



Republic of the Philippines
Supreme Court
 Manila

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Wilfredo V. Capitan
 WILFREDO V. CAPITAN
 Division Clerk of Court
 Third Division
 NOV 18 2016

THIRD DIVISION

HELEN EDITH LEE TAN,
 Petitioner,

G.R. No. 218902

Present:

VELASCO, JR., J.,
 Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

PEOPLE OF THE PHILIPPINES,
 Respondent.

Promulgated:

October 17, 2016

X-

Wilfredo V. Capitan - X

DECISION

PEREZ, J.:

Assailed in this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision¹ and the Resolution² dated 7 November 2013 and 30 June 2015, respectively, of the Sandiganbayan in Criminal Case No. 25674. The questioned Decision found herein petitioner Helen Edith Lee Tan (Tan), President/Proprietor of International Builders Corporation (IBC),³ together with her co-accused therein, namely: Rene Mondejar (Mondejar), Municipal Mayor; Francisco Tolentino (Tolentino), *Sangguniang Bayan* Secretary; Ildefonso Espejo (Espejo), *Sangguniang Bayan* Member; Margarita Gumapas (Gumapas), *Sangguniang Bayan*

¹ Penned by Associate Justice Alexander G. Gesmundo with Associate Justices Roland B. Jurado and Amparo M. Cabotaje-Tang concurring; *rollo*, pp. 88-130.

² Id. at 131-136.

³ A domestic corporation duly organized and existing under the laws of the Philippines and based in Iloilo City.

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Member; Manuel Piolo (Piolo), *Sangguniang Bayan* Member; and Roberto Velasco (Velasco), *Sangguniang Bayan* Member; all of Maasin, Iloilo City, guilty beyond reasonable doubt of Violation of Section 3(e) of Republic Act (R.A.) No. 3019,⁴ as amended. Each of them was meted with the penalty of imprisonment of six (6) years and one (1) month, as minimum, to 10 years, as maximum, as well as perpetual disqualification to hold public office.⁵ The questioned Resolution, on the other hand, denied for lack of merit the separate Motions for Reconsideration of petitioner and Mondejar, as well as the joint Motion for Reconsideration of Tolentino, Gumapas, Velasco and Espejo.⁶

The antecedents of this case are:

To protect Barangay Naslo in Maasin, Iloilo City, from the dangers posed by the Tigum River, which usually overflows during the rainy season, its *Sangguniang Barangay* enacted on 16 June 1996 Resolution No. 9⁷ requesting the IBC to rechannel the path of the Tigum River and, after the temporary river control is replenished, to extract whatever surplus of sand and gravel supply, as payment for its services.⁸ A day after, or on 17 June 1996, the Municipal Development Council (MDC) of Maasin, Iloilo City, adopted a similar resolution, *i.e.*, Resolution No. 9,⁹ also requesting the IBC to perform the rechanneling of the Tigum River path because it has the necessary equipment for that kind of work, as well as the Department of Environment and Natural Resources (DENR) to issue the Environmental Clearance Certificate (ECC) in connection with the implementation of the project.¹⁰ With these in view, the *Sangguniang Bayan* of Maasin, Iloilo City, enacted on 21 June 1996 the questioned (1) Resolution No. 30-A¹¹ strongly

⁴ Also known as the "Anti-Graft and Corrupt Practices Act."

⁵ Sandiganbayan Decision dated 7 November 2013; *rollo*, p. 128.

⁶ *Id.* at 135.

⁷ Entitled "*A Resolution Requiring The [IBC] For Rechanneling Of The Tigum River Path At Barangay Naslo.*" Those present during its enactment were: Rolando Sison (*Punong Barangay/Presiding Officer*), Allan Maderista (*Barangay Secretary*), Patricia Somo, Nora Bombita, Erwin Dumadaug, Edwin Maderista, Juan Cabrera, Nelson Bombita (all *Sangguniang Barangay Members/Barangay Councilors*) and Ed Son Garcia (*Sangguniang Kabataan Chairman/Sangguniang Barangay Member*).

⁸ Resolution No. 9, Series of 1996, of the *Sangguniang Barangay* of Barangay Naslo; *rollo*, p. 231.

