

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 250867

- versus -

Present:

RONALD N. RICKETTS, CYRUS
PAUL S. VALENZUELA, MANUEL J.
MANGUBAT, JOSEPH D.
ARNALDO, and GLENN S. PEREZ,
Accused,

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

RONALD N. RICKETTS and GLENN
S. PEREZ,
Accused-Appellants.

Promulgated:

MAR 16 2022

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DECISION

ROSARIO, J.:

This is an appeal from the *Decision*¹ dated March 15, 2019 of the Sandiganbayan (Special Fourth Division) in Case No. SB-15-CRM-0132 for Violation of Sec. 3(e) of Republic Act (RA) No. 3019,² and its *Resolution*³ dated November 15, 2019 denying reconsideration thereof. The Sandiganbayan decision found accused-appellants Ronald N. Ricketts (Ricketts) and Glenn S. Perez (Perez; collectively, accused-appellants) guilty beyond reasonable doubt of the offense charged, and sentenced them to suffer

¹ *Rollo*, pp. 13-35. Penned by Associate Justice Bayani H. Jacinto, with Associate Justices Alex L. Quiroz, Reynaldo P. Cruz, Karl B. Miranda, and Ronaldo B. Moreno, concurring.

² Otherwise known as the Anti-Graft and Corrupt Practices Act.

³ *Id.* at 179-201. Penned by Associate Justice Bayani H. Jacinto with Associate Justices Amparo M. Cabotaje-Tang and Sarah Jane T. Fernandez, concurring; and Associate Justices Alex L. Quiroz and Reynaldo P. Cruz, dissenting.

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imprisonment from six (6) years and one (1) day to eight (8) years, with perpetual disqualification from holding public office. The other accused – Cyrus Paul S. Valenzuela (Valenzuela), Manuel J. Mangubat (Mangubat), and Joseph D. Arnaldo (Arnaldo) – were acquitted for the prosecution's failure to prove their guilt beyond reasonable doubt.

ANTECEDENT FACTS

Ricketts was the Chairman and Chief Executive Officer of the Optical Media Board (OMB),⁴ while Perez was the Computer Operator in said Board.⁵ The other accused, Valenzuela, Mangubat, and Arnaldo, were the Executive Director of the OMB,⁶ Head of the Enforcement and Inspection Division,⁷ and Investigation Agent I, respectively.⁸

On June 24, 2015, an Information for violation of Section 3(e) of RA No. 3019 was filed against the accused, specifying as follows:

That on 27 May 2010, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused Ronald N. Ricketts, a high ranking public officer (SG 29), being the Chairman and Chief Executive Officer of the Optical Media Board (OMB), conspiring, confabulating and confederating with Cyrus Paul S. Valenzuela, Manuel J. Mangubat, Joseph D. Arnaldo, and Glenn S. Perez, Executive Director, Head of the Enforcement and Inspection Division (EID), Investigation Agent I of EID, and Computer Operator, respectively, while in the performance of their official functions as such, taking advantage thereof and committing the offense in relation to office, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Sky High Marketing Corporation, thru manifest partiality, evident bad faith or gross inexcusable negligence, by allowing and causing the release and reloading into the corporation's vehicle the pirated Digital Video Discs (DVDs) and Video Compact Discs (VCDs) that were confiscated from the establishment in the afternoon of the same day, 27 May 2010, which compromised the pieces of evidence that could support the case(s) that should have been filed against the said violators of Republic Act 9239 (the Optical Media Board Act of 2003), to the damage and prejudice of the government and to the detriment of public interest.

CONTRARY TO LAW.⁹

On June 26, 2015, the Sandiganbayan issued a Hold Departure Order¹⁰ against all the accused. On the same day, Ricketts posted bail, while Perez did so on June 29, 2015. All the accused pleaded “Not Guilty” upon arraignment.

⁴ Exhibits “A” & “A-1,” folder of exhibits for the prosecution (unpaginated).

⁵ Exhibits “A-8” & “A-9,” id.

⁶ Exhibits “A-2” & “A-3,” id.

⁷ Exhibits “A-4” & “A-5,” id.

⁸ Exhibits “A-6” & “A-7,” id.

⁹ Sandiganbayan *rollo*, Vol. 1, pp. 1-2.

¹⁰ Id. at 227.

On July 8, 2015, the Sandiganbayan found probable cause to proceed against the accused. However, no warrant of arrest was issued against the accused since bail had already been posted.

