



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
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EN BANC

RICHARD T. MARTEL, ALLAN C.  
PUTONG, ABEL A. GUIÑARES,  
VICTORIA G. MIER, and EDGAR C.  
GAN,  
Petitioners,

G.R. No. 224720-23

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.  
X-----X

BENJAMIN P. BAUTISTA, JR.,  
Petitioner,

G.R. Nos. 224765-68

Present:

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

PERALTA, C.J.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
GISMUNDO,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
M. LOPEZ,  
DELOS SANTOS,  
GAERLAN,  
ROSARIO, and  
J. LOPEZ, JJ.

Promulgated: *Anna-Li R. Lopez-Jordan*  
February 2, 2021

X-----X

**DECISION****CAGUIOA, J.:**

While the Constitution exacts a higher standard of accountability with respect to public officers, as indeed public office is a public trust, the constitutional right of presumption of innocence in criminal prosecutions is likewise enjoyed by public officers who stand accused. Therefore, in order to justify conviction, their guilt must be proven beyond reasonable doubt, as with any other person who stands accused.

In criminal cases involving Section 3(e) of Republic Act No. (R.A.) 3019, or the Anti-Graft and Corrupt Practices Act, in relation to alleged irregularities in procurement committed by public officers, findings of violations of procurement laws, rules, and regulations, *on their own*, do not automatically lead to the conviction of the public officer under the said special penal law. *It must be established beyond reasonable doubt that the essential elements of Section 3(e) of R.A. 3019 are present.*

It is in this spirit that the Court proceeds to assess whether the conviction of petitioners under Section 3(e) of R.A. 3019 should be reversed and set aside.

**The Case**

Before the Court are two consolidated petitions.

In **G.R. Nos. 224720-23**, petitioners Richard T. Martel (Martel), Allan C. Putong (Putong), Abel A. Guiñares (Guiñares), Victoria G. Mier (Mier), and Edgar C. Gan (Gan) filed a Petition for Review on *Certiorari*<sup>1</sup> (Martel Petition) under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> dated February 24, 2016 (assailed Decision) and Resolution<sup>3</sup> dated May 13, 2016 (assailed Resolution) of the Sandiganbayan, Special First Division (Sandiganbayan) in Criminal Case Nos. SB-12-CRM-0241 to SB-12-CRM-0244, which found them guilty beyond reasonable doubt for violation of Section 3(e) of R.A. 3019.

In **G.R. Nos. 224765-68**, petitioner Benjamin P. Bautista, Jr. (Bautista) also filed a Petition for Review on *Certiorari*<sup>4</sup> (Bautista Petition), seeking the reversal of the assailed Decision and Resolution, which likewise found him guilty beyond reasonable doubt for violation of Section 3(e) of R.A. 3019.

<sup>1</sup> *Rollo* (G.R. Nos. 224720-23), pp. 118-229.

<sup>2</sup> *Id.* at 13-54. Penned by Associate Justice Rafael R. Lagos, with Associate Justices Efren N. De La Cruz and Rodolfo A. Ponferrada concurring.

<sup>3</sup> *Id.* at 109-115.

<sup>4</sup> *Rollo* (G.R. Nos. 224765-68), Vol. I, pp. 10-57.



### The Facts

The instant case revolves around the procurement of five motor vehicles for the use of the Governor and Vice Governor of Davao del Sur (the Province).

Through Purchase Requests dated January 24, 2003,<sup>5</sup> February 18, 2003,<sup>6</sup> and July 15, 2003,<sup>7</sup> all signed by Bautista as then Governor of the Province, the Office of the Governor requested the acquisition of five specific vehicle brands and makes for the purpose of providing service vehicles for the use of the Governor and Vice Governor, *i.e.*, two units of Toyota Hilux 4x4 SR5 (Toyota Hilux), one unit of Mitsubishi L300 Exceed DX2500 Diesel (Mitsubishi L300 Exceed), and two units of Ford Ranger XLT 4x4 (Ford Ranger) (collectively, the subject vehicles).

The procurement of the subject vehicles was not subjected to competitive public bidding as it was effected through direct purchase. The recommendation was approved by the members of the Bids and Awards Committee (BAC) of the Province, which was comprised of the following individuals: (1) Bautista; (2) Martel, then Provincial Accountant; (3) Putong, then Provincial General Services Officer (GSO); (4) Guiñares, then Provincial Treasurer; (5) Mier, then Provincial Budget Officer; and (6) Gan, then member of the *Sangguniang Panlalawigan* (collectively, petitioners). Accordingly, the vehicles were purchased. The disbursement vouchers for the subject vehicles were signed by Martel and Guiñares in their capacity as Provincial Accountant and Provincial Treasurer, respectively.

The subject vehicles and their corresponding purchase price, date of purchase request, and vehicle suppliers, are as follows:

Motor Vehicle Brand and Make	Purchase Price	Date of Purchase Request	Supplier
Two units of Toyota Hilux	P2,500,000.00	January 24, 2003	Toyota Davao City, Inc. (Toyota Davao)
One unit of Mitsubishi L300 Exceed	P878,919.50	February 18, 2003	Kar Asia, Inc. (Kar Asia)
One unit of Ford Ranger	P1,000,000.00	July 15, 2003	Ford Davao
One unit of Ford Ranger	P1,218,000.00	July 15, 2003	Ford Davao

<sup>5</sup> *Rollo* (G.R. Nos. 224720-23), p. 362.

<sup>6</sup> *Id.* at 368.

<sup>7</sup> *Id.* at 375.

The specifics on these purchases were detailed by the Sandiganbayan, thus:

The procurement covered in these cases were transacted through and justified as Direct Purchase covered under Sec. 366(d) [of the Local Government Code (LGC)], based on the tenor or as described in the supporting documents involved, such as the Purchase Requests, Purchase Orders, and Awards, in particular.

The *Purchase Request* signed by Bautista for the two units of **Toyota SR5** (Exhibit I) dated January 24, 2003, shows at the column Item Description the typewritten words: NOTE: Direct Purchase, and handwritten on the Purchase Order (Exhibit G) dated January 29, 2003, across Mode of Procurement: DIRECT PURCHASE, as well as stamped DIRECT PURCHASE at the bottom of the column Description. The *Abstract of Canvass* (Exhibit J) is stamped with the words "DIRECT PURCHASE" on the front of the form below the column Name and Description of Article and typewritten under the portion for JUSTIFICATION OF AWARD: SOLE DISTRIBUTOR. The *Abstract* form was signed by the accused Bautista, Guiñares, Martel, Putong, Mier and Gan.

For the **Mitsubishi L300 EXCEED DX 2500 DIESEL**, the *Purchase Request* (Exhibit RR) dated February 18, 2003 signed by Bautista, is stamped on the front with "DIRECT PURCHASE" and the Purpose for the request specified as "For the use of the Governor". On the *Purchase Order* dated February 26, 2003 is typewritten the letters opposite the portion Mode of Procurement: "D.P." The *Abstract of Canvass* (Exhibit SS) is also stamped Direct Purchase and under the Justification of Award: EXCLUSIVE DISTRIBUTOR, and signed by all the accused.

For the two units of **Ford Ranger**, only one *Purchase Request* dated July 15, 2003 signed by Bautista was used, designated as PR No. 2752, but one is marked as Exhibits MMM and the other Exhibit CCCC. It indicates under the column Item Description: "Vehicle preferably Ford Ranger XLT 4x4 M/T" at an estimated cost of P2,000,000.00 for both, and below it the words: DIRECT PURCHASE. The Purpose section indicated: "For the use of Governor Benjamin P. Bautista, Jr. and Vice Governor Romualdo C. Garcia". The same exhibits show different stamped entries, aside from the basic typewritten entries and the signatures of officials involved in the processing thereof.

For the vehicle reserved for accused Bautista, Purchase Order No. 2231 (Exhibit KKK), dated July 29, 2003, for one unit Ford Ranger in the amount of P1,000,000.00 was used. It indicates "Mode of Procurement: Public Bidding," but stamped on the document are the words "DIRECT PURCHASE." The *DIRECT PURCHASE AWARD SHEET* (Exhibit LLL), naming FORD DAVAO as supplier, contains the following statement: The Local Bids & Awards Committee hereby award the above item/s to FORD DAVAO being the Manufacturer/Exclusive or Sole of the said item/s." The award sheet was signed by all the accused.

The vehicle reserved for Vice Governor Garcia makes reference to Purchase Order/PO No. 2230 (Exhibit DDDD), dated July 21, 2003, for the



amount of P1,218,000.00. The Mode of Procurement section was left blank, but stamped thereon are the words "DIRECT PURCHASE." The DIRECT PURCHASE AWARD SHEET (Exhibit EEEE) contains the same statement that it awards the purchase of one (1) unit vehicle "preferably Ford Ranger XLT 4x4 M/T" for use of Vice-Gov. Romualdo C. Garcia to Ford Davao, "being the Manufacturer/Exclusive or Sole Distributor" thereof. The award sheet was signed by all the accused.

These five (5) vehicles were delivered to the Davao del Sur Provincial Government, and after inspection and acceptance by the concerned officials, check payments were issued to Toyota Davao, Ford Davao and Kar Asia, based on the disbursement vouchers admitted by the parties.<sup>8</sup>

Subsequently, a letter dated September 2, 2003 was filed by the *Concerned Citizens for Good Governance* (CCGG) before the Office of the Ombudsman in Mindanao (Ombudsman).<sup>9</sup>

The CCGG alleged that petitioners procured five motor vehicles for the use of the Governor and Vice Governor of the Province in a manner violative of procurement laws. The complaint was docketed as Case No. OMB-M-C-05-0557-L entitled *Concerned Citizens for Good Governance v. Gov. Benjamin Bautista, Jr. Province of Davao del Sur*.<sup>10</sup>

On February 15, 2012, the Ombudsman issued a Resolution<sup>11</sup> finding probable cause against petitioners for violating Section 3(e) of R.A. 3019, positing the view that the purchase of the subject vehicles did not conform to existing procurement laws and regulations of the Commission on Audit (COA).

