SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

JOSE TAPALES VILLAROSA,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. Nos. 233155-63

Present:

PERALTA, *C.J.*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS, and
GAERLAN,* *JJ.*

Promulgated:

June 23, 2020

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DECISION

PERALTA, *C.J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] of the Sandiganbayan (*SB)*, promulgated on November 17, 2016, which found petitioner guilty beyond reasonable doubt of nine (9) counts of violation of Section 3(e) of Republic Act No. 3019 (*RA 3019*), otherwise known as the *Anti-Graft and Corrupt*

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* On leave.

1 Penned by Associate Justice Reynaldo P. Cruz, with Associate Justices Efren N. De La Cruz and Michael Frederick L. Musngi, concurring, *rollo*, pp. 43-61.

Practices Act, and sentenced him, for each count, to an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with the accessory penalty of perpetual disqualification from holding public office. The petition also questions the SB Resolution[2] dated March 6, 2017 which denied petitioner's Motion for Reconsideration.[3]

The factual and procedural antecedents of the case are as follows:

Sometime in August to September 2010, the Designated Area Supervisor of the Provincial Environment and Natural Resources Office (*PENRO*) of the Province of Occidental Mindoro received several reports from their mining and quarry checkers that there are persons who are conducting quarry operations within the territorial jurisdiction of the Municipality of San Jose, in the same province, without the required Extraction Permits issued by the Provincial Government. Acting on these reports, the Designated Area Supervisor notified the quarry operators of their alleged violation, but upon being confronted by the former, the said quarry operators presented several documents, among which are Extraction Permits signed by herein petitioner who was then the Mayor of San Jose. Noting that the documents shown were not issued by the Provincial Governor's Office, Ruben P. Soledad (*Soledad*), the Provincial Environment and Natural Resources Officer of Occidental Mindoro issued Cease-and-Desist Orders (*CDOs*) against these quarry operators, notifying them that it is the Provincial Governor who has sole authority to issue extraction permits and reminding them of the penalties that may be imposed upon them under the applicable provisions of the governing Provincial Tax Ordinance.

After acquiring information of the issuance of the above CDOs, herein petitioner wrote a letter, dated May 23, 2011, addressed to Soledad explaining his position on the matter and stating that he [Soledad] is guilty of "mockery of the whole legislative process" in considering certain provisions of the existing and applicable Provincial Tax Ordinance as repealed, and in supposedly giving effect to a proposed amendment of the said Ordinance without the benefit of public hearing and publication as required by law. As such, petitioner manifested that the Municipality of San Jose "shall not recognize [the] cease-and-desist order until such time that a proper legal process is adhered to by the Provincial Government." Petitioner also asked Soledad to "properly respect the inherent powers vested upon the Local Government Unit which was unmistakably and distinctly defined in the Local Government Code (*LGC*) of 1991 as a political subdivision" which "has substantial control of local affairs."[4]

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2 *Id.* at 63-69.

3 Records, Vol. II, pp. 406-434.

4 See Exhibit "H," *id.* at 74.

In a letter dated May 26, 2011, Soledad responded to petitioner by claiming that, pursuant to Provincial Tax Ordinance No. 2005-004 of Occidental Mindoro, as well as the Local Government Code of 1991, the authority to issue permits for the extraction of sand and gravel within the Province of Occidental Mindoro resides exclusively with the Provincial Governor. Soledad explained that the subject CDOs were issued for failure of the concerned quarry operators to present the legal permits because the ones they presented were issued by herein petitioner in his capacity as the Mayor of San Jose who is not authorized to do so. Soledad also insisted that the CDOs it issued were based on the strength of the provisions of the existing Provincial Tax Ordinance and not on the basis of any proposed amendments thereto.[5]

On August 23, 2011, petitioner wrote a letter addressed to the Members of the *Sangguniang Panlalawigan* of Occidental Mindoro insisting that, under the LGC, the Municipal government is authorized to organize its Municipal Environment and Natural Resources and to enforce its own regulatory powers. Petitioner also manifested that he is not in conformity with the alleged amendment of Provincial Tax Ordinance No. 2005-004, and that he will just honor the provisions of the original version of the said Ordinance which supposedly authorizes the Municipal Treasurer to receive payments from applicants of extraction permits.[6]

