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Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**SIMEON GABRIEL RIVERA,  
MARILOU FARNACIO  
CANTANCIO,  
CESAR V. PRADAS, and  
EDUARDO A. CLARIZA,**  
Petitioners,

**G.R. No. 228154**

Present:

BERSAMIN, *Chief Justice*,  
\*PERLAS-BERNABE,  
GESMUNDO,  
CARANDANG, and  
\*\*ZALAMEDA, *JJ.*

- versus -

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

Promulgated:

**OCT 16 2019**

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**DECISION**

**BERSAMIN, C.J.:**

To convict for the violation of Section 3(e) of Republic Act No. 3019 (*Anti-Graft and Corrupt Practices Act*), the State must allege in the information and establish beyond reasonable doubt during the trial that the accused acted in the discharge of his official, administrative or judicial functions through manifest partiality or evident bad faith, or with gross inexcusable negligence in order to cause undue injury to any party, including the Government, or to give any private party any unwarranted benefits, advantage, or preference. The mere allegation of such modes, not being evidence, is not competent as proof of guilt.

**The Case**

We hereby resolve this appeal by petition for review on *certiorari* seeking to reverse and undo the decision promulgated on June 16, 2016,<sup>1</sup>

\* On leave.

\*\* Vice Associate Justice Francis H. Jardeleza, per Special Order No. 2712 dated September 27, 2019.

<sup>1</sup> *Rollo*, pp. 70-111; penned by Associate Justice Reynaldo P. Cruz, with the concurrence of Associate Justice Efren N. De La Cruz and Associate Justice Maria Cristina J. Cornejo.

whereby the Sandiganbayan found and pronounced the petitioners guilty of violating Section 3(e) of R. A. No. 3019.

### **Antecedents**

The petitioners, along with William Ramirez (Ramirez), Robert Magaway (R. Magaway) and Lawrence Andrew A. Magaway (L. Magaway), were charged with violating Section 3(e) of R.A. No. 3019 under the information whose accusatory portion stated:

That on or about the period 17 July 2007 to 05 December 2007, or sometime prior or subsequent thereto, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, accused WILLIAM ICALINA RAMIREZ, a high-ranking public officer being then the Chairman of the Philippine Sports Commission (PSC), Planning Officer V CESAR VALERA PRADAS, in his capacity as Chairman of the PSC Bids and Awards Committee (PSC-BAC), Administrative Officer V SIMEON GABRIEL MUSON RIVERA, Planning Officer III MARILOU FARNACIO CANTANCIO, Engineer II EDUARDO ABAN CLARIZA, in their capacity as PSC-BAC Members, all being employees of the PSC, acting as such, while in the performance of their official duties and functions, taking advantage of their official position and committing the offense in relation to their office, through manifest partiality, evident bad faith or gross inexcusable negligence, conspiring and confederating with ROBERT P. MAGAWAY AND LAWRENCE ANDREW A. MAGAWAY, owners of Elixir Sports Company (Elixir), did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage or preference to Elixir Sports Company with the PSC-BAC enabling Elixir to post its bid without competition by dispensing with the requirement of Section 21.2.1 in relation to Section 21.2.3 of the Implementing Rules and Regulations-A (IRR-A) of R.A. No. 9184 that the Invitation to Apply for Eligibility and to Bid (IAEB) be published or advertised in a newspaper of general circulation and notwithstanding the failure of Elixir to qualify as a bidder as it does not possess the eligibility criteria as required under Section 23.11 of IRR-A, R.A. No. 9184, that it should have been in existence for at least three consecutive years prior to the advertisement and/or posting of the IAEB, the PSC-BAC nonetheless resolved to declare Elixir as the Single Lowest Calculated and Responsive Bid for the supply of the sports equipment for the Philippine cycling athletes who would participate in the 24<sup>th</sup> Southeast Asian Games in Thailand, and with WILLIAM ICALINA RAMIREZ, despite non-compliance by the PSC-BAC with the provisions of IRR-A, R.A. No. 9184, still approving the PSC-BAC Resolution No. 034-2007 SEA Games declaring Elixir as the Single Lowest Calculated and Responsive Bids, thus resulting to an overprice of the said sports equipment of Elixir in the total amount of Six Hundred Seventy-One Thousand Two Hundred Pesos (Php671,200.00), thereby the accused public officers giving unwarranted benefits, advantage or preference to Elixir and which eventually caused undue injury to the government in the total amount of Six Hundred Seventy-One Thousand Two Hundred Pesos (Php671,200.00).

