



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-appellee,

G.R. No. 259467

Present:

- versus -

CAGUIOA, J.,
Chairperson,
 INTING,
 GAERLAN,
 DIMAAMPAO, and
 SINGH,* JJ.

MAGDALENA K. LUPOYON,
 CLARK CHATONGNA NGAYA,
 EDMUNDO CHALLIIS SIDCHAYAO,
 FERNANDO YACAM-MA CABLOG,
 ALBERT T. MARAFO, and DANILO
 RABINA LUCAS,

Accused-appellants.

Promulgated:
 November 11, 2024

~~MistDCBalt~~

X-----X

DECISION

GAERLAN, J.:

These are consolidated appeals from the February 26, 2021 Decision¹ of the Sandiganbayan (SBN) in SB-16-CRM-0323 to 0324, which pronounced Magdalena K. Lupoyon (Lupoyon) and Albert T. Marafo (Marafo) guilty of two counts graft, as defined and penalized in Section 3(e) of Republic Act No. 3019, as amended; and Clark Chatongna Ngaya (Ngaya), Edmundo Challiis Sidchayao (Sidchayao), Fernando Yacam-ma Cablog (Cablog), and Danilo Rabina Lucas (Lucas) guilty of one count of the same offense.

Sometime during the 1990s, the broadcasting companies GMA Network, Inc. (GMA) and ABS-CBN Broadcasting Corporation (ABS-CBN) constructed relay antennae atop Mount Amuyao, within the jurisdiction of the municipality

* On official business.

¹ *Rollo*, pp. 188–250. Penned by Associate Justice Ronald B. Moreno and concurred in by Associate Justices Bernelito R. Fernandez and Kevin Narce B. Vivero, Associate Justice Maria Theresa V. Mendoza-Arcega concurring separately, and Presiding Justice Amparo M. Cabotaje-Tang dissenting.

0

of Barlig, Mountain Province,² with the free and prior informed consent (FPIC) of the Balangao community who exercise ancestral domain over the area.³ In consideration for the grant of FPIC, said companies donated funds to the Barlig Local Government Unit (LGU) for the construction of certain municipal infrastructure projects. On July 31, 2007, GMA donated PHP 144,760.00 for the construction of a pathway and a view deck in Mount Amuyao using indigenous materials (Pathway Project);⁴ and on January 12, 2009, ABS-CBN donated PHP 3 million for the construction of an open gymnasium (Open Gym Project).⁵ Accused-appellant Marafo signed the instruments of donation on behalf of the Barlig LGU, in his capacity as municipal treasurer.⁶ Accused-appellant Lucas also signed the agreement with GMA in his capacity as municipal engineer, while then-municipal mayor Lupoyon signed the ABS-CBN Deed of Donation as a witness.⁷ Both instruments of donation provided that the donated funds shall be deposited to the LGU's trust fund account.⁸ The municipal treasurer's office issued Official Receipt No. 0051258 on April 3, 2009 for the GMA donation, while the ABS-CBN donation was covered by Official Receipt No. 0051261 issued on May 7, 2009.⁹ The amounts were deposited to the LGU's trust fund account with the Land Bank of the Philippines (LBP).

The LGU implemented the Open Gym and Pathway Projects without undergoing public bidding. Lupoyon testified that public bidding was dispensed with to maximize the donated amounts by avoiding contractor's profit and withholding taxes, and by facilitating the utilization of labor from Barlig residents, some of whom were willing to work on the projects for free.¹⁰

The Pathway Project was implemented directly by the LGU in June 2009. Laborers from the Balangao ancestral domain conducted the clearing and construction operations.¹¹ They were supervised by Ophelia Witawit (Witawit),

² *Id.* at 198. Records (vol. 4), p. 166, Judicial Affidavit of Magdalena K. Lupoyon.

³ Records (vol. 1), pp. 244–253, July 31, 2007 FPIC-Memorandum of Agreement between the Indigenous Cultural Communities/Indigenous Peoples of the Balangao Tribe of Barangays Gawana, Macalana, Latang and Fiangtin of the Municipality of Barlig, Mountain Province and GMA Network, Inc. and Deed of Donation between ABS-CBN Broadcasting Corporation and the Municipality of Barlig

⁴ *Id.*, GMA also committed to: 1) a one-time donation of PHP 175,130.00 for the construction of comfort room facilities along the pathway; 2) a quarterly donation of PHP 5,000.00 for the maintenance of the pathway; and 3) an annual donation of PHP 5,000.00 for the Barlig town festival.

⁵ *Id.*

⁶ *Id.* at 252, Signature page of Deed of Donation between ABS-CBN and Barlig LGU.

⁷ *Id.* at 250, 252. Signature pages of Deed of Donation between ABS-CBN and Barlig LGU and FPIC-Memorandum of Agreement between GMA and the Balangao Indigenous Communities of Barangays Gawana, Macalana, Latang and Fiangtin, Barlig, Mountain Province.

⁸ *Id.* at 245 & 251, Deed of Donation and FPIC-Memorandum of Agreement.

⁹ *Id.* at 54, 254–255. Audit Observation Memorandum No. 09-003 dated July 5, 2009 (erroneously dated March 11, 2009) and Copies of Official Receipts.

¹⁰ *Rollo*, p. 275, Appellant's Brief for Magdalena K. Lupoyon; Records (vol. 4), p. 171, Judicial Affidavit of Magdalena K. Lupoyon; TSN, Magdalena K. Lupoyon, April 30, 2019, p. 33. *See also* Counter-affidavit of Albert Tenglab Marafo, Records (vol. 1), p. 299 and July 14, 2009 Letter of Mayor Magdalena K. Lupoyon to State Auditor III Esther F. Daoas, *id.* at 112.

¹¹ Exhibit XX, "Appointment," Evidence Folder (unpaginated); Records (vol. 1), pp. 222–223, Affidavit of Ophelia C. Witawit; Records (vol. 4), pp. 201–206, Joint Affidavits of Rexon Nasungan, Babin Fianisor, Carino Cawayan, Carolda Wacchan, and Repsy Nawang-oy.

a village elder and Lupong Tagapamayapa member from Barangay Latang, Barlig; and were paid directly by Marafo after being issued community tax certificates.¹² Witawit averred that the laborers for the Pathway Project were paid a total amount of PHP 50,000.00.¹³ She also submitted attendance log sheets containing the names of the laborers and the amounts paid to each.¹⁴ Accused-appellants Cablog and Ngaya witnessed the payment of the wages to the laborers.¹⁵ Records show that a total of PHP 55,063.50 was disbursed for the pathway project, of which PHP 55,000.00 was actually spent.¹⁶

On May 22, 2009, the Barlig municipal council authorized Marafo and Lupoyon to transfer the ABS-CBN donation to the LGU's account with the Philippine National Bank (PNB), and to withdraw from said account the amounts needed for the Open Gym Project.¹⁷ Marafo thus transferred a total of PHP 3,324,890.00 representing the full amount of the ABS-CBN donation and part of the GMA donation to the LGU's PNB account.¹⁸ He also cancelled the official receipts upon Lupoyon's instruction.¹⁹ According to Marafo, Lupoyon justified the transfer on the ground that the funds are outside state audit jurisdiction because they were donated by private entities.²⁰

The LGU directly implemented the Open Gym Project from June to December 2009. The Program of Works²¹ was drawn up by a certain Rogelio Abalos, a foreman assigned to the Barlig municipal engineer's office. Lucas, as municipal engineer, evaluated, verified, and submitted to Lupoyon the prepared Program of Works.²² As in the Pathway Project, the LGU utilized labor from local residents.²³ Construction materials and other supplies were sourced directly by the LGU from various sources.²⁴ To defray these expenses, Lupoyon and Marafo withdrew from the donated funds that had been transferred to LGU's PNB account.²⁵ They disbursed a total of PHP 2.5 million from the ABS-CBN

¹² *Id.*

¹³ Records (vol. 1), p. 224, Affidavit of Ophelia C. Witawit.

