

JOSE ANTONIO F. ROXAS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 223654-55. July 14, 2021

Ponente: INTING, J.

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INTING, J.:

Before the Court is a Petition for Review on Certiorari[1] filed by Jose Antonio F. Roxas (Roxas) seeking to reverse and set aside the Decision[2] dated November 26, 2015 of the Sandiganbayan, First Division, in SB-11-CRM-0249 & 0250 which, inter alia, found Roxas guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. (RA) 3019 otherwise known as the Anti-Graft and Corrupt Practices Act, as amended; and Article 237 of the Revised Penal Code (RPC), respectively.

Likewise assailed in this petition is the Resolution[3] dated March 7, 2016 of the Sandiganbayan, Special First Division, which denied for want of merit the Omnibus Motion (1) For New Trial, and alternatively (2) Motion for Reconsideration[4] filed by Roxas.

The Antecedents

The instant case stemmed from the following Informations[5] filed before the Sandiganbayan against Roxas and then Pasay City Mayor Wenceslao B. Trinidad (Trinidad), among others, which read:

In SB-11-CRM-0249:

That on February 4, 2004 or sometime prior or subsequent thereto in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, accused WENCESLAO B. TRINIDAD, a high ranking public official being then the Mayor of Pasay City and the Chairman of the Pre-Qualification Bids and Awards Committee (PBAC) for infrastructure project, and accused JOSE ANTONIO F. ROXAS, likewise a public officer being then City Councilor of Pasay City and Member of the PBAC while in the exercise of their official and administrative functions as such, and committing the offense herein charged in relation to their respective positions and designations, conspiring and confederating with accused private individuals JOSELITO A. MANABAT, an NGO-BAC Representative, also Member of the PBAC and ALEXANDER E. RAMOS, an NGO-CPA-BAC Representative likewise a member of the PBAC, all the aforementioned accused mutually helping one another did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to IZUMO Contractors, Inc. through manifest partiality, evident bad faith or gross inexcusable negligence by then and there reconvening the said PBAC and conducting and proceeding with the public bidding for the construction of the Pasay City Mall and Public Market in the amount of FOUR HUNDRED EIGHTY NINE MILLION NINE HUNDRED FIFTY THOUSAND PESOS (P489,950,000.00) declaring as winning bidder the said IZUMO Contractors, Inc. and thereafter awarding the contract for the construction of the said Pasay City Mall and Public Market to the latter in the aforesaid amount, with the full knowledge that the said PBAC already ceased to exist having been superseded by the creation and constitution of a new BAC on December 29, 2003 under Republic Act No. 9184 in which the accused are no longer Chairman and/Members thereof.

CONTRARY TO LAW.[6] (Underscoring omitted.)

In SB-11-CRM-0250:

That between the period from January 31, 2004 to February 4, 2004 or sometime prior or subsequent thereto in Pasay City, Philippines, and within the jurisdiction of this Honorable Court, accused WENCESLAO B. TRINIDAD, a high ranking public official being then the incumbent Mayor of Pasay City and the Chairman of the Pre-Qualification Bids and Awards Committee (PBAC) for infrastructure project, created under P.D. 1594 and acting in conspiracy with City Councilor JOSE ANTONIO F. ROXAS, NGO-BAC Representatives JOSELITO A. MANABAT and ALEXANDER E. RAMOS and taking advantage of their official functions, and committing the offense in relation to office, did then and there willfully, unlawfully and feloniously cause the reconvening of the said PBAC, and conducted (sic) the public bidding and awarding of the Pasay City Mall and Public Market in the amount of FOUR HUNDRED EIGHTY NINE MILLION NINE HUNDRED FIFTY THOUSAND PESOS (Php489,950,000.00) in favor of IZUMO Contractors, Inc., notwithstanding the fact that a new Bids and Awards Committee (BAC) under Republic Act No. 9184 has been created effective January 2004.

CONTRARY TO LAW.[7]

Upon arraignment,[8] Roxas and Trinidad both pleaded not guilty to the charges against them. In the meantime, their other co-accused who were private persons, namely: Joselito A. Manabat (Manabat) and Alexander E. Ramos (Ramos), remained at large.[9]

During the trial, the prosecution presented four witnesses.