CONTRARY TO LAW.<sup>2</sup>

<sup>2</sup> Id. at 194-195.

All of the accused pled *not guilty* to the information at arraignment.<sup>3</sup>

The Sandiganbayan summarized the factual antecedents thusly:

On 11 July 2007, the joint task force of the Philippine Olympic Committee and Philippine Sports Commission (POC-PSC) for the 24<sup>th</sup> Southeast Asian Games (SEA Games) endorsed to the PSC Board of Commissioners (PSC Board) the proposal of the Philippine Amateur Cycling Association (PCA). This pertained to the purchase of cycling equipment and uniforms for the national athletes competing in the 24<sup>th</sup> SEA Games, in the amount of Two Million Three Hundred Sixty-Five Thousand Nine Hundred Eighty-one and 64/100 (Php2,365,981.64).

On 17 July 2007, the PSC Board appropriated the amount of Php13,559,340.44 to cover the budgetary requirements for the purchase of various sports equipment to be used by national athletes for the SEA Games. Out of this amount, Php2,365,981.64 was allotted for Cycling.

On 31 July 2007, Manuel R. Ibay, Jr., (Ibay) the Acting Property Head of the PSC, prepared Purchase Request (PR) No. SG07-79-2007 for SEA Games-Cycling, with the approval of accused Pradas as Acting Executive Director of the PSC.

On 3 September 2007, the PSC Bids and Awards Committee (PSC-BAC) posted on the PhilGEPS an Invitation to Apply for Eligibility and to Bid (IAEB) for the Supply and delivery of Sports Training Equipment for 2007 SEA Games-Cycling, with an ABC in the amount of Php2,365,981.64. The IAEB was also posted on the PSC website and on the PSC-BAC's Bulletin Board located at the 2<sup>nd</sup> Floor of the Administration Building of the PSC.

On 12 September 2007, the PSC-BAC conducted a Pre-Bidding Conference for the Supply and Delivery of Sports Equipment for Various Sporting Events of the 24<sup>th</sup> SEA Games. The Minutes of the Pre-Bid Conference indicated the attendance of Elixir, represented by accused Lawrence Magaway, as the only supplier for cycling.

Likewise, only Elixir submitted a bid proposal in response to the PSC-BAC's invitation to bid. Elixir is a partnership between accused Robert Magaway and accused Lawrence Magaway. It was registered with the SEC on 20 November 2006.

On 10 October 2007, the PSC-BAC held the opening of bids, with Elixir's bid amounting to Php2,329,130.00. During post-qualification, an examination, validation and verification of all eligibility, technical capability and financial requirements submitted by Elixir allegedly showed that its bid was also responsive. Thus, the PSC-BAC issued Resolution No. 034-2007-SEA GAMES (Resolution) declaring Elixir as the bidder with the Single Lowest Calculated Bid (SLCB) and recommended the approval of

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<sup>3</sup> Id. at 72.

the award of the contract for the Supply and Delivery of Training Sports Equipment for the 2007 SEA Games-Cycling in its favor.

On even date, accused Ramirez, who was then the Chairman of the PSC, approved the PSC-BAC's Resolution. He also signed the corresponding Notice of Award and Notice of Proceed. These notices bore the "*conforme*" of accused Lawrence Magaway, as Elixir's Manager.

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The final delivery was made on the same date. Thus, Elixir received the full payment in the amount of Php1,822,281.96.

After the SEA Games held in December 2007, a news article entitled "Cyclists Denounce Anomalies in Cycling Field" was published in the Manila Times on 28 February 2008. Said news article exposed the alleged anomalous purchase of supplies and equipment committed by PSC officials and employees for the 2007 SEA Games. This was the basis of the complaint filed by some members of the Philippine Cycling Team before the Field Investigation Office (FIO) of the Office of the Ombudsman.

On 06 March 2008, a special team was created by virtue of FIO Memorandum Circular No. 08-024. The team was tasked to conduct a fact-finding investigation relative to the complaint of the cyclists.

In the course of the investigation, the special team sent a letter to the Commission on Audit of the PSC (COA-PSC), requesting the conduct of a special audit regarding the procurement of equipment and other supplies of the PSC for the RP National Cycling Team for the 2007 SEA Games. In this Special Audit Report, the COA-PSC found no irregularities in the procurement of equipment and supplies conducted by the PSC. It was further observed that the bid quotation in the amount of Php2,329,130.00 was within the Php2,365,981.64 ABC.