¹⁴ *Id.* at 225–235. Attachments to the Affidavit of Ophelia C. Witawit.

¹⁵ *Id.* at 302. Counter-affidavit of Albert Tenglab Marafo. Marafo claimed that Cablog and Ngaya personally distributed the laborers' wages.

¹⁶ Records (vol. 2), p. 669, Statement of Bank Reconciliation dated August 31, 2009; Exhibit WW, Evidence Folder, unpaginated. Undated Liquidation Report signed by Albert T. Marafo and Val B. Tubay.

¹⁷ Records (vol. 1), pp. 258–259, Sangguniang Bayan Resolution No. 36, s. 2009.

¹⁸ *Id.* at 54–55, Audit Observation Memorandum No. 09-003.

¹⁹ *Id.* at 254–255 & 298, Counter-affidavit of Albert Tenglab Marafo and Copies of Official Receipts with the handwritten annotation “Cancelled.”

²⁰ *Id.* at 298, Counter-affidavit of Albert Tenglab Marafo.

²¹ Records (vol. 4), pp. 796–812.

²² TSN, Danilo R. Lucas, August 27, 2019, pp. 16–18

²³ TSN, Edmundo Sidchayao, June 27, 2019, pp. 49–50; Records (vol. 1), p. 326, Letter dated July 14, 2009 from Mayor Magdalena K. Lupoyon to State Auditor Esther Daoas; Records (vol. 1), p. 113, Letter dated April 28, 2010 from Mayor Magdalena K. Lupoyon to Supervising Auditor Hilario G. Dumasán.

²⁴ Records (vol. 1), pp. 162–216, Compiled Receipts of Materials, Labor and Other Incidental Expenses in connection with the Construction of the Open Gym.

²⁵ Exhibits NN-3 and NN-4, Evidence Folder, unpaginated. August 17, 2012 Memorandum from Audit Team Leader Hilario G. Dumasán for Commission on Audit-Cordillera Regional Director Luis S. Mejia.

fund without undergoing procurement processes.²⁶ Some of the disbursements were made or witnessed by Sidchayao, Cablog, and Ngaya, who were members of the municipal council at that time.²⁷ Ngaya also executed a Certification wherein he assumed responsibility for any disallowance of the amounts paid to his brother, Warren Ngaya, who received PHP 71,100.00 for “hauling of construction materials.”²⁸ The Open Gym was completed on December 23, 2009.²⁹

In the course of a routine cash audit, state auditors discovered the withdrawal of the donated amounts from the LGU trust fund and the subsequent implementation of the Open Gym and Pathway Projects without public bidding.³⁰ On July 5, 2009, State Auditor III Esther F. Daoas³¹ (SA Daoas) of the Commission on Audit (COA)-Mountain Province office issued Audit Observation Memorandum (AOM) No. 09-003 stating that the ABS-CBN donation was not recorded in the LGU’s trust fund account, and that the transfer of the donated funds from the LGU’s LBP trust fund account to its PNB account appears to have been a deliberate attempt to bring the funds out of state audit jurisdiction. SA Daoas thus directed Lupoyon to: 1) cause the transfer of the donated funds back to the LGU’s LBP trust fund account; 2) submit all documents pertaining to the donated funds for post-audit; and 3) explain the transfer of the funds to the PNB account and the cancellation of the original official receipts. In her reply dated July 14, 2009, Lupoyon explained that “*the disbursement of expenses for the open gym will not follow the government procedures*” to avoid payment of the 10% contractor’s profit and the long process of government bidding, and to access the labor of the concerned residents.³² Lupoyon further admitted that the original receipts were cancelled and replaced by acknowledgment receipts; and maintained that “[*t*]he accounting and auditing of expenses will be done by the Municipal Officials to the residents of Barlig when the projects will be completed.”³³

After a further exchange of correspondence and documents between the LGU and the state auditors, the COA issued a Notice of Suspension for the 2.5 million pesos disbursed for the Open Gym Project.³⁴ The COA also

²⁶ Exhibit III, Evidence Folder, unpaginated, August 31, 2009 Statement of Bank Reconciliation signed by Municipal Accountant Val B. Tubay; TSN, Ester F. Daoas, April 10, 2018, p. 32; TSN, Magdalena K. Lupoyon, April 30, 2019, pp. 47–50.

²⁷ Records (vol. 1), pp. 162–216, Compiled Receipts of Materials, Labor and Other Incidental Expenses in connection with the Construction of the Open Gym.

²⁸ *Id.* at 164, 215 & 337, Acknowledgment Receipt dated July 30, 2009, Compiled Receipts of Materials, Labor and Other Incidental Expenses in connection with the Construction of the Open Gym, and Certification dated December 22, 2009 signed by Clark C. Ngaya.

²⁹ *Id.* at 219–220, Accomplishment/Inspection Report and Certificate of Acceptance.

³⁰ Records (vol. 3), p. 4, Judicial Affidavit of Esther F. Daoas.

³¹ Also referred to in the records as Ester F. Daoas.

³² Records (vol. 1), p. 326, July 14, 2009 Letter from Mayor Magdalena K. Lupoyon to SA Esther Daoas.

³³ *Id.*

³⁴ Exhibit AA, Evidence Folder, unpaginated. Notice of Suspension (NS) No. 2010-003-101 dated September 1, 2010; Exhibit QQ, Evidence Folder, unpaginated. Notice of Settlement of

disallowed the following amounts: 1) PHP 10,889.66 for electricity supply fees and payments to a hauler for the Open Gym Project, for failure to pay taxes, failure to issue an official receipt, and erroneous payment;³⁵ 2) PHP 22,275.00 paid to four persons who allegedly worked in the Open Gym Project, for apparently having been issued after the completion of said project;³⁶ and 3) PHP 50,000.00 for the wages of the laborers for the Pathway Project, for failure to submit the Program of Work, Accomplishment Report and Inspection Report.³⁷ The Notice of Suspension identified the following responsible officers and their participation:³⁸

Name	Position/Designation	Nature of Participation in the Transaction
Magdalena K. Lupoyon	Former Municipal Mayor	Approving official in the project implementation
Albert T. Marafo	Former Municipal Treasurer	Municipal officer who made withdrawals for the payment of transactions
Edmundo C. Sidchayao	Former Municipal Vice-Mayor and now elected Mayor	Elective official who participated in the procurement activities
Fernando Y. Cablog	S[angguniang] B[ayan] Member	Elective official who participated in the procurement activities
Clark C. Ngaya	S[angguniang] B[ayan] Member	Elective official who participated in the procurement activities
Danilo R. Lucas	Municipal Engineer	For not preparing the SWA, Plans and Change Orders

On November 10, 2010, former councilor Jeb Constancio (Constancio), Ayson Naulgan (Naulgan),³⁹ and Albert Kiwan filed a complaint against accused-appellant/s and other Barlig LGU officials before the Office of the Ombudsman (OMB), praying for the “conduct [of] an investigation on the basis of the factual and material allegations herein and [for the] institut[ion of] the appropriate criminal and administrative cases” against said officials, for implementing the Pathway and Open Gym Projects without public bidding, despite the issuance of the Notice of Suspension.⁴⁰

Suspension/Disallowance/Charge (NSSDC) No. 12-05, dated December 28, 2012; Records (vol. 4), p. 648. NSSDC No. 13-001 dated July 11, 2013.