Mr. Luisito S. Suarez (Suarez), Graft Investigation Officer II in the Field Investigation Office of the Office of the Ombudsman, testified that the bidding and awarding of the contract to Izumo Contractors, Inc. (Izumo) for the construction of the Pasay City Mall and Public Market (the Project) did not comply with the pertinent provisions of RA 9184, otherwise known as the Government Procurement Reform Act, particularly on the publication requirements, including the lack of pre-procurement conference, procurement planning, and pre-bid conference. In addition, Trinidad still used the old Pre-Qualification Bids and Awards Committee (old PBAC) despite its dissolution pursuant to Executive Order No. (EO) 10, Series of 2003 on December 29, 2003, which created the new BAC.[10]

Ms. Concepcion C. Daplas (Daplas), City Treasurer of the Pasay City Government from 1988 until 2004, testified that she was a member of the old PBAC from April 2000 until RA 9184 took effect in 2003, together with then City Mayor Trinidad as Chairman, with the following members: Roxas, City Councilor Reynaldo Padua (Padua), Manabat, and Ramos as representatives of the NGOs, herself, and the head of the department concerned.[11] Initially, Trinidad issued an invitation to pre-qualify/apply for eligibility to bid for the proposed construction of the Project. However, the invitation was not published after Trinidad requested to hold the publication thereof pending the approval by the Pasay City Council of an ordinance to fund the construction of the Project.[12]

On October 21, 2003, the Sangguniang Panlungsod of Pasay City passed and approved Ordinance No. 2864, Series of 2003 (Floatation Ordinance) which authorized the bond floatation of the City Government of Pasay in the amount not exceeding P500,000,000.00 to fund the construction of the Project. Two days after or on October 23, 2003, Trinidad issued another invitation to pre-qualify/apply for eligibility to bid for the Project which was published in two newspapers.[13]

During the meeting for the opening of bids, Padua distributed a letter to the old PBAC members which questioned the authority of the latter to conduct the bidding in light of EO 10. Because of the issue, the reopening of the bids was rescheduled to February 2, 2004 at 2:00 p.m.[14]

On the rescheduled date, the old PBAC was informed that the City Legal Officer, Atty. Phydias Emmanuel R. Ramos, was of the view that there was enough reason to hold the bidding under the old PBAC despite the earlier objections raised by Councilor Padua.[15] Thus, in the subsequent meeting held on February 4, 2004, the old PBAC approved a Resolution accepting the bid offered by Izumo for the Project. Thereafter, a notice of award was issued by City Mayor Trinidad to Mr. Cedric C. Lee, President of Izumo.[16]

According to Daplas, she did not sign the February 4, 2004 minutes of the meeting of the old PBAC because she believed that it was already dissolved pursuant to RA 9184 and EO 10. She explained that RA 9184 became effective on January 26, 2003 while its Implementing Rules and Regulations Part A (IRR-A) became effective on October 8, 2003.[17]

The third witness for the prosecution, Atty. Erwin Edward P. Mendinueto, Securities Counsel III of the Company Registration Monitoring Division of the Securities and Exchange Commission, identified the Certificate of Non-Registration of the two newspapers where the invitation to pre-qualify/apply for eligibility to bid for the Project were published identified as Examiner News and Weekly Views.[18]

The fourth and last witness, Atty. Ernestina B. Carbajal, identified the documentary pieces of evidence related to the Project, being the former City Administrator of Pasay.[19]

The prosecution filed its Formal Offer of Documentary Evidence[20] after the presentation of its last witness. On May 29, 2014, the Sandiganbayan issued a Resolution which admitted all the pieces of evidence that were formally offered by the prosecution.[21]

Consequently, Roxas filed his Motion for Leave of Court to File Demurrer to Evidence[22] on the ground that the pieces of evidence that were presented by the prosecution were insufficient to show the elements of the offenses charged against him.[23]

However, the Sandiganbayan denied the motion in a Resolution[24] dated July 11, 2014, along with a similar motion that was separately filed by Trinidad.

On July 24, 2014, the former counsel of Roxas filed a Demurrer to Evidence[25] despite the earlier denial of his previous motion.

On August 20, 2014, the Sandiganbayan issued another Resolution[26] which merely noted the Demurrer to Evidence, with a statement that it shall resolve the latter simultaneously with the decision of the cases for orderly proceedings.

Trinidad then proceeded to present his evidence. Thereafter, the cases were submitted for resolution of the Sandiganbayan.