On October 30, 2012, the Ombudsman filed before the Sandiganbayan four Informations<sup>12</sup> charging petitioners with **violation of Section 3(e) of R.A. 3019**. The Informations against them read as follows:

#### **For Criminal Case No. SB-12-CRM-0241**

That on or about 24 January 2003, or sometime prior or subsequent thereto, in Matti, Digos City, Davao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, BENJAMIN P. BAUTISTA, JR., RICHARD T. MARTEL, ALLAN C. PUTONG, ABEL A. GUIÑARES, VICTORIA G. MIER, and EDGAR C. GAN, public officers being then the Governor, Accountant, General Services Officer, Treasurer, Budget Officer, Sangguniang Panlalawigan Member, respectively and all members of the Local Bids and Awards Committee of the Provincial Government of Davao del Sur, while in the discharge of their official functions, conspiring and confederating with one another, with

<sup>8</sup> Id. at 41-42. Emphasis in the original.

<sup>9</sup> *Rollo* (G.R. Nos. 224765-68), Vol. II, pp. 724-754. (Including attachments)

<sup>10</sup> *Rollo* (G.R. Nos. 224765-68), Vol. I, p. 21.

<sup>11</sup> *Rollo* (G.R. Nos. 224765-68), Vol. II, p. 755-790.

<sup>12</sup> Id. at 795-807.



evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the procurement of two (2) units Toyota Hilux 4x4 through an unjustified direct purchase from TOYOTA Davao City, Inc. in the net amount of TWO MILLION FIVE HUNDRED THOUSAND PESOS (P2,500,000.00), instead of the requisite public bidding, by specifying the brand name of the motor vehicle in the Purchase Request, in violation of the procurement laws, thereby denying the Provincial Government of Davao del Sur of the opportunity to find suitable substitutes of the same quality and obtain the most advantageous offer for the requisitioned item, and thus, giving unwarranted benefit, advantage, or preference to TOYOTA Davao City, Inc., to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>13</sup>

### **For Criminal Case No. SB-12-CRM-0242**

That on or about 18 February 2003, or sometime prior or subsequent thereto, in Mati, Digos City, Davao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, BENJAMIN P. BAUTISTA, JR., RICHARD T. MARTEL, ALLAN C. PUTONG, ABEL A. GUIÑARES, VICTORIA G. MIER, and EDGAR C. GAN, public officers being then the Governor, Accountant, General Services Officer, Treasurer, Budget Officer, Sangguniang Panlalawigan Member, respectively and all members of the Local Bids and Awards Committee of the Provincial Government of Davao del Sur, while in the discharge of their official functions, conspiring and confederating with one another, with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the procurement of one (1) unit of Mitsubishi L300 Exceed DX2500 Diesel through an unjustified direct purchase from Kar Asia, Inc. in the net amount of EIGHT HUNDRED SEVENTY EIGHT THOUSAND NINE HUNDRED NINETEEN PESOS AND FIFTY CENTAVOS (P878,919.50), instead of the requisite public bidding, by specifying the brand name of the motor vehicle in the Purchase Request, in violation of the procurement laws, thereby denying the Provincial Government of Davao del Sur of the opportunity to find suitable substitutes of the same quality and obtain the most advantageous offer for the requisitioned item, and thus, giving unwarranted benefit, advantage, or preference to Kar Asia, Inc., to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>14</sup>

### **For Criminal Case No. SB-12-CRM-0243**

That on or about 15 July 2003, or sometime prior or subsequent thereto, in Mati, Digos City, Davao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, BENJAMIN P. BAUTISTA, JR., RICHARD T. MARTEL, ALLAN C. PUTONG, ABEL A. GUIÑARES, VICTORIA G. MIER, and EDGAR C. GAN, public officers being then the Governor, Accountant, General Services Officer, Treasurer, Budget Officer, Sangguniang Panlalawigan Member,

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<sup>13</sup> Id. at 796.

<sup>14</sup> Id. at 799.



respectively and all members of the Local Bids and Awards Committee of the Provincial Government of Davao del Sur, while in the discharge of their official functions, conspiring and confederating with one another, with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the procurement of one (1) unit of Ford Ranger XLT 4x4 through an unjustified direct purchase from Ford Davao in the net amount of ONE MILLION PESOS (P1,000,000.00), instead of the requisite public bidding, by specifying the brand name of the motor vehicle in the Purchase Request, in violation of the procurement laws, thereby denying the Provincial Government of Davao del Sur of the opportunity to find suitable substitutes of the same quality and obtain the most advantageous offer for the requisitioned item, and thus, giving unwarranted benefit, advantage, or preference to Ford Davao to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>15</sup>

### **For Criminal Case No. SB-12-CRM-0244**

That on or about 21 July 2003, or sometime prior or subsequent thereto, in Matti, Digos City, Davao del Sur, and within the jurisdiction of this Honorable Court, the above-named accused, BENJAMIN P. BAUTISTA, JR., RICHARD T. MARTEL, ALLAN C. PUTONG, ABEL A. GUIÑARES, VICTORIA G. MIER, and EDGAR C. GAN, public officers being then the Governor, Accountant, General Services Officer, Treasurer, Budget Officer, Sangguniang Panlalawigan Member, respectively and all members of the Local Bids and Awards Committee of the Provincial Government of Davao del Sur, while in the discharge of their official functions, conspiring and confederating with one another, with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause the procurement of one (1) unit of Ford Ranger XLT 4x4 through an unjustified direct purchase from Ford Davao in the net amount of ONE MILLION TWO HUNDRED EIGHTEEN PESOS (P1,218,000.00), instead of the requisite public bidding, by specifying the brand name of the motor vehicle in the Purchase Request, in violation of the procurement laws, thereby denying the Provincial Government of Davao del Sur of the opportunity to find suitable substitutes of the same quality and obtain the most advantageous offer for the requisitioned item, and thus, giving unwarranted benefit, advantage, or preference to Ford Davao to the damage and prejudice of the government.

CONTRARY TO LAW.<sup>16</sup>

On January 24, 2013, each of the petitioners pleaded not guilty to the charges. Pre-trial was conducted on June 24, 2013. On August 5, 2013, the Sandiganbayan issued its Pre-Trial Order.<sup>17</sup>

The trial proceeded thereafter. The prosecution presented two witnesses in the persons of Alicia D. San Juan (San Juan), COA State Auditor III, and Maria Victoria Napalit Ranada (Ranada), COA Attorney VI, Regional Office

<sup>15</sup> Id. at 802.

<sup>16</sup> Id. at 805.

<sup>17</sup> *Rollo* (G.R. Nos. 224720-23), p. 16.



No. 11,<sup>18</sup> though only the former was able to testify, as the testimony of the latter was dispensed with.<sup>19</sup> San Juan's testimony focused on the special audit conducted by the COA with respect to the procurement of the subject vehicles. The COA Audit/Investigation Report<sup>20</sup> dated July 28, 2005 reached the conclusion that the procurement of the subject vehicles was anomalous and violated procurement law.

On May 26, 2014, petitioners filed a Motion for Leave of Court to File Demurrer to Evidence,<sup>21</sup> asserting that the prosecution failed to provide sufficient evidence to establish the conviction of the accused. In its Resolution<sup>22</sup> dated June 23, 2014, the Sandiganbayan denied the aforesaid Motion.

Afterwards, the defense proceeded to present its evidence, with Putong, Martel, Guiñares, Bautista, Jr., and Mier testifying.<sup>23</sup> In their testimonies, they uniformly stressed that the suppliers who provided the subject vehicles were the exclusive dealers of the subject vehicles. Hence, direct purchase as the mode of procurement was warranted under Section 371<sup>24</sup> of R.A. 7160, otherwise known as the Local Government Code. They also emphasized that the documents involving the subject procurement were transmitted to the Provincial Auditor of the COA and that no adverse comment was received by petitioners from the Provincial Auditor's Office.

### The Ruling of the Sandiganbayan

After trial on the merits, the Sandiganbayan promulgated the assailed Decision finding petitioners guilty beyond reasonable doubt of violating Section 3(e) of R.A. 3019.

The dispositive portion of the assailed Decision reads:

**WHEREFORE**, premises considered, this Court renders judgment finding accused Benjamin P. Bautista, Jr., Richard T. Martel, Allan C. Putong, Abel A. Guiñares, Victoria G. Mier and Edgar C. Gan GUILTY beyond reasonable doubt for violating section 3(e) of R.A. No. 3019 in all of the cases covered herein, and therefore sentences them to an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, for each of the four (4) cases.

<sup>18</sup> Id. at 17.

<sup>19</sup> Id. at 26.

<sup>20</sup> Id. at 390-398.

<sup>21</sup> *Rollo* (G.R. Nos. 224765-68), Vol. III, pp. 999-1090.

<sup>22</sup> Id. at 1091-1092. Penned by Associate Justice Efren N. De La Cruz, with Associate Justices Rafael R. Lagos, and Napoleon E. Inoturan concurring.

<sup>23</sup> *Rollo* (G.R. Nos. 224720-23), pp. 27-28.

<sup>24</sup> SECTION 371. *Procurement from Exclusive Philippine Agents or Distributors*. — Procurement may, in the case of supplies of foreign origin, preferably be made directly from the exclusive or reputable Philippine distributors or agents, subject to the following conditions:

(a) That the Philippine distributor has no subdealers selling at lower prices; and

(b) That no suitable substitutes of substantially the same quality are available at lower prices.



All of the accused are also perpetually disqualified from holding public office. There being no act or omission on which civil liability can be based on, none is pronounced.

*Costs de officio.*

**SO ORDERED.**<sup>25</sup>

The Sandiganbayan found that the procurement of the subject vehicles violated procurement laws and that all the elements of Section 3(e) of R.A. 3019 were present when the procurement of the subject vehicles was undertaken by petitioners.

The Sandiganbayan held that petitioners erroneously relied on Section 371 of the LGC, which provides for the direct purchase of goods from exclusive distributors. The Sandiganbayan also specifically found Bautista, Jr. and Putong guilty for acting with manifest partiality when they identified the particular brands of the subject vehicles in the Purchase Requests. On their part, Martel, Guiñares, Mier, and Gan were convicted due to their gross negligence as BAC members in arriving at the conclusion that the direct purchase of the subject vehicles was justified.

Petitioners filed their Motion for Reconsideration<sup>26</sup> (MR) dated March 10, 2016 and Supplement to the MR<sup>27</sup> dated March 21, 2016, which were denied by the Sandiganbayan in the assailed Resolution.

Aggrieved, petitioners filed their separate appeals before the Court.