³⁵ Exhibit BB, Evidence Folder, unpaginated. Notice of Disallowance (ND) No. 11-001-101(09) dated January 18, 2011.

³⁶ Exhibit TT, Evidence Folder, unpaginated. ND No. 13-002-100(10) dated July 12, 2013.

³⁷ Exhibit JJJ, Evidence Folder, unpaginated. ND No. 17-001-300(09) dated August 18, 2017.

³⁸ Exhibit AA-3, Evidence Folder, unpaginated. NS No. 2010-003-101 dated September 1, 2010, p. 4.

³⁹ Also referred to in the records as “Ison Laolgan.”

⁴⁰ Records (vol. 1), pp. 31–42. Joint Affidavit.

The Notice of Suspension previously issued against the PHP 50,000.00 spent for the Pathway Project ripened into a Notice of Disallowance issued on August 18, 2017, after the Barlig LGU failed to submit the required payroll, work program, accomplishment report, and inspection report on work done.⁴¹

On August 10, 2015, the OMB found probable cause to charge accused-appellant/s with violation of Section 3(e) of Republic Act No. 3019.⁴² On March 21, 2016, accused-appellant/s were formally charged under the following Informations:

In SB-16-CRM-0323:

The undersigned Assistant Special Prosecutor I of the Office of the Special Prosecutor, Office of the Ombudsman, accuses MAGDALENA K. LUPOYON and ALBERT TENGLAB MARAFO of the crime for Violation of Section 3 (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, committed as follows:

That on 26 June 2009 or sometime prior or subsequent thereto, in the Municipality of Barlig, Mountain Province, Philippines, and within the jurisdiction of this Honorable Court; the above named accused, MAGDALENA K. LUPOYON, a high ranking public officer with salary grade 27, being then the Municipal Mayor and ALBERT TENGLAB MARAFO, then Municipal Treasurer, both of the Municipality of Barlig, Mountain Province; while in the performance of their official and/or administrative functions; conspiring with one another, committing the offense in relation to their office, acting with evident bad faith or gross inexcusable negligence; did then and there willfully, unlawfully and criminally cause undue injury to the Municipality of Barlig, Mountain Province by causing the repair or renovation of the pathway leading to Mount Amuyao in the amount of Fifty Thousand Pesos (Php50,000.00), without public bidding as required under Section 10 of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act and its implementing rules and regulations, to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW.⁴³

In SB-16-CRM-0324:

The undersigned Assistant Special Prosecutor I of the Office of the Special Prosecutor, Office of the Ombudsman, accuses MAGDALENA K. LUPOYON, EDMUNDO CHALLIIS SIDCHAYAO, CLARK CHATONGNA NGAYA, FERNANDO YACAM-MA CABLOG, ALBERT TENGLAB MARAFO and DANILO RABINA LUCAS of the crime of

⁴¹ Evidence folder, unpaginated, Exhibits JJJ, JJJ-1, and JJJ-2.

⁴² Records (vol. 1), pp. 7–21. August 10, 2015 OMB Resolution, signed by Graft Investigation and Prosecution Officer I Blesilda T. Ouano and approved by Ombudsman Conchita Carpio Morales.

⁴³ *Id.* at 1. Information in SB-16-CRM-0323 dated March 21, 2016.

Violation of Section 3 (e) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, committed as follows:

That on 23 December 2009 or sometime prior or subsequent thereto, in the Municipality of Barlig, Mountain Province, Philippines, and within the jurisdiction of this Honorable Court; the above named accused, MAGDALENA K. LUPOYON, a high ranking public officer with salary grade 27, being then the Municipal Mayor, EDMUNDO C. SIDCHAYAO, then Municipal Vice-Mayor, CLARK CHATONGNA NGAYA and FERNANDO YACAM-MA CABLOG, both then Sangguniang Bayan Member, ALBERT TENGLAB MARAFO, then Municipal Treasurer and DANILO RABINA LUCAS, Municipal Engineer, all of the Municipality of Barlig, Mountain Province; while in the performance of their official and/or administrative functions; conspiring with one another, committing the offense in relation to their office, acting with evident bad faith or gross inexcusable negligence; did then and there willfully, unlawfully and criminally cause undue injury to the Municipality of Barlig, Mountain Province by causing the construction of the open gymnasium in the amount of Two Million Five Hundred Thousand Pesos (Php2,500,000.00), without public bidding as required under Section 10 of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act and its implementing rules and regulations, to the damage and prejudice of the government in the aforestated amount.

CONTRARY TO LAW.⁴⁴

The prosecution presented Constancio, Naulgan,⁴⁵ and the COA officers who audited the Open Gym and Pathway Projects. The state auditors produced and identified the audit reports, audit documents, and the supporting documents submitted by the Barlig LGU. On the whole, the prosecution tried to show that accused-appellant/s deliberately brought the donated funds out of state audit jurisdiction and directly disbursed said funds to implement the Open Gym and Pathway Projects without public bidding. For these reasons, the COA either suspended or disallowed almost PHP 2,550,000.00 in disbursements related to the Open Gym and Pathway Projects.⁴⁶

Lupoyon, Sidchayao, Ngaya, Cablog, and Lucas took the witness stand in their own defense. Marafo adopted their testimonies as his own.

Lupoyon maintained that the decision to forego public bidding was arrived at by consensus among the concerned municipal officials, after Lucas had submitted an estimate of the contractor's profit that the municipality would have been required to pay under prevailing procurement guidelines. She also admitted that only PHP 500,000.00 of the total amount spent on the projects underwent public bidding, after the COA had issued a notice of

⁴⁴ *Id.* at 3–4. Information in SB-16-CRM-0324 dated March 21, 2016.

⁴⁵ TSN, Ayson Naulgan, April 5, 2018 and July 26, 2018; TSN, Jeb C. Constancio, July 30, 2018.

⁴⁶ *Rollo*, pp. 192–196. SB Decision. Citations omitted.

suspension for the previously-spent funds. Lupoyon also agreed that the donated funds should have been placed in the LGU's trust fund account. However, Lupoyon maintained that the LGU was able to submit all the documents required by the COA, and that the people of Barlig were able to benefit from the already-completed Open Gym.⁴⁷

Sidchayao admitted that he witnessed and signed for certain deliveries of materials directly procured by the LGU for the Open Gym Project; however, he claimed that he learned of the decision to dispense with public bidding only after construction of the Open Gym had already begun. The Open Gym was finished before the end of Lupoyon's term as Mayor, and he signed the certificate of acceptance of the finished project. As Lupoyon's successor, he received most of the Notices of Suspension issued by the COA and accordingly submitted the documents requested. He maintained that the implementation of the Open Gym project without public bidding did not cause any injury to the LGU, and the residents of Barlig are already enjoying and using said gymnasium.⁴⁸

Like Sidchayao, Cablog claimed that he only learned of the decision to forego public bidding after the Open Gym project had begun. He also admitted to witnessing and signing for certain deliveries of materials for the Open Gym project.⁴⁹

Ngaya testified that he was elected mayor of Barlig in 2013. He also disclaimed any participation in the decision to forego public bidding, claiming that merely went along with the implementation of the Open Gym project. He admitted to signing the final acceptance and inspection report. He also admitted to personally disbursing payments to certain suppliers for the Open Gym project. Finally, he admitted that his brother, Warren Ngaya, was one of the persons hired by the LGU to haul materials for the construction of the Open Gym.⁵⁰

Lucas testified that he was the municipal engineer of Barlig at the time of the events pertinent to the case. As such, he has the duty to administer, coordinate, supervise and control the LGU's public works projects. He was initially directed by Lupoyon to draft a work program for the Open Gym at a cost of PHP 10 million. Lupoyon then asked him to draft a revised program at a cost of PHP 3 million. The project proceeded without public bidding despite his contrary advice to Lupoyon. When asked by the COA to explain why two programs of work were submitted without engineering specifications or

⁴⁷ *Id.* at 198–200.

