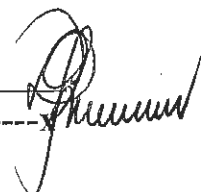


FIRST DIVISION

G.R. No. 248701—PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*,
versus LIONEL ECHAVEZ BACALTOS, *accused-appellant*.

Promulgated:

JUL 28 2020



x-----

CONCURRING OPINION

CAGUIOA, J.:

I concur with the *ponencia* that the accused-appellant should be acquitted. I submit this separate concurring opinion if only to stress anew that a violation of a regulation that is not penal in nature does not, as it cannot, automatically translate into a violation of Section 3(e) of Republic Act No. (RA) 3019.

Brief review of the facts

Pursuant to the government's Kalusugang Pangkalahatan Program, the Philippine Health Insurance Corporation (PhilHealth) approved the Primary Care Benefit (PCB) Package which was intended to provide Filipinos access to quality health services. The PCB Package was offered through government health facilities registered with PhilHealth.

The Municipal Health Office of Sibonga, Cebu was registered as a PCB provider. In exchange for its service, the said Municipal Health Office had been allocated incentives on a Per Family Payment Rate (PFPR) from 2012 to 2015.

In May 2012, PhilHealth Regional Vice President William O. Chavez (Regional Vice President Chaves) sent a letter to accused-appellant Lionel Echavez Bacaltos (Bacaltos), then mayor of the Municipality of Sibonga, Cebu, informing him of Section V (G) of PhilHealth Circular No. 010 s. 2012 (PhilHealth Circular) which prescribed the allocation of the PFPR, thus:

G. The disposition and allocation of the PFPR shall be, as follows:

1. Eighty percent (80%) of PFPR is for operational cost and shall be divided, as follows:

a. Minimum of forty percent (40%) for drugs and medicines (PNDF) (to be dispensed at the facility) including drugs and medicines for Asthma, AGE and pneumonia; and

b. Maximum of forty percent (40%) for reagents, medical supplies, [equipment] (i.e., ambulance,



ambubag, stretcher, etc.), information technology (IT equipment specific for facility use needed to facilitate reporting and database build[-]up), capacity building for staff, infrastructure or any other use related, necessary for the delivery of required service including referral fees for diagnostic services if not able in the facility.

2. **The remaining twenty percent (20%) shall be exclusively utilized as honoraria of the staff of the PCB facility** and for the improvement of their capabilities as would enable them to provide better health services:

- a. Ten percent (10%) for the physician;
- b. Five percent (5%) for other health professional staff of the facility; and
- c. **Five percent (5%) for non-health professionals/staff, including volunteers and community members of health teams (e.g., Women's Health Team, Community Health Team).**¹

In February 2015, Bacaltos certified Obligation Request No. 0499-02-15-300 for the release of the twenty percent (20%) *honoraria* for health personnel in the amount of ₱280,197.00. Based on Item 16 of the 2015 payroll summary, Bacaltos received ₱17,512.50 representing his five percent (5%) *honorarium*. The said payroll summary bore the Municipal Accountant's reservation to the effect that payment of the ₱17,512.50 is still subject to PhilHealth's existing rules and regulations.

An Information² was filed against Bacaltos for violation of Section 3(e) of RA 3019, the accusatory portion of which reads:

That in February 2015, or sometime prior or subsequent thereto, in the Municipality of Sibonga, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, LIONEL ECHAVEZ BACALTOS, a high-ranking public officer, being the Mayor of the Municipality of Sibonga, Cebu, in such capacity, committing the crime in relation to office, acting with **manifest partiality, evident bad faith and/or gross inexcusable negligence**, did then and there **willfully, unlawfully and criminally** cause undue injury to the government by receiving an honorarium from the Philippine Health Insurance Corporation (PhilHealth) in the amount of Php17,512.50, despite the fact that he was not entitled to receive it since the said honorarium was exclusively given and intended for the municipal health personnel, and accused was not a member of the municipal health personnel, thereby causing undue injury to the government in the aforesaid amount.