### **Proceedings before the Court**

In his petition, Bautista lays down the following arguments:

- A. THERE IS NO COMPETENT EVIDENCE SHOWING MANIFEST PARTIALITY ON THE PART OF PETITIONER BAUTISTA. SPECIFYING THE BRAND OF THE SUBJECT MOTOR VEHICLES DOES NOT NECESSARILY CONSTITUTE MANIFEST PARTIALITY.
  - i. The brand and model of a particular motor vehicle is descriptive of its specifications, performance, and overall value.
  - ii. Petitioner Bautista's preference of the Subject Motor Vehicles did not restrict the BAC from determining the vehicle to be procured.

<sup>25</sup> *Rollo* (G.R. Nos. 224720-23), pp. 53-54.

<sup>26</sup> *Id.* at 55-97.

<sup>27</sup> *Id.* at 101-108.

- B. THE RESORT TO DIRECT PURCHASE, WHICH IS ALLOWED BY LAW, IS NOT INDICATIVE OF ANY "MANIFEST PARTIALITY".
- C. THE DIRECT PURCHASE OF THE SUBJECT MOTOR VEHICLES DID NOT RESULT TO ANY UNWARRANTED BENEFIT, ADVANTAGE, OR PREFERENCE TO TOYOTA DAVAO, FORD DAVAO, AND KAR ASIA.
- i. Contrary to the ruling of the Sandiganbayan, being able to sell products at quoted prices without public bidding does not automatically result in giving unwarranted benefits to Toyota Davao, Ford Davao, and Kar Asia.
- ii. The State failed to discharge the burden of proving beyond reasonable doubt that unwarranted benefits resulted in favor of Toyota Davao, Ford Davao, and Kar Asia.
- D. THE SANDIGANBAYAN ERRED IN FINDING PETITIONER BAUTISTA GUILTY OF GRAFT AND CORRUPT PRACTICES UNDER SECTION 3(E) OF R.A. 3019. THE RECORDS FAIL TO SHOW CRIMINAL INTENT ON THE PART OF PETITIONER BAUTISTA. ON THE CONTRARY, THE RECORDS SHOW THAT HE ACTED IN GOOD FAITH.<sup>28</sup>

For their part, Martel, Putong, Guiñares, Mier, and Gan raised the following arguments in their petition:

- A. THE PROCUREMENT FROM EXCLUSIVE PHILIPPINE AGENTS OR DISTRIBUTORS OF FOREIGN SUPPLIES AS AUTHORIZED IN SEC. 371 OF THE LOCAL GOVERNMENT CODE EXTENDS LIKEWISE TO PROCUREMENT FROM EXCLUSIVE DEALERS IN VIEW OF THE PECULIAR CIRCUMSTANCES IN THE MOTOR VEHICLE INDUSTRY WHERE EXCLUSIVE PHILIPPINE AGENTS OR DISTRIBUTORS OF VEHICLES OF FOREIGN ORIGIN TRANSACT BUSINESS ONLY WITH THEIR DEALERS.<sup>29</sup>
- A.1. THE FINDINGS OF FACT OF THE COURT A QUO THAT TOYOTA DAVAO, FORD DAVAO, AND KAR ASIA WERE NOT EXCLUSIVE DEALERS WERE CONTRADICTED BY THE EVIDENCE ON RECORD.<sup>30</sup>
- A.2. EVEN THE COA AUDIT TEAM CONFIRMED THAT TOYOTA DAVAO, FORD DAVAO, AND KAR ASIA WERE EXCLUSIVE DISTRIBUTORS

<sup>28</sup> *Rollo* (G.R. Nos.224765-68), pp. 31-33.

<sup>29</sup> *Rollo* (G.R. Nos. 224720-23), Vol I., p.137.

<sup>30</sup> *Id.* at 140.



OF TOYOTA, FORD, AND MITSUBISHI,  
RESPECTIVELY.<sup>31</sup>

- B. THE PREPARATION OF A SUPPLEMENTARY PROCUREMENT PLAN, WHICH IS AUTHORIZED UNDER SEC. 11 OF COA CIRC. NO. 92-386, JUSTIFIED THE PROCUREMENT BY THE PROVINCIAL GOVERNMENT OF THE FORD VEHICLES.<sup>32</sup>
- C. THE PETITIONERS CANNOT BE HELD LIABLE FOR THE ACTS OF THE REQUISITIONER IN SPECIFYING THE BRAND OF MOTOR VEHICLES IN THE PRS.<sup>33</sup>
- C.1. THE BRANDS SPECIFIED BY THE REQUISITIONERS IN THE PRS MERELY FORM PART OF THE TECHNICAL SPECIFICATIONS THAT WOULD FILL AND SATISFY THE NEEDS OF THE REQUISITIONERS.<sup>34</sup>
- C.2. THE BRANDS SPECIFIED BY THE REQUISITIONERS IN THE PRS WERE MERELY RECOMMENDATORY TO THE BAC SINCE IT STILL BEHOVED UPON THIS COMMITTEE TO DETERMINE, AFTER COMPLYING WITH THE RELEVANT LAWS, THE WINNING BIDDER.<sup>35</sup>
- C.3. THE MERE SPECIFICATION OF THE BRANDS IN THE PRS CANNOT JUSTIFY A DECLARATION OF PARTIALITY TO THE BRANDS.<sup>36</sup>
- C.4. THE SPECIFICATION OF THE BRANDS IN THE PRS DID NOT RESULT TO UNWARRANTED BENEFIT, ADVANTAGE, OR PREFERENCE TO ANY PARTY INCLUDING THE EXCLUSIVE DEALERS.<sup>37</sup>
- D. THE RESORT BY THE PROVINCIAL GOVERNMENT [TO] THE DIRECT PURCHASE OF THE VEHICLES SUBJECT OF THESE CASES, AS IT IS AUTHORIZED BY SEC. 371 OF R.A. NO. 7160, WAS JUSTIFIED.<sup>38</sup>
- E. THE FINDINGS OF THE COURT *A QUO* AS TO THE LIABILITY OF THE PETITIONERS WERE GROUNDED ON

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<sup>31</sup> Id. at 144.

<sup>32</sup> Id. at 146-147.

<sup>33</sup> Id. at 153.

<sup>34</sup> Id. at 155.

<sup>35</sup> Id. at 159.

<sup>36</sup> Id. at 161.

<sup>37</sup> Id. at 166.

<sup>38</sup> Id. at 169.

CONJECTURES AND PREMISED ON THE ABSENCE OF EVIDENCE.<sup>39</sup>

- E.1. PETITIONER PUTONG, AS THE GENERAL SERVICES OFFICER AND AS MEMBER OF THE BAC, HAD NO DUTY TO FILL-UP THE PURCHASE REQUESTS.<sup>40</sup>
- E.2. THE ACT OF THE REQUISITIONER IN SPECIFYING THE BRANDS TOYOTA, FORD, AND MITSUBISHI IN THE PRS CANNOT GIVE RISE TO A VALID CONCLUSION THAT PETITIONER PUTONG INTENDED TO BE PARTIAL TO TOYOTA, FORD, AND MITSUBISHI.<sup>41</sup>
- E.3. THE SPECIFICATION OF THE BRANDS IN THESE CASES DID NOT PREJUDICE THE INTERESTS OF THE GOVERNMENT.<sup>42</sup>
- E.4. THERE IS NO LAW THAT REQUIRES THE REQUISITIONER TO EXPLAIN HIS ACT IN SPECIFYING A BRAND IN THE PR OR WHEN HE CALLS FOR A BRAND AT A HIGHER PRICE.<sup>43</sup>
- E.5. THE ENSUING DECISION OF THE BAC TO PROCURE THE VEHICLES AS REQUESTED BY THE REQUISITIONER WAS ANCHORED ON THE RESULTS OF ITS STUDY AND NOT SOLELY ON THE "PARTICULAR NEEDS OF THE PROVINCE'S ROAD CONDITIONS."<sup>44</sup>
- E.6. [AS FOR PETITIONERS MARTEL, GUIÑARES, MIER, AND GAN, THE] COURT *A QUO* FOUND THAT THERE WAS NO CONSPIRACY AMONG THE PETITIONERS WHICH ONLY FORTIFIES THE TRUTH THAT MARTEL, ET AL. WERE NOT MANIFESTLY PARTIAL TO THE BRANDS INDICATED IN THE PRS OR THAT THEY HAVE NOT GIVEN UNWARRANTED BENEFITS, ADVANTAGE, OR PREFERENCE TO THE DEALERS.<sup>45</sup>
- E.7. THERE WAS MANIFEST MISTAKE IN THE INFERENCE OF THE COURT *A QUO* THAT PETITIONERS MARTEL, GUIÑARES, MIER, AND GAN WERE GROSSLY NEGLIGENT

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<sup>39</sup> Id. at 176.

<sup>40</sup> Id. at 177.

<sup>41</sup> Id. at 182.

<sup>42</sup> Id. at 187.

<sup>43</sup> Id. at 189.

<sup>44</sup> Id. at 192-193.

<sup>45</sup> Id. at 200.

WHEN THEY ARRIVED AT THE CONCLUSION THAT THE DIRECT PURCHASE CAN BE JUSTIFIED.<sup>46</sup>

E.8. THERE WAS PATENT MISTAKE IN THE CONCLUSION OF THE COURT *A QUO* THAT PETITIONERS MARTEL, GUIÑARES, MIER, AND GAN HAD ACTED IN BAD FAITH.<sup>47</sup>

The People of the Philippines, represented by the Ombudsman, through the Office of the Special Prosecutor, filed Comments<sup>48</sup> for both petitions. In both Comments, the People maintain that petitioners violated the procurement rules in their resort to direct purchase without the conduct of a public bidding. By preselecting the vehicle models to be procured, petitioners are alleged to have acted with manifest partiality in favor of their preferred suppliers and accorded them unwarranted benefit and advantage, causing undue injury to the government. Their criminal intent and evident bad faith are apparent in their deliberate breach of their sworn duty to obey the laws by flouting procurement rules and procedures. Moreover, the People claim that petitioners are asking the Court to revisit evidentiary matters, which is beyond the pale of an appeal by *certiorari*.<sup>49</sup>

Petitioners filed their respective Replies,<sup>50</sup> maintaining their position in their petitions.

On August 14, 2017, the Court noted the Manifestation filed by petitioners in the Martel Petition informing the Court as to the death of Gan on December 4, 2016.<sup>51</sup>

### Issue

Whether the Sandiganbayan erred in finding petitioners guilty beyond reasonable doubt for violation of Section 3(e) of R.A. 3019.