Ruling of the Sandiganbayan

On November 26, 2015, the Sandiganbayan rendered the assailed Decision[27] finding Roxas and Trinidad guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019 and Article 237 of the RPC. The dispositive portion of the Decision reads:

WHEREFORE, judgment is hereby rendered as follows –

1. In SB-11-CRM-0249 - finding accused WENCESLAO B. TRINIDAD and JOSE ANTONIO F. ROXAS GUILTY beyond reasonable doubt of violation of Section 3(e) of R.A. 3019 as charged in the Information and, with the application of the Indeterminate Sentence Law and without any mitigating or aggravating circumstance, sentencing each of them to suffer the indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to

proportionately pay the cost.

2. In SB-11-CRM-050 finding accused WENCESLAO B. TRINIDAD and JOSE ANTONIO F. ROXAS GUILTY beyond reasonable doubt of the offense of prolonging performance of official duties and powers defined and penalized under Article 237 of the Revised Penal Code as charged in the Information and, with the application of the Indeterminate Sentence Law and without any mitigating or aggravating circumstance, sentencing each of them to suffer the indeterminate penalty of four (4) months and twenty-one (21) days of arresto mayor as minimum to one (1) year, one (1) month and eleven (11) days of prision correccional as maximum and special temporary disqualification from public office for a period of six (6) years and one (1) day, and a fine of Php200.00 with cost against the accused.

For failure of the prosecution to present evidence to establish damage or injury and/or the amount thereof suffered by the government as a result of the said procurement of the Project which is already fully operational, no civil liability is assessed against the herein accused in both cases.

As regards accused JOSELITO A. MANABAT and ALEXANDER E. RAMOS, who are at large and beyond the jurisdiction of the Court, these cases are ordered ARCHIVED to be revived upon their arrest or surrender.

SO ORDERED.[28]

Aggrieved, Roxas, represented by a new counsel, filed an Omnibus Motion (1) For New Trial and, alternatively (2) Motion for Reconsideration[29] on the grounds that serious error and gross inexcusable negligence were committed by his former counsel, thereby depriving him of his constitutional right to be heard and to present his evidence.

The Sandiganbayan denied the motions filed by Roxas in the assailed Resolution[30] dated March 7, 2016 for lack of merit.

Trinidad died during the pendency of his motion for reconsideration, thus, the Sandiganbayan dismissed the case as to him pursuant to Article 89 of the RPC.

Hence, the instant petition.

Issues before the Court

In his petition, Roxas alleges that the Sandiganbayan erred in denying his motions contending that he was deprived of his day in court due to the gross, reckless, and inexcusable negligence of his former counsel in filing the Demurrer to Evidence despite the denial of his prior motion for leave of court. He asserts that his guilt was not proven beyond reasonable doubt, and that the presence of the elements of the crimes was not proven against him.

The Court's Ruling

The petition is bereft of merit.

The Sandiganbayan did not err in denying the Omnibus Motion for New Trial.

Roxas anchors his argument on Section 2(a) of Rule 121 of the Revised Rules of Criminal Procedure, viz.:

SEC. 2. Grounds for a new trial. — The court shall grant a new trial on any of the following grounds:

(a) The errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

According to Roxas, a new trial is proper due to errors of law or irregularities prejudicial to his substantial rights as an accused.[31] He asserts that he did not consent, nor was he informed that the filing of the Demurrer to

Evidence without leave of court would result in the waiver of his constitutional right to be heard. He laments that he was deprived of the opportunity to question the propriety of the waiver of the presentation of his evidence when the Demurrer to Evidence was resolved simultaneously with the cases.[32] Thus, he claims that a new trial is proper pursuant to Section 2 of Rule 121 of the Rules of Court.

The Court is not persuaded. The filing of the Demurrer to Evidence even after the denial of the motion for leave of court is not an error of law or irregularity prejudicial to the substantive rights of an accused which would warrant a new trial.

Section 23 of Rule 119 of the Rules of Court is clear:

SEC. 23. Demurrer to Evidence. — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.

If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.

x x x (Italics and underscoring supplied.)

Notably, the Sandiganbayan's denial of the respective motions for leave of court to file demurrer to evidence of Roxas and Trinidad, explicitly stated that they could still file a demurrer to evidence without prior leave of court, subject to the provision of Section 23 of Rule 119. Thus:

After a solicitous consideration of the prosecution's evidence, both oral and documentary, which the Court admitted in its Resolution, dated May 29, 2014, as well as the stipulations between the parties, the Court is not inclined to grant the accused-movants leave to file demurrer to evidence. However, if they so desire, the accused-movants are given a non-extendible period of ten (10) days from notice within which to file their respective demurrers to evidence without prior leave of court, subject to the provision of Section 23, Rule 119 of the 2000 Rules of Criminal Procedure which provides: xxx[33]

Indeed, there was no error of law or irregularity in the proceedings conducted by the Sandiganbayan which prejudiced the substantive rights of Roxas.