CONTRARY TO LAW.³

¹ Emphasis supplied. *See* Records, p. 188.

² *See Rollo*, pp. 5-6.

³ Records, p. 1. Emphasis and underscoring supplied.

Bacaltos admitted that he received the ₱17,512.50 but averred that he believed in good faith that he was entitled thereto as the municipal mayor exercising control and supervision over the Municipal Health Office and its personnel.

The Sandiganbayan found Bacaltos guilty of violation of Section 3(e) of RA 3019. It rejected Bacaltos's defense of good faith, holding that he acted with evident bad faith and manifest partiality when he received the *honorarium*.

The *ponencia* reverses and rules that Bacaltos should be acquitted of the charge against him.

As stated at the outset, I fully concur with the ruling of the *ponencia*.

The element of evident bad faith was absent

To be found guilty of violating Section 3(e) of RA 3019, the following elements must concur:

- (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.⁴

The existence of the first two elements — that Bacaltos was a public officer and the act in question was done in the discharge of his official functions — are not disputed. The controversy lies in the existence of the third and fourth elements, particularly whether his act of receiving the *honorarium* was done through manifest partiality or evident bad faith, and resulted in undue injury to the Government.⁵

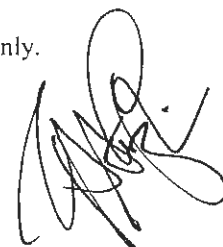
I agree with the view of the *ponencia* that Bacaltos did not act in bad faith when he received the *honorarium* based on his honest belief that he was entitled to it based on an erroneous interpretation of the PhilHealth Circular.

It is ***well-established*** that evident bad faith “does not simply connote bad judgment or negligence”⁶ but of having a “**palpably and patently fraudulent and dishonest purpose** to do moral obliquity or conscious wrongdoing for some **perverse motive or ill will**. It contemplates a state of mind affirmatively operating with **furtive design or with some motive or**

⁴ *Sison v. People*, 628 Phil. 573, 583 (2010).

⁵ The Sandiganbayan found that Bacaltos acted with manifest partiality and evident bad faith only.

⁶ *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994). Emphasis supplied



self-interest or ill will or for ulterior purposes.”⁷ Simply put, it partakes of the nature of fraud.⁸

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

As explained by the Court in *Sistoza v. Desierto*,⁹ “mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*.”¹⁰

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.”¹¹ It connotes “a manifest deliberate intent on the part of the accused to do wrong or to cause damage. It contemplates a breach of sworn duty through some perverse motive or ill will.”¹²

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was “spurred by any corrupt motive[.]”¹³ **Mistakes, no matter how patently clear, committed by a public officer are not actionable “absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.”¹⁴**

In *Jacinto v. Sandiganbayan*,¹⁵ evident bad faith was not appreciated by the Court because

x x x the actions taken by the accused were not entirely without rhyme or reason; he refused to release the complainant’s salary because the latter failed to submit her daily time record; he refused to approve her sick-leave application because he found out that she did not suffer any illness; and he removed her name from the plantilla because she was moonlighting during office hours. Such actions were measures taken by a superior against an erring employee who studiously ignored, if not defied, his authority.¹⁶

In *Alejandro v. People*,¹⁷ evident bad faith was ruled out “because the accused therein gave his approval to the questioned disbursement after relying

⁷ *Fuentes v. People*, 808 Phil. 586, 594 (2017).

⁸ *Fonacier v. Sandiganbayan*, supra note 6.

⁹ 437 Phil. 117 (2002).

¹⁰ Id. at 130. Italics in the original.

¹¹ *Air France v. Carrascoso*, 124 Phil. 722, 737 (1966).

¹² *Reyes v. People*, 641 Phil. 91, 104 (2010).

¹³ *Republic v. Desierto*, 516 Phil. 509, 516 (2006).

