

TITO S. SARION, PETITIONER, V.S. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. Nos. 243029-30. August 22, 2022

Ponente: GAERLAN, J.

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GAERLAN, J.:

This resolves the Motion for Reconsideration[1] of the Court's March 18, 2021 Decision[2] which denied the petition for review on certiorari under Rule 45 of the Rules of Court of petitioner Tito S. Sarion (petitioner), thereby affirming the Decision[3] dated September 29, 2017, and Resolution[4] dated November 8, 2018, of the Sandiganbayan in SB-11-CRM-0256 to 0257, convicting the petitioner of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) and of violating Section 3(e) of Republic Act (R.A.) No. 3019.

In the assailed Decision, the Court ruled that the issues raised by the petitioner are factual in nature, and as such beyond the province of a petition for review on certiorari. As none of the jurisprudentially established exceptions obtain in this case, the Court concluded that there is no reason to deviate from the factual findings of the Sandiganbayan.[5]

Just the same, the Court deliver into the merits of the charges and found that the Sandiganbayan correctly convicted the petitioner of the charges.

Addressing the petitioner's defense in the crime of Malversation, the Court opined that the petitioner, by the nature of his functions as then Mayor, is an accountable officer of the public funds of the Municipality of Daet. As such, petitioner must ensure that these funds are disbursed only for their "intended municipal use." [6]

In the case of the petitioner, the Court found that Malversation was committed through gross inexcusable negligence when the petitioner permitted Markbilt Construction (Markbilt) to receive payment of the price escalation despite not being entitled thereto. The Court explained that by approving the disbursement voucher and signing the Landbank check, despite the absence of appropriation and failure to comply with the requirements of Section 61 of Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, the petitioner facilitated the illegal release of public funds to Markbilt.[7]

Notably, contrary to the findings of the Sandiganbayan, the Court found that the petitioner is guilty of two acts both constitutive of malversation: 1) failure to comply with the requirements of R.A. 9184, and 2) the payment of price escalation despite the absence of appropriation.[8] The Court ruled that the petitioner cannot claim good faith as a defense, in view of the existence of circumstances which should have alerted petitioner to inquire further before approving the payment to Markbilt.[9]

With respect to the charge for violation of Section 3(e) of R.A. No. 3019, the Court likewise affirmed the petitioner's conviction after finding that he is guilty of gross inexcusable negligence when he violated basic rules 10 in disbursement, thus causing undue injury to the Municipality of Daet.[10]

Aggrieved, the petitioner filed the instant Motion for Reconsideration. In his motion, the petitioner argued that he is not guilty of gross inexcusable negligence. In support thereof, he quoted the Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa which stated in gist that the Information violated the petitioner's constitutional right to information as it alleged "the absence of CAF, not irregularity";[11] that in fact there is no irregularity in the CAF as the price escalation claim of Markbilt contained in Supplemental Budget No. 01 was approved by Appropriation Ordinance No. 1.[12] In so far as non-compliance with Section 61 of R.A. No. 9184, that the same did not pertain to the petitioner, but to "Architect Itturalde for Acon"; and that even assuming that it pertains to him, R.A. No. 9184 does not penalize the said irregularity.[13] Ultimately, the petitioner argues that he exerted the required diligence under the circumstances.[14]

In further support of his motion, the petitioner cited the legal opinion of Legal Officer Edmundo R. Devesa II (Legal Officer Devesa II), stating that the Municipal Engineering Office had been consulted and found no irregularity in the computation of the price escalation. And that the petitioner, in signing the disbursement voucher "relied in good faith on the diligent exercise of functions of the municipal officers who were primarily tasked with accounting, budgeting, and addressing legal matters." Hence, there is no "patent irregularity" which should have prompted him to inquire further.[15]

The Court denies the motion.