EVIDENCE FOR THE PROSECUTION

Trial proceeded and the prosecution presented evidence showing that on May 27, 2010, Perez and co-accused Arnaldo and Mangubat conducted a raid on a compound situated at Carlos Palanca Street, Quiapo, Manila upon a confidential report that there were pirated optical discs stored therein.¹¹ As a result of the raid, 127 boxes and two (2) sacks of DVDs and VCDs were confiscated, as well as one unit of a Huanan Digital Video Recording Machine. It was reported that three (3) Chinese nationals were also arrested. The seized items were loaded by the OMB agents onto an Isuzu Elf van with Plate Number RGW 474 that was found in the raided premises. The van reportedly had the markings "Sky High Marketing" at its sides.¹² The seized vehicle and the items were brought to the OMB compound, where they were turned over to the guard-on-duty and recorded in the logbook.¹³

Evidence was also presented showing that at around 10:00 p.m. of the same day, the guard-on-duty, Pedro Gazzingan, found the computer operator, Perez, re-loading 121 boxes of the seized items back onto the Elf van seized earlier that day.¹⁴ When Gazzingan requested to see his gate pass, as is standard operating procedure in the OMB, Perez could not present any but said, instead, that it was "Chairman" – referring to Ricketts – who purportedly instructed him to take the items out of the OMB compound. The guard sought out accused Valenzuela (the highest-ranking OMB officer still on duty at that time) to seek guidance, but the latter supposedly said that, "*kung utos ni Chairman, wala tayong magagawa.*"¹⁵ The following day, upon noticing the missing boxes, the Chief of the Administrative and Finance Division of the OMB, Evelyn Asoy, directed the guard-on-duty, Pedro Gazzingan, and Perez to explain in writing why only four (4) boxes of confiscated DVDs and VCDs remained. Perez and the guard complied and submitted their reports.¹⁶

After resting its case, the prosecution offered the testimony of its witnesses, and its documentary evidence consisting of the personnel records of the accused;¹⁷ the complaint against the accused filed by Field Investigator II, Atty. Donabel D. Atienza, of the Office of the Ombudsman;¹⁸ the affidavit of Crisanto Aguas, the guard-on-duty on May 27, 2010, who recorded the

¹¹ Exhibit "C-24," folder of exhibits for the prosecution (unpaginated)

¹² TSN, May 25, 2016, pp. 28-29.

¹³ Exhibit "F-1-a" & "F-2-a," folder of exhibits for the prosecution.

¹⁴ Exhibit "C-33", "C-33-a", "C-33-b" & "C-33-c," id.

¹⁵ Exhibit "F," id.; TSN, May 25, 2016, p. 22.

¹⁶ Exhibits "C-39" & "F," folder of exhibits for the prosecution.

¹⁷ Exhibits "A" & "B," id.

¹⁸ Exhibit "C," id.

entry of the seized items into the OMB compound;¹⁹ the letter of an administrative aide in the OMB, stating the standard procedure for turn-over and release of seized items, and attaching templates/samples thereto;²⁰ the memorandum of the guard-on-duty, Pedro Gazzingan, as to Perez' pull-out of the seized items on the night of May 27, 2010;²¹ the implementing rules of RA No. 9239²² of the OMB;²³ and the incorporation certificate, by-laws, general information sheets and business permits for various years of Sky High Marketing Corporation.²⁴

EVIDENCE FOR THE DEFENSE

Accused-appellants Ricketts and Perez, as well as accused Arnaldo and Valenzuela, filed their respective motions for leave to file demurrer to evidence, which were all denied by the Sandiganbayan, save for the motion of Valenzuela.²⁵ On November 20, 2017, Valenzuela filed his demurrer to evidence which was granted by the Sandiganbayan on February 26, 2018, and the case against him was dismissed.

Accused Arnaldo and Mangubat testified in their defense,²⁶ while accused-appellants Ricketts and Perez did not take the witness stand. Mangubat testified that Ricketts knew of the pull-out of the seized items, and allegedly told them in a meeting that the items had been transferred to a safe place.²⁷ Mangubat also explained that 12 to 20 pirated discs are sufficient for the purpose of filing charges against the violators of the anti-piracy law. Thus, Mangubat said that the remaining four (4) boxes, containing about 500 discs per box, would have been more than sufficient basis to file charges against Sky High Marketing, had the OMB chosen to do so. However, because there was no evidence that Sky High Marketing Corporation (the registered owner of the Elf van) also owned the seized discs, Mangubat said that no charges could be filed against Sky High.²⁸

The exhibits for Arnaldo consisted of his counter-affidavit²⁹ and position paper;³⁰ Mangubat did not make a formal offer of evidence;³¹ while Perez adopted the prosecution's Exhibit "E-3," which is the receipt form of the turned-over seized items from the May 27, 2010 raid.