It bears stressing that Roxas actively participated in the proceedings before the Sandiganbayan—from arraignment,[34] to Pre-trial Order[35] and up to the prosecution's presentation of evidence. This is also precisely the reason why he was able to file a Demurrer to Evidence, believing that the pieces of evidence presented by the prosecution were insufficient to prove the charges against him.

Because Roxas failed to show any error of law or irregularities in the conduct of the proceedings before the Sandiganbayan which is prejudicial to his substantial rights as an accused, there is no basis to grant his motion for a new trial. Besides, Roxas was still afforded the opportunity to present his side when the Sandiganbayan took into consideration the issues and arguments raised in his Demurrer to Evidence filed without leave of court. As aptly ruled by the Sandiganbayan in the assailed Resolution dated March 7, 2016:

It is clear that the argument presented by accused-movant Roxas in support of his motion for new trial is outside the ambit of the above quoted provisions of the Rules to justify the grant of a motion for new trial. The Demurrer to Evidence that was filed by his previous counsel allegedly without accused-movant Roxas' knowledge and/or express consent can hardly be considered as an error of law or irregularities prejudicial to his substantial rights. Besides, in rendering the assailed Decision, the Court also took into consideration the issues and arguments raised in the said Demurrer to Evidence of accused-movant Roxas.[36]

On the issue of negligence of the former counsel of Roxas.

Corollary thereto, Roxas submits that his former counsel committed reckless, gross, and inexcusable negligence, asserting that he was not informed nor consulted on the filing of the Demurrer to Evidence after the denial of his motion for leave. Consequently, he insists that he should not be bound by such negligence and that the action of his former counsel is tainted with serious and grave errors that warrant a new trial.[37]

On the contrary, the Office of the Solicitor General, representing respondent People of the Philippines, in its Comment[38] to the petition, argues that while the previous counsel may have committed a mistake or was negligent, errors, mistake, or negligence of counsel is binding on the client.

The question now arises: Did the former counsel of Roxas commit reckless, gross, and inexcusable negligence in handling his cases before the Sandiganbayan?

The Court does not believe so.

The record would show that Roxas was duly and actively represented by his former counsel from the very beginning of the trial until the Sandiganbayan rendered the assailed Decision. Though his counsel may have advocated a different strategy, it was not tantamount to a deprivation of his substantial rights because he was still given the opportunity to present his side during the proceedings. While it may not be successful, the filing of a Demurrer to Evidence without prior leave of court is sanctioned under Section 23 of Rule 119 of the Rules of Court, thus, it cannot be considered as reckless, gross, and inexcusable as to warrant a new trial.

To amplify his position that the supposed negligence of his former counsel must not bind him, Roxas cites the cases of *Hilario v. People*[39] (*Hilario*) and *Rivera v. People*[40] (*Rivera*).

However, a reading of the case of *Hilario* would reveal that the reliance of Roxas therein is misplaced. For one, *Hilario* involves the failure of the counsel of the accused therein to file a notice of appeal from the judgment of the trial court convicting him of homicide. For another, the Court did not make a conclusive finding in *Hilario* that there was, indeed, an inexcusable negligence on the part of his counsel which prejudiced his right to appeal his conviction. In ruling that the case should be remanded to the trial court for the hearing on the petition for relief from judgment filed by *Hilario*, the Court explained as follows:

In all criminal prosecutions, the accused shall have the right to appeal in the manner prescribed by law. The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals* where we ruled that an appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution. Thus, the importance of finding out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

However, we cannot, in the present petition for review on certiorari, make a conclusive finding that indeed there was excusable negligence on the part of the PAO lawyer which prejudiced petitioner's right to appeal his conviction. To do so would be pure speculation or conjecture. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for relief from judgment is just and proper.[41]

In other words, the case of *Hilario* involves the supposed failure of the counsel for the accused to appeal the conviction of the latter. The Court, in upholding the right of *Hilario* to file an appeal pronounced that he should be

afforded due process of law by giving him an opportunity to be heard in a petition for relief from judgment which he filed based on said grounds. To reiterate, the case did not rule on the issue of the purported negligence of the counsel for lack of basis thereof.