The petitioner in entreating that this Court review the factual findings of the Sandiganbayan under the instant petition for review on certiorari must demonstrate and prove that the case clearly falls under the exceptions to the rule.[16] In this case, the petitioner failed to discharge this burden. In his petition for review, the petitioner directly proceeded with the discussion of the alleged errors committed by the Sandiganbayan in evaluating the evidence and eventually in finding that they establish the elements of the crime charged. It is only in the instant motion for reconsideration, after the Court has pointed out the error, that the petitioner alleged that this case falls under the exceptions, and specified what these exceptions are. This, the Court cannot countenance.

Even then, the Court sees no reason to reverse the judgment of conviction.

The thrust of the instant motion for reconsideration centered on the Court's finding that the petitioner committed gross inexcusable negligence, a common element of the charges for Malversation and Section 3(e) of R.A. No. 3019. The same is a mere reiteration of his arguments in the petition for review and already passed upon by the Court in arriving at its Decision dated March 18, 2021.

There is no violation of the petitioner's constitutional right to information. There is indeed, as alleged in the Information, an absence of appropriation, not with respect to the entire project, as the same has admittedly been provided for with the statement of the contract price, but specifically for the payment of price escalation.

To recall, the Contract Agreement[17] entered into on December 29, 2003, provided only for one specific appropriation, that is for the amount of P71,499,875.29, relative to the Phase II construction of the Daet Public Market. Such contract price had already been fully released, and the payment of price escalation to Markbilt and subject of this case is over and beyond such amount.

The source of Markbilt's right to claim for price escalation is also based on the same contract, albeit contrarily, without any mention as to the source of funds for its satisfaction, viz.:

4. The Implementing Rules and Guidelines regarding Adjustment of contract prices adopted and approved by the Government will be applied in this contract.[18]

To authorize payment, there must initially be a statement of source of funding for the price escalation in accordance with the requirement of Section 86 of P.D. No. 1445; there is none in this case. As such the

aforequoted clause in the Contract Agreement cannot be a source of an enforceable right on the part of Markbilt. As the Court elucidated in its decision:

Section 85 in relation to Section 86 of P.D. No. 1445, requires the existence of a prior sufficient appropriation, as certified by the proper accounting official, before any contract for expenditure of public funds is authorized, viz.:

Section 85. Appropriation before entering into contract.

(1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.

x x x x

Section 86. Certificate showing appropriation to meet contract. Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate, signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Underscoring supplied.)

The only appropriation in this case is the original contract price of Php 71,499,875.29. Consequently, no payment can be made beyond such amount. In the same way, as there is no funding to support the price escalation clause in the said Contract Agreement, no public funds can be disbursed in payment thereof. The clause is void and of no effect.[19] It cannot be enforced and the public officer who entered into the contract without such appropriation and certification shall be liable for any resulting damage to the government. [20]

At the risk of repetition, if only to emphasize the point, Section 86 of P.D. No. 1445 requires the existence of a prior specific appropriation, as certified by the proper accounting official, before any contract for expenditure of public funds is authorized. In this case, there is no such prior specific appropriation for the satisfaction of price escalation at the time the parties agreed to its payment on December 29, 2003, which renders such undertaking in the Contract Agreement, void and of no effect. To the Court, this is the "absence" referred to in the Information.

At any rate, even granting for the sake of argument that the failure of the Information to employ the word "irregularity" violated the petitioner's constitutional right to information, and as such may not be considered in determining the offense with which the petitioner may be prosecuted, the decision would remain the same.

The petitioner may still be convicted of the crime of Malversation and for violation of Section 3(e) of the R.A. No. 3019 on account of his approval of the disbursement voucher without first referring the matter to the National Economic and Development Authority (NEDA) for the determination of the existence of extraordinary circumstances and securing the approval of the Government Procurement Policy Board (GPPB). The petitioner's failure to comply with these requirements were clearly stated and alleged in the subject Informations. While it is true that non-compliance with these requirements under Sec. 61 of R.A. No. 9184 is not penalized under the Act, the inaction may, however, constitute a different offense. In fine, the imposition of penalty is not on account of R.A. No.9184, but of his acts that translate into violation of R.A. 3019 and the RPC.