The result of the investigation of the special team however contradicted the findings of the COA-PSC. In their investigation Report dated 24 April 2008, the special team found several violations of the rules of R.A. No. 9184 committed by PSC officials and employees. Particularly, they discovered that the required newspaper publication of the IAEB was not complied with, even though the ABC was more than Php2,000,000.00. Moreover, Elixir was not a qualified bidder since as a business entity it had only been existing for a year, and not three years as required under the law. The result of the market probe they conducted also confirmed that some of the items delivered were overpriced. Consequently, the FIO filed a complaint against several officials of the PSC and the owners of Elixir.

After the conduct of preliminary investigation, the Ombudsman found probable cause to file an Information for violation of Sec. 3(e) R.A. No. 3019 against herein accused.<sup>4</sup>

On June 16, 2016, after trial, the Sandiganbayan promulgated the assailed decision pronouncing the petitioners, along with the Magaways, guilty of violating Section 3(e) of R.A. No. 3019, disposing thusly:

<sup>4</sup> Id. at 82-90.

**WHEREFORE**, premises considered, judgment is hereby rendered as follows:

1. Accused Cesar V. Pradas, Simeon Gabriel M. Rivera, Marilou F. Cantancio, Eduardo A. Clariza, Roberto P. Magaway, Lawrence Andrew A. Magaway are found **GUILTY** beyond reasonable doubt of violation of Sec. 3(e), and pursuant to Section 9 thereof, are hereby sentenced to suffer an indeterminate penalty of imprisonment from six (6) years and one (1) month as minimum to ten (10) years as maximum, with perpetual disqualification from holding public office.

2. Accused William I. Ramirez is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. Accordingly, the hold departure order issued against him by reason of this case is hereby **LIFTED** and **SET ASIDE**, and his bond **RELEASED**, subject to the usual accounting and auditing procedures.

**SO ORDERED.**<sup>5</sup>

The Sandiganbayan opined that the petitioners as PSC-BAC members had not advertised the invitation to apply for eligibility and to bid (IAEB) in a newspaper of general circulation to prevent other suppliers from participating in the bidding; that the failure to advertise had favored Elixir Sports Company (Elixir); that the petitioners as PSC-BAC members had borne the responsibility to ensure that the procuring entity abided by the standards set forth in the law and the implementing rules and regulations, but they had been guilty of gross inexcusable negligence for not seeing to it that Elixir complied with the standards; that the PSC-BAC members had exhibited manifest partiality towards Elixir during the post-qualification proceedings by evaluating Elixir as a qualified bidder in contravention of the rules of the bidding requiring the bidders to have been in existence for three years and to have dealt with the procuring agency for the same length of time; and that the petitioners had thereby afforded Elixir with unwarranted benefits, advantage, or preference.<sup>6</sup>

The petitioners sought reconsideration, but the Sandiganbayan denied their motions through the assailed resolution of November 10, 2016.<sup>7</sup>

### Issue

The petitioners maintain that the posting of the IAEB in the PhilGEPS<sup>8</sup> and the PSC-BAC's bulletin board substantially complied with the publication requirement; that they did not deliberately fail to publish the IAEB in a newspaper of general circulation because the BAC Secretariat had assured that such publication was no longer required for contracts with

<sup>5</sup> Id. at 110-111.

<sup>6</sup> Id. at 92-99.

<sup>7</sup> Id. at 112-119.

<sup>8</sup> Acronym for Philippine Government Electronic Procurement System.

approved budget for the contract (ABC) of less than ₱5,000,000.00; and that Elixir had submitted documents showing its previous existence of more than three years and its having done business with the PSC in that length of time as the sole proprietorship of R. Magaway under the name and style of Elixir Trading; and that Elixir Trading had been converted into a partnership under the name and style of Elixir Sports Company, with R. Magaway and his brother, L. Magaway, as the partners.<sup>9</sup>

The Office of the Special Prosecutor (OSP) counters that the petitioners conspired in giving unwarranted benefit, advantage or preference in favor of Elixir by not publishing the IAEB in a newspaper of general circulation, and in awarding the contract to Elixir despite knowledge of its not being a qualified bidder.<sup>10</sup>

Did the Sandigabayan correctly find and pronounce the petitioners guilty of violating Section 3 (e) of RA 3019 in connection with the contract awarded in favor of Elixir?