### The Court's Ruling

The petition is meritorious.

#### *I. Procedural Matters*

The People contend that the petitions must be denied because the grounds relied upon involve questions of fact. Moreover, the petitions amount to a collateral attack on the judgment of conviction by raising doubt as to

<sup>46</sup> Id. at 203.

<sup>47</sup> Id. at 216.

<sup>48</sup> Id. at 458-492; *Rollo* (G.R. Nos. 224765-68), Vol. III, pp. 1227-1262.

<sup>49</sup> *Rollo* (G.R. Nos. 224765-68), Vol. III, pp. 1239 and 1332.

<sup>50</sup> Id. at 1267-1289; *Rollo* (G.R. Nos. 224720-23), pp. 621-667.

<sup>51</sup> *Rollo* (G.R. Nos. 224720-23), p. 431.



whether the acts of petitioners were sufficient to establish criminal liability, thereby assailing the Sandiganbayan's appreciation of evidence. According to the People, the petitions fail to demonstrate that the issues raised therein fall under any of the recognized exceptions warranting a factual review by the Court.<sup>52</sup>

The Court disagrees.

While it is the general rule that only questions of law may be raised in petitions filed under Rule 45,<sup>53</sup> there are recognized exceptions, namely:

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>54</sup>

The petitions invoke the first, second, third, fourth, eighth, tenth, and eleventh exceptions above.<sup>55</sup>

After a judicious examination of the records of this case, the Court finds petitioners' invocation of these exceptions to be well-taken. While the findings of fact of the Sandiganbayan as a trial court are accorded weight and respect, the Court will not hesitate to reverse the conclusions reached by the trial court when there appears to be a misappreciation of facts.<sup>56</sup> Ultimately, the Court must be satisfied that in convicting the accused, the factual findings and conclusions of the trial court meet the exacting standard of proof beyond reasonable doubt.<sup>57</sup> Here, such standard has not been met.

## II. Substantive Matters

In order to convict the accused for violation of Section 3(e) of R.A. 3019, the following elements must be proven beyond reasonable doubt: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he must have acted with manifest partiality, or evident

<sup>52</sup> *Rollo* (G.R. Nos. 224720-23), pp. 486-488; *Rollo* (G.R. Nos. 224765-68), Vol. III, pp. 1256-1259.

<sup>53</sup> RULES OF COURT, Rule 45, Sec. 1.

<sup>54</sup> *De Castro v. Office of the Ombudsman*, 810 Phil. 31, 44-45 (2017).

<sup>55</sup> *Rollo* (G.R. Nos. 224720-23) p. 122; *Rollo* (G.R. Nos. 224765-68), Vol. III, pp. 1282-1283.

<sup>56</sup> *Cruz v. People*, G.R. Nos. 197142 & 197153, October 9, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65804>>.

<sup>57</sup> *Id.*

bad faith, or gross inexcusable negligence; and (3) his action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>58</sup>

The first element is established in this case. As for the second and third elements, the prohibited act of either causing undue injury or giving unwarranted benefits, advantage, or preference may be committed in three ways, as defined below:

There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes. “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>59</sup>

Based on the foregoing definitions, the Court cannot uphold the conviction of the accused. A thorough review of the facts and evidence presented shows that the prosecution failed to prove beyond reasonable doubt the second element for a violation of Section 3(e) of R.A. 3019.

#### *On the matter of procurement*

The Sandiganbayan found Bautista, Jr. and Putong guilty of acting with manifest partiality when they identified the particular brands of the subject vehicles in the Purchase Requests. On their part, Martel, Guiñares, Mier, and Gan were convicted due to their gross negligence as BAC members in arriving at the conclusion that the direct purchase of the subject vehicles was justified. Since the case revolves around the procurement of the subject vehicles, a discussion of the applicable procurement laws is necessary.

The prevailing law on government procurement is R.A. 9184 or the Government Procurement Reform Act. This law was signed by the President on January 10, 2003. Section 78 thereof provided for the effectivity of the law after fifteen (15) days following its publication. Considering that the Act was published in *Malaya* on January 11, 2003, R.A. 9184 became effective only on January 26, 2003.<sup>60</sup>

<sup>58</sup> *Rivera v. People*, G.R. No. 228154, October 16, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65819>>.

<sup>59</sup> *Tiongco v. People*, G.R. Nos. 218709-10, November 14, 2018, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64833>>.

<sup>60</sup> See *Thunder Security and Investigation Agency v. NFA*, 670 Phil. 351 (2011).

As to the first subject procurement, *i.e.*, the procurement of two units of Toyota Hilux 4x4 SR5, the Purchase Request was signed and issued by petitioner Bautista, Jr. on January 24, 2003, or two days prior to the effectivity of R.A. 9184.

Hence, the procurement law applicable to the first subject procurement is primarily the LGC, specifically Title VI, Book II, which deals with the property and supply management of Local Government Units (LGUs). The aforesaid section of the LGC governs “the procurement, care, utilization, custody, and disposal of supplies, as defined herein, by local government units and the other aspects of supply management at the local levels.”<sup>61</sup>

Pursuant to Section 383<sup>62</sup> of the LGC, the implementing rules and regulations of the LGC provisions on the supply and property management of LGUs was issued by the COA through COA Circular No. 92-386.

Upon the effectivity of R.A. 9184 on January 26, 2003, Title VI, Book II of the LGC was *expanded*.<sup>63</sup> Hence, with respect to the three subsequent procurements which involve Purchase Requests that were signed and issued beyond January 26, 2013, R.A. 9184 should be considered together with the pertinent provisions of the LGC.

In any event, it must be emphasized that the relevant rules on the procurement of goods sold by an exclusive dealer or manufacturer through direct contracting, as well as the manner by which the specifications of the goods to be procured are presented, are *essentially similar* under the LGC and R.A. 9184.

With respect to the general policy on the method of procurement, the LGC states that the “acquisition of supplies by local government units shall be through competitive public bidding.”<sup>64</sup> Similarly, R.A. 9184 provides that “[a]ll Procurement shall be done through Competitive Bidding.”<sup>65</sup>

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<sup>61</sup> LOCAL GOVERNMENT CODE, Sec. 355.

<sup>62</sup> SECTION 383. *Implementing Rules and Regulations*. — The Chairman of the Commission on Audit shall promulgate the rules and regulations necessary to effectively implement the provisions of this Title, including requirements as to testing, inspection, and standardization of supply and property.

<sup>63</sup> Note: while the Repealing Clause of R.A. 9184, *i.e.*, Section 76, expressly repealed E.O. 40, E.O. 262, s. 2000, E.O. 302, s. 1996, and Presidential Decree No. 1594, Title VI, Book II of the LGC was *merely amended*.

SECTION 76. *Repealing Clause*. — This law *repeals* Executive Order No. 40, series of 2001 x x x. **This law amends Title Six, Book Two of Republic Act No. 7160, otherwise known as the “Local Government Code of 1991”**; the relevant provisions of Executive Order No. 164, series of 1987, entitled “Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government”; and the relevant provisions of Republic Act No. 7898 dated February 23, 1995, entitled “An Act Providing for the Modernization of the Armed Forces of the Philippines and for Other Purposes.” Any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly. (Emphasis supplied)

<sup>64</sup> LOCAL GOVERNMENT CODE, Sec. 356.

<sup>65</sup> R.A. 9184, Sec. 10.



Nonetheless, the general rule of competitive public bidding under both the LGC and R.A. 9184 admits of exceptions.

Under Section 366 of the LGC, procurement of supplies may be made without the benefit of public bidding under any of the following modes: (a) Personal canvass of responsible merchants; (b) Emergency purchase; (c) Negotiated purchase; (d) Direct purchase from manufacturers or exclusive distributors; and (e) Purchase from other government entities.

Comparatively, under Section 48 of R.A. 9184, subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in the law, the Procuring Entity may resort to any of the following alternative methods of Procurement: (a) Limited Source Bidding; (b) Direct Contracting; (c) Repeat Order; (d) Shopping; and (e) Negotiated Procurement. Alternative methods shall be resorted to only in highly exceptional cases.<sup>66</sup>

In the instant case, petitioners justify the eschewing of competitive bidding in procuring the subject vehicles on the reasoning that these were goods of foreign origin that may only be procured directly from the exclusive Philippine distributors or agents.

Under the LGC, in case of supplies of foreign origin, LGUs may do away with competitive bidding and procure directly from the exclusive Philippine distributors, or agents, subject to certain conditions:

Section 371. *Procurement from Exclusive Philippine Agents or Distributors.* — Procurement may, in the case of supplies of foreign origin, preferably be made directly from the exclusive or reputable Philippine distributors or agents, subject to the following conditions:

- (a) That the Philippine distributor has no subdealers selling at lower prices; and
- (b) That no suitable substitutes or substantially the same quality are available at lower prices.

Under Section 105<sup>67</sup> of COA Circular No. 92-386, a *certification* to the effect that the distributor has no subdealers selling at lower price must be secured from the principal and/or exclusive distributor.

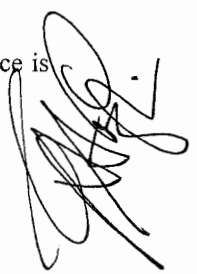
Similarly, Section 50 (c) of R.A. 9184 provides that direct contracting may be resorted to with respect to “[t]hose sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for

<sup>66</sup> R.A. 9184 IRR-A, Sec. 48.2.

<sup>67</sup> SECTION 105. *When Procurement from Exclusive Philippine Agent or Distributors may be Made.* — Procurement of supplies or property of foreign origin may preferably be made directly from the exclusive or reputable Philippine distributors or agents subject to the following conditions:

- a. the Philippine distributor has no subdealers selling at lower prices; and
- b. no suitable substitutes of substantially the same quality are available at lower prices.

*Provided,* That certification to the effect that the distributor has no subdealers selling at lower price is secured from the principal and/or exclusive distributor.



which no suitable substitute can be obtained at more advantageous terms to the government.”

In the instant case, it is not disputed that the procurement of the subject vehicles did not undergo competitive public bidding. Petitioners justify their not resorting to bidding by asserting that the procurement of the subject vehicles was allowed by way of direct purchase from exclusive distributors. They maintain that there were no suitable substitutes of substantially the same quality as those of the subject vehicles available at lower prices.