The petitioner cannot rely on the doctrine in *Arias v. Sandiganbayan*[21] to exculpate himself from liability. As the Court stated in its Decision,

"[t]he *Arias* doctrine is not a magic cloak that can be used as a cover by a public officer to conceal himself in the shadows of his subordinates and necessarily escape liability." When there are circumstances that should have alerted heads of offices to exercise a higher degree of circumspection in the performance of their duties, they cannot invoke the doctrine to escape liability. In this scenario, heads of offices are expected to exercise more diligence and go beyond what their subordinates have prepared.

x x x x

In this case, the Court finds the existence of such circumstances which could have alerted the petitioner to inquire further prior to his approval of the disbursement voucher, beyond the certifications and documents issued by municipal officials.

To recall, the Contract Agreement for the construction of the Daet Public Market (Phase II) was entered into on December 29, 2003, during the petitioner's term as Municipal Mayor. Actual construction commenced in January 2005. Months thereafter or in December 2005, allegedly on account of spiraling costs of materials during the construction period, Markbilt filed claim for the adjustment of contract price pursuant to the price escalation clause of the Contract Agreement. This was followed by successive requests for price escalation, viz.:

Billing Date

Amount

Period Covered

April 25, 2004

P 76,282.99

February 19, 2004- April 16, 2004

July 15, 2004

2,041,842.15

April 17, 2004- July 13, 2004

September 26, 2004

1,647,087.36

July 14, 2004- September 23, 2004

February 28, 2005

1,457,700.24

September 24, 2004- February 23, 2005

Total P5,222,903.74

During the intervening period or in May 2004, Mayor Panotes was elected as Municipal Mayor of Daet. It was sometime in June 2005, during his term that the Phase II construction project was completed. Thereafter,

Markbilt continued to file several letter-requests reiterating its claim for price escalation. However, then Mayor Panotes refused to act upon the claims until the end of his term in June 2007. It was when the petitioner was re-elected that Markbilt's claim was processed and eventually paid in May 2008.

Considering that two years has passed since the project's completion and more than three years since the first demand for payment of price escalation was made by Markbilt, the petitioner could have inquired into the circumstances attending the demand and the construction project and why the same was unacted upon by his predecessor. Instead of immediately instructing Administrator Nagera to look for sources of funds, he should have sought the opinion of the Municipal Engineer. Petitioner should have at the very least referred the documents relative to construction project to the appropriate municipal officials for study in order to verify the basis of Markbilt's claim. This is particularly relevant as majority of the project was undertaken and ultimately completed prior to his term. As well, the amount appropriated for the Daet Public Market (Phase II) construction project has already been fully released. Markbilt's demand is over and beyond the contract price and dependent upon the cost of materials almost three (3) years passed. Simply, the propriety of Markbilt's additional claim depends upon the prevailing market prices at the time they were purchased vis-a-vis the costs when the contract was entered into. In this regard, prudence dictates that further verification be conducted as to the veracity of the amount claimed by Markbilt. The amount involved is by no means trivial; it involves millions of pesos of public funds. Petitioner, as head of office, should have taken this precaution in order to safeguard the government funds for which he is responsible and protect the interests of the municipality.[22] (Citations omitted.)

Notably, it was not the petitioner who sought the opinion of Municipal Legal Officer Deveza II which he now strongly relies upon to prove that he exercised the diligence demanded by the circumstances. It was Accountant Robles acting on the advice of the- COA Auditor assigned to the municipality, who sought the opinion of Legal Officer Deveza II.[23] What is clear from the records is that the petitioner, immediately upon receiving the request of Markbilt for payment of price escalation, immediately ordered Administrator Nagera to look for sources of funds to satisfy the claim, thus prompting the creation and approval of Supplemental Budget No. 1, and the preparation of the disbursement voucher payable to Markbilt, all prior to the referral of the propriety of the additional claim to the concerned municipal officials.[24] Verily, the petitioner already approved the amount of Markbilt's claim without first verifying whether the same is the correct amount, as he already authorized the release of partial payment covered by Disbursement Voucher No. 08041239. Contrary to his claim therefore, petitioner failed to exert diligence demanded by the circumstances in this case.