¹⁹ Exhibit "D," id.

²⁰ Exhibit "E," id.

²¹ Exhibit "F," id.

²² The Optical Media Board Act of 2003.

²³ Exhibit "G," id.

²⁴ Exhibit "I," id.

²⁵ *Sandiganbayan Resolution* dated October 12, 2017, *Sandiganbayan rollo*, Vol. 3, pp. 364-370.

²⁶ TSN, May 9, 2018, May 10, 2018, March 1, 2018 and May 2, 2018.

²⁷ TSN, March 1, 2018, pp. 39-41.

²⁸ TSN, May 25, 2016, pp. 5-9.

²⁹ Exhibit "38," folder of exhibits for the defense.

³⁰ Exhibit "39," id.

³¹ *Sandiganbayan Resolution* dated September 10, 2018, *Sandiganbayan rollo*, Vol. 4, pp. 207-208.

For his part, Ricketts adopted the prosecution's Exhibit "C-30," which is page 224 of the logbook showing the entry of the Elf van and the confiscated items into the OMB compound;³² prosecution's Exhibit "C-31," which is page 37 of the logbook, also showing the entry of the van and the confiscated items into the OMB compound;³³ prosecution's Exhibit "C-32," which is security guard Gazzingan's report;³⁴ prosecution's Exhibit "C-33," which is page 227 of the logbook containing the entries made on May 27, 2010;³⁵ prosecution's Exhibit "C-38,"³⁶ prosecution's Exhibit "C-52," which is page 1 of Gazzingan's memorandum;³⁷ prosecution's Exhibit "C-53," which is page 2 of Gazzingan's memorandum;³⁸ prosecution's Exhibit "C-54," which is page 3 of Gazzingan's memorandum;³⁹ and prosecution's Exhibit "E-3," which is the OMB receipt form of the turn-over of the seized items, stating that only four (4) boxes and two (2) sacks were turned over from the raid of May 27, 2010.⁴⁰

DECISION OF THE SANDIGANBAYAN

After due proceedings, the Sandiganbayan could not reach a unanimous decision on the guilt of the accused. Thus, a special division of five (5) justices was formed. On March 15, 2019, the Sandiganbayan Special Fourth Division rendered a Decision⁴¹ acquitting Arnaldo and Mangubat, but finding Ricketts and Perez guilty beyond reasonable doubt of a violation of Section 3(e) of RA 3019, *i.e.*, giving unwarranted benefit, advantage, or preference to Sky High Marketing by releasing 121 boxes of pirated optical media, and by not filing charges against Sky High Marketing, to the detriment of the government. The dispositive portion reads, as follows:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. Accused RONALD N. RICKETTS and GLENN S. PEREZ are hereby found GUILTY beyond reasonable doubt of Violation of Sec. 3(e) of R.A. No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) day as minimum and eight (8) years as maximum, with perpetual disqualification from holding public office.

2. Accused MANUEL G. MANGUBAT and JOSEPH D. ARNALDO are hereby ACQUITTED of the same charge for failure of the prosecution to prove their guilt beyond reasonable doubt. The Hold

³² Exhibit "1," folder of exhibits for the defense.

³³ Exhibit "2," *id.*

³⁴ Exhibit "3," *id.*

³⁵ Exhibit "4," *id.*

³⁶ Exhibit "5." However, We note that there is no prosecution's Exhibit "C-38" in the list made by the Chief of the Judicial Records Office of the Supreme Court.

³⁷ Exhibit "6," *id.*

³⁸ Exhibit "7," *id.*

³⁹ Exhibit "8," *id.*

⁴⁰ Exhibit "9," *id.*

⁴¹ *Rollo*, pp. 13-35.

Departure Order issued against them are hereby LIFTED and SET ASIDE and their respective cash bonds RELEASED subject to the usual accounting and auditing procedures.