On the other hand, in the case of Rivera, it was found that his counsel asked for leave of court to file demurrer to evidence but the Sandiganbayan ordered him instead to file it without leave of court within a period of 10 days. Simply put, the counsel in Rivera intended to file a motion for leave of court to file a demurrer to evidence but he was prevented from doing so without his fault. The foregoing circumstances constrained the Court to remand the case to the Sandiganbayan for further proceedings.[42]

In the case herein, apart from the active participation of Roxas and his counsel during the course of the trial, the July 11, 2014 Resolution[43] of the Sandiganbayan was explicit in that it gave Roxas the option to still file a demurrer to evidence without prior leave of court, subject to the limitations under Section 23 of Rule 119 of the Rules of Court.

At this point, it is well to note that the demurrer to evidence was filed by the counsel of Roxas on July 24, 2014.[44] The prosecution filed its Comment to the Demurrer to Evidence to which Roxas even filed a Reply.[45] Assuming, arguendo that he was not aware of the consequences of the filing of Demurrer to Evidence without leave of court, he could have very well raised this issue before the promulgation of judgment. Instead, Roxas chose to await for the Sandiganbayan decision and when it turned out as adverse, conveniently passed the blame to his former counsel by disowning knowledge of the waiver of his right to present evidence. To recall, Trinidad, his co-accused presented evidence on his behalf after the denial of his motion for leave of court to file demurrer to evidence. This should have alerted Roxas as would have any person who exercises diligence in his/her dealings, especially an accused in a criminal proceeding. His inaction and nonchalance in discussing with his former counsel their strategy in proving his innocence, especially given his stature as a City Councilor, rendered him undeserving of any sympathy from the Court vis-à-vis his former counsel's alleged negligence. We fail to see how Roxas could not have known of the Sandiganbayan Resolution which laid out the consequence of filing a demurrer to evidence without leave of court. It is unacceptable that Roxas had set a standard of negligence when he as a client had evidently fell short of his duty of simply following through with his counsel on the status of his case. The Court cannot tolerate such distasteful conduct to be exploited as a subterfuge to the imposition of a penalty.

The Court's pronouncement in the case of *Ong Lay Hin v. Court of Appeals, et al.*[46] is enlightening:

The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules. The exception to the rule is "when the reckless or gross negligence of the counsel deprives the client of due process of law."

The agency created between a counsel and a client is a highly fiduciary relationship. A counsel becomes the eyes and ears in the prosecution or defense of his or her client's case. This is inevitable because a competent counsel is expected to understand the law that frames the strategies he or she employs in a chosen legal remedy. Counsel carefully lays down the procedure that will effectively and efficiently achieve his or her client's interests. Counsel should also have a grasp of the facts, and among the plethora of details, he or she chooses which are relevant for the legal cause of action or defense being pursued.

It is these indispensable skills, among others, that a client engages. Of course, there are counsels who have both wisdom and experience that give their clients great advantage. There are still, however, counsels who wander in their mediocrity whether consciously or unconsciously.

The state does not guarantee to the client that they will receive the kind of service that they expect. Through

this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.

Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

x x x x

But, there is an exception to this doctrine of binding agency between counsel and client. This is when the negligence of counsel is so gross, almost bordering on recklessness and utter incompetence, that we can safely conclude that the due process rights of the client were violated. Even so, there must be a clear and convincing showing that the client was so maliciously deprived of information that he or she could not have acted to protect his or her interests. The error of counsel must have been both palpable yet maliciously exercised that it should viably be the basis for disciplinary action.

Thus, in *Bejarasco, Jr. v. People*, this court reiterated:

For the exception to apply . . . the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him. Citations omitted.[47]

RA 9184 governs the conduct of the bidding of the project.

In any case, as earlier stated, even without presentation of evidence, the Sandiganbayan still considered the arguments raised by Roxas in his Demurrer to Evidence.

Roxas avers that they were faced with a difficult question of law as to which between EO 40[48] entitled "Consolidating Procurement Rules and Procedures for All National Government Agencies, Government-Owned or -Controlled Corporations and Government Financial Institutions, and Requiring the Use of the Government Electronic Procurement System" and RA 9184[49] governed the conduct of the bidding of the Project. It may be recalled that RA 9184 took effect on January 26, 2003 and IRR-A on October 8, 2003. He insists on the applicability of the transitory provision of the IRR-A of RA 9184, as follows:

Section 77. Transitory Clause

In all procurement activities, if the advertisement or invitation for bids was issued prior to the effectivity of the Act, the provisions of E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be, shall govern.