The petitioner holds the position of Municipal Mayor, he is not an ordinary public official. He occupies the highest position in the municipality; as such head of office, he exercises administrative supervision over all officials and employees in the locality. His imprimatur to the disbursement is not ministerial. It is incumbent upon him to ensure compliance with the basic requirements of the law prior to authorizing payment, particularly as the Contract Agreement which served as basis for the claim for price escalation was entered into during his prior term as Municipal Mayor. His gross inexcusable negligence in this case is therefore manifest when he immediately gave his imprimatur to Markbilt's claim by directing Administrator Nagera to look for funds for its satisfaction.

As the Court stated in its decision, a simple consultation and/or verification could have alerted the petitioner of the fact that Markbilt's claim for price escalation was not supported by a separate funding at the time it was made, and of the requirements that must be complied with under Sec. 61 of R.A. No. 9184, before any approval and payment of price escalation can be made.

The petitioner's failure to observe sufficient diligence under the circumstances coupled by and resulting to violation of the law and rules relating to disbursement of public funds amount to gross inexcusable negligence.

WHEREFORE, premises considered, petitioner Tito S. Sarion's Motion for Reconsideration is hereby DENIED.

Consequently, the Court's Decision dated March 18, 2021 is AFFIRMED.

SO ORDERED.

Zalameda and Dimaampao, JJ., concur.

Caguioa, J., I dissent. See dissenting opinion.

Kho, Jr., J., I join the dissenting opinion.

[1] Rollo, pp.762-790.

[2] Id. at 709-732.

[3] Id. at 95-119b. Penned by Associate Justice Sarah Jane T. Fernandez, with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez, concurring.

[4] Id. at 121-130.

[5] Id. at 716-717.

[6] Id. at 717-718.

[7] Id. at 719-723.

[8] Id. at 723-724.

[9] Id. at 726-728.

[10] Id. at 728-730.

[11] Id. at 763, 775-779.

[12] Id. at 764, 772-774.

[13] Id. at 764-765.

[14] Id. at 765-771, 780-789.

[15] Id. at 767, 780-789.

[16] Pascual v. Burgos, 776 Phil. 167, 184 (2016).

[17] Rollo, pp. 169-172.

[18] Id. at 170.

[19] Section 87. Void contract and liability of officer. Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

[20] Id.

[21] 259 Phil. 794(1989).

[22] Rollo, pp. 726-728.

[23] Id. at 109.

[24] Id. at 108b-109, 176, 710-711.

SPECIAL FIRST DIVISION

G.R. Nos. 243029-30 - TITO S. SARION, petitioner, versus PEOPLE OF THE PHILIPPINES, respondent

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DISSENTING OPINION

CAGUIOA, J.;

The Resolution[1] denies the Motion for Reconsideration[2] (MR) filed by petitioner Tito S. Sarion (petitioner), thereby affirming the March 18, 2021 Decision[3] (main Decision) of the Court, which affirmed the Decision[4] dated September 29, 2017, and Resolution[5] dated November 8, 2018, of the Sandiganbayan in SB-11-CRM-0256 to 0257, convicting petitioner of the crime of Malversation of Public Funds under Article 217 of the Revised Penal Code (RPC) and of violating Section 3(e) of Republic Act (R.A.) No. 3019.

To recall, this case arose from a Contract Agreement entered into on December 29, 2003 by herein petitioner, in his capacity as Municipal Mayor for the Municipal Government of Daet, Camarines Norte, and Mr. Billy Acheron (Acheron), General Manager of Markbilt Construction (Markbilt), represented by his attorney-in-fact, Architect Romeo B. Itturalde (Architect Itturalde). The agreement was for the Phase II construction of the Daet Public Market for the amount of P71,499,875.29, which was to be completed within a period of 365 calendar days.[6]