### **Ruling of the Court**

The appeal is meritorious.

Section 3(e) of R.A. 3019 provides:

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

x x x x

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

x x x x

The essential elements of the violation of Section 3(e) are the following, namely: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he must have acted with

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<sup>9</sup> *Rollo*, pp. 92-93.

<sup>10</sup> *Id.* at 552.

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.<sup>11</sup>

There are, therefore, three modes of committing the violation of Section 3(e), that is, through manifest partiality, or with evident bad faith, or through gross inexcusable negligence. The modes have been well explained in *Fonacier v. Sandiganbayan*,<sup>12</sup> to wit:

The second element enumerates the different modes by which means the offense penalized in Section 3 (e) may be committed. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "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." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of *any* of these modes in connection with the prohibited acts under Section 3 (e) should suffice to warrant conviction. (Italics is part of the original text)

The three modes are distinct and different from one another.<sup>13</sup> Hence, proof of the existence of *any* of these modes suffices to warrant conviction for the violation of Section 3(e).<sup>14</sup>

The Sandiganbayan concluded that the petitioners had conspired to favor Elixir from the start; that Elixir had obtained advance information on the procurement to be carried out by the PSC; and that R. Magaway, one of the owners of Elixir, had no longer needed to wait for any kind of publication in order to be notified of the needs of the PSC because of his long standing relationship with the PSC.

The conclusions of the Sandiganbayan cannot be upheld.

To start with, no specific showing was made to the effect that R. Magaway had obtained advance information or had been given any definite information on the proposed procurement; or that, if such was the case, the

<sup>11</sup> *Reyes v. People*, G.R. Nos. 177105-06, August 4, 2010, 626 SCRA 782, 793.

<sup>12</sup> G.R. Nos. 50691, 52263, 52766, 52821, 53350 & 53397, December 5, 1994, 238 SCRA 655, 687.

<sup>13</sup> *Id.*

<sup>14</sup> *Reyes v. People*, *supra*.

petitioners had assisted in his obtention of such advance information. Thereby, the Sandiganbayann apparently indulged in plain conjecture.

Secondly, our impression after review indicates that the non-publication of the IAEB in a newspaper of general circulation was the outcome of the confusion in the minds of the petitioners as members of the PSC-BAC about the necessity for publication in respect of the particular procurement. It is not contested that Rivera had twice inquired from Noel Salumbides of the BAC Secretariat if the IAEB still had to be published in a newspaper of general circulation given the ABC of less than ₱5,000,000.00, and the latter had answered in the negative each time with the explanation that one of his subordinates had learned during a seminar about the new guideline of the Government Procurement Policy Board (GPPB) that effectively dispensed with the requirement for publication in a newspaper of general circulation for a procurement with an ABC of less than ₱5,000,000.00.<sup>15</sup> The fact that Rivera directly inquired from the BAC Secretariat on the requirement to publish in a newspaper of general circulation surely indicated the sincere intention to satisfy the requirement for publication. In other words, the non-publication did not at all result from the petitioners' evident bad faith or gross inexcusable negligence towards Elixir, or from their gross inexcusable negligence as members of the PSC-BAC.

In all likelihood, the non-publication might have been engendered also by the petitioners already regarding the actual publication of the IAEB in the PhilGEPS, and its posting in the PSC's website itself as well as in conspicuous places like the PSC-BAC's bulletin board as sufficient compliance with the requirement for the publication. As we see it, the actual posting of the IAEB in the PhilGEPS and in the PSC-BAC's bulletin board was entirely consistent with the legal requirement for making the procurement as public as possible, instead of being concealed. Even if hindsight wisdom may enlighten us now that the petitioners did not faithfully discharge their responsibility as PSC-BAC members, it is not fair or reasonable to judge them as grossly negligent or having acted with evident bad faith under the circumstances obtaining at the time of the procurement.

Thirdly, that only Elixir submitted its bid in the end would not warrant the conclusion that Elixir had obtained or been given advance notice of the procurement. It is not at all amiss to point out that the records tended to indicate that eight suppliers had attended the pre-bid conference, a detail that revealed some degree of public awareness of the forthcoming procurement for the cycling equipment.<sup>16</sup> Such other suppliers, had they been interested and qualified, could have submitted bids of their own.

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<sup>15</sup> *Rollo*, pp. 78-80; and 94-95.