Procurement law defines a *suitable substitute* as an “article which would serve substantially the same purpose or produce substantially the same results as the brand, type, or make of article originally desired or requisitioned.”<sup>68</sup> According to petitioners, the purpose of the subject procurement was to provide vehicles for the use of the Governor and Vice Governor in transporting people and goods throughout the Province in rough roads, well-paved roads, and not so well-paved roads.<sup>69</sup>

Bautista, Jr. clarified that the purpose for the procurement of the subject vehicles was for the general need for pick-up trucks:

JUSTICE LAGOS:

So, what was the appropriation for? Was it for specific Toyota, Mitsubishi and Ford vehicles or a general need for pick-up trucks?

WITNESS:

General need, Your Honor.

JUSTICE LAGOS:

It's for a general need.

WITNESS:

Yes, Your Honor.<sup>70</sup> (Underscoring supplied)

Hence, the resort to direct contracting would have been legally permissible only if there were no other vehicles that may have served the general need of the Governor and Vice Governor for pick-up trucks aside from the specific vehicle brands and makes purchased.

In asserting that there are no other suitable vehicles that satisfy the abovementioned purpose, petitioners primarily relied on certifications issued by the three suppliers of the subject vehicles, *i.e.*, Toyota Davao, Kar Asia, and Ford Davao.

<sup>68</sup> COA Circular No. 92-386, Sec. 4.

<sup>69</sup> Transcript and Stenographic Notes (TSN) dated October 20, 2014, p. 10. *Rollo* (G.R. Nos. 224765-68), Vol. III, p. 1134.

<sup>70</sup> TSN dated May 25, 2014, p. 41. *Rollo* (G.R. Nos. 224765-68), Vol. I, p. 213.



However, at most, these certifications merely state that the aforesaid car dealers are the exclusive dealers of Toyota Hilux, Mitsubishi L300 Exceed, and Ford Davao. These certifications do not purport to show whatsoever that there are no other suitable and more affordable vehicle brands and makes that may serve as viable service vehicles of the Governor and Vice Governor.

Aside from the foregoing, another relevant procurement rule that comes into play is the rule on the referencing of brand names in indicating the specifications for the procurement of goods.

Under Section 24 of COA Circular No. 92-386, “[t]he description and specification of the supplies or property called for in the requisition shall include only the technical specifications which will fill and satisfy the needs of the requisitioner.” Similarly, under Section 18 of R.A. 9184, “[s]pecifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.”

COA Circular No. 92-386 itself provides the definition of *specification* as the “technical description of supplies or property being requisitioned or ordered, which should be clear and complete, including if necessary, the specific uses therefor and how acceptability thereof can be determined.”<sup>71</sup>

Hence, when the LGU undertakes the process of requisition of supplies or properties, which the procurement law defines as the formal requesting of supplies or property made through a written request or order,<sup>72</sup> only the technical description of the supplies or properties shall be indicated. The particular brand names of the goods cannot be specified in the requisition.

Here, in the requisition of the subject vehicles, the specific brands and makes of the subject vehicles were indicated. The Purchase Requests dated January 24, 2003,<sup>73</sup> February 18, 2003,<sup>74</sup> and July 15, 2003,<sup>75</sup> which prompted the requisition of the subject vehicles, specified the particular vehicle brands and makes. The technical descriptions of these vehicles, such as the engine displacement, braking system, and other exact specifications, were not identified in the Purchase Requests.

In refutation, petitioners argue that under Section 54 of COA Circular No. 92-386, reference to the manufacturer’s brand name is permissible and that when such reference is made, the reference is intended to be merely descriptive and not restrictive.<sup>76</sup>

<sup>71</sup> COA Circular No. 386-92, Sec. 4.

<sup>72</sup> COA Circular No. 386-92, Sec. 17 in relation to Sec. 4.

<sup>73</sup> *Rollo* (G.R. Nos. 224720-23), p. 362.

<sup>74</sup> *Id.* at 368.

<sup>75</sup> *Id.* at 375.

<sup>76</sup> *Rollo* (G.R. Nos. 224720-23), p. 158.

Section 54 of COA Circular No. 92-386 states that “[w]hen reference to a manufacturer's brand-name is indicated in the call for bids, it shall be intended to be descriptive, not restrictive, and shall be understood to merely indicate to prospective bidders that brand-names other than those specified, if of equal quality, may be considered, regardless of whether or not a statement to that effect is made in the tender x x x.”

However, the non-restrictive reference to brand name referred to in the foregoing provision applies to references made in the *call for bids*, which refers to the act of the office of the provincial or city general services officer to call bids for open public competition.<sup>77</sup> In the instant case, considering that direct purchase was chosen as the mode of procurement from the outset, there was no call for bids made as there was no public bidding that was even commenced. Hence, Section 54 of COA Circular No. 92-386 does not find any application in the instant case. On the other hand, as already discussed, in issuing the purchase requests, procurement law unequivocally mandates that LGUs shall only indicate the technical specifications and not specify the particular brand names and makes.

*Violation of procurement laws does not ipso facto give rise to violation of R.A. 3019*

From the foregoing discussion, it is evident that there were irregularities in the procurement of the subject vehicles, in violation of the applicable procurement laws. Be that as it may, it should be emphasized that petitioners were charged and convicted for violating Section 3(e) of R.A. 3019. As recently held in *Sabalдан, Jr. v. Ombudsman*:<sup>78</sup>

More importantly, it must be emphasized that the instant case involves a finding of probable cause for a 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.** It must be shown that (1) the violation of procurement laws caused undue injury to any party 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.<sup>79</sup> (Emphasis supplied)

In support of the ruling therein, the Court in *Sabalдан* cites the earlier case of *Sistoza v. Desierto*<sup>80</sup> where the Court held:

<sup>77</sup> COA Circular No. 386-92, Sec. 38.

<sup>78</sup> G.R. No. 238014, June 15, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66254>>.

<sup>79</sup> Id.

<sup>80</sup> 437 Phil. 117 (2002).

Clearly, the issue of petitioner Sistoza's **criminal liability does not depend solely upon the allegedly scandalous irregularity of the bidding procedure for which prosecution may perhaps be proper. For even if it were true and proved beyond reasonable doubt that the bidding had been rigged, an issue that we do not confront and decide in the instant case, this pronouncement alone does not automatically result in finding the act of petitioner similarly culpable.** It is presumed that he acted in good faith in relying upon the documents he signed and thereafter endorsed. **To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), RA 3019, the prosecution must show not only the defects in the bidding procedure, a circumstance which we need not presently determine, but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of petitioner** in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. **Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.**<sup>81</sup> (Emphasis supplied)

While these two cases involve the existence of probable cause for violation of Section 3(e) of R.A. 3019, the pronouncements therein are still applicable in this case. Accordingly, it is through the lens of the anti-graft and corruption law, and not the procurement laws, that the guilt of the accused for violation of Section 3(e) of R.A. 3019 must be determined.

Thus, in order to successfully prosecute the accused under Section 3(e) of R.A. 3019 based on a violation of procurement laws, the prosecution cannot *solely* rely on the fact that a violation of procurement laws has been committed. 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. This the prosecution failed to do. Specifically, the prosecution miserably failed to prove beyond reasonable doubt that petitioners acted with evident bad faith, manifest partiality, or gross inexcusable negligence in relation to the subject procurements.

*The prosecution failed to establish evident bad faith*

The evidence on record is *not sufficient to prove beyond reasonable doubt* that there was evident bad faith on the part of petitioners when they directly contracted with the car dealers.

It is settled in jurisprudence that evident bad faith “does not simply connote bad judgment or negligence”<sup>82</sup> but of having a “palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of

<sup>81</sup> Id. at 133.

<sup>82</sup> *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994).



mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.”<sup>83</sup> Simply put, it partakes of the nature of fraud.<sup>84</sup>

The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. It is not enough that the accused violated a provision of law or that the provision of law violated is clear, unmistakable and elementary. To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.

As explained in *Sistoza*, “mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*.”<sup>85</sup>

To stress anew, evident bad faith “contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.”<sup>86</sup> It connotes “a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will.”<sup>87</sup>

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was “spurred by any corrupt motive.”<sup>88</sup> Mistakes, no matter how patently clear, committed by a public officer are not actionable “absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.”<sup>89</sup>

Applying the foregoing, while petitioners may have violated the pertinent laws and rules on procurement, there is reasonable doubt that they consciously and intentionally did so in order to commit fraud, to purposely commit a crime, or to gain profit for themselves so as to amount to fraud.

The testimony of the prosecution’s witness was able to demonstrate that violations of procurement law were committed by the petitioners. However, that was all that the evidence proved. There was no evidence presented whatsoever showing that petitioners were animated by fraudulent motives. **On the contrary**, the evidence shows that petitioners honestly believed that their resort to direct purchase was proper. To recall, Section 371 of the LGC allows direct purchase of supplies of foreign origin from exclusive Philippine agents or distributors, subject to the following conditions: a) that the Philippine distributor has no subdealers selling at lower prices; and b) that no suitable

<sup>83</sup> *Fuentes v. People*, 808 Phil. 586, 594 (2017).

<sup>84</sup> *Fonacier v. Sandiganbayan*, supra note 82.

<sup>85</sup> Supra note 80 at 130. (Italics in the original)

<sup>86</sup> *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).

<sup>87</sup> *Reyes v. People*, 641 Phil. 91, 104 (2010).

<sup>88</sup> *Republic v. Desierto*, 516 Phil. 509, 516 (2006).

<sup>89</sup> *Collantes v. Marcelo*, 556 Phil. 794 (2007).

substitutes or substantially the same quality are available at lower prices. As mentioned in the petition:

3.a Undeniably, a local government unit may dispense with the public bidding and procure directly from either an exclusive or reputable Philippine distributor or agent, subject only to the two conditions set forth in the law.

3.b. It must be stressed that the vehicles subject of these cases were of foreign origin, i.e., Toyota Hilux 4x4 and Mitsubishi L300 Exceed DX2500 were from Japan, and the Ford Ranger XLT 4x4 from the United States. Albeit these brands of vehicles were specified by the requisitioners in the PRs, considering that it is only the requisitioner who can determine which specification will fill and satisfy the needs of his office, the BAC, cognizant that the specified brands were merely recommendatory, proceeded in making a study to determine whether the procurement in each of these cases would, among others, fall under Sec. 371 of R.A. No. 7160.<sup>90</sup> (Underscoring supplied)

As for why they chose the mode of direct purchase, the following statements of the petitioners are illuminating:

36. Prior to the direct purchase of the subject vehicles, the Provincial Government had already acquired seven vehicles through direct purchase and at no instance were these purchases of the seven vehicles questioned or the subject of AOM, NS, or ND by the COA despite the fact that the latter Office had been furnished copies of the documents pertinent to these transactions.