On October 4, 2011, Soledad filed, before the Office of the Ombudsman, a Complaint[7] against petitioner for Usurpation of Authority, Violation of Section 138 of Republic Act No. 7160 (*RA 7160*), otherwise known as the *Local Government Code of 1991*, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of Republic Act No. 6713 (*RA 6713*), otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*. In his Complaint, Soledad alleged that despite petitioner's knowledge that he lacks the requisite authority to issue extraction permits to quarry operators, petitioner, nonetheless, proceeded to issue several permits to several operators who were conducting quarry operations in San Jose.

In its Resolution[8] dated January 16, 2014, the Office of the Ombudsman for Luzon found probable cause to hold petitioner criminally liable for issuing the subject extraction permits and directed the filing of the corresponding Informations. Thus, on even date, separate Informations were filed with the SB against petitioner for ten (10) counts of violation of Section 3(e) of RA 3019, as amended. The Informations, which were similarly

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[5] See Exhibit "J," *id.* at 76.
[6] Exhibit "I," *id.* at 75.
[7] Exhibit "E," *id.* at 17-27.
[8] Records, Vol. I, pp. 5-16.

worded, except as to the dates of the commission of the offense and the recipients of the extraction permits, alleged as follows:

> That on or about (24 August 2010), in San Jose, Occidental Mindoro, and within the jurisdiction of this Honorable Court, the above-named accused, JOSE T. VILLAROSA, a public officer, being then the Municipal Mayor of San Jose, taking advantage of his official position and committing the crime in relation to his office, did then and there willfully, criminally and **with evident bad faith**, give unwarranted benefits, advantage or preference to private party, by unlawfully issuing an Extraction Permit to (Gem CHB Maker), contrary to the provisions of Section 138 of Republic Act No. 7160, which vests on the Provincial Governor the exclusive power to regulate and levy taxes on extraction activities conducted within the Province, thereby allowing said private party to benefit from and take advantage of the privilege to extract quarry resources without legal authority and official support.[9]

The Informations were docketed as SB-14-CRIM. CASE Nos. 0347-0356.

On November 12, 2014, the prosecution filed a Manifestation with Motion to Withdraw Information[10] praying for the withdrawal of the Information in SB-14-CRIM. CASE No. 0347 on the ground that the document attached in the Complaint was not an Extraction Permit as alleged in the Information but a Mayor's Permit to conduct business which was not illegally issued.

On February 23, 2015, petitioner was arraigned, and he entered a plea of not guilty in all ten cases.[11]

However, in its Resolution[12] dated February 24, 2015, the SB granted the prosecution's Motion to Withdraw the Information in SB-14-CRIM. CASE No. 0347 and deemed the said case dismissed.

Subsequently, trial ensued with respect to the nine (9) indictments against petitioner.

After trial, the SB rendered its November 17, 2016 questioned Decision finding petitioner, in all nine (9) cases (SB-14-CRIM. Case Nos. 0348-0356), guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019 and imposing upon him, in each of the nine cases, the indeterminate penalty of imprisonment of six (6) years and one (1) month to

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9 *Id.* at 1. (Emphasis ours)
10 *Id.* at 181-183.
11 See SB Order dated February 23, 2015, *id.* at 279.
12 Records, Vol. I, p. 280.

ten (10) years, with the accessory penalty of perpetual disqualification to hold public office.

The SB held that all the elements of violation of Section 3(e) of RA 3019 are present in the instant case.

Petitioner filed a Motion for Reconsideration, but the SB denied it in its Resolution dated March 6, 2017.

Petitioner, then, filed a petition for review on *certiorari* with this Court. However, his petition was denied via a minute Resolution[13] dated September 13, 2017 for failure to sufficiently show any reversible error in the assailed judgment of the SB to warrant the exercise by this Court of its discretionary appellate jurisdiction.

Aggrieved by such denial, he filed a motion for reconsideration, but this Court denied the motion with finality in a Resolution[14] dated November 22, 2017, as no substantial argument was adduced to warrant the reconsideration sought.