¹⁴ *Collantes v. Marcelo*, 556 Phil. 794, 806 (2007).

¹⁵ 258-A Phil. 20 (1989).

¹⁶ *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 843-844 (1998).

¹⁷ 252 Phil. 413 (1989).

on the certification of the bookkeeper on the availability of funds for such disbursement.”¹⁸

In the case at bar, as pointed out by the *ponencia*, Bacaltos honestly believed that as municipal mayor exercising control and supervision over the Municipal Health Office and its personnel, he is a non-health professional entitled to a five percent *honorarium* under the PhilHealth Circular.

Certainly, Bacaltos’s interpretation of the law is not completely unfounded. The relevant provision of the PhilHealth Circular states:

2. The remaining twenty percent (20%) shall be exclusively utilized as honoraria of the staff of the PCB facility and for the improvement of their capabilities as would enable them to provide better health services:

x x x x

c. Five percent (5%) for non-health professionals/staff, including volunteers and community members of health teams (e.g., Women’s Health Team, Community Health Team).¹⁹

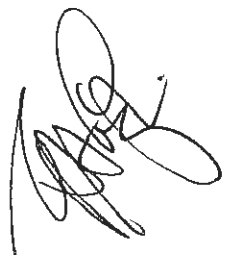
Clearly, the regulation did not provide a definition of who may be considered as “non-health professionals.” It only gave a few examples and left the rest open to interpretation.

When a law or circular leaves room for interpretation, misinterpretation is inevitable. While learned members of the bench and bar can easily discern that a municipal mayor is not covered by the said provision, an ordinary layman like Bacaltos cannot be faulted for incorrectly interpreting the ambiguous category of “non-health professionals” in the PhilHealth Circular. Even the municipal accountant was not certain how to interpret the subject provision as evidenced by his annotation in the payroll summary. Indeed, as the municipal mayor, Bacaltos is a non-health professional who exercises control and supervision over the Municipal Health Office. If volunteers and community members of health teams are entitled to *honoraria*, it is not farfetched to believe that a mayor who controls and supervises the operations of the entire Municipal Health Office and its personnel would likewise be considered a non-health professional. In fact, even PhilHealth Regional Vice President Chavez recognized the authority of Bacaltos over the Municipal Health Office when he sent a letter to Bacaltos, prescribing the allocation and distribution of the PFPR. Thus, when Bacaltos included himself in the category of non-health professionals entitled to five percent *honoraria*, this action cannot be considered as having been done without basis.

Bacaltos’s genuine belief that he was entitled to an *honorarium* negates *dolo* or wrongful or malicious intent. To stress, when the accused is alleged

¹⁸ *Llorente, Jr. v. Sandiganbayan*, supra note 16 at 844.

¹⁹ Emphasis supplied.



to have acted with evident bad faith under Section 3(e) of RA 3019, which is the case here, the crime alleged is a crime of *dolo*²⁰ — an offense committed with *wrongful or malicious intent*.²¹ The same cannot be said of Bacaltos who believed in good faith, albeit erroneously, that he was covered by the PhilHealth circular.

The element of manifest partiality was absent

There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.”²² **Similar to the modality of evident bad faith, mere partiality is not sufficient — the same must be manifest.**

Here, there is no ground to support a finding that Bacaltos acted with manifest partiality. As discussed, Bacaltos cannot be faulted for misinterpreting the ambiguous provision in the PhilHealth Circular. His interpretation is not entirely baseless as to amount to a deliberate misapplication of the said circular. Furthermore, Bacaltos knew that his entitlement to the *honorarium* was still contingent on PhilHealth’s approval in view of the reservation expressed by the Municipal Accountant with respect to his receipt of the *honorarium*. **Thus, even without a Notice of Disallowance from the Commission on Audit (COA), he returned ₱33,478.12,²³ representing all the moneys he received pursuant to the PhilHealth Circular, which amount is ₱15,965.62 more than the honorarium subject of this case.** To my mind, these are badges of good faith proving that Bacaltos honestly believed that he was entitled to an *honorarium*.