⁴⁸ *Id.* at 200–201.

⁴⁹ *Id.* at 201–202.

⁵⁰ *Id.* at 202.

4

drawings, Lucas claimed that the plans and specifications may not have reached the concerned auditor's office. Following the suspension of the PHP 2.5 million previously spent for the Open Gym project, he prepared a work program for the final amount of PHP 500,000.00 that was disbursed through public bidding. He also failed to submit the Statement of Work Accomplished required by COA because his office did not supervise the project of implementation due to lack of bidding. On cross-examination, Lucas claimed that the work program was prepared by a certain Rogelio Abalos, who was Ngaya's brother-in-law and a Barlig LGU employee assigned to the Office of the Municipal Engineer. Nevertheless, Lucas checked and verified the program of works before submitting it to Lupoyon.⁵¹

The SBN found Lupoyon and Marafo guilty of two counts of violation of Section 3(e) of Republic Act No. 3019, for their participation in the Pathway and the Open Gym Projects, while Sidchayao, Ngaya, Cablog, and Lucas were found guilty of the same offense for their participation in the Open Gym Project.

In SB-16-CRM-0323, Lupoyon and Marafo's implementation of the Pathway Project without public bidding caused undue injury to the government as the LGU lost the opportunity to implement the project at a most advantageous and beneficial cost. Lupoyon and Marafo failed to sufficiently justify the decision to dispense with public bidding. Manifest partiality, evident bad faith, and gross inexcusable negligence were manifested by the following: 1) Lupoyon and Marafo deliberately moved the GMA funds out of the LGU trust fund account, in violation of Sections 305(d) and 309(a) of the Local Government Code (LGC); 2) Lupoyon personally appointed the laborers for the Pathway Project; 3) Marafo personally paid the wages and expenses of said laborers; and 4) none of the payments in connection with the project were covered by disbursement vouchers.⁵²

In SB-16-CRM-0324, accused-appellant/s implemented the Open Gym Project without public bidding, causing undue injury to the government by preventing the implementation of said Project at a most advantageous and beneficial cost to the LGU.⁵³ Since there was no public bidding, all payments made by the LGU for the Open Gym project can be considered unwarranted benefits, as the suppliers and other participants in the project were either selected or paid by the accused-appellant/s. The SBN cited the following questionable payments: 1) PHP 370,000.00 paid to Lorenzo Backian for labor costs, without any statement of work accomplished, and without proof that said payment was more economical than "*programming of labor cost for building construction*"; 2) PHP 71,100.00 paid to Warren Ngaya for hauling

⁵¹ *Id.* at 202–203.

⁵² *Id.* at 204–211.

⁵³ *Id.* at 213–215, 259–260. SBN Decision and Resolution on Motion for Reconsideration.

construction materials, without a list of materials hauled; 3) PHP 69,800.00 worth of undelivered angle bars; 4) unreceipted electricity payments to the Mountain Province Electric Cooperative; and 5) payments to workers made after the date of final inspection and acceptance of the Open Gym.⁵⁴

Manifest partiality, evident bad faith, and gross inexcusable negligence were evinced by the following circumstances: 1) accused-appellants Cablog, Sidchayao, and Ngaya violated the Deed of Donation with ABS-CBN when they voted to authorize Lupoyon and Marafo to move the ABS-CBN donation out of the LGU's trust fund account; 2) accused-appellants Lupoyon and Marafo violated the Deed of Donation with ABS-CBN when they actually moved the ABS-CBN donation out of the LGU's trust fund account, pursuant to the Sangguniang Bayan authorization; 3) accused-appellant/s admitted that the decision to move the donated funds out of the trust fund account was made by the Sangguniang Bayan at the instance of Lupoyon and Marafo;⁵⁵ 4) accused-appellant/s again violated the Deed of Donation with ABS-CBN when they implemented the Open Gym project without public bidding; 5) Lupoyon openly and formally admitted to state auditors that the Open Gym project did not undergo public bidding; and 6) Lupoyon also admitted to state auditors that the LGU started purchasing materials for the projects even before the completion of the work program.⁵⁶

As in SB-16-CRM-0323, the SBN found Lupoyon's justification for skipping public bidding untenable, because the alleged computation of the 10% contractor's profit by Lucas was not shown, and Lucas himself recommended that the project be bid out. At any rate, the LGU cannot totally avoid paying a profit to any contractor or supplier, because no supplier or contractor would be willing to provide goods or services without profit; and the rules on government procurement do not preclude the utilization of free labor in public works project.

The SBN also found that accused-appellant/s acted in conspiracy. After receiving the ABS-CBN donation, Marafo cancelled the original receipt and omitted the amount from the trust fund books. The Sangguniang Bayan—Ngaya, Cablog, and Sidchayao included—then authorized Lupoyon and Marafo to move the donated funds from the LBP trust fund account to the PNB account, and to withdraw from said donated funds. Lupoyon signed the purchase requests as requesting and approving officer, while Ngaya and Sidchayao signed the Inspection and Acceptance Report for the Open Gym project even if they were not members of the LGU's Inspection and Acceptance Committee. Sidchayao admitted to witnessing and receiving

⁵⁴ *Id.* at 215–216.

⁵⁵ Lupoyon claimed that the decision was reached by consensus between her and the Sangguniang Bayan, while Cablog, Ngaya, and Sidchayao claim that Lupoyon and Marafo requested the transfer.

⁵⁶ *Rollo*, pp. 211–216. SB Decision.

certain deliveries of construction materials, while Ngayá and Cablog admitting making certain payments to suppliers even if they were not duly authorized disbursing officers. Ngayá even executed a deed holding himself personally responsible for the payments made to his brother. Finally, Lucas prepared a deficient work program, declined to supervise the construction of the Open Gym, and consequently failed to produce the necessary progress reports. Taken together, these acts indicate accused-appellant/s' common purpose of taking the donated funds out of state audit jurisdiction and implementing the Open Gym and Pathway projects without public bidding.⁵⁷ The SBN disposed of the case thusly:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follows:

1. In SB-16-CRM-0323. accused Magdalena K. Lupoyon and Albert T. Marafo are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of [Republic Act] No. 3019, as amended, and are each hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum; and to suffer perpetual disqualification to hold public office; *and*

2. In SB-16-CRM-0324. accused Magdalena K. Lupoyon, Albert T. Marafo, Edmundo Challiis Sidchayao, Clark Chatongna Ngayá, Fernando Yacamma Cablog and Danilo Rabina Lucas are found **GUILTY** beyond reasonable doubt of violation of Section 3(e) of [Republic Act] No. 3019, and are sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum; and to suffer perpetual disqualification to hold public office.