Petitioner filed a second motion for reconsideration.

On July 17, 2018, this Court issued a Resolution[15] which reinstated the instant petition. In the said Resolution, this Court noted that if an accused in a case decided by the SB, which completely disposes of the case, whether in the exercise of its original or appellate jurisdiction, chooses to question such decision of the SB, the legal recourse he/she has is to file a petition for review on *certiorari* with this Court under Rule 45 of the Rules of Court. However, this Court has observed that, in a number of cases, petitions for review of decisions of the SB were adjudicated via minute resolutions. While the disposition of cases through minute resolutions is an exercise of judicial discretion and constitutes sound and valid judicial practice under the Constitution,[16] settled jurisprudence[17] and the prevailing rules,[18] this Court found it a better policy to limit the issuance of minute resolutions denying due course to a Rule 45 petition, which assails a decision of the SB, to cases decided by the said court in the exercise of its appellate jurisdiction. Thus, with respect to cases resolved by the SB in the exercise of its original jurisdiction, the mode of deciding the case is either

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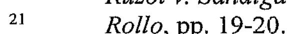
13 Records, Vol. I, pp. 123-124.
14 *Id.* at 149-150.
15 *Id.* at 177-178.
16 Constitution, Art. VIII, Sec. 14.
17 *Agoy v. Araneta Center, Inc.*, G.R. No. 196358, March 21, 2012; *Borromeo v. Court of Appeals*, G.R. No. L-82273, June 1, 1990.
18 See A.M. No. 10-4-20-SC, Rule 13, Section 6(d).

through a decision or unsigned resolution.[19] The reason behind this policy is because this Court is the first and last court which has the chance to review the factual findings and legal conclusions of the SB. Thus, by disposing of the case through a decision or unsigned resolution, this Court is required to take a "more than casual consideration" of the arguments raised by the appellant to support his cause as well as every circumstance which might prove his innocence.[20] Moreover, by virtue of the unique nature of an appeal in a criminal case, such appeal throws the whole case open for review in all its aspects. An examination of the entire records of the case may be made for the purpose of arriving at a correct conclusion. In doing so, the Court is always mindful of the precept that the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

Hence, the present petition raising the following Issues:

> I. Whether the mere issuance of the Extraction Permits by herein Petitioner Villarosa as Municipal Mayor amounts to evident bad faith and giving of unwarranted benefits, advantage or preference to the Quarry Operators considering that: (i) Accused issued the Extraction Permits only upon recommendation of both the Municipal Environment and Resources Office and the Municipal Administrator; (ii) Taxes were collected and remitted to the Province, Municipality of San Jose, and the Barangay, and that the share of the Province even formed part of its general fund which was duly appropriated by the Province in its 2011 and 2012 Budget Ordinance; (iii) not one of the Quarry Operators[,] alleged of having received unwarranted benefits, advantage or preference were prosecuted; (iv) The Extraction Permits were issued without knowledge of the Cease-and-Desist Orders; and [v] the Cease and Desist Orders were issued only to the Quarry Operators.
>
> II. Whether Section 138 of the Local Government Code is not a self-executing provision such that Petitioner Villarosa cannot be held liable for violation of Section 3(e) of R.A. No. 3019, as amended, in the absence of proof of publication of both SP Resolution No. 11, adopting and approving Provincial Tax Ordinance No. 2005-004, and Provincial Tax Ordinance No. 2005-004.[21]

The petition is meritorious.



[19] In conformity with the above-discussed policy, the 2018 Revised Internal Rules of the Sandiganbayan, which took effect on 16 November 2018, now provides that appeals to this Court, in criminal cases decided by the SB in the exercise of its original jurisdiction, shall be by notice of appeal, while appeals in cases decided by the SB, in the exercise of its appellate jurisdiction, is by petition for review on certiorari under Rule 45 of the Rules of Court.

[20] *Ruzol v. Sandiganbayan*, G.R. No. 186739-960, April 17, 2013.

[21] *Rollo*, pp. 19-20.

The settled rule is that conviction in criminal actions demands proof beyond reasonable doubt.[22] This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused.[23] Indeed, the burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[24] Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved."[25] Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution.