⁹ Entitled "*A Resolution Requesting For Rechanneling Of The Tigum River At Barangay Naslo.*" Those present during its enactment were: Rene M. Mondejar (*Municipal Mayor/Chairman/Presiding Officer*), Ildefonso P. Espejo (*Sangguniang Bayan Member/Congressman's Representative*), Jose S. Navarra (*Sangguniang Bayan Member/Chairman on Appropriation*), Benedicto Mandate (PEC), Sherlito Reyes (NGO), Francisco C. Tolentino (NGO), Engineer Juan Rentoy, Jr. (*Municipal Planning Development Officer*), Bienvenido P. Espino (ABC President), Elsa C. Maternal [NGO (SDAI)] and 48 *Barangay Captains*, as members.

¹⁰ Resolution No. 9, Series of 1996, of the MDC; *rollo*, p. 232.

¹¹ Entitled "*A Resolution Strongly Endorsing Resolution No. 9, of Barangay Naslo and Resolution No. 9, Series of 1996 of the [MDC].*"

endorsing the resolutions of Barangay Naslo and MDC; and (2) Resolution No. 30-B¹² authorizing Mondejar to exercise his emergency powers to negotiate with the IBC for the rechanneling of the Tigum River path.¹³

On 27 June 1996, pursuant to the aforesaid *Sangguniang Bayan* resolutions, the Municipality of Maasin, Iloilo City, through Mondejar, entered into a Memorandum of Agreement (MOA)¹⁴ with the IBC, through petitioner Tan, for the rechanneling of the Tigum River path. Per the said MOA, the parties agreed that the IBC will do the rechanneling for no monetary considerations whatsoever, except that it can get the surplus supply of sand and gravel taken out therefrom after the necessary dike has been established, as what has been provided for in the alleged Resolution No. 30-A, on account of financial constraints since the municipality has already exhausted all its resources due to a series of calamities.¹⁵

Soon thereafter, Criminal Complaints for Falsification under Article 171 of the Revised Penal Code (RPC) and for Violation of Section 3(e) of R.A. 3019 were filed before the Office of the Ombudsman–Visayas (OMB–Visayas) against the local officials involved in the project of rechanneling the Tigum River path, including petitioner Tan.¹⁶ The case was docketed as OMB-VIS-CRIM-98-0372.

The alleged Falsification was committed by Mondejar, Arnaldo Partisala (Partisala),¹⁷ Tolentino, Espejo, Gumapas, Piolo, and Velasco when they made it appear in the Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, held on 21 June 1996, that Resolution No. 30-A and Resolution No. 30-B were deliberated, approved and/or enacted by the *Sangguniang Bayan* on the said date. Allegedly, no such resolutions were passed and/or enacted by the said body on that date. It was argued that this was done to give Mondejar legal basis or authority to enter into a MOA with the IBC, through petitioner Tan, for the supposed rechanneling of the Tigum River path. In reality, however, such MOA is a grant of an authority for the IBC to engage into massive quarrying activities in the area even without the required permit. As the argument ran, all the local officials involved in the project of rechanneling the Tigum River path, in conspiracy with petitioner Tan, indubitably committed also a Violation of

¹² Entitled “*A Resolution authorizing Mayor [Mondejar] to exercise his Emergency Powers.*”

¹³ Office of the Ombudsman Memorandum dated 16 September 1999, which was approved by the Acting Ombudsman on 17 September 1999; *rollo*, p. 213; Respondent Comment dated 26 February 2016; *rollo*, p. 262.

¹⁴ *Id.* at 229-230.

¹⁵ Memorandum of Agreement, *id.* at 229.

¹⁶ Office of the Ombudsman (Visayas) Resolution dated 31 May 1999, *id.* at 207.

¹⁷ Vice-Mayor of Maasin, Iloilo City.

Section 3(e) of R.A. 3019 inasmuch as they gave unwarranted benefits, advantage and displayed manifest partiality in favor of the IBC. They entered into a contract that is grossly disadvantageous to the government, particularly to the Municipality of Maasin, Iloilo City, as it has been deprived of the revenues, which could have been collected from the IBC out of the hauling activities of the latter for sand and gravel if there was no such MOA.¹⁸

On 31 May 1999, the OMB-Visayas, through Special Prosecution Officer II Raul V. Cristoria, issued a Resolution¹⁹ recommending the (1) dismissal of the charge against the local officials involved in the project of rechanneling the Tigum River path, except for Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco, for insufficiency of evidence; (2) filing of separate Informations for Falsification under Article 171 of the RPC and for Violation of Section 3(e) of R.A. 3019 against the afore-named public officials before the Sandiganbayan; and (3) inclusion of petitioner Tan as one of the accused in the Information for Violation of Section 3(e) of R.A. 3019.²⁰

