

*Mis D C Batt*  
MISAELO DOMINGO C. BATTUNG III  
THIRD DIVISION Deputy Division Clerk of Court  
Third Division

OCT 31 2019

G.R. Nos. 233280-92 – PEOPLE OF THE PHILIPPINES, *Petitioner*, v.  
HON. SANDIGANBAYAN (SECOND DIVISION) and FELICIDAD B.  
ZURBANO, *Respondents*.

Promulgated:  
September 18, 2019

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### DISSENTING OPINION

LEONEN, J.:

Public office is a public trust.<sup>1</sup> When determining whether this public trust has been violated, the courts must recall the constitutional mandate that public officers must be, at all times, “accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency[.]”<sup>2</sup> Republic Act No. 3019<sup>3</sup> should be applied to the facts of this case with this guiding principle in mind.

Republic Act No. 3019, Section 3(h) declares it unlawful for public officers to intervene in certain transactions:

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

In its Resolution,<sup>4</sup> while the Sandiganbayan found that respondent Felicidad B. Zurbano (Zurbano), a public officer, intervened in a transaction in her official capacity, it nonetheless acquitted her. This was after it had found that the prosecution failed to establish the financial or pecuniary interest in the transaction in which she intervened.

Notably, in its earlier Decision<sup>5</sup> on the case, the Sandiganbayan held

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<sup>1</sup> CONST., art XI, sec. 1.

<sup>2</sup> CONST., art XI, sec. 1.

<sup>3</sup> Anti-Graft and Corrupt Practices Act.

<sup>4</sup> *Rollo*, pp. 33–40. The February 21, 2017 Resolution was penned by Associate Justice Michael Frederick L. Musngi and concurred in by Associate Justices Samuel R. Martires and Geraldine Faith A. Econg of the Second Division, Sandiganbayan, Quezon City.

<sup>5</sup> *Id.* at 62–108. The April 12, 2016 Decision was penned by Chairperson Teresita V. Diaz-Baldos and concurred in by Associate Justices Napoleon E. Inoturan and Maria Cristina J. Cornejo of the Second Division, Sandiganbayan, Quezon City.

that respondent Zurbano's intervention in the process that led to the award of the contracts of the Technical Education and Skills Development Authority-Cavite to her sister's business sufficiently established her indirect pecuniary interest in the transactions. However, in the Resolution, the Sandiganbayan reversed this finding:

In this case, the prosecution merely assumed the pecuniary interest of the accused when her sister's company, CDZ Enterprises, was able to submit the lowest price quotations for the contracts due to the accused's intervention. This Court finds that the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. The prosecution was not able to present evidence that the accused received any financial benefit from these transactions. Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest.

The third element of the crime enumerates the two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3 (h) of R.A. No. 3019. As previously mentioned, the first mode is when the public officer intervenes or takes part in his official capacity in any business, contract or transaction. The second mode is when the public officer is prohibited by the Constitution or by law from having such interest. This Court found the accused guilty of the first mode when she intervened as Provincial Director in the procurement or acquisition of office supplies for TESDA-Cavite.

Indeed, the accused personally intervened in the procurement of office supplies in order to ensure that her sister, who was the sole proprietor of CDZ Enterprises, would be granted the contracts. The accused also admitted that CDZ Enterprises became a supplier of TESDA-Cavite only during her incumbency as Provincial Director. Therefore, it appears that the accused took advantage of her position and used her knowledge of the prices of the other suppliers to safeguard the bid of CDZ Enterprises. Since CDZ Enterprises would end up with the lowest prices for the supplies, then the BAC will eventually grant the contracts to said company. Nonetheless, Section 3 (h) of R.A. No. 3019 primarily requires the existence of a direct or pecuniary interest on the part of the accused on the contracts with CDZ Enterprises to which she intervened in. Unfortunately, the prosecution failed to show how the accused is connected with CDZ Enterprises or how this intervention led to her acquisition of any financial interest or benefit.<sup>6</sup>

I agree with the Sandiganbayan's earlier disquisition that when it was established that respondent Zurbano had intervened in the transaction involving her sister, the burden shifted to her to prove that she did not have any indirect financial or pecuniary interest in her sister's business.