In cases where the advertisements or invitations for bids were issued after the effectivity of the Act but before the effectivity of this IRR-A, procuring entities may continue adopting the procurement procedures, rules and regulations provided in E.O. 40 and its IRR, P.D. 1594 and its IRR, R.A. 7160 and its IRR, or other applicable laws, as the case may be.

Roxas contends that the invitation to bid for the Project was issued as early as October 3, 2003, thereby placing the conduct of the bidding under the old law, EO 40. This becomes relevant as this will answer the issue of whether the old PBAC had the authority to continue with the bidding activities and eventually award the Project to Izumo.

Section 77 of RA 9184 allows procuring entities to continue to adopt procurement procedures, rules, and regulations provided under EO 40 and its IRR, but only in cases where the advertisements or invitations for bids were issued during the interim period of the law's effectivity: after the effectivity of RA 9184, but before its IRR-A takes effect. RA 9184 took effect on January 26, 2003 and its IRR-A on October 8, 2003.[50]

While it is true that Trinidad issued an invitation to pre-qualify/apply for eligibility and to bid on October 3, 2003 or before IRR-A took into effect, the publication thereof was put on hold pending the Pasay City Council's issuance of the Floatation Ordinance to fund the construction of the Project. Thus, it was only on October 23, 2003 and after the Floatation Ordinance was enacted by the Pasay City Council that Trinidad issued a new invitation to pre-qualify/apply for eligibility and to bid for the Project, which was eventually published in two newspapers.[51] At the time of the issuance of the invitation on October 23, 2003, IRR-A of RA 9184 was already in effect and there is no more reason to apply the transitory provision of RA 9184.

At this point, it bears stressing that on December 29, 2003, Trinidad issued EO 10 creating and constituting the new Pasay City BAC effective January 2004. This notwithstanding, the old PBAC still convened to continue the bidding activities for the Project on January 31, 2004, February 2, 2004, and February 4, 2004.[52] As succinctly pointed out by the Sandiganbayan in the assailed Decision:

Thus, the Court finds that the acts of accused Trinidad reconvening the defunct PBAC for the purpose of conducting the bidding of the Project under PD 1594 and its IRRs, knowing fully well that RA 9184 and its IRR-A had already taken effect by his issuance of E.O. No. 10, S. 2003 on December 29, 2003, creating and constituting the BAC and by virtue thereof, he effectively abolished the PBAC, and thereafter, he, together with the accused PBAC members Roxas, Joselito Manabat and Alexander Ramos, notwithstanding their lack of authority to do so, still convened and conducted the bidding in question and awarded the contract for the Project to Izumo Contractors, Inc. in the amount of PhP489,950,000.00, they thereby gave unto the latter unwarranted benefits, advantage and preference, as such acts not only indicate a dishonest purpose or some moral obliquity, the conscious doing of a wrong, and a breach of sworn duty through some bad motive or intent or ill will but also constitute corruption or abuse of authority."[53]

Verily, the provisions of RA 9184 and IRR-A should have governed the conduct of the bidding for the Project and not EO 40.

On the other issues raised by Roxas.

As to the other issues raised in the petition,[54] the Court is no longer inclined to reevaluate them as these are factual matters that are not appropriate for a petition for review on certiorari under Rule 45 of the Rules of Court.[55]

At any rate, the Sandiganbayan correctly convicted Roxas of the offenses charged against him as lengthily discussed in the assailed Decision:

That allegedly no injury was caused to the Pasay City Government or that the Project made the people of Pasay City very happy will not exculpate the accused because as earlier discussed, the Anti-Graft Law punishes or prohibits causing undue injury to any party including the government or giving any private party any unwarranted benefits, advantage or preference, as in this case.

Hence, the Court finds the presence of the second and third elements of the offense charged in this case.[56]

In addition, Roxas was properly convicted by the Sandiganbayan under Article 237[57] of the RPC:

There is no question that the accused in this case were holding public office as Chairman and members of the PBAC under the provisions of P.D. 1594 and its IRRs until their office was abolished by accused Trinidad on

January 1, 2004, when he issued E.O. No. 10, S. 2003 on December 29, and its IRR-A. Hence, when the herein accused continued to perform their duties and powers as Chairman and members of the abolished PBAC when they convened on January 30, 2004, and conducted the bidding on the procurement of the Project, they thereby prolonged the performance of their duties and powers as chairman and members of the defunct PBAC in violation of Article 237 of the Revised Penal Code.