Upon review, the OMB, through Graft Investigation Officer II Julita M. Calderon, issued a Memorandum dated 16 September 1999²¹ approving the Resolution dated 31 May 1999 of the OMB-Visayas, thus, approving the filing of the Informations against the mentioned individuals. The said OMB Memorandum was later approved by the Acting Ombudsman Margarito P. Gervacio, Jr. on 17 September 1999.²²

Accordingly, two separate Informations were filed against Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco, before the Sandiganbayan, to wit: **(1) for Violation of Section 3(e) of R.A. 3019 docketed as Criminal Case No. 25674,²³ where petitioner Tan was included as one of the accused;** and **(2) for Falsification under Article 171 of the RPC docketed as Criminal Case No. 25675.²⁴**

The Information docketed as Criminal Case No. 25674 charging Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo, Velasco and

¹⁸ Office of the Ombudsman (Visayas) Resolution dated 31 May 1999; *rollo*, pp. 207-209; Office of the Ombudsman Memorandum dated 16 September 1999, which was approved by the Acting Ombudsman on 17 September 1999; *rollo*, p. 213.

¹⁹ *Supra* note 16, at 206-211.

²⁰ *Id.* at 210-211.

²¹ *Supra* note 13, at 212-214.

²² *Id.* at 214.

²³ *Id.* at 215-217.

²⁴ *Id.* at 218-220.

petitioner Tan with Violation of Section 3(e) of R.A. 3019, *by giving the latter unwarranted benefits, advantage and preference, to the damage and prejudice of the government*, reads:

That on or about the 27th day of June 1996, and for sometime prior or subsequent thereto, in the Municipality of Maasin, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, above-named accused [Mondejar, Partisala, Tolentino, Espejo, Gumapas, Piolo and Velasco], public officers, having been duly elected, appointed and qualified to such public positions above-mentioned, in such capacity and committing the offense in relation to Office, **and while in the performance of their official functions, conniving, confederating and mutually helping with each other and with [herein petitioner Tan], a private individual and President/Proprietor of [IBC] Iloilo City with deliberate intent, with manifest partiality and evident bad faith, did then and there willfully, unlawfully and feloniously make it appear that Resolution No. 30-B, series of 1996, was validly enacted by the Sangguniang Bayan of Maasin, Iloilo, authorizing Mayor [Mondejar] to exercise his emergency powers as in fact accused [Mondejar], entered into a [MOA] with [petitioner Tan] of IBC authorizing the said IBC to engage in massive quarrying in the guise of rechan[n]eling the Tigum River in Maasin, Iloilo, thus accused in the performance of their official functions had given unwarranted benefits, advantage and preference to [petitioner Tan] and themselves, to the damage and prejudice of the government, particularly the Municipality of Maasin.**

CONTRARY TO LAW.²⁵ (Emphasis and italics supplied)

Criminal Case No. 25674 and Criminal Case No. 25675²⁶ were eventually consolidated.

Upon arraignment, petitioner Tan and her co-accused in Criminal Case No. 25674, except for Partisala, who still remains at large, pleaded NOT GUILTY to the charge.²⁷ The parties then entered into a Joint Stipulation of Facts, which states, among others:

1. That at the time material in the Information, accused were public officials holding the following official positions in the government:
 - a. [MONDEJAR] – Municipal Mayor, Maasin, Iloilo;

²⁵ Id. at 215-217.

²⁶ This Court finds it no longer necessary to quote the text of the Information for Falsification under Article 171 of the RPC lodged against the accused public officials since Criminal Case No. 25674 (for Violation of Section 3[e] of R.A. 3019) against petitioner Tan is the only subject of this Petition and only in the said case that the latter was named as an accused.

²⁷ The accused in Criminal Case No. 25675 made the same plea.

- b. [TOLENTINO] – S. B. Member, Maasin, Iloilo;
- c. [ESPEJO] – S. B. Member, Maasin, Iloilo;
- d. [GUMAPAS] – S. B. Member, Maasin, Iloilo;
- e. [PIOLO] – S. B. Member, Maasin, Iloilo;
- f. [VELASCO] – S. B. Member, Maasin, Iloilo;

While [herein petitioner Tan] was the President of [IBC].

2. **That on 27 June 1996 a [MOA] was entered into between the Municipality of Maasin, Iloilo represented by Mayor [Mondejar] as the First Party and [IBC] represented by [petitioner Tan] as the Second Party, for the Rechanneling of the Tigum River path at Barangay Naslo, Maasin, Iloilo.**
3. That Resolution No. 9 Series of 1996 was passed by Barangay Naslo, Maasin, Iloilo, relative to the rechanneling of the Tigum River Path at Barangay Naslo.
4. That Resolution No. 9 was also passed by the Members of the [MDC] of Maasin, Iloilo endorsing the rechanneling of the said River Path.²⁸ (Emphasis and underscoring supplied.)