In the present case, petitioner is charged with violation of Section 3(e) of RA 3019 which provides:

> Section. 3. *Corrupt practices of public officers*. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

In order to hold a person liable under this provision, the following elements must concur, to wit:

(1) the offender is a public officer;
(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[26]

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22 *Daayata, et al. v. People*, G.R. No. 205745, March 8, 2017.
23 *Id.*
24 *Id.*
25 *Id.*
26 *Valencerina v. People of the Philippines*, 749 Phil. 886, 906 (2014).

The presence of the first and second elements are not disputed in the present case. Petitioner was the Mayor of the Municipality of San Jose, Occidental Mindoro at the time of the commission of the alleged offense and the acts complained of were done in the discharge of his official functions.

As to the third element, petitioner argues that the prosecution failed to prove that there was evident bad faith on his part. *First*, petitioner contends that the applications for extraction permit went through a legitimate process as these were filed with the Municipal Environment and Natural Resources Office (*MENRO*), a body which was duly created by the *Sangguniang Bayan* of San Jose and approved by the *Sangguniang Panlalawigan* of Occidental Mindoro. Thereafter the applications were forwarded to the Municipal Administrator who, then, recommended its approval to the Mayor. Upon approval by the Mayor, the applicant paid the extraction fee to the Municipal Treasurer who issued Official Receipts. *Second*, petitioner argues that the taxes and fees paid by the applicants for extraction permit were duly collected by the Municipal Government of San Jose and were, in turn, remitted to the Provincial Government of Occidental Mindoro. The taxes which were remitted formed part of the Province's general fund and were duly appropriated by the *Sangguniang Panlalawigan*. Petitioner avers that if he indeed had no authority to issue the subject extraction permits, why did the Provincial Government continue to accept the taxes which were generated from the issuance of these permits, and which were remitted by the Municipal Government of San Jose and never bothered to question them?

Under the third element, the crime may be committed through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." As already held by this Court, Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence.[27] There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[28] "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.[29] "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.[30] "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

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27 *Garcia, et al. v. Sandiganbayan, et al.*, 730 Phil. 521, 535 (2014).

28 *Id.*; *Fuentes v. People*, 808 Phil. 586, 594 (2017).

29 *Id.*

30 *Id.*

intentionally, with conscious indifference to consequences insofar as other persons may be affected.[31]

In the instant case, the prosecution alleges that petitioner is guilty of evident bad faith. However, the Court agrees with petitioner and finds that there is no sufficient evidence to prove that he is guilty of evident bad faith.

First, since he was not furnished copies of the CDOs nor was he previously notified of their issuance, petitioner was the one who took initiative in clarifying the validity of the said CDOs by writing a letter to Soledad and informing him of his position on the issue and the legal bases of such position.

Second, from the tenor of his letter to Soledad and the *Sangguniang Panlalawigan* of Occidental Mindoro, petitioner was very emphatic in his belief and reasoning, albeit mistakenly, that, under the Local Government Code, he wields authority, as Municipal Mayor, to issue the questioned permits. In fact, he even raised a legitimate question on the validity of the Provincial Tax Ordinance of Occidental Mindoro which governs, among others, the issuance of permits to extract and dispose of resources of the province. In other words, his claim and argument are not without any legal basis. However, he was mistaken in his reliance on the provisions of the Local Government Code as to his authority to issue the subject extraction permits. Such mistake, nonetheless, is not tantamount to evident bad faith, manifest partiality or gross inexcusable negligence as contemplated under the law as to make him liable under Section 3(e) of RA 3019.

Third, there is no showing that petitioner personally gained anything by his issuance of the questioned extraction permits. In fact, it was not disputed that all the pertinent taxes and fees in the issuance of the said permits were collected and the respective shares of the Provincial Government and the *barangay* were properly remitted and appropriated by them.

Fourth, there could have been no furtive design to issue the questioned permits because it is likewise undisputed that the application, the processing and the approval of the said permits went through the regular process. The applications were filed with the MENRO, which were then forwarded to the Municipal Administrator who, then, recommended its approval to the Mayor. Upon approval by the Mayor, the applicant paid the extraction fee to the Municipal Treasurer who issued Official Receipts. There was no evidence to show that there were favored applicants whose permits were surreptitiously issued for any ulterior motive or purpose.