SO ORDERED.⁴²

From this adverse decision, Ricketts and Perez filed their respective motions for reconsideration, both of which the Sandiganbayan denied in its *Resolution*⁴³ dated November 15, 2019.

Aggrieved, accused-appellants Ricketts and Perez separately filed their appeals⁴⁴ before the Court.

RICKETTS' APPEAL

Ricketts raises the following grounds against the decision of the Sandiganbayan:

PROCEDURAL GROUND

A.

THE ASSAILED DECISION RENDERED BY THE SANDIGANBAYAN'S SPECIAL FOURTH DIVISION IS NULL AND VOID FOR BEING PROCEDURALLY INFIRM, AND THUS, PRODUCES NO LEGAL EFFECT.

SUBSTANTIVE GROUND/S

B.

THE CHIEF EVIDENCE ON WHICH RICKETT'S (*sic*) CONVICTION WAS BASED, PARTICULARLY THE OUT-OF-COURT TESTIMONIES OF SECURITY GUARD GAZZINGAN AND VALENZUELA, ARE NOT INDEPENDENTLY RELEVANT STATEMENTS, AND THUS, ARE INADMISSIBLE IN EVIDENCE FOR BEING HEARSAY.

C.

THE PROSECUTION FAILED TO PROVE THE EXISTENCE OF CONSPIRACY BEYOND REASONABLE DOUBT.

D.

ALL THE ELEMENTS OF SECTION 3(e) OF RA 3019 WERE NOT PROVEN BEYOND REASONABLE DOUBT.⁴⁵

⁴² Id. at 33-34.

⁴³ Id. at 179-201.

⁴⁴ Id. at 36 for accused-appellant Ricketts; and at 40 for accused-appellant Perez.

⁴⁵ Id. at 62-63.

In his appeal, Ricketts argues that the decision of the Sandiganbayan is without legal effect because that court did not dissolve the special division of five (5) after it had reached a unanimous decision in the case, contrary to its internal rules. Ricketts also contends that the affidavits of the security guard Gazzingan and of Valenzuela as to his alleged participation are not independently relevant statements and are, therefore, inadmissible in evidence for being hearsay. Finally, Ricketts argues that the prosecution failed to prove the existence of conspiracy beyond reasonable doubt, and to prove all the elements of Section 3(e) of RA No. 3019.

PEREZ' APPEAL

On the other hand, Perez assigns the following errors to the Sandiganbayan:

A.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT AMONG OTHERS NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE THE GUILT OF THE HEREIN ACCUSED BEYOND REASONABLE DOUBT.

B.

THE HONORABLE SANDIGANBAYAN GRAVELY ERRED FOR NOT DISMISSING THE INSTANT CASE FOR THE FATAL DEFECT COMMITTED BY THE PROSECUTION.⁴⁶

It is Perez' theory that since the search and seizure conducted by the OMB on May 27, 2010 was done without a search warrant in violation of the Constitution, the items seized were inadmissible in evidence. Consequently, even if there had been a pull-out of the seized items on the night of May 27, 2010, there was no prejudice to the government because the seized items were inadmissible in evidence anyway and, therefore, would have had no probative value in any proceeding. Perez also argues that it is not even sure that the items seized were pirated because when they conducted the raid on May 27, 2010, all they saw were boxes being unloaded from a truck. Thus, Perez concludes that there was no actual violation of RA No. 9239, the Optical Media Board Act of 2003. Finally, Perez contends that the ownership of the seized items was not established and, therefore, even if no charges were filed against Sky High Marketing, the Republic suffered no damage.

THE SPECIAL PROSECUTOR'S CONTENTION

On the other hand, in its appellee's brief,⁴⁷ the Republic, through the

⁴⁶ Id. at 302-327.

⁴⁷ Id. at 399-437.

Special Prosecutor, asserted that the Sandiganbayan did not commit a reversible error in finding Ricketts and Perez guilty beyond reasonable doubt of violating Sec. 3(e) of RA No. 3019. In particular, the Special Prosecutor insisted that security guard Gazzingan's testimony that Perez had told him that it was Ricketts who instructed him to bring out the seized items is an independently relevant statement and is not hearsay. The Special Prosecutor also contended that the conspiracy between accused-appellants need not be directly proved and can be inferred from the acts of the accused. Thus, considering the evidence presented, the Special Prosecutor now asks the Court to affirm the decision of the Sandiganbayan.