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Thereafter, the Sandiganbayan jointly tried Criminal Case No. 25674 and Criminal Case No. 25675.

The prosecution presented eight witnesses, namely, Jose S. Navarra (Navarra),²⁹ Imelda Maderada (Maderada),³⁰ Soledad R. Sucaldito (Sucaldito),³¹ Rogelio T. Trinidad (Trinidad),³² Elisa L. Trojillo (Trojillo),³³ Darell A. Cabanero (Cabanero),³⁴ Dr. Vicente Albacete (Dr. Albacete)³⁵ and Ernie Jesus Lee Malaga (Malaga).³⁶ All together, their testimonies tend to establish that (1) the accused public officials falsified the Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, held on 21 June 1996 by making it appear that the body enacted on that date Resolution No. 30-A and Resolution No. 30-B, which resolutions led to the

²⁸ Joint Stipulation of Facts dated 2 September 2003; *rollo*, pp. 221-222.

²⁹ *Sangguniang Bayan* Member of Maasin, Iloilo City from 1 July 1992 to 30 June 1998.

³⁰ Clerk of Court of the 12th Municipal Circuit Trial Court (MCTC) of Cabatuan, Iloilo and a resident of Barangay Madriz, Maasin, Iloilo City.

³¹ Provincial Environmental and Natural Resources Officer (PENRO) of Iloilo Provincial Government.

³² Director III, DENR, Iloilo.

³³ *Sangguniang Bayan* Member of Maasin, Iloilo City from 1992-2001.

³⁴ Resident of Barangay Naslo, Maasin, Iloilo City and Chairman of the Save Naslo Movement.

³⁵ Elected as *Sangguniang Bayan* Member of Maasin, Iloilo City, in 1996.

³⁶ Municipal Councilor of Maasin, Iloilo City, from 1995-2001.

signing of the MOA between Mondejar and petitioner Tan for the alleged rechanneling of the Tigum River path; and (2) the quarrying activities of petitioner Tan's IBC at the Tigum River in the guise of rechanneling the same.³⁷

After the prosecution's formal offer of documentary evidence was admitted by the Sandiganbayan in its Order dated 23 May 2006 over the objection of petitioner Tan and her co-accused,³⁸ the latter separately filed Demurrers to Evidence (with prior leave of court), which were denied in a Resolution dated 16 March 2007. They moved for its reconsideration but it was again denied in a Resolution dated 22 January 2008.³⁹

Petitioner Tan and her co-accused then proceeded in presenting themselves as witnesses, together with Rolando B. Sison (Sison),⁴⁰ Engineer Juan Rentoy, Jr. (Engr. Rentoy, Jr.)⁴¹ and Abner Tudela (Tudela).⁴² Their testimonies as a whole tend to prove, among others, that (1) the old flood control system of Barangay Naslo, Maasin, Iloilo City, was almost destroyed by the previous typhoons that hit the community; thus, there is a great need to construct or build another flood control system and, that is, the rechanneling of the Tigum River path since that river always inundated Barangay Naslo during the rainy season; (2) resolutions were passed by both the *Sangguniang Barangay* of Barangay Naslo and the MDC requesting the IBC to do the rechanneling since the latter has the necessary equipment for that kind of work; (3) the resolutions of *Sangguniang Barangay* of Barangay Naslo and the MDC were endorsed by the *Sangguniang Bayan* of Maasin, Iloilo City, via Resolution No. 30-A; and Resolution No. 30-B authorized Mondejar to exercise his emergency powers to negotiate with the IBC for the rechanneling of the Tigum River path, which resolutions were validly enacted by the body on 21 June 1996; (4) pursuant thereto, the Municipality of Maasin, Iloilo City, through Mondejar, and the IBC, through petitioner Tan, entered into a MOA for the rechanneling of the Tigum River path; and (5) the IBC was able to rechannel the Tigum River path.⁴³

³⁷ Supra note 5, at 92-101.

³⁸ Id. at 101.

³⁹ Id. at 101-102.

⁴⁰ Barangay Captain of Barangay Naslo from October 1993 to October 2007.

⁴¹ Municipal Planning and Development Coordinator (MPDC) of Maasin, Iloilo City from 1988 to present.

⁴² Operations Manager of IBC Equipment Division since 1984.