Based on the foregoing, no manifest partiality can be imputed to Bacaltos. When the language of the law or regulation is not clear, as in this case, there is all the more basis to give the accused the benefit of the doubt for his erroneous interpretation and acquit him of the charge for violation of Section 3(e) of RA 3019.

The element of gross inexcusable negligence was absent

While the Sandiganbayan did not premise its conviction on this ground, it may nonetheless be apropos to discuss this element.

Neither is the element of gross negligence present in this case. Gross negligence has been 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,

²⁰ *Uriarte v. People*, 540 Phil. 477, 494 (2006).

²¹ *Beradio v. Court of Appeals*, 191 Phil. 153, 163 (1981).

²² *Villarosa v. Ombudsman*, G.R. No. 221418, January 23, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64916>>.

²³ *Rollo*, p. 144.

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.²⁴

In *Yapyuco v. Sandiganbayan*,²⁵ the Court stated that “[i]n criminal negligence, the injury caused to another **should be unintentional, it being the incident of another act performed without malice,**” and “that a deliberate intent to do an unlawful act is essentially inconsistent with the idea of reckless imprudence”²⁶ which is a form of negligence.

Bacaltos’s act of receiving an *honorarium* under the mistaken belief that he is entitled thereto is one of *dolo*, not *culpa*. He is charged with “willfully, unlawfully, criminally,”²⁷ causing undue injury to the government. A crime alleged to be *willfully* committed is contrary to an act predicated on negligence or *culpa*. Hence, there could not have been gross inexcusable negligence or *culpa* in this case.

To stress, Bacaltos’s violation of a provision in a PhilHealth Circular that is not penal in nature, does not, as it should not, *automatically* translate into evident bad faith, manifest partiality, or gross inexcusable negligence that makes one guilty of a violation of Section 3(e) of RA 3019. For it to amount to a violation of Section 3(e) of RA 3019 through the modality of evident bad faith, established jurisprudence demands that *the prosecution must prove the existence of factual circumstances that point to fraudulent intent*.

The prosecution was not able to prove beyond reasonable doubt the element of causing undue injury

The element of causing undue injury to the government is likewise absent in the present case.

RA 3019 was crafted as an anti-graft and corruption measure. The crux of the acts punishable under RA 3019 is corruption. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, “[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized.”²⁸ Graft entails the acquisition of gain in *dishonest ways*.²⁹

Thus, in charging a public officer of “causing undue injury,” it is not enough that damage was actually inflicted in violation of laws, rules, and regulations. The damage must have been effected with *corrupt intent, a*

²⁴ *Roy III v. Ombudsman*, G.R. No. 225718, March 4, 2020, accessed at < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66111> >.

²⁵ 689 Phil. 75 (2012).

²⁶ Id. at 123.

²⁷ See *Rollo*, p. 5.

²⁸ Senate Deliberations of RA 3019 dated July 1960.

²⁹ BLACK’S LAW DICTIONARY 794 (9th ed. 2009).



dishonest design, or some unethical interest. This is in keeping with the purpose of RA 3019, at the heart of which is the concept of graft.

I realize that this is not the understanding under the current state of jurisprudence. In *Guadines v. Sandiganbayan*,³⁰ the Court defined undue injury this way:

The term “undue injury” in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of “causing undue injury to any party,” has a meaning akin to that civil law concept of “actual damage.” The Court said so in *Llorente vs. Sandiganbayan*, thus:

In jurisprudence, “undue injury” is consistently interpreted as “actual damage.” Undue has been defined as “more than necessary, not proper, [or] illegal;” and injury as “any wrong or damage done to another, either in his person, rights, reputation or property [; that is, the] invasion of any legally protected interest of another.” Actual damage, in the context of these definitions, is akin to that in civil law.³¹

Under current jurisprudence, in order to be found guilty of causing undue injury, it is enough that the public officer has inflicted damage to another.³² Proof of the extent or quantum of damage is not essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible.³³

I respectfully submit that this line of reasoning should no longer be followed.