ISSUE

Whether or not the Sandiganbayan erred in finding that the prosecution had proved the conspiracy between accused-appellants, as well as their guilt of the offense charged beyond reasonable doubt.

RULING OF THE COURT

The appeal of Ricketts is meritorious. We find that the evidence against him is mere hearsay. The prosecution failed to prove his participation in the crime beyond reasonable doubt.

However, the appeal of Perez is without merit. Having been caught red-handedly taking out the seized items without written authorization, Perez' justifications for his actions are irrelevant since the mere act of taking out and returning the seized items without written authority from the OMB amounts to giving an unwarranted benefit to the owner of the seized items.

This Court has always supported the government's efforts to stamp out graft and corruption in the service. Indeed, we have always held that the tentacles of greed must be cut and the offenders punished. However, this objective can only be accomplished if the evidence adduced by the prosecution, which must closely be scrutinized under the lens of the spirit that animates RA No. 3019, passes the test of *moral certainty*. Where doubt lingers, as in this case, the Court is mandated to uphold the presumption of innocence guaranteed by our Constitution to the accused.⁴⁸ As a rule, findings of fact of the Sandiganbayan, as a trial court, are accorded great weight and respect. However, in cases where there is a misappreciation of facts, the Court will not hesitate to reverse the conclusions reached by the trial court. At all times, 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.⁴⁹ Otherwise,

⁴⁸ *Monteverde v. People*, 435 Phil. 906, 925 (2002).

⁴⁹ *Maamo v. People*, 801 Phil. 627, 652 (2016).

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the presumption of innocence must be favored, and exoneration must be granted as a matter of right.⁵⁰

After a judicious examination of the records and submissions of the parties in this case, the Court finds that the facts and evidence presented by the prosecution failed to prove the guilt of Ricketts beyond reasonable doubt.

The prosecution failed to prove a conspiracy between Perez and Ricketts.

Accused-appellants in the instant case were charged with allegedly conspiring and confederating with one another in giving unwarranted benefits to Sky High Marketing to the damage and prejudice of the government.

The prosecution hinges its theory of conspiracy solely on Gazzingan's report that when he caught Perez bringing out the seized items without the proper written authorization form or gate pass, Perez told him that it was Chairman Ricketts who had ordered him to do so. To the Sandiganbayan, this report, coupled with Ricketts' failure to make a specific denial during trial, was sufficient to make accused-appellants liable as co-principals by reason of conspiracy.

The Court disagrees. Despite Ricketts' failure to testify during the trial, the presumption of innocence should remain in his favor and the prosecution continued to have the burden of proving his guilt beyond reasonable doubt. Unfortunately, the prosecution failed to discharge its burden.

It should be stressed at the outset that there is no such thing as presumption of bad faith in cases involving violations of RA No. 3019, or the Anti-Graft and Corrupt Practices Act. On the contrary, the law presumes the accused innocent, until proven guilty. Well entrenched in our jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the evidence for the prosecution. The burden is on the prosecution to prove the accused's guilt beyond reasonable doubt, not on the accused to prove his innocence. The administration of justice is not a matter of guesswork. Since a person's liberty is at stake here, all measures must be taken to ensure the protection of his fundamental rights.⁵¹

While the report of Gazzingan may be taken as an independently relevant statement with respect to the fact that Perez had made a statement to the effect that it was Ricketts who ordered the release of the seized items, it does not prove the truth of such statement.

⁵⁰ *Arriola v. Sandiganbayan*, 526 Phil. 822, 835-836 (2006).

⁵¹ *Suba v. Sandiganbayan*, G.R. No. 235418, March 3, 2021.

We are well aware that independently relevant statements are the exception to the hearsay rule. However, we are not prepared to accept the Sandiganbayan's conclusion that just because Gazzingan's report is admissible in evidence, it follows that Ricketts had ordered the pull-out of the seized items. While Gazzingan's report falls under the doctrine of independently relevant statements, it does not prove the truth or falsity of Perez' statement.