⁴³ Supra note 5, at 102-114.

Petitioner Tan and her co-accused subsequently made a formal offer of evidence, which was admitted by the Sandiganbayan in its Order dated 13 January 2011 despite the objection of the prosecution.⁴⁴

Thereafter, the prosecution presented Shirlito A. Reyes (Reyes)⁴⁵ and Sucaldito as rebuttal witnesses. On 20 July 2012, the prosecution submitted its supplemental offer of evidence, which the Sandiganbayan admitted in its Order dated 21 September 2012 over the objection of petitioner Tan.⁴⁶

Once the parties submitted their respective Memoranda, the Sandiganbayan accordingly rendered a joint Decision on 7 November 2013 in Criminal Case No. 25674 and in Criminal Case No. 25675, which dispositive portion reads:

WHEREFORE, premises considered, the Court hereby rules as follows:

1. **In Criminal Case No. 25674**, the Court finds the accused [MONDEJAR], [TOLENTINO], [ESPEJO], [GUMAPAS], [PIOLO], [VELASCO] and [HEREIN PETITIONER TAN] **GUILTY** beyond reasonable doubt of the offense of [V]iolation of Section 3 (e) of [RA 3019], as amended, and sentences each of them to suffer an 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. Insofar as [PARTISALA] is concerned, since he is still at large up to the present, let the case be **ARCHIVED** and let an *alias* warrant of arrest issue against him.

2. In Criminal Case No. 25675, the Court finds the accused [MONDEJAR], [TOLENTINO], [ESPEJO], [GUMAPAS], [PIOLO] and [VELASCO] **GUILTY** beyond reasonable doubt of Falsification defined under Article 171 of the [RPC] and sentences each of them to suffer the penalty of imprisonment of six (6) months [and] one (1) day of *prision correccional*[,] as minimum[,] to eight (8) years and one (1) day of *prision mayor*[,] as maximum in the absence of any mitigating and aggravating circumstance in accordance with the provisions of the Indeterminate Sentence Law; to pay a fine of Five Thousand Pesos ([P]5,000.00); and to further suffer temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage. Insofar as [PARTISALA] is concerned, since he is still at large up to the present, let the case be **ARCHIVED** and let an *alias* warrant of arrest issue against

⁴⁴ Id. at 114.

⁴⁵ MDC Member between 1994 and 1998 in his capacity as NGO Representative (as President of the Maasin Market Vendors).

⁴⁶ Supra note 5, at 114-116.

him.⁴⁷ (Emphasis partly in the original and partly supplied; italics supplied)

In arriving at such conclusion (in Criminal Case No. 25674), the Sandiganbayan elucidated, thus:

To be convicted of [V]iolation of Section 3 (e) of [RA 3019], the prosecution must prove the following:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;
- 2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- 3) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

The first element has been established as the accused public officials have stipulated on their public functions. **[Herein petitioner Tan], on the other hand, is charged in conspiracy with the public officials.**

The second element is likewise present x x x It was established by the prosecution that the SB never passed Resolution No. 30-B authorizing accused Mondejar to exercise his emergency powers and for him to carry out emergency measures relative to the rechanneling of the Tigum River. This means that accused Mondejar did not have the authority to enter into a MOA with the IBC for the rechanneling of the Tigum River. Knowing this, the accused public officials falsified Exh. "F" [Minutes of the 21 June 1996 *Sangguniang Bayan* Session] thereby making it appear that the SB gave such authority to accused Mondejar. This act was done in evident bad faith as they deliberately covered-up an illegal act thus justifying the extraction of sand and gravel by the IBC at the Tigum River. Without such act by the accused, IBC would not have any right to haul any and all "excess" sand and gravel from the said site x x x

As to third element, it was shown by the prosecution that the only way for the IBC to legally extract sand and gravel from the Tigum River was if it could secure a quarrying permit from the provincial government of Iloilo. This is stated clearly in Provincial Ordinance No. 11 of the *Sangguniang Panlalawigan* of Iloilo dated [14 August 1995] x x x

The municipality of Maasin, through its Mayor and the SB, did not have the authority to issue quarrying permit. What the accused were able to accomplish through the MOA was to allow IBC to engage in quarrying

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Supra note 5, at 128-129.

activities without having to go through the trouble of securing a quarrying permit on the justification that IBC was performing a service for the townspeople by constructing a temporary dike and by rechanneling the Tigum River and that the extraction of sand and gravel as its compensation for services rendered.