Although the prosecution did not provide evidence specifically showing respondent Zurbano's pecuniary interest in her sister's company, I

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<sup>6</sup> Id. at 37-38.

submit that, because of their relationship as siblings, there is a disputable presumption that they indirectly benefit from each other's financial successes.

Close family ties are a common Filipino trait,<sup>7</sup> and the relationship between respondent Zurbano and her sister cannot be brushed aside as if that relationship has no implications.

Arguably, the prosecution should have exerted more effort to show that respondent Zurbano had some financial interest in her sister's winning the award. Arguably, a close family relationship does not conclusively entail financial interest in each other's successes. After all, a person may assist her sibling out of love or some concept of familial duty, without necessarily contemplating any monetary gain.

However, under the law, immediate relatives are obliged to support each other to varying degrees. Under certain conditions, siblings are legally obliged to provide for their siblings' needs, and this legal obligation may extend even to expenses related to education.<sup>8</sup> This family support is, among others, personal, based on family ties, intransmissible, and cannot be renounced or compromised.<sup>9</sup> This family support is financial.

Thus, one's financial success or ruin will generally have some financial effect on his or her siblings.

Certainly, not all sibling relationships are identical, and some siblings may be all but estranged. However, I submit that, in the ordinary course of life in the Filipino family, when a person assists his or her sibling in obtaining an award, that person will presumably indirectly benefit financially. Thus, while respondent Zurbano's financial interest in her sister's success may not necessarily be conclusive, she had the burden to contradict this presumption.<sup>10</sup>

<sup>7</sup> *Son v. Son*, 321 Phil. 951 (1995) [Per J. Kapunan, First Division].

<sup>8</sup> CIVIL CODE, arts. 290 and 291 provide:

ARTICLE 290. Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, according to the social position of the family.

Support also includes the education of the person entitled to be supported until he completes his education or training for some profession, trade or vocation, even beyond the age of majority. (142a)

ARTICLE 291. The following are obliged to support each other to the whole extent set forth in the preceding article:

.....

Brothers and sisters owe their legitimate and natural brothers and sisters, although they are only of the half-blood, the necessities for life, when by a physical or mental defect, or any other cause not imputable to the recipients, the latter cannot secure their subsistence. This assistance includes, in a proper case, expenses necessary for elementary education and for professional or vocational training.

<sup>9</sup> *Patricio v. Dario III*, 537 Phil. 595 (2006) [Per J. Ynares-Santiago, First Division].

<sup>10</sup> RULES OF COURT, Rule 131, sec. 3 provides:

SECTION 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

.....

The Sandiganbayan recognized this twice: first, when it denied Zurbano's Demurrer to Evidence,<sup>11</sup> and second, when it convicted her in its Decision, reasoning that:

... the intervention of the accused in the process that led to the award of the contracts of TESDA-Cavite to CDZ Enterprises which is a business owned by her sister established the latter's indirect pecuniary interest in the transactions, applying the ruling of the Supreme Court in the *Tuviera (sic)* case cited therein.

Under the circumstances, therefore, it was incumbent upon the accused to rebut the charge that she had direct or indirect pecuniary interest in the business transactions of CDZ Enterprises with TESDA Cavite wherein she intervened or took part in her official capacity as Provincial Director of TESDA Cavite. As stated by the Court in its aforementioned Resolutions, "*the burden of evidence had shifted to the accused to prove that her intervention in the eventual award of the contract for the supply of office and technical materials of TESDA-Cavite to CDZ Enterprises was not because of her indirect financial or pecuniary interest in the said company.*"

Every criminal case starts with the constitutionally-protected presumption of innocence in favor of the accused that can only be defeated by proof beyond reasonable doubt. The prosecution starts the trial process by presenting evidence showing the presence of all the elements of the offense charged. If the prosecution proves all the required elements, the burden of evidence shifts to the accused to disprove the prosecution's case.