37. In undertaking the direct purchase of the vehicles subject of these cases, the petitioners, acting as BAC, made a study of the surrounding circumstances of the earlier procured seven vehicles through direct purchase.

37.a. The petitioners found out that before the seven vehicles were purchased, public bidding were held. However, the public bidding were all declared as failed bidding because only one bidder or no one would join the bidding. Thus, a second bid would be held but like the first, there was also a failure of bidding for the same reason that only one or no bidder would join the bidding. For these reasons, the previous BAC decided to propose the negotiated purchase of the seven vehicles. However, because the negotiated purchase would require a longer period of time as this would still require the approval of the Sangguniang Panlalawigan and several meetings of the BAC resulting to the delay in the delivery of the basic services, the BAC instead consulted the COA Auditor on this matter whose advice was to revisit the rules of COA, Sec. 015 of COA Circ. 92-386, Sec. 371 of R.A. No. 7160 and Art. 437 of the IRR of R.A. No. 7160.

37.b. With the advice of the COA, the seven vehicles were procured through direct purchase. The documents pertinent to the direct purchase of the vehicles were sent by

<sup>90</sup> Rollo (G.R. Nos. 224720-23), p. 138.

the Province to the Office of the Provincial Auditor but the former never received any AOM, NS, or ND.<sup>91</sup>  
(Underscore supplied)

As can be gleaned above, it cannot be said that petitioners were spurred by any ill or corrupt motive in resorting to direct purchase of the subject vehicles. After studying the previous procurement experiences of the Provincial Government, which were all not questioned by the COA despite having been done through direct purchase, petitioners deemed direct purchase to be a viable and allowed mode of procurement for the subject vehicles in this case.

Indeed, the absence of any adverse findings from the Provincial Auditor should likewise be considered in their favor. The following averments of Bautista are well taken:

111. The lack of criminal intent on the part of Petitioner Bautista is likewise evident in the fact that in all the Direct Purchases in this case, Petitioner Bautista himself executed transmittal letters addressed to the Provincial Auditor to apprise the latter of the same. Also, the Province only prepared the Disbursement Vouchers around one (1) to two (2) months after the transmittal letters to the Provincial Auditor. This shows that the Province waited for any Notice of Disallowance or Notice of Suspension before making payments to the suppliers. Since the Provincial Auditor never issued any Notice of Disallowance or Notice of Suspension, the Disbursement Vouchers were approved and the corresponding checks were issued.

112. The foregoing only shows that Petitioner Bautista had no malicious motives in the procurement of the Subject Motor vehicles. Nothing can be more indicative of good faith than his transparency to the Provincial Auditor and the chance he and the BAC afforded to the latter to object to or question the purchases. As testified by the Prosecutor's very own witness, no disallowance or suspension was issued because the Provincial Auditor found no irregularity regarding the transactions.<sup>92</sup>  
(Underscore supplied)

Thus, the evidence does not support the conclusion that petitioners possessed a state of mind operating with furtive design or some motive of self-interest or ill will for ulterior purposes. Therefore, petitioners cannot be found guilty of committing Section 3(e) of R.A. 3019 through evident bad faith.

*The prosecution failed to establish  
manifest partiality*

Likewise, there is no sufficient evidence to prove *beyond reasonable doubt* that petitioners acted with manifest partiality in relation to the subject procurements.

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<sup>91</sup> Id. at 169-170.

<sup>92</sup> *Rollo* (G.R. Nos. 224765-68), Vol. I, pp. 52-53.





There is manifest partiality “when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another.”<sup>93</sup> It should be remembered that manifest partiality, similar to evident bad faith, is in the nature of *dolo*. Hence, it must be proven that the accused had *malicious and deliberāte intent* to bestow unwarranted partiality upon Toyota Davao, Kar Asia, and Ford Davao.

Here, petitioners’ act of specifying the brands of the subject vehicles in the Purchase Requests — by and of itself — is not enough to conclude *beyond reasonable doubt* that there was manifest partiality as conceptualized under Section 3(e). Otherwise stated, the evidence on record fails to establish beyond reasonable doubt that petitioners were animated with malicious intent, and consciously pursued a notorious scheme to deliberately favor Toyota Davao City, Inc., Kar Asia, Inc., and Ford Davao. The evidence presented by the prosecution is simply not enough to prove beyond reasonable doubt that the subject procurements were pursued purposely and intently by petitioners to fraudulently benefit themselves and the said car dealers.

As already explained, the testimony of the prosecution’s witness did not establish in any manner any deceitful intent and motivation behind the procuring of the subject vehicles from the three car dealers. There was no evidence whatsoever showing that petitioners were animated by fraudulent and devious motives.

On the other hand, petitioners’ unrefuted testimonies before the Sandiganbayan reveal that their decision not to follow the competitive bidding requirement of procurement law was motivated not by any evil scheme to profit, but by their honest, albeit mistaken, belief that the alternative mode of direct contracting was warranted. As for the specification of the brands, petitioners’ reliance on Section 54 of COA Circular 92-386,<sup>94</sup> *i.e.*, specification of the brand-name is allowed as it is intended to be merely descriptive and not restrictive, although mistaken as this only applies to calls for bids, nonetheless reveals a measure of good faith on their part.

To be sure, for the identification of the specific brands involved, Bautista explained that he merely specified his brand preference in his request — but that there is no evidence that he persisted and insisted on sticking to this preferred brand. He maintains that there is nothing malicious about said preference:

x x x Evidently, the Sandiganbayan failed to realize that the purchase of motor vehicles is no ordinary purchase, unlike the procurement of fungible goods or generic supplies which are practically homogenous

<sup>93</sup> *Uriarte v. People*, 540 Phil. 477, 494 (2006).

<sup>94</sup> SECTION 54. *Bids on Brand-Names Other Than Those Specified.* — Whenever reference to a manufacturer’s brand-name is indicated in the call for bids, it shall be intended to be descriptive, not restrictive, and shall be understood to merely indicate to prospective bidders that brand-names other than those specified, if of equal quality, may be considered, regardless of whether or not a statement to that effect is made in the tender, provided that the bidder shall give full description of his offer accompanied with catalog, literature, and/or sample. An offer guaranteeing to deliver an “equal” or “equivalent” without acceptable proof shall not be considered.

regardless of the brand. Vehicle manufacturers have their own particular selling points and long-standing reputation and each brand alludes to a specific market or need, which differentiates it from other brands and models. x x x

x x x Simply put, indicating the brand of the vehicle is the best way to describe the technical specifications of the motor vehicle. To be sure, Petitioner Bautista's x x x "partiality" to a particular brand of a motor vehicle does not necessarily mean "partiality" to the dealer or distributor. x x x The Toyota, the Ford, the Mitsubishi and other motor vehicle brands have been with us for years. Their performance is common knowledge and it is normal to have a brand preference as far as motor vehicles are concerned.<sup>95</sup>

Verily, even the Sandiganbayan stated in its Decision that "[w]hether Bautista's signing the PRs specifying the brand of the vehicle was merely recommendatory or not, remains disputed."<sup>96</sup> This further strengthens Bautista's claim that he did not insist on the preferred brands and left it to the BAC to determine whether these vehicles would satisfy the needs of the Province. In the course of its study, the BAC found, among others, that:

a. The Ford Ranger was efficient for transporting goods and passengers on rough roads.

b. The Toyota Hilux was efficient for transporting goods in well-paved roads.

c. The Mitsubishi L300 was efficient in transporting passengers in well-paved roads.

d. Toyota Davao, Ford Davao, and Kar Asia (for Mitsubishi) were the exclusive dealers of their respective brands of vehicles, which were all of foreign origin. There were no other sub-dealers selling the same type of vehicles at lower prices.

e. There were no other brands offering the same kind of vehicles at lower prices. The Subject Motor Vehicles had no reasonable substitutes of the same kind and quality available at lower prices that would adequately cater to the needs of the Province.

f. Although Isuzu and Suzuki sold pick-up trucks, the specifications and overall performance of these trucks fall short of the stringent requirements of the Province. Moreover, the dealers of these brands, along with other dealers in the Province, were not interested in joining any public bidding for the purchase of the Subject Motor Vehicles as participating in a public bidding was considered to entail a lot of expenses which would not be a worthy investment for a dealer.<sup>97</sup>

Petitioners maintain that "the brands indicated in the PRs were eventually chosen by the BAC not because these brands had been specified by the requisitioner but for the reason that, on the basis of their study, this

<sup>95</sup> *Rollo* (G.R. Nos. 224765-68), Vol. I, p. 36.

<sup>96</sup> *Id.* at 96. (Underscoring supplied)

<sup>97</sup> *Id.* at 15-16.

would fill and satisfy the needs of the requisitioner taking into consideration the provisions of R.A. No. 7160 and COA Circ. No. 92-386.”<sup>98</sup>

From the foregoing, while there appears to be a degree of preference for a specific brand, a preference for the brand’s performance record and reliability, this preference does not rise to the level of *manifest* partiality that would show an ulterior motive or purpose on the part of petitioners. Therefore, the conviction of petitioners based on manifest partiality cannot stand as the required threshold of proof beyond reasonable doubt was not met by the prosecution.

*The prosecution failed to establish gross inexcusable negligence*

As well, there is no sufficient evidence to prove *beyond reasonable doubt* that petitioners acted with gross inexcusable negligence.

The commission of Section 3(e) of R.A. 3019 through gross inexcusable negligence requires more than simple negligence. The negligence committed must be both *gross* and *inexcusable*, characterized by the want of even slight care, wherein the accused was consciously indifferent as to the compliance with his or her duty as a public officer. More than committing a breach of a legal duty, it is necessary that in committing the said breach, the public officer was inattentive, thoughtless, and careless.

It must be stressed that gross inexcusable negligence varies from evident bad faith and manifest partiality. Evident bad faith and manifest partiality are acts committed through *dolo*, while gross inexcusable negligence is committed by means of *culpa*.

Felonies committed by means of *dolo* or deceit are those performed with deliberate intent. On the other hand, felonies committed by means of *culpa* are those performed with imprudence, negligence, lack of foresight, or lack of skill.<sup>99</sup> In intentional felonies, the act or omission of the offender is *malicious*. However, in culpable felonies, the act or omission of the offender *need not be malicious*. The wrongful act results from imprudence, negligence, lack of foresight or lack of skill.<sup>100</sup>

Gross inexcusable negligence under Section 3(e) of R.A. 3019, a culpable felony, does not require fraudulent intent or ill-will. A public officer is guilty of gross inexcusable negligence when there is a *breach of duty* that is committed *flagrantly, palpably*, and with *willful indifference*.<sup>101</sup> Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under

<sup>98</sup> *Rollo* (G.R. Nos. 224720-23), pp. 201-202.

<sup>99</sup> Article 3, Act No. 3815 as amended, otherwise known as the REVISED PENAL CODE (RPC).

<sup>100</sup> *Calimutan v. People*, 517 Phil. 272, 289 (2006), citing LUIS B. REYES, THE REVISED PENAL CODE 33-34 (13th Ed., 1993).

<sup>101</sup> *Sistoza v. Desierto*, supra note 80 at 122.

Section 3(e) regardless of whether such breach of duty was done with malicious intent.

In this case, while the Sandiganbayan found Bautista and Putong liable for manifest partiality, it found Martel, Guiñares, Mier, and Gan liable for gross inexcusable negligence, to wit:

While there may be scant evidence of their conspiracy with Bautista and Putong, criminal liability on their part can be based on their being grossly negligent in arriving at the conclusion that direct purchase of these vehicles can be justified. As members of the BAC, these accused were duty-bound to follow the rules on procurement, to ensure that any exception to the general rule on bidding was justified. As admitted by them, they were tasked to make a study on the purchase of these vehicles. However, what they did was to conduct only a superficial interview of the dealers involved, to ask whether these dealers were open to a public bidding, in addition to inspecting the vehicles.<sup>102</sup> (Underscoring supplied)

The Sandiganbayan harps on the fact that the alleged study conducted by the BAC was not reduced into writing, that they were confined only to interviewing the dealers of the brands specified, and that there were no price matrices or comparisons for suitable substitutes.<sup>103</sup> In this regard, petitioners counter:

26.a. It was precisely because the petitioners knew that there were dealers for other brands of pick-up trucks and vans that they conducted a study for each PR to determine, *inter alia*, whether a public bidding can be held; whether the procurement would fall under Sec. 371 of R.A. 7160 and if the conditions stated therein could be complied; and, whether the vehicles offered by the dealers had the same technical specifications as that requested by the requisitioner and which would fill and satisfy the needs of his office.

26.b. As testified to by the petitioners, acting as BAC, their study yielded the following results: that no dealers would join the bidding; Sec. 371 of R.A. 7160 would apply and that the conditions set forth therein were present; and, that the vehicles specified in the PRs would fill and satisfy the needs of the office of the requisitioner.<sup>104</sup>

x x x x

68.b. The lapses in the conduct of the study, if these can be characterized as such, was not for the reason that there was an evil intent to cause damage to the government or to give benefit, advantage or preference to themselves or the dealers but for the reason that there were no specific laws to serve as guide in undertaking the study.<sup>o</sup>

68.c. Petitioners humbly aver that they did not reduce in a formal written instrument the results of their study but this however, cannot amount to a finding that there were (*sic*) no actual study made by the BAC considering that, as earlier mentioned, there were no guidelines or directives

<sup>102</sup> *Rollo* (G.R. Nos. 224765-68), Vol. 1, p. 100.

<sup>103</sup> *Id.* at 96.

<sup>104</sup> *Rollo* (G.R. Nos. 224720-23), p. 161.

either from the COA or the Local Government Code prescribing on the manner by which a study should be conducted by the BAC.

68.d. The fact is also underscored that the results of the study was not required as one of the attachments to facilitate the transaction relative to the direct purchase of the subject vehicles or to cause the payment to the dealers.<sup>105</sup> (Underscoring supplied)

Petitioners' averments are well-taken. The records show that petitioners, as BAC members, did conduct a study, albeit limited and not reduced to writing. Moreover, as earlier discussed, they no longer considered public bidding based on their past experiences and the belief that direct purchase was availing. While it is arguable that a more thorough study would have led petitioners to conclude that direct purchase was not proper for the subject procurements, their actions cannot be characterized as without *even slight care and conscious indifference as to the compliance with their duties* so as to make them liable for gross inexcusable negligence. Hence, they cannot be held liable for violation of Section 3(e) of R.A. 3019 on this account.

*Violations of R.A. 3019 must be grounded on graft and corruption*

Based on the foregoing discussion, it is evident that the prosecution failed to establish evident bad faith, manifest partiality, or gross inexcusable negligence on the part of petitioners to satisfy the second element for violation of Section 3(e) of R.A. 3019.

In criminal cases, it is hornbook principle that *all* the elements of the crime must be proven beyond reasonable doubt in order to convict the accused. Considering that the prosecution miserably failed to prove the second element of the crime charged, there is no more reason for the Court to discuss the third element. The absence of the second element for violation of Section 3(e) of R.A. 3019 is enough to acquit petitioners.

At this juncture, the Court emphasizes the spirit that animates R.A. 3019. As its title implies, and as what can be gleaned from the deliberations of Congress, R.A. 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under R.A. 3019 is *corruption*. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized."<sup>106</sup> Graft entails the acquisition of gain in *dishonest* ways.<sup>107</sup>

In the instant case, petitioners' act of pursuing the subject procurements was motivated not by any corrupt intent to favor one car dealer over another or to unduly receive any pecuniary benefit. Based on the evidence on record,

<sup>105</sup> *Rollo* (G.R. Nos. 224720-23), p. 206.

<sup>106</sup> Senate Deliberations of RA 3019 dated July 1960.

<sup>107</sup> BLACK'S LAW DICTIONARY 794 (9th ed. 2009).



petitioners' actuations were simply based on their honest belief that direct procurement was legally permissible. There was no showing that graft and corruption actually transpired. As a matter of fact, there is no issue at all on overpricing.<sup>108</sup>

19.f To stress, State Auditor San Juan testified that there was no issue of overpricing in all these cases which only signifies the absence of benefit, much more of an unwarranted benefit, to the dealers of Ford, Toyota and Mitsubishi resulting from the procurement of the vehicles.<sup>109</sup>

x x x x

61.d. The "profit" earned by Toyota-Davao, Ford-Davao and Kar-Asia resulted from their delivery of the vehicles procured by the Provincial Government. Hence, it cannot be claimed that the profits they received were "unwarranted", i.e., it lacked adequate or official support; unjustified; unauthorized or without justification or adequate reason. These companies were entitled to the return of their investments viz: "in all cases where a party enters into a contract with the government, he does so, not out of charity and not to lose money, but to gain pecuniarily. In the same vein, the Provincial Government cannot unjustly enrich itself at the expense of these dealers."<sup>110</sup>

x x x x

63.d. Moreover, it must be noted that respondent had never put to the fore the issue that petitioners had colluded with the dealers so that benefit, advantage or preference may be extended to the latter. Equally significant is the truth that the respondent had not found any reason to include the dealers as accused in these cases thus, negating any claim that these dealers were the recipients of any form of benefits from the petitioners. Petitioners respectfully state that these facts, when properly appreciated, reinforce the claim of the petitioners that at no instance were they moved by an evil or criminal intent to extend benefit, advantage or preference to the dealers or to cause undue injury to the government.<sup>111</sup>  
(Underscoring supplied)

To reiterate, petitioners believed in good faith that direct purchase as the mode of procurement was justified under Section 371 of the LGC. Moreover, the procurement documents were transmitted to the Provincial Auditor of the COA prior to the procurement precisely to give the COA a chance to say if such procurement was not allowed. It was only when the COA did not give any adverse comment that the purchase proceeded. These circumstances strengthen the conclusion that petitioners were not animated by any corrupt motive.

Indeed, while public office is a public trust, the Court is called upon to refrain from interpreting the laws to effectively be a disincentive to individuals in joining the public service. It is simply absurd to criminally

<sup>108</sup> *Rollo* (G.R. Nos. 224720-23), p. 209.

<sup>109</sup> *Id.* at 152.

<sup>110</sup> *Id.* at 197.

<sup>111</sup> *Id.* at 199.

punish every minute mistake that incidentally caused a benefit to private parties **even when these acts were not done with *corrupt intent***.

*The Death of Petitioner Gan*

With respect to Gan, who died on December 4, 2016, Article 89, paragraph 1 of the RPC provides for the consequences of such death, to wit:

ART. 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

Construing the foregoing provision, the Court, in *People v. Bayotas*,<sup>112</sup> explained that “the term final judgment employed in the Revised Penal Code means judgment beyond recall. Really, as long as a judgment has not become executory, it cannot be truthfully said that defendant is definitely guilty of the felony charged against him.”<sup>113</sup>

In the same case, the Court summarized the rules in case the accused dies prior to final judgement:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, “the death of the accused prior to final judgment terminates his criminal liability and *only* the civil liability *directly* arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto in senso strictiore*.”

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

x x x x

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where, during the prosecution of the criminal action and prior to its extinction, the

<sup>112</sup> 306 Phil. 266 (1994).

<sup>113</sup> Id. at 270, citing *People v. Castillo and Ocfemia*, No. 22211-R, November 4, 1959, 56 O.G. No. 23, p. 4045.

private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with the provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.<sup>114</sup>

Thus, applying these established rules in the instant case, the death of Gan pending the resolution of the instant appeal extinguished his criminal liability inasmuch as there is no longer a defendant to stand as the accused.<sup>115</sup> Accordingly, the Court holds that the death of Gan results in the dismissal of the criminal case against him.

### A Final Note

The fundamental law of the land states that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.<sup>116</sup> Being beholden to the Filipino people, the actions of public officers are thus subjected to a higher level of scrutiny, more so when the expenditure of public funds is involved.

Nevertheless, the fundamental law likewise guarantees the basic and inalienable right to a presumption of innocence to all citizens, including public officers. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved beyond reasonable doubt.<sup>117</sup> The accountability of public officers enshrined under the Constitution does not diminish whatsoever the right of public officers to be presumed innocent in criminal prosecutions.