In effect, the accused public officers and the IBC owner [petitioner] Tan effectively bypassed the provincial government and circumvented the requirement for a quarrying permit, with all its conditions and limitations. By so doing, the accused gave unwarranted favor or unwarranted benefit to [petitioner] Tan, the owner of the IBC, in the exercise of their official functions x x x

x x x Worse the MOA did not put in necessary safeguards to prevent any abuses by the IBC. It did not require the municipality to supervise the construction of the dike and the rechanneling of the river nor did it require monitoring of the sand and gravel being extracted by the IBC thereby giving IBC unfettered discretion in its implementation of the MOA and allowing indiscriminate quarrying in the area.⁴⁸

Aggrieved, petitioner Tan moved for its reconsideration⁴⁹ but it was denied for lack of merit in the questioned Resolution dated 30 June 2015.

The Sandiganbayan held that:

Contrary to [herein petitioner] Tan's argument, **the prosecution has proven her complicity by her act of signing the MOA ostensibly dated 28 June 1996 but was actually executed sometime after September 1997 which act indicates a common purpose to make it appear that accused Mondejar had the authority to enter into said MOA with [petitioner] Tan's IBC. While such finding had not been expressly stated in the assailed Decision, such is necessarily implied from the finding that the falsified Minutes was executed only sometime in 1997.**

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The Information states that unwarranted benefit was given [petitioner] Tan by the act of the accused public officers in making it appear that Resolution No. 30-B series of 1996 was passed authorizing accused Mondejar to exercise his emergency powers and that, in fact, Mondejar did enter into a MOA with [petitioner] Tan of IBC authorizing it to engage in massive quarrying in the guise of rechanneling the Tigum River. These are the ultimate facts that go into the sufficiency of the

⁴⁸ Id. at 125-127.

⁴⁹ Petitioner Tan's co-accused in Crim. Case No. 25674 also filed their separate Motions for Reconsideration of the Sandiganbayan Decision dated 7 November 2013 but their motions were also denied in the same Resolution dated 30 June 2015.

Information and which the prosecution had proven beyond reasonable doubt. The discussion by the Court that the acts of the accused had the effect of circumventing the rules on securing a quarry permit and that the MOA unduly benefited [petitioner] Tan's IBC are mere details that go into the whys and the hows of the authority granted [petitioner] Tan's IBC. Verily, an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage or unwarranted benefit.⁵⁰ (Emphasis supplied.)

Hence, this Petition by petitioner Tan raising the following grounds: **(1)** the Sandiganbayan Decision is void on its face for non-compliance with Section 14, Article VIII of the Constitution; **(2)** the Information in Criminal Case No. 25674, in regard petitioner Tan, is void as it does not conform to the OMB-Visayas Resolution finding no probable cause to charge the latter with Falsification of Resolution No. 30-B of the *Sangguniang Bayan* of Maasin, Iloilo City; **(3)** the Information does not allege an offense constitutive of violation of Section 3(e) of R.A. 3019 with regard to petitioner Tan who is a private individual; **(4)** The Sandiganbayan Decision imputes to the accused public officials in Criminal Case No. 25674, including petitioner Tan, the grant of unwarranted benefits to the IBC as the latter was able to quarry in the Tigum River without any permit from the provincial government of Iloilo, which fact is not alleged in the Information, much less supported by any evidence, thus, in violation of petitioner Tan's constitutional right to be informed of the nature and cause of the accusations against her, making the entire proceedings void; **(5)** the Sandiganbayan Decision violated petitioner Tan's right to due process and even the fundamental rules of evidence as it appreciated the evidence presented in Criminal Case No. 25675 (for Falsification) in convicting the latter in Criminal Case No. 25674 (for Violation of Section 3(e) of R.A. 3019) even though such evidence was never offered in the latter case; **(6)** both the Sandiganbayan Decision and Resolution contain no finding of the commission of any act by petitioner Tan, either by herself or in conspiracy with her co-accused in Criminal Case No. 25674, that established beyond reasonable doubt the violation of each and every element of the offense punishable under Section 3(e) of R.A. 3019 in relation to Section 4(b) of the same law; and **(7)** the Sandiganbayan Decision and Resolution were rendered in violation of the Constitution, thus, merits reversal and the petitioner deserves an acquittal.⁵¹

With the foregoing arguments, the main issue to be resolved in the present recourse is whether the Sandiganbayan erred in finding petitioner

⁵⁰ Sandiganbayan Resolution dated 30 June 2015; supra note 2, at 134-135.

⁵¹ Petition for Review on *Certiorari* dated 19 August 2015; id. at 50-52.