Evaluating the evidence presented by the accused, however, the Court finds that with respect to the specific charge of having directly or indirectly had pecuniary interest in any business, contract or transaction in connection with which she intervened or took part in her official capacity, the accused has failed to discharge that burden of overthrowing the positive evidence of the prosecution.<sup>12</sup> (Emphasis in the original, citations omitted)

I submit that the Sandiganbayan committed grave abuse of discretion in reversing its earlier ruling. Despite properly citing and applying *Republic v. Tuvera*<sup>13</sup> in its Decision,<sup>14</sup> it later inexplicably reduced in its Resolution this Court's pronouncement in *Tuvera* as pertaining to *delicadeza*:

In the case of *Republic vs. Tuvera, et al.*, the Supreme Court mentioned that the legal principle of *delicadeza* embodied in the provisions of R.A. No. 3019, specifically in paragraphs (a) and (h), should

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(y) That things have happened according to the ordinary course of nature and the ordinary habits of life[.]

<sup>11</sup> *Rollo*, p. 60.

<sup>12</sup> *Id.* at 103-104

<sup>13</sup> 545 Phil. 21 (2007) [Per J. Tinga, Second Division].

<sup>14</sup> *Rollo*, p. 103.

have dissuaded the accused from any official or unofficial participation or intervention in behalf of Twin Peaks' request for a timber license. However, the absence of *delicadeza* on the part of the accused does not make her liable for violation of Section 3 (h) of R.A. No. 3019. This law prohibits such actual intervention by a public officer in a transaction over which he/she has a financial or pecuniary interest because the law aims to prevent the dominant use of influence, authority and power. All the elements of the crime must be sufficiently proven in order to convict the accused.<sup>15</sup> (Citations omitted)

The Sandiganbayan ignored that in *Tuvera*,<sup>16</sup> this Court expressly found that a relationship in itself can establish the indirect pecuniary interest of someone charged with violation of Republic Act No. 3019, Section 3(h).

To further support its new conclusion that respondent Zurbano's intervention and relationship with her sister are not enough to show indirect financial interest, the Sandiganbayan also muddled two (2) separate instances where this Court discussed the question of relationship in *Tuvera*. It stated:

However, a review of the records of this case shows that the prosecution was not able to sufficiently prove the second element of the crime. In its *Decision*, this Court applied the case of *Republic vs. Tuvera, et al.* where the Supreme Court held that the fact that the principal stockholder of Twin Peaks was the son of accused Presidential Executive Assistant Juan Tuvera establishes the latter's indirect pecuniary interest in the transaction he appears to have intervened in. However, it is important to note that the Supreme Court also mentioned that kinship alone may not be enough to disqualify the accused's son from seeking the timber license agreement.<sup>17</sup> (Citation omitted)

The Sandiganbayan's citation of *Tuvera* is misleading. This Court's discussion regarding kinship and indirect pecuniary interest was completely separate from its discussion on *delicadeza* and the question of whether the accused's son was disqualified from seeking a timber license agreement. For clarity, on indirect pecuniary interest, which is the very issue in this case, *Tuvera* states:

The Memorandum signed by Juan Tuvera can be taken as proof that he "persuaded, induced or influenced" the Director of Forestry to accommodate a timber license agreement in favor of Twin Peaks, despite the failure to undergo public bidding, or to comply with the requisites for the grant of such agreement by negotiation, and in favor of a corporation that did not appear legally capacitated to be granted such agreement. ***The fact that the principal stockholder of Twin Peaks was his own son establishes his indirect pecuniary interest in the transaction he appears***

<sup>15</sup> Id. at 38–39.

<sup>16</sup> 545 Phil. 21 (2007) [Per J. Tinga, Second Division].

<sup>17</sup> *Rollo*, p. 37.

*to have intervened in.* It may have been possible on the part of Juan Tuvera to prove that he did not persuade, induce or influence the Director of Forestry or any other official in behalf of the timber license agreement of Twin Peaks, but then again, he waived his right to present evidence to acquit himself of such suspicion. Certainly, the circumstances presented by the evidence of the prosecution are sufficient to shift the burden of evidence to Tuvera in establishing that he did not violate the provisions of the Anti-Graft and Corrupt Practices Act in relation to the Twin Peaks “request.” Unfortunately, having waived his right to present evidence, Juan Tuvera failed to disprove that he failed to act in consonance with his obligations under the Anti-Graft and Corrupt Practices Act.<sup>18</sup> (Emphasis supplied)

The pronouncement pertaining to “kinship alone” was not made in relation to indirect pecuniary interest. It was pertinent only to the question of whether the accused’s son was disqualified, by reason of kinship alone, from seeking a timber license agreement:

The causes of action against respondents allegedly arose from Juan Tuvera’s abuse of his relationship, influence and connection as Presidential Executive Assistant of then President Marcos. Through Juan Tuvera’s position, the Republic claims that Twin Peaks was able to secure a Timber License Agreement despite its lack of qualification and the absence of a public bidding. On account of the unlawful issuance of a timber license agreement, the natural resources of the country were unlawfully exploited at the expense of the Filipino people. Victor Tuvera, as son of Juan Tuvera and a major stockholder of Twin Peaks, was included as respondent for having substantially benefited from this breach of trust. The circumstance of kinship alone may not be enough to disqualify Victor Tuvera from seeking a timber license agreement. Yet the basic ethical principle of *delicadeza* should have dissuaded Juan Tuvera from any official or unofficial participation or intervention in behalf of the “request” of Twin Peaks for a timber license.<sup>19</sup>

Grave abuse of discretion has no precise definition,<sup>20</sup> but the Sandiganbayan’s muddling of this Court’s pronouncements in *Tuvera* to acquit respondent Zurbano of a crime she had already been convicted of amounts to grave abuse of discretion.

Notably, the doctrine of finality of acquittal does not apply when the acquittal was rendered with grave abuse of discretion. In *People v. Asis*,<sup>21</sup> this Court explained that there are exceptions to this doctrine:

A petition for *certiorari* under Rule 65, not appeal, is the remedy to question a verdict of acquittal whether at the trial court or at the appellate level. In our jurisdiction, We adhere to the finality-of-acquittal

<sup>18</sup> *Republic v. Tuvera*, 545 Phil. 21, 56 (2007) [Per J. Tinga, Second Division].

<sup>19</sup> *Id.* at 53–54.

<sup>20</sup> *People v. Sandiganbayan*, 581 Phil. 419 (2008) [Per J. Quisumbing, Second Division].

<sup>21</sup> 643 Phil. 462 (2010) [Per J. Mendoza, Second Division].

doctrine, that is, a judgment of acquittal is final and unappealable. The rule, however, is not without exception. In several cases, the Court has entertained petitions for *certiorari* questioning the acquittal of the accused in, or the dismissals of, criminal cases. Thus, in *People v. Louel Uy*, the Court has held:

Like any other rule, however, the above said rule is not absolute. By way of exception, a judgment of acquittal in a criminal case may be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court upon clear showing by the petitioner that the lower court, in acquitting the accused, committed not merely reversible errors of judgment but also grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process, thus rendering the assailed judgment void. . . .

In *People v. Laguio, Jr.*, where the acquittal of the accused was via the grant of his demurrer to evidence, We pointed out the propriety of resorting to a petition for *certiorari*. Thus:

By this time, it is settled that the appellate court may review dismissal orders of trial courts granting an accused's demurrer to evidence. This may be done via the special civil action of *certiorari* under Rule 65 based on the ground of grave abuse of discretion, amounting to lack or excess of jurisdiction. Such dismissal order, being considered void judgment, does not result in jeopardy. Thus, when the order of dismissal is annulled or set aside by an appellate court in an original special civil action via *certiorari*, the right of the accused against double jeopardy is not violated.<sup>22</sup> (Citations omitted)

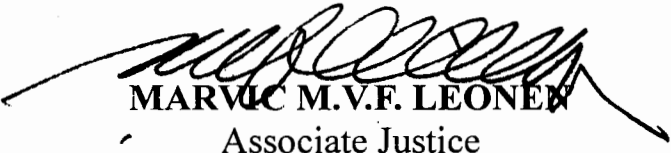
In other words, an acquittal that was rendered with grave abuse of discretion “does not exist in legal contemplation”<sup>23</sup> and, thus, cannot be final.

Accordingly, I vote to **GRANT** the Petition.

CERTIFIED TRUE COPY

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Deputy Division Clerk of Court  
Third Division

OCT 31 2019

  
MARVIC M.V.F. LEONEN

Associate Justice

<sup>22</sup> Id. at 469–470.

<sup>23</sup> *People v. Sandiganbayan*, 581 Phil. 419, 429 (2008) [Per J. Quisumbing, Second Division].