On November 27, 2008, Zenaida Baluca (complainant), a resident of Daet, Camarines Norte, filed a complaint against petitioner before the Deputy Ombudsman for Luzon.[7] The complainant charged petitioner with violation of Section 3(e) of R.A. No. 3019 relative to the payment of contract price escalation in the Daet Public Market (Phase II) Project.[8] After investigation, Graft Investigation and Prosecution officer Judy Anne Doctor-Escalona found merit in the complaint and charged petitioner with violation of Section 3(e) of R.A. No. 3019, and Malversation of Public Funds, in two separate Informations.[9] After trial, the Third Division of the Sandiganbayan rendered on September 29, 2017 its Decision finding petitioner guilty beyond reasonable doubt for violation of Section 3(e) of R.A. No. 3019 and Malversation of Public Funds.[10]

The main Decision affirmed the Sandiganbayan's Decision and found petitioner guilty of the crimes charged.

In affirming the conviction of petitioner for the crime of Malversation of Public Funds, the Court ruled that the prosecution was able to prove all of the elements of said crime:[11] (1) that petitioner is a public officer, being the then elected Municipal Mayor of Daet and that the funds involved are public in character, as they belong to the Municipality of Daet;[12] (2) that, by reason of his office, he is an accountable officer based on Section 340 of the Local Government Code, as well as Presidential Decree No. 1445 or the Government Auditing Code of the Philippines;[13] (3) that the disbursement or release of funds had petitioner's approval as Mayor; and that payment in favor of Markbilt was released only after petitioner's signature in the disbursement voucher and the corresponding Landbank check;[14] and (4) agreeing with the Sandiganbayan, that petitioner was guilty of gross inexcusable negligence when he permitted Markbilt to receive partial payment of price escalation despite not being entitled thereto.[15]

On the other hand, in affirming petitioner's conviction for violation of Section 3(e) of R.A. No. 3019, the Comi

again anchored this on the finding that petitioner is guilty of gross inexcusable negligence "amounting to bad faith." [16] The Court justified its ruling on the following: (1) petitioner was remiss in his duty when he failed to exercise diligence in ensuring compliance with basic requirements demanded by the laws, rules, and regulations in the disbursement of public funds; [17] (2) as the signatory to the Contract Agreement. with Markbilt, he is presumed to know the contents thereof; [18] thus (3) upon receipt of Markbilt's demand for price escalation, petitioner should have first verified the propriety of the said claim and whether the said claim satisfied the requirements of applicable laws. [19]

In denying petitioner's MR, the ponencia maintains that:

First there is no violation of petitioner's right to information as there is indeed a absence of appropriation, as alleged in the Information, not with respect to the entire project, but specifically for the payment of price escalation. [20]

Second, petitioner may still be convicted of the crime of Malversation of Public Funds and for violation of Section 3(e) of R.A. No. 3019 on account of his approval of the disbursement voucher without first referring the matter to the National Economic and Development Authority (NEDA) for the determination of the existence of extraordinary circumstances and securing the approval of the Government Procurement Policy Board (GPPB). The ponencia further rules that while it is true that non-compliance with these requirements under Section 61 of R.A. No. 9184 is not penalized under the Act, the inaction may, however, constitute a different offense. In fine, the imposition of penalty is not on account of R.A. No. 9184, but of his acts that translate into violation of R.A. No. 3019 and the RPC. [21]

To these points, I respectfully maintain my dissent.

First, I emphasize anew that the Information for violation of Section 3(e) of R.A. No. 3019 alleges that petitioner approved the disbursement "in the absence of certificate of availability of funds [(CAFs)]." [22] However, the Sandiganbayan found as a fact that there were indeed CAFs, ruling only that there was an irregularity in the CAF. [23] However, in spite of the Sandiganbayan's ruling that it cannot find petitioner culpable for the alleged irregularity in the CAF since "the Information alleges the absence of, not the infirmity in, the [CAF]," [24] the ponencia still insists that it is the absence of certification as to the availability of or source of funds pertaining specifically to the payment of price escalation, that rendered the clause void and the subsequent approval by petitioner of the disbursement voucher invalid. It is this irregularity, according to the ponente, which rendered the payment in favor of Markbilt illegal. [25] However, the foregoing ruling violates petitioner's right, as an accused, to be properly informed of the charges against him. [26] As correctly pointed out by petitioner, he cannot be found guilty for an irregularity in the CAFs because this violates his right to be informed of the accusation against him under Section 14(1), Article III of the 1987 Constitution since the Information merely alleged the absence of CAFs, and not irregularity. [27] Stated differently, petitioner prepared for trial to prove, as he did, that there was a CAF. To convict him now on the reasoning that the CAF was "irregular" unduly deprived him the opportunity to directly traverse this.