Tan guilty beyond reasonable doubt of Violation of Section 3(e) of R.A. 3019 in conspiracy with the accused public officials of Maasin, Iloilo City.

The Petition is meritorious.

Section 3(e) of R.A. 3019, under which petitioner Tan is charged, provides:

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In *Rivera v. People*,⁵² this Court held that to justify an indictment under this section, the existence of the following elements must be established: (1) the accused must be a public officer discharging administrative, judicial or official functions; (2) that the accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.⁵³

There are two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions, to wit: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term “or” connotes that either act qualifies as a violation of Section 3(e) of R.A. 3019.⁵⁴

⁵² *Rivera v. People*, G.R. No. 156577, 3 December 2014, 743 SCRA 476.

⁵³ *Id.* at 496.

⁵⁴ *Id.*

Private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, including (e) thereof. This is in consonance with the avowed policy of the anti-graft law to repress certain acts of **public officers and private persons alike** constituting graft or corrupt practices act or which may lead thereto.⁵⁵

Thus, for a private person to be charged with and convicted of Violation of certain offenses under Section 3 of R.A. 3019, which in this case (e), it must be satisfactorily proven that he/she has acted in conspiracy with the public officers in committing the offense; otherwise, he/she cannot be so charged and convicted thereof.

In conspiracy, the act of one is the act of all; thus, it is never presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.⁵⁶ To establish conspiracy, direct proof of an agreement concerning the commission of a felony and the decision to commit it is not necessary. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.⁵⁷ **While direct proof is not essential to establish conspiracy, it must be established by positive and conclusive evidence. And conviction must be founded on facts, not on mere inferences and presumptions.**⁵⁸

In this case, petitioner Tan was charged with and convicted of Violation of Section 3(e) of R.A. 3019 because of the alleged conspiracy between her and her co-accused public officials of Maasin, Iloilo City, in committing the said offense. But, a perusal of the Sandiganbayan Decision showed no instance how petitioner Tan could have conspired with her co-accused public officials. Petitioner Tan, thus, raised this point in her Motion for Reconsideration. The Sandiganbayan, however, in disposing the same, simply stated:

x x x the prosecution has proven her complicity by her act of signing the MOA ostensibly dated 28 June 1996 but was actually executed sometime after September 1997 which act indicates a common purpose to make it appear that accused Mondejar had the authority to enter into said MOA with [petitioner] Tan's IBC. While

⁵⁵ *Go v. The Fifth Division, Sandiganbayan, et al.*, 549 Phil. 783, 799 (2007).

⁵⁶ *Froilan v. The Honorable Sandiganbayan*, 385 Phil. 32, 42 (2000).

⁵⁷ *Id.*

⁵⁸ *People v. Carpio Vda. De Quijano*, G.R. No. 102045, 17 March 1993, 220 SCRA 66, 72.

such finding had not been expressly stated in the assailed Decision, such is necessarily implied from the finding that the falsified Minutes was executed only sometime in 1997.

It can be gleaned from the aforesaid Sandiganbayan disposition that their only basis in declaring that the MOA was actually executed sometime after September 1997 was their finding that the falsified Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, was executed only sometime in 1997. To the mind of this Court, this is a patently erroneous conclusion.

There was no iota of evidence ever presented by the prosecution in Criminal Case No. 25674 that would prove that the MOA entered into between Mondejar and petitioner Tan was actually executed on a date other than 27 January 1996. There was also nothing on the face of the MOA that would show any irregularity in its execution. To note, the MOA signed by petitioner Tan dated 27 June 1996 was duly notarized on 28 June 1996. Section 30 of Rule 132 of the Rules of Criminal Procedure provides:

SECTION 30. *Proof of notarial document.* – Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgement being *prima facie* evidence of the execution of the instrument or document involved. (Italics supplied)

The notarization of a document carries considerable legal effect. **Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity.**⁵⁹ With that notarial act, the MOA became a public document. As such, it is a perfect evidence of the fact which gives rise to its execution and of its date so long as the act which the officer witnessed and certified to or the date written by him is not shown to be false.⁶⁰ To overcome the presumption, the rules require not just a preponderance of evidence, but evidence that is “clear and convincing” as to exclude all reasonable controversy as to the falsity of the certificate. In the absence of such proof, the document must be upheld.⁶¹

Further, in the parties’ Joint Stipulation of Facts before the Sandiganbayan, one of facts they agreed on was:

⁵⁹ *Tigno v. Spouses Aquino*, 486 Phil. 254, 267 (2004).