In *XXX v. People*,⁵² Justice Edgardo L. Delos Santos discussed the *doctrine of independently relevant statements*, citing *Gubaton v. Amador*,⁵³ as follows:

Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and *the truth or falsity thereof is immaterial*. The doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, *regardless of their truth or falsity*, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it (a) constitutes a fact in issue or (b) is circumstantially relevant to the existence of such fact. Accordingly, the hearsay rule does not apply, and hence, the statements are admissible as evidence. (Emphasis and italics supplied)

In this case, Gazzingan had no personal knowledge of who had actually ordered Perez to pull-out the seized items. Thus, while Gazzingan's report may be considered as an independently relevant statement with respect to the fact that Perez had reloaded the seized items into a van and had made a statement as to who allegedly ordered him to do so, it is inadmissible as hearsay with respect to the truth of such statement; that is, it is hearsay as to whether Ricketts had actually verbally ordered Perez to pull-out the seized items. While Gazzingan's testimony proves Perez' unauthorized act, it does not prove that Ricketts had ordered the unlawful act. Neither does it prove that a conspiracy existed between them.

In *Macairan v. People*,⁵⁴ the Court had occasion to reiterate hornbook doctrine on conspiracy. Said the Court:

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. While direct proof is not necessary to establish a conspiracy, it is vital for the prosecution to show, at the very least, with the same degree of proof required to establish the crime – *proof beyond reasonable doubt*, that all participants performed overt acts with such closeness and coordination as to indicate a common purpose or design to commit the felony. The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators or by exerting moral ascendancy

⁵² G.R. No. 241390, January 13, 2021.

⁵³ A.C. No. 8962, July 9, 2018.

⁵⁴ G.R. No. 215104, March 18, 2021.

over the other co-conspirators by moving them to execute or implement the conspiracy. The Court further emphasizes that the community of design to commit an offense must be a conscious one. Mere knowledge, acquiescence, or agreement to cooperate, mere presence at the scene of the crime at the time of its commission, and mere companionship, are insufficient to constitute one as part to a conspiracy.⁵⁵ (Emphasis ang italics supplied)

In this case, Ricketts' participation in Perez' unauthorized acts was not established with proof beyond reasonable doubt.

As pronounced by Chief Justice Diosdado M. Peralta in *Suba v. Sandiganbayan*⁵⁶ –

It is settled that the burden is on the prosecution to prove an accused's guilt beyond reasonable doubt. This is demanded by the due process clause of the Constitution, which protects an accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. Unless the prosecution is able to discharge its burden, the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal.⁵⁷

It does not take too much imagination to see that having been caught red-handed, Perez had grasped at straws and dropped the OMB Chairman's name to excuse his unauthorized pull-out of the seized items. However, implicating Ricketts was not sufficient because the unauthorized pull out would not have succeeded had Gazzingan not allowed Perez to take the items out.

As shown by the prosecution's own evidence, the standard procedure for the pull-out of any seized items requires the presentation of a written authority or gate pass.⁵⁸ Even though Perez had dragged Ricketts' name into the matter, it remained within security guard Gazzingan's power to stop the pull-out because the pull-out without written authority was a clear violation of OMB standard procedures. Indeed, the unauthorized pull-out of the seized items succeeded only because Gazzingan had allowed it. Thus, Gazzingan's reliance on Perez' statement that Ricketts had purportedly verbally authorized the pull-out was as much his (Gazzingan's) excuse for allowing the pull-out, as it was Perez' defense for the unauthorized act. Strictly speaking, the only overt acts proved by the prosecution were Perez' act of pulling out the seized items and Gazzingan's act of allowing it. Ricketts' alleged participation in the matter is purely speculative and hearsay. Thus, it was a grievous and egregious error for the Sandiganbayan to conclude that Ricketts' guilt of the crime charged had been proved beyond reasonable doubt.

⁵⁵ Id.

⁵⁶ *Suba v. Sandiganbayan*, supra.

⁵⁷ Id.

⁵⁸ Exhibit "E," folder of exhibits for the prosecution.

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At the very least, Gazzingan's testimony should not have been made the sole basis to conclude that Ricketts intentionally took part in the planning, preparation, and execution of the alleged conspiracy to defraud the government by ordering Perez to release the seized items. There must be other positive and clear evidence showing each of the accused's conscious and intentional participation in the planning, preparation and execution of the crime charged.⁵⁹ However, from the evidence adduced by the prosecution, the Court finds that no clear nexus exists to prove a unity of action and purpose between and among Ricketts and Perez to give unwarranted benefit to a private party resulting in damage to the government. Therefore, Ricketts should have been acquitted and the case against him dismissed.

We quote Justice Alfredo Benjamin S. Caguioa's *ponencia* in *Martel v. People*,⁶⁰ –

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.⁶¹

Only Perez' guilt was proved beyond reasonable doubt

Section 3(e) of RA No. 3019 states:

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

x x x

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

In order to convict an accused for violation of the aforequoted provision, each of the following essential elements must be proven beyond reasonable doubt:

⁵⁹ *Macairan v. People*, supra note 52.