More importantly, even the finding that there was an "irregularity" is wrong - it is completely belied by the evidence. This finding of "irregularity" in the CAF is based on the belief that "[t]here was no appropriation to pay for the contract price escalation." [28] The Sandiganbayan,

As well as the ponencia, holds that Appropriation Ordinance No. 01 [29] contained no appropriation for the payment of P1,000,000.00 to Markbilt. [30] At the point of being repetitive, this is just plain error.

The plain language of Supplemental Budget No. 1 [31] belies this factual finding. To recall, Resolution No. 063

approved Supplemental Budget No.1. for CY[32] 2008 for the Municipality of Daet. It was this Supplemental Budget No.1 that was approved in Appropriation Ordinance No.01. [33] Stated simply, Appropriation Ordinance No. 01 approved each and every proposed item in Supplemental Budget No. 1, including the payment of P1,000,000.00 for the price escalation claim of Markbilt.[34] As correctly shown by petitioner:

The title of Resolution No.063 is revealing as to what was approved by the Sangguniang Bayan, that is, Supplemental Budget No. 1, which contained an appropriation of P1,000,000.00 to partially pay Markbilt Construction's claim for price escalation -

Resolution Approving the Supplemental Budget No.01 for CY 2008 for the Municipality of Daet Appropriating the Amount of Six Million Eight Hundred Twenty Two Thousand Eighty Eight Pesos (P6,822,088.00) for Various Municipal Projects/Expenditures under the General Fund Proper and for Special Account (Market)- Construction of Public Market Amounting to Four Million Four Hundred Thousand Pesos (P4,400,000.00) with a Total Amount of Eleven Million Two Hundred Twenty Two Thousand Eighty Eight Pesos (P11,222,088.00).[35]

Likewise, it is apparent in the title of Appropriation Ordinance No. 01 as to what was approved by the Sangguniang Bayan:

An Ordinance Approving the Supplemental Budget No. 01 for CY 2008 for the Municipality of Daet Appropriating the Amount of Six Million Eight Hundred Twenty Two Thousand Eighty Eight Pesos (P6,822,088.00) for Various Municipal Projects/Expenditures under the General Fund Proper and for Special Account (Market) Construction of Public Market Amounting to Four Million Four Hundred Thousand Pesos (P4,400,000.00) with a Total Amount of Eleven Million Two Hundred Twenty Two Thousand Eighty Eight Pesos (P11,222,088.00).[36]

The portion of Appropriation Ordinance No.01, which appropriated the amount of P4,400,000.00 as Special Account (Market) Construction of Market" exactly corresponded to the appropriated items in that portion of Supplemental Budget No.1 sub-marked as Exhibit 21-Q-1, which to repeat had these components:.

Subsidy to Special Account-Market

Construction of Market 1,500,000.00

Price Escalation 1,000,000.00

Improvement/Repair Market 1,900,000.00[37]

These appropriated items would add up to P4,400,000.00, which is Exhibit 9-A-1 of the prosecution.

A cursory examination of Supplemental Budget No. 1 would show that the proposed appropriations therein were all approved and adopted in Appropriation Ordinance No. 01, as shown by the fact that Supplemental Budget No.1 proposed a total appropriation of P11,222,088.00, which was the same approved amount in Appropriation Ordinance No. 01.