⁶⁰ *Fernandez v. Fernandez*, 416 Phil. 322, 338 (2001).

⁶¹ *St. Mary’s Farm, Inc. v. Prime Real Properties, Inc.* 582 Phil. 673, 681 (2008).

2. That on 27 June 1996 a Memorandum of Agreement was entered into between the Municipality of Maasin, Iloilo represented by Mayor Rene Mondejar as the First Party, International Builders Corporation (IBC) represented by Helen Edith Lee Tan as the Second Party, for the Rechanneling of the Tigum River path at Barangay Naslo, Maasin, Iloilo.

As the aforesaid Joint Stipulation of Facts was reduced into writing and signed by the parties and their counsels, thus, they are bound by it and the same becomes judicial admissions of the facts stipulated.⁶² Section 4, Rule 129 of the Rules of Court states:

Section 4. *Judicial Admissions.* An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

A party may make judicial admissions in (a) the pleadings, (b) during the trial, either by verbal or written manifestations **or stipulations**, or (c) in other stages of the judicial proceeding. It is well-settled that judicial admissions cannot be contradicted by the admitter who is the party himself and binds the person who makes the same, and absent any showing that this was made thru palpable mistake, as in this case, no amount of rationalization can offset it.⁶³ Also, in *Republic of the Philippines v. D Guzman*⁶⁴ citing *Alfelor v. Halasan*,⁶⁵ this Court held that “a party who judicially admits a fact cannot later challenge that fact as **judicial admissions are a waiver of proof**; production of evidence is dispensed with. **A judicial admission also removes an admitted fact from the field of controversy.**”

With the foregoing, the Sandiganbayan is precluded from ruling that the MOA was actually executed sometime in September 1997 as it would run counter to the stipulated fact of the parties that it was entered into on 27 June 1996, which stipulation was not shown to have been made through palpable mistake.

Having established that the MOA was entered into on 27 June 1996 and not in September 1997 as what the Sandiganbayan would make it appear, petitioner Tan’s act of signing the same did not in anyway prove that she had conspired with her co-accused public officials in committing the

⁶² *Bayas v. Sandiganbayan*, 440 Phil. 54, 69 (2002).

⁶³ *Sps. Binarao and v. Plus Builders, Inc.*, 524 Phil. 361, 366 (2006), citing *Yuliongsiu v. Philippine National Bank*, 130 Phil. 575, 580 (1968).

⁶⁴ 667 Phil. 229, 247 (2011).

⁶⁵ 520 Phil. 982, 991 (2006).

offense charged. To repeat, there is nothing in the MOA that would apprise petitioner Tan of any irregularity or illegality that led to its execution. More so, the prosecution did not even present evidence in Criminal Case No. 25674 to prove that petitioner Tan (1) has knowledge that Resolution No. 30-B was a product of a falsified document, *i.e.*, Minutes of the Regular Session of the *Sangguniang Bayan* of Maasin, Iloilo City, and that Mondejar has no authority to enter into a MOA with her; and that (2) despite knowledge thereof, still entered into a MOA with Mondejar. It also bears stressing that none of those who testified for the prosecution ever linked petitioner Tan to the alleged falsification committed by the accused public officials of Maasin, Iloilo City. In fact, petitioner Tan was not among those charged with Falsification.

Since petitioner Tan's conviction was based on the presence of conspiracy, which the prosecution was not able to prove beyond reasonable doubt, her conviction of the offense charged must be reversed.

WHEREFORE, premises considered, the present Petition is hereby **GRANTED**. The Sandiganbayan Decision and Resolution dated 7 November 2013 and 30 June 2015, respectively, in Criminal Case No. 25674 insofar as petitioner Tan is concerned are hereby **REVERSED and SET ASIDE**. Accordingly, petitioner Tan is **ACQUITTED** from the charge of Violation of Section 3(e) of Republic Act No. 3019.


SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



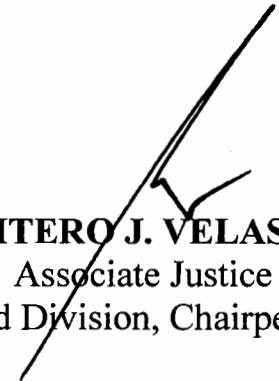
BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

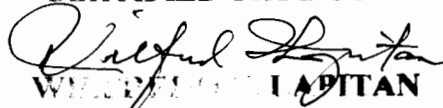
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY



WILFREDO C. CAPITAN
Division Chairperson
Court

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