That the Chairman and members of the BAC that was created under the said E.O. of accused Trinidad are still under training at that time, is not a valid reason for the herein accused to prolong the exercise and performance of their powers and duties as chairman and members of the abolished PBAC. It should be pointed out that under RA 9184 and its IRR-A, the BAC that was created by accused Trinidad in January 2004 by virtue of his E.O. No. 10, S. 2003, automatically assumes the powers and duties of the PBAC under the old procurement laws except for those procurements/projects covered under afore-quoted provision of the second paragraph of Section 77 of the IRR-A of RA 9184.[58]

In light of the above conclusions, the Court finds no need to further discuss the other issues raised in the petition.

WHEREFORE, the instant petition is DENIED. The Decision dated November 26, 2015 as well as the Resolution dated March 7, 2016 of the Sandiganbayan, First Division, in SB-11-CRM-0249 & 0250 are AFFIRMED.

SO ORDERED.

Leonen, (Chairperson), Hernando, Rosario, and J. Lopez, JJ., concur.

[1] Rollo, pp. 3-42.

[2] Id. at 43-72; penned by Associate Justice Rodolfo A. Ponferrada with Associate Justices Efren N. De La Cruz and Rafael R. Lagos, concurring.

[3] Id. at 73-81.

[4] Id. at 175-208.

[5] Sandiganbayan rollo, Vol. II, pp. 4-6, 218-220.

[6] See Amended Information dated March 23, 2012, id. at 218-219.

[7] See Information dated July 13, 2009, id. at 4-5.

[8] See Order of the Sandiganbayan dated December 6, 2012, id. at 342.

[9] Rollo, p. 45.

[10] Id. at 49.

[11] Id. at 50.

[12] Id.

[13] Id.

[14] Id. at 51-52.

[15] See Letter of Atty. Phydias Emmanuel R. Ramos dated February 2, 2004, id. at 171-174.

[16] Id. at 52.

[17] Id.

[18] Id. at 53.

[19] Id.

[20] Id. at 122-142.

[21] Id. at 6.

[22] Id. at 82-88.

[23] Id. at 83, 86-87.

[24] Id. at 89-92; signed by Associate Justices Efren N. De La Cruz, Rodolfo A. Ponferrada, and Rafael R. Lagos.

[25] Id. at 93-119.

[26] Id. at 120.

[27] Id. at 43-72.

[28] Id. at 71-72.

[29] Id. at 175-208.

[30] Id. at 73-81.

[31] Id. at 13.

[32] Id. at 12-13.

[33] Id. at 90.

[34] See Order dated December 6, 2012 of the Sandiganbayan, Sandiganbayan, rollo, Vol II, p. 342.

[35] Id. at 490-514.

[36] Rollo, p. 75.

[37] Id. at 16.

[38] Id. at 299-323.

[39] 574 Phil. 348 (2008).

[40] 499 Phil. 80 (2005).

[41] Hilario v. People, *supra* note 39 at 366-367.

[42] Rivera v. People, *supra* note 40 at 92.

[43] Rollo, p. 90.

[44] Id. at 93.

[45] Id. at 120.

[46] 752 Phil. 15-27 (2015).

[47] Id. at 23-25.

[48] Approved on October 8, 2001.

[49] Government Procurement and Reform Act, approved on January 10, 2003.

[50] Rollo, p. 60.

[51] Id.

[52] Id. at 60-61.

[53] Id. at 68.

[54] Id. at 10.

[55] See *Coloma, Jr. v. Sandiganbayan, et al.*, 744 Phil. 214 (2014)

[56] Rollo, p. 69.

[57] Article 237 of the Revised Penal Code provides:

ART. 237. Prolonging Performance of Duties and Powers. — Any public officer who shall continue to exercise the duties and powers of his office, employment or commission, beyond the period provided by law, regulations or special provisions applicable to the case, shall suffer the penalties of *prisión correccional* in its minimum period, special temporary disqualification in its minimum period and a fine not exceeding 500 pesos.

[58] Rollo, pp. 70-71.

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