R.A. 3019 to have "a meaning akin to" the civil law concept of "actual damage,"[96] to wit:

Undue injury in the context of Section 3(e) of R.A. No. 3019 should be equated with the civil law concept of "actual damage." Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.[97]

In this case, undue injury to the government was caused by the unauthorized disbursement of P1,522,849.48 in public funds, in that, first, the person who approved said disbursement did not have the authority to do so, and second, because the beneficiary was not yet entitled to the release of the retirement gratuity.

As such, Estacio also enjoyed an unwarranted benefit because non-compliance with the requirements under OMB MC No. 10 disqualified him to receive his retirement gratuity at that time. On top of that, Estacio was given said unwarranted benefit through Tiongco's usurpation of Barbin's official functions and the violation of OMB MC No. 10.

Estacio's former position afforded him access to the highest officials of the agency, the same ones who were in a position to know how to work through PCIC's processes. Tiongco's overreach was obviously targeted to expedite the process in favor of the former president.

At this point, it is also important to point out that the dismissal of the cases against Estacio is irrelevant. The letter being presented by petitioner to this Court was not considered by the Sandiganbayan since it was never presented at trial or at any time before the denial of her motion for reconsideration. Tiongco submitted the same, through a Manifestation and Motion, only four days after the resolution of her motion for reconsideration.

The Sandiganbayan ruled that the letter is a "mere scrap of paper barren of probative [value]."[98] It held that the letter was not newly discovered evidence, nor was Tiongco presenting it as such, since it could have been easily obtained during the course of the trial, or even filed with her motion for reconsideration. Further, it said that even if the court can concede that the same is a public document, it was never presented in evidence and was, thus, not part of the records when the case was submitted for decision.[99]

As such, this letter is being offered for its evidentiary value for the first time before this Court. This being a petition for review under Rule 45, the Court is limited to determining questions of law and could not consider evidence belatedly presented by Tiongco.

Moreover, it will not change the ruling of the Court since it has been already determined that the elements of violation of Section 3(e) of R.A. 3019 were proven in this case.

#### Voluntary surrender

Finally, Tiongco's plea to consider her voluntary surrender as a mitigating circumstance must be set aside.

Tiongco is raising this issue for the first time in this petition for review. Records show that Tiongco never raised this argument during the proceedings before the Sandiganbayan. Likewise, Tiongco failed to file her Memorandum where she should have argued for the consideration of this mitigating circumstance. Lastly, Tiongco could have advanced her cause when she filed her motion for reconsideration, but lost her chance when she still failed to raise this issue then.[100]

WHEREFORE, the petition is DENIED. The Decision dated 18 February 2015 and the Resolution dated 18 June 2015 of the Sandiganbayan in Case Nos. SB-08-CRM-0414 and SB-08-CRM-0415 are AFFIRMED.

**SO ORDERED.**

Perlas-Bernabe, Caguioa, A. Reyes, Jr., and J. Reyes, Jr.,[\*] JJ., concur.

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[\*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

[1] Rollo, pp. 9-34.

[2] Id. at 38-76. Penned by Associate Justice Ma. Theresa Dolores C. Gomez-Estoesta, with Associate Justices Roland B. Jurado and Alexander G. Gesmundo (now a Member of this Court) concurring.

[3] Id. at 77-84.

[4] Id. at 13

[5] Id. at 85.

[6] Id. at 13.

[7] Id. at 14.

[8] Sandiganbayan records, Vol. 4, p. 63

[9] Id.

[10] Rollo, p. 14.

[11] Sandiganbayan records, Vol. 4, 89.

[12] Rollo, p. 15.

[13] Id.

[14] Sandiganbayan records, Vol. 1, pp. 42-44.

[15] Id. at 43.

[16] Id. at 31-34.

[17] Id. at 4-30.

[18] Rollo, pp. 15-16.

[19] Sandiganbayan records, Vol. 1, pp. 28-29.

[20] Rollo, p. 40.

[21] Id. at 41.

[22] Id.

[23] Id. at 42.

[24] Sandiganbayan records, Vol. 3, p. 17.

[25] Rollo, p. 43.

[26] Id.

[27] Id. at 45.

[28] Id. at 50.

[29] Id. at 56.

[30] Id.

[31] Id. at 57-58.

[32] Id. at 58.

[33] Id. at 59.

[34] Id.

[35] Id. at 60.

[36] Id. at 75.

[37] Id. at 66.

[38] 24 January 1995.

[39] Rollo, pp. 67-68.

[40] Id. at 68.

[41] Id.

[42] Id. at 69.

[43] Id. at 70.

[44] Id.

[45] Id. at 73.

[46] Id at. 74.

[47] Sandiganbayan records, Vol. 3, pp. 226-227.

[48] Id. at 334-335.

[49] Id. at 340-343.

[50] Id. at 341.

[51] Id. at 342.

[52] Rollo, pp. 18-19.

[53] Id. at 23.

[54] Id.

[55] Id. at 24.

- [56] Id.
- [57] Id. at 25.
- [58] Id. at 26.
- [59] Id.
- [60] Id. at 27.
- [61] Id. at 28.
- [62] Id. at 29.
- [63] Id. at 30.
- [64] Id.
- [65] Id. at 31.
- [66] Id.
- [67] Id. at 130.
- [68] Id. at 131.
- [69] Id.
- [70] Id. at 132.
- [71] Id. at 132-133.
- [72] Id. at 134.
- [73] Id. at 135.
- [74] Id. at 136.
- [75] Id. at 139.
- [76] Id. at 140.
- [77] Id. at 141.
- [78] Id.
- [79] Id.
- [80] 709 Phil. 708, 750(2013).
- [81] Sandiganbayan records, Vol. 4, pp. 57-62.
- [82] Id. at 57.
- [83] Rollo, pp. 66-67.
- [84] Supra note 38.
- [85] Rollo, p. 28.
- [86] Ruzol v. Sandiganbayan, supra note 80, at 752-753.

[87] Sandiganbayan records, Vol. 4, p. 63.

[88] 749 Phil. 124 (2014).

[89] *Id.* at 142, citing *Sison v. People*, 628 Phil. 573 (2010).

[90] *Valencerina v. People*, 749 Phil. 886 (2014), citing *Bautista v. Sandiganbayan*, 387 Phil. 872, 881-882 (2000). Emphasis in the original.

[91] 688 Phil. 122, 132 (2012).

[92] 595 Phil. 18, 42 (2008).

[93] *Guadines v. Sandiganbayan and People*, 665 Phil. 563, 576-577 (2011), citing *Santos v. People*, 520 Phil. 58, 68 (2006).

[94] *Id.* at 577. Citations omitted.

[95] *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 232 (2014).

[96] *Guadines v. Sandiganbayan*, *supra* note 93, at 577.

[97] *Rivera v. People*, *supra* note 88, at 148, citing *Soriano v. Ombudsman Marcelo*, 597 Phil. 308, 318 (2009).

[98] Sandiganbayan records, Vol. 3, p. 342.

[99] *Id.* at 341.

[100] *Id.* at 160-175.

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