⁶⁰ G.R. No. 224720-23, February 2, 2021.

⁶¹ *Id.*

- 1) the accused must be a public officer discharging administrative, judicial, or official functions;
- 2) he must have acted with manifest partiality, or evident 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.

In this case, the Special Prosecutor proved all three (3) elements against Perez. It is not disputed that as a Computer Operator in the OMB, Perez was a public officer discharging official functions therein. In fact, Perez was among the OMB personnel who conducted the raid that resulted in the confiscation of the optical discs in question.

Perez also does not deny that later that same day of the raid, under cover of darkness, he took out the seized items without a written authorization or gate pass. In so doing, Perez acted with manifest partiality in favor of Sky High Marketing and in evident bad faith because he knew that the seized discs were under preventive custody of the OMB since he was part of the seizure and confiscation team. He seized the contraband, only to return them after office hours without written authorization from the OMB.

Justice Jose C. Vitug explains "bad faith" in *Fonacier v. Sandiganbayan*⁶² as follows:

Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and **conscious doing of a wrong**; a **breach of sworn duty** through some motive or intent or ill will; it partakes of the nature of fraud. (Emphasis supplied)

Under Section 10(e) of RA No. 9239, the OMB has the power to "*take into preventive custody any optical media and/or material or equipment, including parts, accessories and paraphernalia used for the mastering, manufacture or replication of optical media which are found in any premises if the OMB has reasonable ground to believe or suspect that these are evidence of violation of the provisions of this Act; x x x.*"

Optical media that are under preventive custody or *custodia legis* must remain in the possession of the OMB and are to be released only after 30 days from date of confiscation, unless the appropriate criminal or administrative case is filed in the meantime. Thus, Section 3, Rule 7 of the Implementing Rules of RA No. 9239 provides:

⁶² 308 Phil. 660 (1994).

Section 3. Return of Property. - Properties taken into preventive custody shall be returned to their owner or holder within thirty (30) days from the date of the taking into preventive custody unless appropriate criminal or administrative complaint has been instituted against the persons or entities which appear to be liable for the offense or violation of the Act or these Rules.

Moreover, if it is eventually determined by the courts that the optical discs under preventive custody are pirated, then they are to be destroyed in accordance with Section 23 of RA No. 9239, as follows:

SEC. 23. Disposal of Seized Materials. — Any optical media, equipment or materials found to be in violation of the provisions of this Act, and any books, records or paraphernalia providing evidence of any violation committed by any person, establishment or entity, shall be confiscated and forfeited in favor of the government and shall be disposed in accordance with pertinent laws and regulations: *Provided, That confiscated optical media may, pending consideration of the case, be immediately destroyed upon final determination by the OMB in an administrative case, or by a court in a civil or criminal case, that the same are in violation of this Act: Provided, further, That a sufficient representative sample shall be retained for evidentiary purposes.*

The retained representative sample shall remain in *custodia legis* until the final resolution of proceedings thereon.

Equipment and materials imported in violation of this Act shall be subject to seizure and immediate disposal by the Bureau of Customs.
(Emphasis supplied)

Perez' return of the seized discs to Sky High Marketing gave the latter an unwarranted benefit because it does not appear that the OMB had the time to properly review the seized discs to determine the appropriate case it could institute against Sky High Marketing. As a member of the OMB, Perez should be aware, if not very familiar, with the above provisions of RA No. 9239 and its Implementing Rules. His act of pulling out the seized discs from OMB custody is a breach of his sworn duty, regardless of whether a separate proceeding against Sky High Marketing would and could be instituted. His actions were simply devoid of good faith and contrary to the letter of the OMB law.

In taking the discs that were under custodia legis of the OMB, Perez interfered with proper legal processes, to the damage and prejudice of the government and to the detriment of public interest.

Perez' contention that the government suffered no prejudice by his pull-

out and return of the confiscated discs because some discs still remained in the OMB office and could have been used as evidence, deserves scant consideration.

The provisions of RA No. 9239 clearly provide that the confiscated optical media are under *custodia legis* of the OMB. It is immaterial that Perez did not take all the discs. What is material is that he interfered with the functions of the OMB by taking out and releasing the confiscated materials before legal processes could be undertaken; that is, before the appropriate criminal and administrative cases could be filed against the perpetrators of the offense.