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[31] *Id.* at 593.

Hence, the foregoing instances cast doubt on the culpability of petitioner for the crime charged. The prosecution was unable to present sufficient evidence to prove that in issuing the questioned extraction permits, petitioner was moved by a clear, notorious, or plain inclination or predilection to favor one side or person rather than another or of a palpably and patently fraudulent and dishonest purpose operating with furtive design to do moral obliquity or conscious wrongdoing.

Anent the last element, in order to hold a person liable for violation of Section 3(e), RA 3019, it is required that the act constituting the offense consists of either (1) causing undue injury to any party, including the government, or (2) giving any private party any unwarranted benefits, advantage or preference in the discharge by the accused of his official, administrative or judicial functions.[32] Petitioner is charged under the second mode.

For one to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official, administrative or judicial functions.[33] The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason.[34] "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.[35] "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[36]

In the instant case, the Court finds no sufficient evidence to prove that the persons in whose favor herein petitioner issued the subject extraction permits received unwarranted benefits, advantage or preference. At the time of issuing the subject permits, petitioner was justified by his honest belief that he is authorized by law to issue the said permits. Moreover, as mentioned above, there is no dispute that the recipients of the permits went through the regular process in applying for the said permits and that they paid the taxes and fees imposed by the Municipal Government of San Jose. Neither was there any showing that they were given preference over other applicants.

Moreover, it bears to reiterate that an accused has in his/her favor the presumption of innocence which the Bill of Rights guarantees. Unless his/her guilt is shown beyond reasonable doubt, he/she must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution, which protects the accused from conviction except upon proof

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32 *Ambil, Jr. v. Sandiganbayan, et al.*, 669 Phil. 32, 53 (2011).
33 *Id.* at 55.
34 *Id.*
35 *Id.*
36 *Id.*

beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his/her behalf, and he/she would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[37]

In this regard, Justice Marvic Mario Victor F. Leonen, in his Dissenting Opinion, posits that petitioner's alleged "brazen act of granting permits without any basis in law gives rise to a presumption of bad faith" on the part of respondent.

First, petitioner's issuance of the questioned permits proceeds from his belief, erroneous as it is, that he is authorized under Section 444(b)(3)(iv)[38] of the Local Government Code to issue the same. A cursory reading of this provision would readily show that there is, in fact, basis to conclude that respondent, as municipal mayor, has authority to issue permits and licenses, although such power is not applicable in the present case. Hence, it would be inaccurate to say that petitioner's act of granting permits has no basis, whatsoever, in law as to make petitioner guilty of evident bad faith.

Second, petitioner's supposed brash act of granting permits without legal basis could not have given rise to a presumption of bad faith. There is no such thing as presumption of bad faith in cases involving violations of the Anti-Graft and Corrupt Practices Act. On the contrary, as in all cases, the law presumes the accused innocent until proven guilty.

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37 *Daayata, et al. v. People, supra* note 22.

38 SEC. 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* –
(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.
(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x x x x x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;

x x x x x x x x x

Well-entrenched in 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 guilt beyond reasonable doubt, not on the accused to prove his innocence.[39]

Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be absolved of the crime charged. Thus, in the instant case, good faith on the part of petitioner need not even be proved. It is for the prosecution to show beyond reasonable doubt that he is guilty of evident bad faith. However, the prosecution has fallen short of discharging its burden of proving petitioner's guilt beyond reasonable doubt.

Yet, even as petitioner's actions were clearly not proven to be tinged with evident bad faith, there are still those that opine that an acquittal should not logically follow. The dissent advances the view that petitioner could still be convicted for violation of Section 3(e) of RA 3019 because the latter's actions may be considered to fall under the rubric of *gross inexcusable negligence* regardless.[40] The dissent further points out that such a conviction would be justified—even if the Informations against petitioner do not contain any allegation of gross inexcusable negligence—following the case of *Sistoza v. Desierto*.[41] This is plain error.