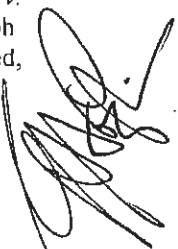
The aforementioned understanding of “undue injury” is too broad that every single misstep committed by public officers that result in injury to any party falls under the definition and would thus possibly be criminally punishable. Every error — no matter how minor — would satisfy the fourth element as the threshold is simply that an injury be inflicted on another. For instance, an allowance withheld in good faith based on an interpretation of the law that is subsequently judicially declared incorrect would be sufficient basis for affirming the existence of the fourth element, which may lead to the incarceration of a public officer simply because he misunderstood a provision that is only later on revealed to be clear and unambiguous by members of the bench who are well-versed in principles of statutory construction and the law.

³⁰ 665 Phil. 563 (2011).

³¹ *Id.* at 577. (Emphasis and citation omitted)

³² The mode of giving unwarranted benefit, advantage or preference to another does not require damage. *Sison v. People*, supra note 4 (damage is not required under the mode of giving unwarranted benefit, advantage or preference to another), with *Guadines v. Sandiganbayan*, supra note 30 (damage is required under the mode of causing undue injury which is consistently interpreted as similar to the civil concept of actual damage).

³³ *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 718 (2005), citing *Fonacier v. Sandiganbayan*, supra note 6. But see *Tiongco v. People* (accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64833>>) where the Court held that the undue injury must be specified, quantified and proven to the point of moral certainty.

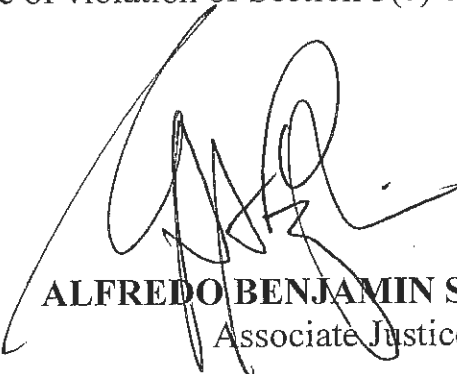


Granted that the maxims “ignorance of the law excuses no one” and “public office is a public trust” are true, the Court should refrain from interpreting laws without heed to its practical consequences. By maintaining the threshold for the fourth element at the bare minimum of inflicting damage to another, the Court will effectively discourage individuals from joining public service. **It is simply unreasonable to criminally punish every little mistake that incidentally caused damage to another even when these acts were not done with corrupt intent.**

In the instant case, for example, Bacaltos’s act of receiving an *honorarium* was motivated not by any corrupt intent to cause injury to the government or to unduly receive any illegal pecuniary benefit. Based on the evidence, his actuations were simply founded on his honest belief that he was a non-health professional exercising control and supervision over the Municipal Health Office and its personnel, that therefore entitled him to receive an *honorarium*. Hence, no graft and corruption actually transpired. **There was no showing that Bacaltos had fraudulent, much less corrupt, intent to cause damage to the Government. Again, he even returned more than what he actually received.**

I reiterate my position in *Villarosa v. People*³⁴ that not all violations of a law or regulation are equivalent to evident bad faith, manifest partiality, or gross inexcusable negligence *even if* they cause undue injury to any party. **For an act to fall under Section 3(e) of RA 3019, the same must be done with fraudulent and corrupt intent.** Such is the purpose of RA 3019 which this Court is mandated to uphold.

Based on the foregoing, I vote to **ACQUIT** accused-appellant Lionel Echavez Bacaltos of the crime of violation of Section 3(e) of RA 3019.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

³⁴ *Villarosa v. People*, G.R. No. 233155-63, June 23, 2020.