As Justice Abdulwahid Bidin explained in *Chua v. Court of Appeals*⁶³ as to why property under *custodia legis* cannot be the object of an action for replevin asking for return of the property –

The reason posited for this principle is that *if it was otherwise, there would be interference with the possession before the function of the law had been performed as to the process under which the property was taken.*

Thus, a defendant in an execution or attachment cannot replevy goods in the possession of an officer under a valid process, although after the levy is discharged, an action to recover possession will lie (Francisco, Revised Rules of Court in the Philippines: Provisional Remedies, p. 402 [1985]).⁶⁴ (Emphasis and italics supplied)

By removing the discs from OMB custody, Perez deprived the government of its right to impose the appropriate penalty of destruction of the discs in the event that the perpetrators are found guilty of violating RA No. 9239.

Perez' contentions that the return of the optical discs did not prejudice the government because it is not sure that the discs were pirated or that Sky High had violated RA No. 9239, and "anyway" the discs would be inadmissible in evidence because the OMB raiding team had no search warrant, amount to an admission that he took out the discs and returned them to Sky High Marketing without due authorization. Perez only denies that it caused prejudice to the government. However, it is not for Perez to decide whether the discs were indeed pirated; whether Sky High Marketing is guilty of violating RA No. 9239; or whether the discs would be admissible in evidence had a case been filed against Sky High because those are matters for the courts and the OMB to decide. What is clear is that Perez had taken the confiscated discs without written authority and in violation of the provisions of RA No. 9239. In doing so, Perez acted with evident bad faith, thereby causing prejudice to the government to the detriment of the public.

⁶³ 294 Phil. 96 (1993).

⁶⁴ Id. at 101.

Piracy of optical media is a worldwide problem owing to the ease with which optical media can be replicated and pirated. Without regulatory controls, the movie industry would suffer and would eventually prove economically unviable. The proliferation of pirated films not only deprives the government of much needed revenues but also indicates the widespread breakdown of national order and discipline.⁶⁵

In sum, the Court rules that the prosecution failed to prove Ricketts' guilt beyond reasonable doubt, necessitating his acquittal on that ground and obviating further need to discuss the procedural issues raised in his appellant's brief. On the other hand, the prosecution proved beyond reasonable doubt the elements showing Perez' violation of Section 3(e) of RA No. 3019. Hence, the Sandiganbayan's decision with respect to Perez must be upheld.

WHEREFORE, the appeal of **RONALD N. RICKETTS** is **GRANTED**, and the *Decision* dated March 15, 2019 of the Sandiganbayan (Special Fourth Division) in Case No. SB-15-CRM-0132 for violation of Section 3(e) of Republic Act No. 3019, and its *Resolution* dated November 15, 2019 denying reconsideration thereof, are **AFFIRMED with MODIFICATION**.

Accused-appellant **RONALD N. RICKETTS** is **ACQUITTED** for failure of the prosecution to prove conspiracy and his guilt of the offense charged beyond reasonable doubt. The Hold Departure Order issued against him is **LIFTED** and **SET ASIDE** and his cash bond is **RELEASED**, subject to the usual accounting and auditing procedures.

The Sandiganbayan's *Decision* finding accused-appellant **GLENN S. PEREZ GUILTY BEYOND REASONABLE DOUBT** of violation of Section 3(e) of Republic Act No. 3019, as amended, and sentencing him to suffer the indeterminate **PENALTY** of imprisonment of six (6) years and one (1) day as minimum and eight (8) years as maximum, with perpetual disqualification from holding public office is **AFFIRMED in toto**.

Let entry of judgment with respect to Ronald N. Ricketts be issued immediately.

SO ORDERED.


RICARDO R. ROSARIO
Associate Justice


WE...

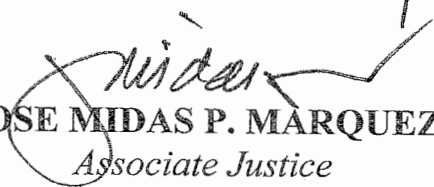
⁶⁵ *20th Century Fox v. Court of Appeals*, 247 Phil. 624, 636 (1988).

... *CONCUR:*


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

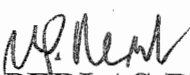

RAMON PAUL L. HERNANDO
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice


ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