Contrary to the dissent's view, it would be highly improper, *nay* unconstitutional, to convict petitioner on the basis of gross inexcusable negligence. It must be emphasized that the Informations filed against petitioner all accuse the latter of violating Section 3(e) of RA 3019 through the modality of evident bad faith *only*. Not one Information accused petitioner of violating the same provision through gross inexcusable negligence. As can be derived from our earlier discussions, *evident bad faith* and *gross inexcusable negligence* are two of the three modalities of committing violations of Section 3(e) of RA 3019.[42] Also, by our previous discussion, we were able to establish that each modality of violating Section 3(e) of RA 3019 is actually distinct from the others.[43] Hence, while all three modalities may be alleged simultaneously in a single information for violation of Section 3(e) of RA 3019, **an allegation of only one modality without mention of the others necessarily means the exclusion of those not mentioned**. Verily, an accusation for a violation of Section 3(e) of RA 3019 committed through evident bad faith *only*, cannot be considered as synonymous to, or includes an accusation of violation of Section 3(e) of RA 3019 committed through gross inexcusable negligence.

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39 *Id.*
40 See Reflections of Senior Associate Justice Estela M. Perlas-Bernabe, p. 1.
41 437 Phil. 117 (2002).
42 *See* notes 29-31.
43 *Id.*

To adopt the dissent's view, therefore, would inevitably sanction a violation of petitioner's due process rights, particularly of his right to be informed of the nature and cause of the accusation against him.[44] Convicting petitioner of violation of Section 3(e) of RA 3019 on the basis of gross inexcusable negligence, when he was but charged of committing the violation by means of evident bad faith only, would be highly unfair as it effectively deprives the petitioner of the opportunity to defend himself against a novel accusation. This outcome simply cannot be countenanced. In *People v. Manalili,*[45] we were taught as much:

> The hornbook doctrine in our jurisdiction is that **an accused cannot be convicted of an offense, unless it is *clearly* charged in the complaint or information**. Constitutionally, he has a right to be informed of the nature and cause of the accusation against him. **To convict him of an offense other than that charged in the complaint or information would be violative of this constitutional right**.[46]

Neither would the case of *Sistoza* offer any refuge to the dissent's view. As astutely observed by Associate Justice Alfredo Benjamin S. Caguioa in his Concurring Opinion, the quotation in *Sistoza* that was relied upon by the dissent to justify their view is just an *obiter dictum.*[47] In other words, *Sistoza* never intended to definitively settle the question of whether an information for a violation of Section 3(e) of RA 3019 committed through evident bad faith only, can be sufficient to sustain a conviction for violation of the same provision albeit committed through the modality of gross inexcusable negligence. On this matter, we echo and adopt, as an integral part of this Decision, the following disquisition of Associate Justice Caguioa:[48]

> The portion of *Sistoza* relied upon by Justice Perlas-Bernabe is as follows:
>
>> We note that the *Information* against petitioner Sistoza, while specifying *manifest partiality* and *evident bad faith*, does not allege *gross inexcusable negligence* as a modality in the commission of the offense charged. An examination of the resolutions of the Ombudsman would however confirm that the accusation against petitioner is based on his alleged omission of effort to discover the supposed irregularity of the award to Elias General Merchandising which it was claimed was fairly obvious from looking casually at the supporting documents submitted to him for endorsement to the Department of Justice. And, while not alleged in the *Information*, it was evidently the intention of the Ombudsman to take petitioner to task for *gross inexcusable negligence* in addition to the two (2) other modalities mentioned therein. At any rate, it bears stressing that Sec. 3, par. (e), *RA*

44 Constitution, Art. III, Sec. 14(2).
45 355 Phil. 652, 654 (1998).
46 Emphasis supplied; citations omitted.
47 Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa, p. 9.
48 *Id.*