SO ORDERED.⁵⁸ (Emphasis in the original)

Associate Justice Maria Theresa V. Mendoza-Arcega (Justice Mendoza-Arcega) voted to acquit Lucas, arguing that his refusal to supervise the Open Gym Project and his consequent failure to produce the necessary progress reports indicate his refusal to participate in the implementation of a project that did not undergo public bidding.⁵⁹

Presiding Justice Amparo M. Cabotaje-Tang (Justice Cabotaje-Tang) voted to acquit the accused-appellant/s, arguing that the State failed to establish the undue injury or unwarranted benefits resulting from the implementation of the questioned projects without public bidding. Mere non-conduct of public bidding, by itself, does not prove undue injury to the government. The prosecution must still establish actual loss through proof that the project could have been implemented at a lower cost had it been bid out.

⁵⁷ *Id.* at 217–221.

⁵⁸ *Id.* at 222.

⁵⁹ *Id.* at 247–250. Separate Opinion of Justice Mendoza-Arcega.

Also, undue injury is negated by the fact that both projects were completed within Lupoyon's term despite noncompliance with government procurement rules.⁶⁰

The suspensions and disallowances issued by the COA cannot be taken as proof of undue injury because they were based either on the Barlig LGU's failure to submit the required documents or the lack of public bidding *per se*. A suspension or disallowance does not necessarily render an expenditure illegal, because the COA has the power to suspend or disallow expenditures for other reasons. More importantly, the prosecution's case was centered around the lack of public bidding. No evidence was submitted to prove that accused-appellant/s actually misused the funds that were disbursed for the questioned projects. Even assuming that the disbursed funds were not properly accounted for, this oversight alone cannot support a conviction for violation of Section 3(e), which requires proof of actual loss to the government.⁶¹

Accused-appellant/s cannot be convicted of violating Section 3(e) through granting unwarranted benefits because this was not alleged in the Informations and the prosecution did not present any evidence on this point, as the prosecution witnesses' testimonies "*centered on the failure of the a[ppellants] to follow the rules on procurement and the non-submission of documents relative to the projects undertaken.*"⁶²

Their motion for reconsideration having been denied,⁶³ accused-appellant/s now accuse the SBN of the following errors: 1) finding accused-appellant/s guilty of violating Section 3(e) through manifest partiality, evident bad faith and gross inexcusable negligence, when manifest partiality was not alleged in the Informations and evident bad faith and gross inexcusable negligence were not duly proven;⁶⁴ 2) finding undue injury solely on the basis of the lack of public bidding, despite the prosecution's failure to prove actual loss or damage;⁶⁵ 3) finding accused-appellant/s guilty of violating Section 3(e) through the act of granting unwarranted benefits, when this was not alleged in the Informations;⁶⁶ and 4) finding that accused-appellant/s conspired to implement the questioned projects without public bidding despite evidence of the limited participation of Sidchayao, Ngaya, Cablog, and Lucas

⁶⁰ *Id.* at 227–236. Dissenting Opinion of Justice Cabotaje-Tang.

⁶¹ *Id.* at 243–245.

⁶² *Id.* at 243.

⁶³ *Id.* at 251–268. September 20, 2021 Resolution in SB-16-CRM-0323-0324, penned by Associate Justice Ronald B. Moreno, with Associate Justices Bemelito R. Fernandez and Kevin Narce B. Vivero concurring, Associate Justice Maria Theresa V. Mendoza-Arcega concurring separately, and Presiding Justice Amparo M. Cabotaje-Tang dissenting.

⁶⁴ *Id.* at 112–119, 157–168, 276–286, 325–335. Appeal brief for Ngaya, Sidchayao and Cablog, appeal brief for Marafo, appeal brief for Lupoyon, and appeal brief for Lucas.

⁶⁵ *Id.* at 119–128, 169–178, 286–295, 335–339. Appeal brief for Ngaya, Sidchayao and Cablog, appeal brief for Marafo, appeal brief for Lupoyon, and appeal brief for Lucas.

⁶⁶ *Id.* at 128–133, 178–182, 293–295. Appeal brief for Ngaya, Sidchayao and Cablog, appeal brief for Marafo, and appeal brief for Lupoyon.

therein.⁶⁷ Lupoyon further argues that the SBN failed to consider the fact that the audit of the questioned projects was still underway when the Informations were filed, and remained pending even during the trial phase, when the state auditors testified. Moreover, the COA ultimately lifted the suspension of the amounts disbursed for the Open Gym project after finding that the whole ABS-CBN donation was actually spent thereon.⁶⁸

The Special Prosecutor urges Us to affirm the SBN. It argues that all the elements of the offense defined in Section 3(e) are present. As to the second element, Lupoyon openly admitted that it was the joint decision of the Mayor and Sangguniang Bayan to take the donated funds out of the LGU trust fund account and to implement the questioned projects without public bidding. Lucas, Marafo, Sidchayao, Ngaya and Cablog then implemented this consensus by actually moving the donated funds out of the LGU's trust fund and then participating in the implementation of said projects despite the lack of bidding.⁶⁹

We find for accused-appellant/s.

Currently, no court or tribunal has intermediate review powers over the SBN's exercise of its original jurisdiction. Original-jurisdiction adjudications by the SBN may be elevated only to the Supreme Court through appeal or petition for review. Mindful of the *de novo* character of an appeal and the constitutional presumption of innocence, We laid down the following policy in deciding such recourses:

Thus, with respect to cases resolved by the [SBN] in the exercise of its original jurisdiction, the mode of deciding the case is either through a decision or unsigned resolution. 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 [SBN]. 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. 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.⁷⁰

⁶⁷ *Id.* at 133–134, 339–347. Appeal brief for Ngaya, Sidchayao and Cablog; Appeal brief for Lucas.

⁶⁸ *Id.* at 295–301. Appeal brief for Lupoyon.

⁶⁹ *Id.* at 478–482. Appeal brief for the People.

⁷⁰ *Villarosa v. People*, 875 Phil. 270, 299–300 (2020) [Per C.J. Peralta, *En Banc*].

We have accordingly scrutinized the records of the present case and found the appeals meritorious.

The offense defined in Section 3(e) of Republic Act No. 3019 has three elements: 1) the accused-appellant/s must be a public officer; 2) the accused-appellant/s caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions; and 3) the injury to any party, or giving any private party any unwarranted benefits, advantage or preference was done through manifest partiality, evident bad faith or gross inexcusable negligence.⁷¹ Accused-appellant/s fault the SB for detecting the presence of the second and third elements.

Causing undue injury and granting unwarranted benefits are separate acts; accused-appellant/s cannot be convicted of one or the other if not alleged in the Information

“[A]n accused can only be convicted of the crime with which he or she is charged. This rule proceeds from the constitutional guarantee that an accused shall always be informed of the nature and cause of the accusation against him or her.”⁷²

Section 3(e) of Republic Act No. 3019 is a multimodal offense, in that its second element contemplates two distinct acts⁷³ and its third element lists three distinct modes of committing such acts.⁷⁴ Thus, there are at least **six** (2*3) distinct ways of committing the offense.⁷⁵ For this reason, case law requires that the manner in which Section 3(e) was violated must be clearly stated in the Information:

Needless to say, there are a number of ways by which Section 3(e) of R.A. No. 3019 may be violated. But, recognizing an accused’s constitutional right to due process, conviction may only be obtained under what has been charged, or included, in the complaint or information. It is of no consequence that the designation of the offense given by the statute has been

⁷¹ *Ramiscal, Jr. v. People*, 913 Phil. 241 (2021) [Per J. Caguioa, First Division]; *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 26 (1989) [Per J. Ganayco, *En Banc*]; *Mejorada v. Sandiganbayan*, 235 Phil. 400, 407–409 (1987) [Per J. Cortes, *En Banc*].

⁷² *People v. XXX*, 871 Phil. 457, 471 (2020) [Per J. Zalameda, Third Division].