<sup>16</sup> *Id.* at 53-54.



Fourthly, the procurement process was subjected to an audit by the Commission on Audit (COA). Based on its report dated March 11, 2008, the COA audit team found no irregularity in the procurement, and certified that the procurement had complied with relevant laws and rules. The regularity and validity of the procurement process thereby became indisputable. The Sandiganbayan should not have accepted and bowed to the audit findings considering that the COA was the constitutionally-mandated audit arm of the Government vested with broad powers over all accounts pertaining to public revenue and expenditures and the uses of public funds and property.<sup>17</sup>

And, lastly, the observations by Sandiganbayan that the PSC-BAC members had exhibited manifest partiality in favor of Elixir during the post-qualification proceedings by declaring Elixir as a qualified bidder despite being organized as a partnership only on November 20, 2006 for being in contravention of the requirement for bidders to have been in existence and doing business for at least three years<sup>18</sup> were unwarranted.

As mentioned, the COA report considered the procurement regular and valid. As such, the declaration of Elixir as a qualified bidder in the post-qualification proceedings despite the supposed defects, standing alone, could not be competent evidence of manifest partiality. Moreover, it would appear from the records that Elixir had been actually converted into the partnership of the Magaways from its earlier status as the sole proprietorship of one of them, and the sole proprietorship had dealt with the PSC as a supplier for more than the required period.

To be underscored is that the mere allegation that the petitioners as PSC-BAC members had accorded preferential treatment in favor of Elixir would not suffice to prove guilt for violation of Section 3(e). To hold otherwise is to let suppositions based on mere presumptions, not established facts, constitute proof of guilt. That holding is constitutionally impermissible, for suppositions would not amount to proof beyond reasonable doubt by virtue of their nature as conjectural and speculative.<sup>19</sup> They do not overcome the strong presumption of innocence in favor of the petitioners as the accused.

In every criminal case, indeed, the accused enjoys the presumption of innocence, and is entitled to acquittal unless his guilt is shown beyond reasonable doubt.<sup>20</sup> The proof of guilt must amount to a moral certainty that the accused committed the crime and should be punished. Thus, we have to acquit the petitioners on the ground that the State did not establish their guilt beyond reasonable doubt.<sup>21</sup>

<sup>17</sup> *Garcia, Jr. v. Office of the Ombudsman*, G.R. No. 197567, November 19, 2014, 741 SCRA 172, 189.

<sup>18</sup> *Rollo*, p. 96.

<sup>19</sup> *Zapanta v. People*, G.R. Nos. 192698-99, April 22, 2015, 757 SCRA 172, 193.

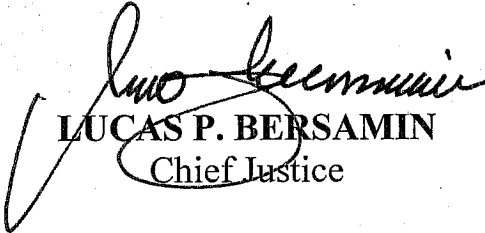
<sup>20</sup> *People v. Claro*, G.R. No. 199894, April 5, 2017, 822 SCRA 365, 367.

<sup>21</sup> *Daayata v. People*, G.R. No. 205745, March 8, 2017, 820 SCRA 58, 74.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; and **ACQUITS** petitioners **SIMEON GABRIEL RIVERA, MARILOU FARNACIO CANTANCIO, CESAR V. PRADAS,** and **EDUARDO A. CLARIZA** for failure of the Prosecution to prove their guilt beyond reasonable doubt.

No pronouncement on costs of suit.

**SO ORDERED.**


  
**LUCAS P. BERSAMIN**  
Chief Justice

**WE CONCUR:**

(On Leave)  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

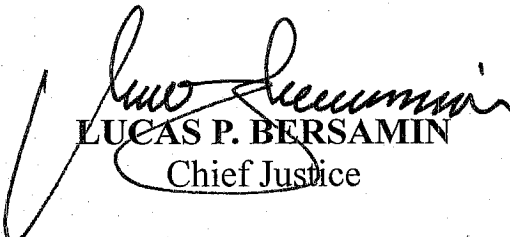
  
**ALEXANDER G. GESMUNDO**  
Associate Justice

  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**RODIL V. ZALAMEDA**  
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's Division.

  
**LUCAS P. BERSAMIN**  
Chief Justice