Therefore, bearing in mind the constitutional right of public officers to be convicted only when the elements of the crime charged have been established beyond reasonable doubt, in the instant case, it behooved the Court to meticulously examine the established facts through the lens of the elements of Section 3(e) of R.A. 3019. The Court cannot simply rely on the findings of violations of the applicable procurement laws, rules, and regulations in determining the guilt of the accused. The Court must determine whether each and every element of Section 3(e) of R.A. 3019 was established beyond reasonable doubt in order to justify holding the accused liable therein.

To reiterate, a violation of the procurement laws does not *ipso facto* lead to a violation of R.A. 3019. This was established as early as 2002 in *Sistoza* where the Court ruled that even if the irregularities in the bidding were true and proved beyond reasonable doubt, the same does not automatically result in finding the act of the accused as culpable under R.A. 3019. Unfortunately, the Ombudsman, the prosecution, and the Sandiganbayan all

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<sup>114</sup> Id. at 282-283.

<sup>115</sup> See *People v. Egagamao*, 792 Phil. 500 (2016).

<sup>116</sup> CONSTITUTION Art. XI, Sec. 1.

<sup>117</sup> CONSTITUTION, Art. III, Sec. 14(2).





strayed away from this established correct approach and instead relied on the gravely erroneous notion that a violation of the procurement laws is already tantamount to a violation of R.A. 3019.

To be sure, even a cursory reading of the Informations filed by the Office of the Ombudsman shows its total reliance on such wrong notion — even employing a shotgun method of listing all the ways by which Section 3(e) may be violated, *i.e.* through evident bad faith, manifest partiality, and gross inexcusable negligence, despite the fact that the first two are committed by means of *dolo* while the last is by *culpa*, and therefore making it illogical for all three modes to be simultaneously present.

As for the prosecution, its belief in the false equivalency of a violation of procurement laws being a violation of R.A. 3019 is palpable in its sole reliance on the COA Audit/Investigation Report to prove petitioners' guilt under R.A. 3019. For its part, the Sandiganbayan should not have contented itself with convicting the petitioners by the mere existence of procurement irregularities — verily, it should have dismissed the case for the prosecution's failure to prove the elements of a violation of Section 3(e) of R.A. 3019.

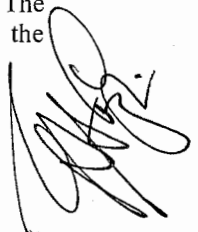
At the risk of being repetitive, the Court echoes the pronouncements in *Sistoza* that in order to establish a *prima facie* case for violation of Section 3(e) of R.A. 3019, the prosecution must show not only the defects in the procurement procedure but also the alleged evident bad faith, gross inexcusable negligence, or manifest partiality on the part of the accused. Absent a well-grounded and reasonable belief that the accused perpetrated the procurement irregularities in the *criminal manner* that he is accused of, then there is not even a basis for declaring the existence of probable cause, more so a finding of guilt for any violation of Section 3(e) of R.A. 3019. The prosecution should not expect the Court to do its bounden duty of proving each and every element of the crime charged — or to come to its rescue when it miserably fails to discharge this onus.

It should be borne in mind, however, that acquitting the accused for violation of R.A. 3019 despite violations of the procurement law should not be viewed as condoning the procurement irregularities. To emphasize, R.A. 9184 contains a penal clause<sup>118</sup> where public officers and private individuals may be held liable. Should their actions be considered as falling under this penal clause, then petitioners may be held criminally liable under R.A. 9184.

As well, for their having committed procurement irregularities, they can also be held accountable administratively. In fact, for petitioners-BAC members, the Court notes that their administrative liability was upheld by the Court in *Office of the Ombudsman v. Martel, et al.*<sup>119</sup> Thus, the acquittal of

<sup>118</sup> See Section 65 on *Offenses and Penalties*.

<sup>119</sup> 806 Phil. 649 (2017). The Ombudsman found Martel, Guiñares, Mier, and Putong administratively liable, but only Martel and Guiñares appealed the Decision to the CA and eventually the Court. The Ombudsman relieved Gan of his administrative liability in view of his reelection (following the condonation doctrine) while Bautista was not included in the administrative case.



the accused herein is not meant to allow a wrongdoing to go unpunished. It is only sought to be emphasized that while holding public officers accountable is a laudable objective, the same must be achieved within the bounds of law.

Lest it be forgotten, what is involved here is a criminal case. The Sandiganbayan convicted the accused and imposed on them the penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, for *each* of the four (4) cases. If the same would be upheld, the Court would be sentencing petitioners to a maximum of 24 years in prison for mere irregularities in the procurement of the subject vehicles, with no showing of evident bad faith, manifest partiality, or gross inexcusable negligence on their part. Evidently, if every irregularity in the performance of duties would be meted with a criminal sanction, then this will have a deleterious effect on public service.

The demand for accountability should not be at the expense of well-meaning public officials who may have erred in the performance of their duties but have done so without a criminal mind. Our penal laws against corruption in the government are meant to enhance, and not stifle, public service. If every mistake, error, or oversight is met with criminal punishment, then qualified individuals would be hindered in serving in the government. If we all continue to “weaponize” each misstep in governmental functions, we run the risk of losing the many good people in the government. Again, it should be underscored that while public office is a public trust, the constitutionally enshrined right to presumption of innocence encompasses all persons — private individuals or public servants alike.

In this case, while the prosecution may have shown how procurement laws had not been strictly followed, it nonetheless failed to prove beyond reasonable doubt the elements for a violation of Section 3(e) of R.A. 3019. Evident bad faith and manifest partiality are absent, owing to the prosecution’s failure to prove fraudulent and malicious intent on the part of the petitioners. Gross inexcusable negligence was likewise not proven as the prosecution was not able to show that petitioners acted with want of even slight care and conscious indifference as to the compliance with their duties.

Having failed to prove the elements for a violation of Section 3(e) of R.A. 3019 beyond reasonable doubt, the Court reverses the conviction of petitioners.

**WHEREFORE**, in view of the foregoing, the Court **RESOLVES** to:

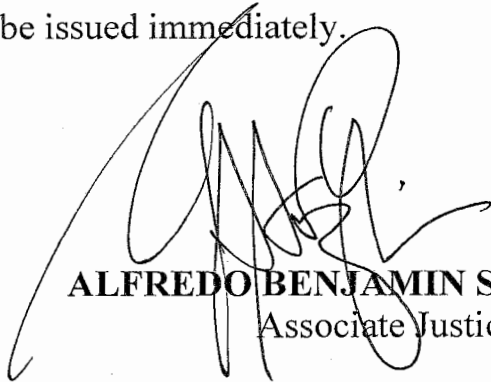
1. **DISMISS** the case insofar as petitioner Edgar C. Gan is concerned, in view of his death;
2. **GRANT** the appeal. The Decision dated February 24, 2016 and Resolution dated May 13, 2016 rendered by the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0241 to SB-12-CRM-0244 are hereby **REVERSED** and **SET ASIDE**. Consequently, the



petitioners Richard T. Martel, Allan C. Putong, Abel A. Guiñares, Victoria G. Mier, and Benjamin P. Bautista, Jr. are hereby **ACQUITTED** of the crime charged, for failure of the prosecution to prove their guilt beyond reasonable doubt.

Let an entry of judgment be issued immediately.

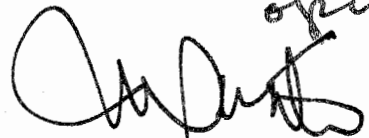
**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

WE CONCUR:

*Please see concurring opinion*

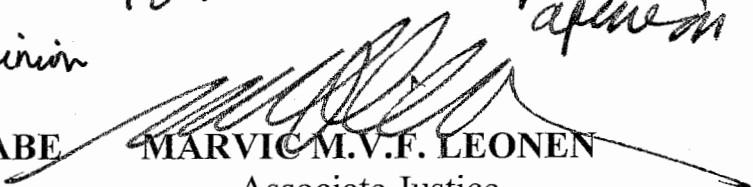


**DIOSDADO M. PERALTA**  
Chief Justice

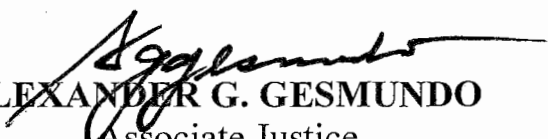
*I dissent. see separate opinion*

*Please see Concurring Opinion*

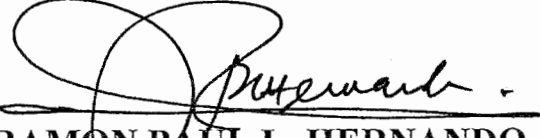
*MP. KERR*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



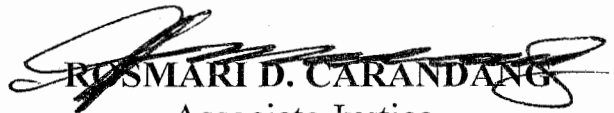
**MARVIC M.V.F. LEONEN**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice

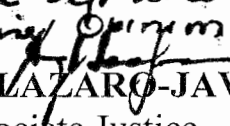


**RAMON PAUL L. HERNANDO**  
Associate Justice





**ROSMARI D. CARANDANG**  
Associate Justice

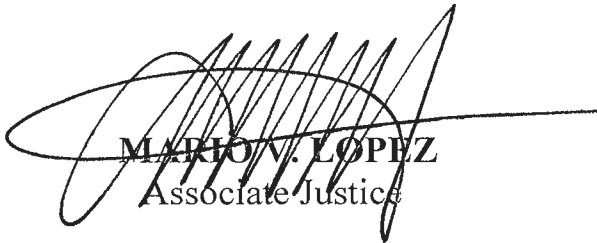
*Pls. see Separate Concurring Opinion*




**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

  
**RODIL V. ZALAMEDA**  
 Associate Justice

  
**MARIO V. LOPEZ**  
 Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
 Associate Justice

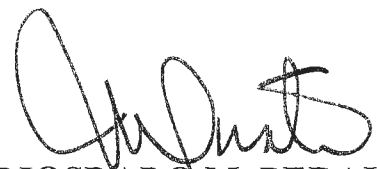
*I join the dissent of*  
  
**SAMUEL H. GAERLAN**  
 Associate Justice


  
**RICARDO R. ROSARIO**  
 Associate Justice

  
**JHOSEP V. LOPEZ**  
 Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

  
**DIOSDADO M. PERALTA**  
 Chief Justice

Certified True Copy  
  
**ANNA-LI R. PAPA-GOMBIO**  
 Deputy Clerk of Court En Banc  
 OCC En Banc, Supreme Court