⁷³ *Cabrera v. Sandiganbayan*, 484 Phil 350, 362 (2004) [Per J. Callejo, Sr., *En Banc*]. Citations omitted.

⁷⁴ *Fonacier v. Sandiganbayan*, 308 Phil 660, 702 (1994) [Per J. Vitug, *En Banc*].

⁷⁵ *See Gallego, et al. v. Sandiganbayan*, 201 Phil. 379, 384 (1982) [Per J. Relova, *En Banc*], where the information specified the following punishable acts: (a) the giving of “unwarranted” benefits through manifest partiality; (b) the giving of “unwarranted” benefits through evident bad faith; and, (c) the giving of “unwarranted” benefits through gross inexcusable negligence while in the discharge of their official and/or administrative functions.

4

specified and the facts proven fall under said designation. The real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but on the facts recited in the complaint or information. More particularly, the prosecution must show that the act alleged, in the manner stated in the information, has been committed by the accused, regardless of the technical name of the crime charged.⁷⁶

Causing undue injury and granting unwarranted benefits are two distinct and separate acts⁷⁷ which Republic Act No. 3019 subsumes under a single offense. Undue injury as contemplated in Section 3(e) means **actual loss to the government or any party**;⁷⁸ while unwarranted benefits are those granted **to private persons** without adequate or official support, justification, or authority.⁷⁹ As explained in *Bautista v. Sandiganbayan*:

Indeed, Sec. 3, par. (e), [Republic Act No.] 3019, as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Sec. 3, par. (e), or as aptly held in Santiago, as two (2) different modes of committing the offense. This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both.

In Santiago petitioner therein assailed the failure of respondent to include the phrase “causing of undue injury to any party, including the Government” in the amended informations filed against her. Refuting the claim, the Court cited the minute resolution in *Uy v. Sandiganbayan* and clarified that **the “act of giving any private party any unwarranted benefit, advantage or preference” is not an indispensable element of the offense of “causing any undue injury to any party,” although there maybe instances where both elements concur.** Thus, in *Pareño v. Sandiganbayan* the information charged the public officers with “willfully and unlawfully causing undue injury to the Government and giving unwarranted benefits to Tanduay Distillery, Inc.” by failing to verify and act on the validity and/or veracity of the claim for tax credit filed by the corporation before the BIR.⁸⁰

Thus, *Cabrera v. Sandiganbayan* instructs that an information for violation of Section 3(e) must charge *either* or *both* punishable acts:

⁷⁶ *Burgos v. Sandiganbayan*, 459 Phil 794, 806-807 (2003) [Per J. Azcuna, First Division].

⁷⁷ *People v. Cerezo*, G.R. No. 252173, March 15, 2022 [Per J. Gaerlan, First Division]; *Cabrera v. Sandiganbayan*, 484 Phil 350, 362 (2004) [Per J. Callejo, Sr., *En Banc*].

⁷⁸ *Renales v. People*, 904 Phil. 456 (2021) [Per J. Carandang, First Division].

⁷⁹ *Estrada v. Sandiganbayan*, 421 Phil. 290, 358 (2001) [Per J. Bellosillo, *En Banc*].

⁸⁰ *Bautista v. Sandiganbayan*, 387 Phil. 872, 881-882 (2000) [Per J. Bellosillo, Second Division]. The *Bautista* Court refers to causing undue injury and granting unwarranted benefits as “modes” of committing the offense defined in Section 3(e).

There are two (2) ways by which a public official violates Section 3(e) of Rep. Act No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or under both. In *Quibal v. Sandiganbayan*, the Court held that the use of the disjunctive term “or” connotes that either act qualifies as a violation of Sec. 3(e) of Rep. Act No. 3019. In fine, the delictual act of the accused may give rise to or cause either an undue injury to any party, including the government; or the giving to any private party unwarranted benefits, advantage or preference, or both undue injury and warranted benefits, advantage or preference.⁸¹

Here, accused-appellant/s are charged with “*caus[ing] undue injury to the Municipality of Barlig, Mountain Province by causing the*” implementation of the Open Gym and Pathway projects.⁸² Clearly, accused-appellant/s are being charged solely for the act of causing undue injury, to the exclusion of granting unwarranted benefits. As discussed above, causing undue injury and granting unwarranted benefits are distinct and separate acts which necessitate different defenses and forms of proof. Thus, both acts must be alleged in the information in order to convict the accused-appellant/s under both acts; and the accused-appellant/s cannot be convicted on the basis of either act if not alleged in the information. In *Villarosa v. People*:

[I]t 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 [Republic Act No.] 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 [Republic Act No.] 3019. Also, by our previous discussion, we were able to establish that each modality of violating Section 3 (e) of [Republic Act No.] 3019 is actually distinct from the others. Hence, while all three modalities may be alleged simultaneously in a single information for violation of Section 3 (e) of [Republic Act No.] 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 [Republic Act No.] 3019 committed through evident bad faith only, cannot be considered as synonymous to, or includes an accusation of violation of Section 3 (e) of [Republic Act No.] 3019 committed through gross inexcusable negligence.

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. Convicting petitioner of violation of Section 3 (e) of [Republic Act No.] 3019 on the basis of gross inexcusable negligence, when he was but charged of committing the

⁸¹ *Cabrera v. Sandiganbayan*, 484 Phil 350, 362 (2004) [Per J. Callejo, Sr., *En Banc*].

⁸² Records (vol. 1), pp. 1, 3–4. Informations.

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.⁸³ (Citations omitted)

While *Villarosa* involved the defective allegation of the particular *modes* of violating Section 3(e), i.e., the third element, its underlying principle also applies to the allegation of the *acts* constitutive of said offense (the second element), because the causing of undue injury and the granting of unwarranted benefits are **two distinct and separate acts**. As correctly pointed out in Justice Cabotaje-Tang's dissent, accused-appellant/s cannot be convicted for an act which they were not properly accused-appellant/s of committing, and which the prosecution did not even try to prove:

In this case, however, the two (2) Informations specifically charge the accused only under the first punishable act. To find them guilty under the second punishable act would be highly improper as that would unduly impinge on their constitutional right to be informed of the nature and cause of accusation against them.

....

Moreover, the prosecution did not present any evidence as to this second modality, i.e. giving unwarranted benefit, advantage or preference in favor of private persons. There is absolutely want of any allegation/evidence on the specific person/s to whom the accused gave unwarranted benefits, advantage, or preference and how they did so. In fact, the prosecution's evidence focused on the failure of the accused to observe the proper procedures in the procurement of the construction of the gymnasium and the pathway.

A review of the records of these cases will show that majority of the prosecution witnesses were from the Commission on Audit (COA). Notably, their testimonies centered on the failure of the accused to follow the rules on procurement and the non-submission of documents relative to the projects undertaken. The only witnesses they presented, who were not from the COA, were the private complainants whose testimonies also revolved around the fact that there was no public bidding, and not on the fact that the donations were misused or lost.⁸⁴

Thus, accused-appellant/s cannot be convicted on the basis of granting unwarranted benefits, and the SBN erred in doing so.

Undue injury not proven beyond reasonable doubt

⁸³ *Villarosa v. People*, 875 Phil. 270, 308 (2020) [Per C.J. Peralta, *En Banc*].

⁸⁴ *Rollo*, pp. 239 & 243. Dissenting Opinion of Justice Cabotaje-Tang.

4

Renales v. People explains the concept of undue injury as contemplated in Section 3(e) of Republic Act No. 3019:

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 damaged one 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.

In turn, actual or compensatory damages is defined by Article 2199 of the Civil Code as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Fundamental in the law on damages is that one injured by a breach of a contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant’s act. Actual pecuniary compensation is awarded as a general rule except where the circumstances warrant the allowance of other kinds of damages. Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Furthermore, damages must not only be capable of proof, but must be actually proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture, or guesswork. They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury.

The same principle was reiterated in *Rivera v. People*, thus:

. . . [U]ndue injury should be equated with that civil law concept of “actual damage.” Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified, and proven to the point of moral certainty.

In *Abubakar v. People of the Philippines*, this Court held that an accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. The loss or damage need not be proven with actual certainty. However, there must be “some reasonable basis by which the court can measure it.” Aside from this, the loss or damage must be substantial. It must be “more than necessary, excessive, improper or illegal”.

In other words, jurisprudence requires that for a successful prosecution of violation of Section 3(e) of [Republic Act No.] 3019, the fact of undue injury to the government must be specified, quantified, and proven beyond reasonable doubt.⁸⁵

In convicting accused-appellant/s, the SBN ruled that they unduly injured the government by implementing the questioned projects without public bidding, thereby foregoing the opportunity to build the Open Gym and the Mount Amuyao pathway at a cost most advantageous and beneficial to the government. However, the prosecution did not identify or even provide an estimate of such most advantageous and beneficial cost. There is nothing in the voluminous case records to show that the questioned projects would have been implemented at a lower cost had the Barlig LGU gone through regular procurement processes. The SBN deduced the existence of undue injury solely from the lack of public bidding. This does not satisfy the statutory requirement of actual loss, as actual loss does not necessarily follow from noncompliance with government procurement regulations. In *Sabaldan v. Office of the Ombudsman*.⁸⁶

More importantly, it must be emphasized that the instant case involves a finding of probable cause for a criminal case for violation of Section 3(e) of [Republic Act] No. 3019, and not for violation of [Republic Act] No. 9184. Hence, even granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of [Republic Act] No. 3019 are already present as a matter of course. For there to be a violation under Section 3(e) of [Republic Act] No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence.⁸⁷

In *Renales*, officials of the Philippine Navy were charged with causing undue injury and granting unwarranted benefits by making unjustified emergency purchases of medicines without public bidding. The SBN found that the unjustified emergency purchases constituted undue injury under Section 3(e) since they were made without public bidding. We reversed the SBN thus:

In this case, it can be observed that the prosecution failed to prove any undue injury suffered by the Government because of the emergency purchase of the medicines from the five suppliers. The Sandiganbayan itself even acknowledged that the prosecution failed to prove the fact of overpricing in

⁸⁵ *Renales v. People*, 904 Phil. 456, 470–471 (2021) [Per J. Carandang, First Division].

⁸⁶ *Sabaldan v. Office of the Ombudsman*, 874 Phil. 144 (2020) [Per J. J.C. Reyes, Jr., First Division].

⁸⁷ *Id.* at 155–156.

the medicines purchased by the accused. To be able to show that indeed the government suffered damage, the prosecution should have canvassed and should have compared the prices of the branded medicines purchased by the accused to the exact brands sold by other suppliers. The difference of the prices, if any, would prove the presence of undue injury to the government. However, this was not done. Hence, there is no actual basis for Sandiganbayan to conclude that the government suffered undue injury because of the emergency purchase of the subject medicines.⁸⁸

Similarly, the State's failure to identify or provide an estimate of the bid-compliant cost for the Open Gym and Pathway projects engenders serious doubt in the existence of undue injury to the government. Without such reference price, there is no way to determine whether the Barlig LGU could have spent less money on the questioned projects had they been bid out. Furthermore, the records show that both projects were completed using the donated funds, and the prosecution did not submit any proof that the Barlig LGU used any other funding source to finance the construction of the Open Gym. The same is true for the Pathway Project, which was completed at a cost of PHP 55,000.00, taken wholly from the GMA fund.

The prosecution also failed to submit adequate proof of undue injury stemming from the irregularities flagged by the COA. As correctly pointed out in Justice Cabotaje-Tang's dissenting opinion,⁸⁹ an audit disallowance can be based not only on the illegality or the irregularity of an expenditure, but also upon its lack of necessity, excessiveness, extravagance, or unconscionability.⁹⁰ Thus, an audit suspension or disallowance does not automatically indicate pecuniary loss to the government or any other party. Here, the COA disallowed PHP 50,000.00 in disbursements for the Pathway Project due to non-submission of the Program of Work, Accomplishment Report and Inspection Report.⁹¹ However, the affidavit of the project supervisor Ophelia Witawit and its included attachments clearly shows that the Pathway Project was implemented directly by the communities residing around Mount Amuyao,⁹² in accordance with the terms of the GMA Deed of Donation, which provided that the pathway to Mount Amuyao shall be constructed using indigenous materials.⁹³ The participation of the Barlig LGU in the project was limited to the disbursement of the donated funds for the compensation of the residents' labor and the purchase of materials used for the project. These disbursements were supported by documentation and receipts which were nevertheless rejected by the COA for not being in line with government procurement regulations. As regards the Open Gym Project,

⁸⁸ *Renales v. People*, 904 Phil. 456, 472 (2021) [Per J. Carandang, First Division].

⁸⁹ *Rollo*, p. 245. Dissenting opinion of Justice Cabotaje-Tang.

⁹⁰ 2009 Revised Rules of Procedure of the Commission on Audit, Rule I, Sec. 4(n), and Rule II, Sec. 1.

⁹¹ Evidence folder, unpaginated, Exhibit JJJ, Notice of Disallowance No. 17-001-300(09) dated August 18, 2017.

⁹² See Records (vol. 1), pp. 222–224, 225–235. Affidavit of Ophelia C. Witawit and attachments.

⁹³ Records (vol. 1), p. 123. GMA Deed of Donation.

1

the COA-Mountain Province itself admitted “*that the previous Audit Team Leaders assigned to the [Barlig LGU] opted not to issue notice of disallowance pursuant to Section 9, Chapter III of the 2009 Rules and Regulation[s] on the settlement of accounts because the nature of suspension does not involve pecuniary loss to the government since [the] suspensions involved the submission of documents of which some have been complied with.*”⁹⁴ This is corroborated by the Inspection Report dated July 30, 2010 by the COA Cordillera regional office, which essentially stated that the Open Gym Project has been completed on the basis of the plans and documents submitted by the Barlig LGU but the complete verification of such completion cannot proceed because of missing documents.⁹⁵

Likewise, the COA reports and the testimonies of the state auditors do not show how the Barlig LGU or any other party was unduly injured by the transfer of the donated amounts away from the LGU’s trust fund account, considering that the Open Gym and Pathway Projects were completed within accused-appellant/s’ tenure in office, using the funds donated for the purpose; and any excess from the GMA and ABS-CBN donations remained in the LGU’s account.⁹⁶

Evident bad faith and gross inexcusable negligence not proven

Accused-appellant/s were charged with violating Section 3(e) by causing undue injury with evident bad faith and gross inexcusable negligence, with the modality of manifest partiality having been omitted. Still following *Villarosa*, the SB erred in finding accused-appellant/s guilty of manifest partiality, as this was not alleged in the Informations.

Evident bad faith “*pertains to bad judgment as well as palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse or ill will;*” while gross inexcusable negligence “*is the degree of negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.*”⁹⁷

⁹⁴ Evidence folder, unpaginated, Exhibit KK and Records (vol. 3), pp. 167–168. Memorandum dated January 3, 2012 from COA-Mountain Province Supervising Auditor Dibangkitun L. Ayoong to COA-CAR Director III Lynn S.F. Sicangco.

⁹⁵ Evidence folder, unpaginated, Exhibit Y. Inspection Report for Infrastructure Projects dated July 30, 2010 signed by Technical Audit Specialist Joseph O. Padcayan.

⁹⁶ See Records (vol. 2), p. 660 and Evidence Folder, unpaginated (Exhibit ZZ). Handwritten Subsidiary Ledger; Records (vol. 2), p. 669 and Evidence Folder, unpaginated (Exhibit III), Statement of Bank Reconciliation dated August 31, 2009 signed by Acting Municipal Accountant Val B. Tubay.

⁹⁷ *People v. Gelacio*, G.R. Nos. 250951 and 250958, August 10, 2022 [Per C.J. Gesmundo, First Division]; *Quiogue v. Estacio*, 893 Phil. 674, 686 (2021) [Per J. M.V. Lopez, Second Division]; *Chung v. Office of*

The SB's finding of evident bad faith, manifest partiality, and gross inexcusable negligence grounded solely on the lack of public bidding has no basis in law or the evidence. *Macairan v. People* holds that:

...the absence of public bidding in the procurement of goods does not automatically equate to evident bad faith and manifest partiality. The guilt of an accused charged with violation of [Republic Act] No. 3019 must be determined through the lens of the anti-graft and corruption law and not the procurement law.⁹⁸

Macairan involved the procurement of medicines by DOH officers through emergency purchases without public bidding. In reversing their conviction, We held that the DOH officers' decision to forego public bidding was not motivated by corruption or malice. It was proven during trial that the DOH officers simply bought the medicine from the same supplier who won the agency's most recent bid for the purchase of the same medicines, subject to the same terms and conditions as the previous purchase made through the most recent bid.⁹⁹ We ruled that "*even if it were to be conceded that the failure to conduct the requisite public bidding for the questioned transactions was unjustified, no other evidence was presented to establish that petitioners' actions were animated by malicious motive or fraudulent intent to defraud the government*"¹⁰⁰

Similarly, the prosecution failed to adduce evidence of fraudulent intent on the part of Lupoyon and her co-accused.

While it is true that accused-appellant/s caused the Barlig LGU to violate certain provisions of the Deed of Donation with ABS-CBN when they moved the ABS-CBN donation out of the LGU's trust fund account and implemented the questioned projects without public bidding, the prosecution adduced no proof that accused-appellant/s did so with fraudulent or *mala fide* purpose. On the other hand, Lupoyon openly and formally admitted that she proceeded on the basis of her opinion that the donated funds remained private in character and therefore outside state audit jurisdiction. She also admitted that the Open Gym project did not undergo public bidding because she did not want the LGU to pay the 10% contractor's share required by the procurement law; while the Pathway Project was implemented directly by the residents around Mount Amuyao as part of the stipulation in the GMA donation that the project shall be constructed using indigenous materials. Lupoyon's justifications, as adopted by the other accused-appellant/s, may have been

the Ombudsman, 899 Phil. 281, 294 (2021) [Per J. Caguioa, First Division]; *Martel v. People*, 895 Phil. 270, 287 (2021) [Per J. Caguioa, *En Banc*].

⁹⁸ *Macairan v. People*, 899 Phil. 75, 107 (2021) [Per J. Caguioa, First Division].

⁹⁹ *Id.*

¹⁰⁰ *Id.*

legally erroneous; but they do not rise to the level of fraud, corruption, or gross inexcusable negligence. Accused-appellant/s simply adopted a well-intentioned but misguided measure to cut costs and maximize the donated funds. Furthermore, the COA itself admitted that the suspensions and disallowances it issued for the questioned projects were based on the lack of acceptable supporting documents, and not upon any actual loss to the government. In effect, the SB penalized accused-appellant/s for ensuring that the Open Gym and Pathway Projects were implemented within the limits of the ABS-CBN and GMA funds. While accused-appellant/s may have violated the procurement law in doing so, this fact does not relieve the prosecution of its duty to prove that accused-appellant/s did so with a fraudulent or corrupt purpose.

Our ruling today should by no means be construed as a license to disregard government procurement laws and regulations. It only highlights the stringent requirements for a conviction for graft as defined and penalized in Republic Act No. 3019, as explained in *Martel v. People*:

It should be borne in mind, however, that acquitting the accused for violation of [Republic Act No.] 3019 despite violations of the procurement law should not be viewed as condoning the procurement irregularities. To emphasize, [Republic Act No.] 9184 contains a penal clause where public officers and private individuals may be held liable. Should their actions be considered as falling under this penal clause, then petitioners may be held criminally liable under [Republic Act No.] 9184.

....

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

In this case, while the prosecution may have shown how procurement laws had not been strictly followed, it nonetheless failed to prove beyond reasonable doubt the elements for a violation of Section 3(e) of [Republic Act No.] 3019.¹⁰¹ (Citations omitted)

¹⁰¹ *Martel v. People*, 895 Phil. 279, 313-314 (2021) [Per J. Caguioa, *En Banc*].


0

Here, accused-appellant/s acted on the incorrect position that funds donated by private parties to a local government unit remain private in character. They compounded this mistake by spending such funds without undergoing government procurement processes, for fear that said funds may not be sufficient for the intended purposes. Nevertheless, the record shows that said funds were used solely for their intended purpose: 'the construction of basic public facilities in a far-flung town in the Cordillera. While accused-appellant/s may have made a series of questionable—even illegal—decisions in the construction of said facilities, the prosecution nevertheless failed to prove undue injury to the government or to any private party: the sole act for which accused-appellant/s have been properly charged.

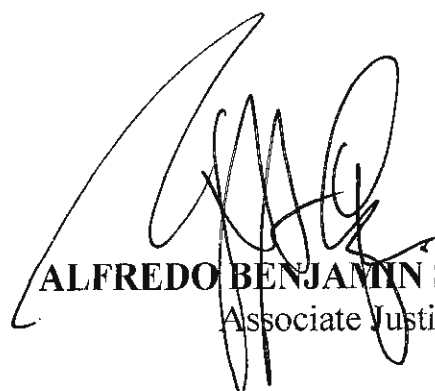
ACCORDINGLY, this appeal is **GRANTED**. The February 26, 2021 Decision and the September 20, 2021 Resolution of the Sandiganbayan in Criminal Case Nos. SB-16-CRM-0323 to 0324 are hereby **REVERSED** and **SET ASIDE**. Accused-appellants Magdalena K. Lupoyon, Albert Tenglab Marafo, Edmundo Challiis Sidchayao, Clark Chatongna Ngaya, Fernando Yacam-ma Cablog, and Danilo Rabina Lucas are **ACQUITTED**. The hold departure orders against them are **LIFTED**. Any amount paid by way of a bail bond is ordered **RETURNED**.

Let entry of judgment be issued immediately.

SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

*See Concurring
Opinion*

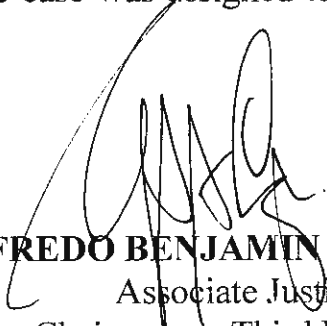

HENRI JEAN PAUL B. INTING
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

(On official business)
MARIA FILOMENA D. SINGH
Associate Justice

A T T E S T A T I O N

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.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, 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.



ALEXANDER G. GESMUNDO
Chief Justice

A