In other words, Appropriation Ordinance No. 01 approved each and every proposed item in Supplemental Budget No. 01, including the payment of P1,000,000.00 for the price escalation claim of Markbilt Construction.[38] (Emphasis and under scoring in the original)

In other words, contrary to the findings of the Sandiganbayan and the ponencia, there was a valid appropriation to pay for the contract price escalation.

Second, on the alleged non-compliance with Section 61 of R.A. No. 9184, the evidence shows that: (1) the alleged non-compliance with Section 61 of R.A. No.9184 did not pertain to petitioner; and (2) even assuming that

compliance with Section 61 of R.A. No. 9184 pertained to petitioner, R.A. No. 9184 does not penalize the alleged irregularity.[39]

As correctly pointed out by petitioner, in the Notice of Disallowance[40] with ND No. 2010-001-101(2008) dated March 17, 2010, the obligation to secure the documents required under Section 61 of R.A. No. 9184 did not pertain to petitioner, but to Architect Itturalde for Acheron. This is, in turn, fully corroborated by the admission of prosecution witnesses Jesus R. Reblora, Jr. and Lourdes G. Cribe (Cribe) that the obligation to submit the required documents in compliance with Section 61 of R.A. No. 9184 did not pertain to petitioner, but to Architect Itturalde for Acheron.[41] Cribe, who was the Commission on Audit State Auditor V and Supervising Auditor who issued the Notice of Disallowance, likewise admitted that the failure to submit the required documents in compliance with Section 61 of R.A. No. 9184 did not appear in the line pertaining to petitioner.[42]

Moreover, even assuming that compliance with Section 61 of R.A. No. 9184 pertained to him, said law does not actually penalize the alleged irregularity[43] R.A. No. 9184 does not contain a penal clause for not securing a GPPB and a NEDA clearance before payment of price escalation.[44]

In this relation, the Court held in *Sabaldan, Jr. v. Office of the Ombudsman or Mindanao*,[45] that violations of procurement laws do not ipso facto give rise to violation of R.A. No. 3019:

More importantly, it must be emphasized that the instant case involves a finding of probable cause for; criminal case for violation of Section 3(e) of R.A. No. 3019, and not for violation of R.A. No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. xx x.[46] (Emphasis supplied)

Thus, in the recent case of *Martel v. People*,[47] the Court ruled that in order to successfully prosecute the accused under Section 3(e) of R.A. No. 3019 based on a violation of procurement laws, the prosecution must prove beyond reasonable doubt that: (1) the violation of procurement laws caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference, and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.

However, in the instant case, the Sandiganbayan conceded that petitioner did not act with evident bad faith or manifest partiality. Also, as discussed in my Dissenting Opinion on the main Decision, the prosecution failed to prove that petitioner acted with gross inexcusable negligence. Thus, the second element is absent.

Further, as I stated in my Concurring Opinion in *Villarosa v. People*,[48] an accused should not be punished with imprisonment for violations of non-penal laws. Again, R.A. No. 9184 and R.A. No. 3019 are distinct laws with distinct requisites for their violation. A violation of one does not ipso facto result in a violation of the other.[49] Thus, even assuming that petitioner committed a violation of some provisions of R.A. No. 9184, he cannot and should not be convicted under R.A. No. 3019 without proof beyond reasonable doubt that the elements of a violation of R.A. No. 3019 are all present.

The ponencia restates in the MR Resolution that a simple consultation and/or verification could have alerted petitioner of the fact that Markbilt's claim for price escalation was not supported by a separate funding at the time it was made, and of the requirements that must be complied with under Section 61 of R.A. No. 9184, before any approval and payment of price escalation can be made. Petitioner's failure to observe sufficient diligence under the circumstances coupled by and resulting to violation of the law and rules relating to disbursement of public funds amount to gross inexcusable negligence.[50]

This is egregious error. With all due respect, under the factual milieu of this case, the evidence shows that petitioner did exercise the required diligence. The fault ascribed to him by the ponencia simply does not exist.

The fact remains that Municipal Legal Officer Edmundo Deveza II (Legal Officer Deveza) gave his legal opinion that the demand of Markbilt should be paid. For petitioner to be labelled as negligent for not "direct[ing] municipal officials [to direct municipal officers] to inquire on"[51] Markbilt's demands "prior to release of[52] Legal Officer Deveza's opinion is, with respect, nonsensical. Again, the fact is that Legal Officer Deveza gave his- imprimatur to the payment.

In this regard, contrary to the ponencia's stand, petitioner's reliance on *Arias v. Sandiganbayan*[53] is very apropos:

We would be setting a bad precedent if a head of office plagued by all too common problems? dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence? is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

x x x x

We can, in retrospect, argue that Adas should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.[54] (Emphasis and underscoring supplied; italics in the original)

Likewise, in *Sistoza v. Desierto*,[55] the Court held:

There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the

acts of their subordinates. x x x[56] (Emphasis arid underscoring supplied)

Thus, there being no "irregularity" in the CAF, or any other patent irregularity in the transaction that had gone through the proper procedure as certified by the officers concerned before petitioner signed the disbursement voucher, as well as the fact that petitioner relied on a legal opinion, it is erroneous to insist that petitioner is guilty of gross inexcusable negligence, more so that he acted in bad faith.

All in all the records of this case compel me to maintain my dissent. I accordingly vote that petitioner be acquitted of the crimes charged. Any other disposition would be injustice.

(SGD.) ALFREDO BENJAMIN S. CAGUIOA

Associate Justice

[1] Ponencia, pp. 1-10.

[2] Rollo, pp. 762-790.

[3] Id. at 709-733. Penned by Associate Justice Samuel 1-1. Gaerlan with Associate Justices Rosmari D. Caranding and Rodil V. Zalameda, concurring while Associate Justice Alfredo Benjamin S. Caguioa with Dissenting Opinion joined by Chief Justice Diosdado M. Peralta.

[4] Id. at 95-1 19b. Penned by Associate Justice Sarah Jane T. Fernandez with Presiding Justice and Chairperson Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez, concurring.

[5] Id. at 121-130.

[6] Id. at 709-710.

[7] Id.at 712.

[8] Id.

[9] Id.

[10] Id. at 713-714.

[11] Id. at 738.

[12] Id.

[13] Id.

[14] Id. at 738-739.

[15] Id. at 739.

[16] Id. 11

[17] Id.

[18] Id.

[19] Id.

[20] Ponencia; p. 4.

[21] Id. at 6.

- [22] Rollo, p. 712; emphasis supplied.
- [23] Id. at 47-48, 112.
- [24] Id. at I 12.
- [25] Id. at 723-724.
- [26] Id. at 47.
- [27] Id.
- [28] Id. at 112.
- [29] Spelled "Appropriation Ordinance No.1 "in some parts of the rollo.
- [30] Ponencia,pp.4-5.
- [31] Rollo,p.49.
- [32] Calendar Year.
- [33] Rollo,p.50.
- [34] Id. at 51.
- [35] Id. at 23-24.
- [36] Id. at 24.
- [37] Exhibit 21-Q-1, id. at 49.
- [38] Rollo, pp. 50-51.
- [39] Id. at 52.
- [40] Exhibit 20 ,id.
- [41] Rollo, pp. 53-54.
- [42] Id.
- [43] Id. at 54.
- [44] Id.
- [45] G.R. No. 238014, June 15, 2020,-938 SCRA 17.
- [46] Id. at 29.
- [47] G.R. Nos. 224720-23 & 224765-68, February 2, 2021, accessed at .
- [48] G.R. Nos. 233155-63, june 23, 2020, 939 SCRA 502, 596.
- [49] Sabaldan, Jr. v. Office of the Ombudsman for mindanao, supra note 45, at 30.
- [50] Ponencia, p. 8.
- [51] Rollo, p. 730.
- [52] Id.

[53] 259 Phil. 794 (1989).

[54] Id. at 801-802.

[55] 437 Phil. 117 (2002).

[56] Id. at. 120-121.

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