> *3019*, is committed either by *dolo* or *culpa* and although the *Information* may have alleged only one (1) of the modalities of committing the offense, the other mode is deemed included in the accusation to allow proof thereof.
>
> It is important to note, however, that Sistoza was a case where the accused questioned the Ombudsman's finding of probable cause against him. **The sufficiency of the Information filed against the accused therein was never the issue, as the main issue in the case was the propriety of the findings of the Ombudsman in the preliminary investigation. The absence of the phrase "gross inexcusable negligence" in the Information filed against him was not a material issue.** "Gross inexcusable negligence" was only brought up tin the discussion to drive home the point that the Ombudsman erred in finding probable cause for violation of Section 3(e), RA 3019, as the acts of the accused therein could not be considered to have been committed with evident bad faith or manifest partiality, or even gross inexcusable negligence.
>
> **Simply put, the paragraph in question is *obiter dictum*.**[49]

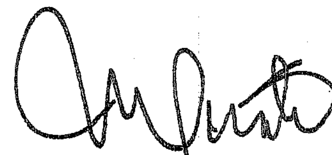
Alas, even assuming for the sake of argument that petitioner may be held accountable for the issuance of the subject extraction permits, such is not for the offense charged in the present Informations, as the acts being complained of do not constitute the elements of the crime presently charged. **In fact, in his complaint filed with the Ombudsman, complainant Soledad accused petitioner not of violation of Section 3(e) of RA 3019 but of Usurpation of Authority, Violation of Section 138 of RA 7160, Grave Abuse of Authority in Office, Grave Misconduct, Dishonesty, Conduct Prejudicial to the Best Interest of the Service and Violation of RA 6713; and Soledad presented evidence to support his accusations. However, the Ombudsman, instead chose to file the present Informations for petitioner's alleged violation of Section 3(e) of RA 3019.** In this respect, it is true, as Justice Amy C. Lazaro-Javier has pointed out in her Dissenting Opinion that it is the prerogative of the Ombudsman to determine what charges it shall file against petitioner. Indeed, the public prosecutor assumes and retains full discretion and control of the prosecution of all criminal actions and that the public prosecutor has the prerogative to determine the charge to be filed in court and who shall be charged. However, I hasten to add that such prerogative or discretion must always be based on evidence presented by the parties. It bears to reiterate that to hold a person liable under Section 3(e) of RA 3019, among the elements that must be proven was that the act complained of was done through manifest partiality, evident bad faith, or gross inexcusable negligence and that the public officer charged gave unwarranted benefits, advantage or preference. In the present case, there appears no evidence submitted by the private complainants to engender a well-founded belief that petitioner indeed violated such provision of law.

[49] Emphasis supplied; citations omitted.

In sum, the evidence proven by the prosecution in this case failed to pass the test of moral certainty necessary to warrant petitioner's conviction. The prosecution has failed to overcome the constitutional presumption of innocence enjoyed by petitioner. Hence, the failure of the prosecution's evidence to overcome such presumption of innocence entitles petitioner to an acquittal.

WHEREFORE, the instant petition is **GRANTED**. The assailed November 17, 2016 Decision and the March 6, 2017 Resolution of the Sandiganbayan in SB-14-CRIM. CASE Nos. 0348-0356, finding petitioner guilty beyond reasonable doubt of nine (9) counts of violation of Section 3(e) of Republic Act No. 3019, are **REVERSED** and **SET ASIDE**. Consequently, petitioner is **ACQUITTED** of the crime charged.

SO ORDERED.



DIOSDADO M. PERALTA
Chief Justice

WE CONCUR:

See Dissenting Opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate dissenting opinion

MARVIC M.V.F. LEONEN
Associate Justice

See Separate Concurring Opinion

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

I join J. Caguioa's separate concurring opinion

ALEXANDER G. GESMUNDO
Associate Justice

JOSE C. REYES, JR.
Associate Justice

I join J. Caguioa's Separate Concurring Opinion

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

Please See Dissenting Opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

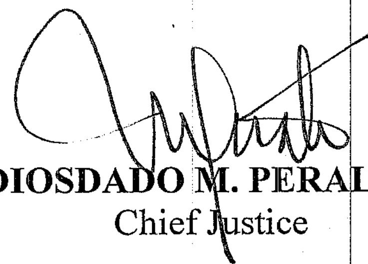
MARIO V. LOPEZ
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

On leave
SAMUEL H. GAERLAN
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 case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice