

EN BANC

G.R. No. 224720-23 – RICHARD T. MARTEL, ALLAN C. PUTONG, ABEL A. GUIÑARES, VICTORIA G. MIER, and EDGARD C. GAN, *petitioners*, v. PEOPLE OF THE PHILIPPINES, *respondent*.

G.R. No. 224765-68 – BENJAMIN P. BAUTISTA, JR., *petitioner*, v. PEOPLE OF THE PHILIPPINES, *respondent*.

Promulgated *Anna-Li R. Reyes-Zubi*
February 2, 2021

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DISSENTING OPINION

LEONEN, J.:

I regret I cannot join the majority. Petitioners should not be acquitted.

I

Republic Act No. 3019, Sec. 3(e) reads:

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

....

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

To convict under Section 3(e), the prosecution must establish the following elements:

- 1) The accused must be a public officer discharging administrative, judicial or official functions;

- 2) He [or she] must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- 3) That his [or her] action caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.¹ (Citation omitted)

It is undisputed that petitioners former Governor Benjamin P. Bautista, Jr. (Bautista), Provincial Accountant Richard T. Martel (Martel), General Services Officer Allan C. Putong (Putong), Provincial Treasurer Abel A. Guiñares (Guiñares), and Provincial Budget Officer Victoria G. Mier (Mier), and *Sangguniang Panlalawigan* Member Edgar G. Gan (Gan) were members of the Provincial Bids and Awards Committee when they committed the offense.²

It must be shown that their actions caused “undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference[,]”³ and that the crime was committed through: “manifest partiality, evident bad faith, or gross inexcusable negligence.”⁴ The presence of any of these three in the performance of official functions is critical.

*Albert v. Sandiganbayan*⁵ differentiates these modes of committing a violation:

There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. “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. “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.⁶ (Citations omitted)

In its assailed decision, the Sandiganbayan found Bautista and Putong manifestly partial, while Martel, Guiñares, Mier, and Gan were held grossly negligent in their procurement of vehicles for the governor’s use.

¹ *Reyes v. People*, G.R. No. 237172, September 18, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65745>> [Per J. Leonen, Third Division] citing *Soriano v. Marcelo*, 610 Phil. 72, 80 (2009) [Per J. Carpio, First Division].

² Ponencia, p. 3.

³ *Reyes v. People*, G.R. No. 237172, September 18, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65745>> [Per J. Leonen, Third Division].

⁴ *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693 (1994) [Per J. Vitug, En Banc].

⁵ 599 Phil. 439 (2009) [Per J. Carpio, First Division].

⁶ Id. at 450-451.

II

Basic wisdom underlies the requirement of a public bidding, which is done to curb the waste of public funds. Policy considerations of the procurement rules include its aim to promote transparency in the acquisition of goods and services in the government,⁷ and encourage competitiveness “by extending equal opportunity” to eligible and qualified parties to participate in public bidding.⁸ Laws on procurement serve as a “system of accountability where both the public officials . . . and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions.”⁹

Republic Act No. 9184¹⁰ is categorical: “[r]eference to brand names shall not be allowed.”¹¹ This prohibition aims to promote fair and equal competition among bidders by preventing any undue preference on certain goods.¹²

From an examination of the evidence, the Sandiganbayan found the following:

The *Purchase Request* signed by Bautista for the two units of **Toyota SRS** (Exhibit I) dated January 24, 2003, shows at the column Item Description the typewritten words: NOTE: Direct Purchase, and handwritten on the Purchase Order (Exhibit G) dated January 29, 2003, across Mode of Procurement: DIRECT PURCHASE, as well as stamped DIRECT PURCHASE at the bottom of the column Description. The *Abstract of Canvass* (Exhibit J) is stamped with the words "DIRECT PURCHASE" on the front of the form below the column Name and Description of Article and typewritten under the portion for JUSTIFICATION OF AWARD: SOLE DISTRIBUTOR. The *Abstract* form was signed by the accused Bautista, Guifiares, Martel, Putong, Mier and Gan.

For the **Mitsubishi L300 EXCEED DX 2500 DIESEL**, the *Purchase Request* (Exhibit RR) dated February 18, 2003 signed by Bautista, is stamped on the front with “DIRECT PURCHASE” and the Purpose for the request specified as “For the use of the Governor”. On the *Purchase Order* dated February 26, 2003 is typewritten the letters opposite the portion Mode of Procurement: “D.P.” The *Abstract of Canvass* (Exhibit SS) is also stamped Direct Purchase and under the Justification of Award: EXCLUSIVE DISTRIBUTOR, and signed by all the accused.

For the two units of **Ford Ranger**, only one *Purchase Request* dated July 15, 2003 signed by Bautista was used, designated as PR No. 2752, but one is marked as Exhibits MMM and the other Exhibit CCCC.

⁷ Republic Act No. 9184 (2003), sec. 3(a).

⁸ Republic Act No. 9184 (2003), sec. 3(b).

⁹ Republic Act No. 9184 (2003), sec. 3(d).

¹⁰ Government Procurement Reform Act.

¹¹ Republic Act No. 9184 (2003), sec. 18.

¹² 806 Phil. 649 (2017) [Per J. Mendoza, Second Division].

It indicates under the column Item Description: "Vehicle preferably Ford Ranger XLT 4x4 M/T" at an estimated cost of P2,000,000.00 for both, and below it the words: DIRECT PURCHASE. The Purpose section indicated: "For the use of Governor Benjamin P. Bautista, Jr. and Vice Governor Romualdo C. Garcia". The same exhibits show different stamped entries, aside from the basic typewritten entries and the signatures of officials involved in the processing thereof. ◦

For the vehicle reserved for accused Bautista, Purchase Order No.2231 (Exhibit KKK), dated July 29, 2003, for one unit Ford Ranger in the amount of P 1,000,000.00 was used. It indicates "Mode of Procurement: Public Bidding," but stamped on the document are the words "DIRECT PURCHASE." The *DIRECT PURCHASE AWARD SHEET* (Exhibit LLL), naming FORD DAVAO as supplier, contains the following statement: "The Bids and Awards Committee hereby award the above item/s to FORD DAVAO being the Manufacturer/Exclusive or Sole Distributor of the said item/s." The award sheet was signed by all the accused.

The vehicle reserved for Vice Governor Garcia makes reference to a Purchase Order/PO No. 2230 (Exhibit DDDD), dated July 21, 2003, for the amount of P1,218,000.00. The Mode of Procurement section was left blank, but stamped thereon are the words "DIRECT PURCHASE." The *DIRECT PURCHASE AWARD SHEET* (Exhibit EEEE) contains the same statement that it awards the purchase of one (1) unit vehicle "preferably Ford Ranger XLT 4x4 M/T" for use of Vice- Gov. Romualdo C. Garcia to Ford Davao, "being the Manufacturer/ Exclusive or Sole Distributor" thereof. The award sheet was signed by all the accused.

These five (5) vehicles were delivered to the Davao del Sur Provincial Government, and after inspection and acceptance by the concerned officials, check payments were issued to Toyota Davao, Ford Davao and Kar Asia, based on the disbursement vouchers admitted by the parties.¹³

Petitioners are members of the Bids and Awards Committee specifically tasked to conduct public bidding for acquisition of goods and services. With the Purchase Requests bearing specific vehicle brands at the outset, it is readily apparent that petitioners were manifestly partial and grossly negligent in the performance of their official functions. There is glaring preference to acquire the Toyota Hilux, Ford Ranger, and Mitsubishi L300 which the requisitioner, the then Governor, specifically named.

III

I agree with the majority that factual circumstances must be established to prove manifest partiality or gross negligence which would warrant a conviction under Section 3(e). While the majority finds reasonable doubt as to petitioners' guilt for graft and corrupt acts, I wish to

¹³ *Rollo* (G.R. No. 224720-23), pp. 43-44. *People v. Martel*, Criminal Case Nos. SB-12-CRM-0241 to SB-12-CRM-0244, February 24, 2016, pp. 29-30.

underscore the findings and the procedural antecedents in the case of *Office of the Ombudsman-Mindanao v. Martel*¹⁴ which it cited.

In *Ombudsman-Mindanao*, this Court ruled on the administrative liabilities of petitioners Martel and Guiñares involving the same factual milieu:

Under the laws, the Bids and Awards Committee shall, among others, conduct the evaluation of bids, and recommend award of contract to the head of the procuring entity. It shall ensure that the procuring entity abides by the standard set forth by the procurement law. In the LGUs, the committee on awards shall decide the winning bids on procurement.

Accordingly, as members of the PBAC, the respondents were not bound by the recommendation of the PGSO to determine the mode of procurement. *As an independent committee, the PBAC was solely responsible for the conduct of the procurement and could not pass the buck to others.* As correctly stated by the CA, the PBAC had control over the approval of the mode of procurement and the respondents could not wash their hands from liability thereof. *Their role in choosing the mode of procurement was clearly an active action, and not a passive one as the respondents would want to convey.*

A scrutiny of the records would show that the respondents committed other violations of the procurement laws and regulations. The Purchase Request, with a stamp of direct purchase on its face, stated the specific brand of the vehicles to be purchased, instead of the technical specifications needed by the procuring entity, in clear violation of Section 24 of COA Circular No. 92-386. Section 18 of [Republic Act No. 9184] plainly provides that reference to brand names for the procurement of goods shall not be allowed. The underlying policy behind this prohibition is to prevent undue preference on certain goods or products and ensure fair and equal competition among the bidders. In spite of the glaring display of the vehicles' brand names on the purchase request, the PBAC still approved the same. The CA observed that **the PBAC itself made the bidding impossible because it pre-determined the suppliers as it indicated the preferred brand of the vehicles.**

Another violation committed by the respondents was that they allowed the governor of Davao del Sur to purchase and use more than one vehicle, which was evidently contrary to COA Circular No. 75-6. The said provision dictates that a government official or employee is not allowed to use more than one service vehicle, to wit:

III. Officials entitled to use of more than one motor vehicle — With the exception of the President, no government official and employee authorized to use any vehicle operated and maintained from the funds appropriated in the decree shall be allowed to use more than one such motor vehicle; PROVIDED, HOWEVER that the Chief Justice of the Supreme Court may be allowed to use two motor vehicles.

¹⁴ 806 Phil. 649 (2017) [Per J. Mendoza, Second Division].

Notwithstanding these glaring violations of the procurement laws and the illegal approval of the vehicles' procurement by the PBAC, Martel and Guiñares *actively participated in the acquisition* of the same by signing the disbursement vouchers as Provincial Accountant and Provincial Treasurer, respectively. Hence, due to the acts of the respondents, the government disbursed public funds for illegally procured service vehicles.¹⁵ (Emphasis supplied, citations omitted)

Here, there were evident badges of fraud which we simply cannot ignore:

In this case, respondents Martel and Guiñares, as members of the PBAC, being the Provincial Treasurer and the Provincial Auditor, respectively, committed the following transgressions:

1. They failed to conduct a public or competitive bidding as a mode of procurement.

2. *Without any basis in law*, they allowed the resort to negotiated procurement in violation of Sections 35, 48, 50 and 53 of R.A. No. 9184; Sections 356, 366 and 369 of R.A. No. 7160; and COA Circular No. 92-386.

3. In the direct purchase of the vehicles, they specified the brand name of the units they wanted to procure, instead of technical descriptions only, which violated Section 18 of R.A. No. 9184.

4. They approved the purchase of more than one service vehicle for the use of the governor, in violation of COA Circular No. 75-6.

5. They signed and issued the disbursement vouchers for the vehicles despite their illegal procurement.¹⁶

Not only did they resort to direct purchase without any proper justification, the members of the Bids and Awards Committee even named a specific make and model in their purchase request to preclude other vehicles. They also sanctioned the use of excess service vehicle for the governor.

The majority vacates the finding of the Sandiganbayan that:

[n]ot once in the purchase of the five (5) vehicles involved, belonging to different brands and on various dates, did the accused even attempt, i.e., take steps, such as make a call for bids bad publication or giving notice thereof, among others, as starting point in the procurement of the subject vehicles. Such disregard of a very fundamental requirement in public procurement is the most incriminating aspect of these cases which makes all their excuses and/or justification legally untenable.¹⁷

¹⁵ Id. at 660-662.

¹⁶ Id. at 663.

¹⁷ *Rollo* (G.R. No. 224720-23), pp. 113.

Instead, it gives credence to petitioners' claims that they were "honest, although mistaken" in assuming they can directly acquire their preferred make and model¹⁸ and that they allegedly conducted studies that justified their resort to direct purchase of specific vehicles.¹⁹

I disagree that petitioners may be exculpated from their criminal liability for what the majority deems an honest mistaken belief. I maintain my position in *Villarosa v. People*,²⁰ that high ranking public officials must not be haphazardly excused upon claims of ignorance of the law, especially when private individuals cannot generally plead this:

[B]asic is the rule that ignorance of the law excuses no one from compliance.

We cannot exculpate an individual from liability for an illicit act when he or she pleads ignorance of what the law is. We have all the more reason not to condone a local chief executive's illegal and unauthorized exercise of power, especially when it is because of some patently erroneous personal view that he has the authority. *It must be underscored that as a local chief executive, petitioner implements the law in his municipality's territorial jurisdiction.*²¹ (Emphasis supplied)

Further, the two studies petitioners harp on having conducted, which the majority accepts, remain unsubstantiated claims before this Court.

Petitioners insist on having conducted a study of the previous procurement of vehicles which resulted to a direct purchase.²² Regardless of its veracity, it cannot operate to excuse the petitioners' failure to perform their basic function of initiating public bidding as members of the Bids and Awards Committee. If anything, the study's import is that petitioners knew of the availability of vehicles other than the Toyota Hilux, Ford Ranger, and Mitsubishi L300 which they could have procured for the same purpose. Wrongful practices that went unregulated cannot serve to exculpate subsequent offenders.

The majority also favorably adopts as fact petitioners' assertion that another purported study resulted in their findings that:

- a. The Ford Ranger was efficient for transporting goods and passengers on rough roads.
- b. The Toyota Hilux was efficient for transporting goods in well-paved roads.

¹⁸ Ponencia, p. 24.

¹⁹ Id. at 24-25.

²⁰ G.R. Nos. 233155-63, June 23, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66280>> [Per C.J. Peralta, En Banc].

²¹ Id.

²² Ponencia, pp. 27-29.

c. The Mitsubishi L300 was efficient in transporting passengers in well-paved roads.

d. Toyota Davao, Ford Davao, and Kar Asia (for Mitsubishi) were the exclusive dealers of their respective brands of vehicles, which were all of foreign origin. There were no other sub-dealers selling the same type of vehicles at lower prices.

e. There were no other brands offering the same kind of vehicles at lower prices. The Subject Motor Vehicles had no reasonable substitutes of the same kind and quality available at lower prices that would adequately cater to the needs of the Province.

f. Although Isuzu and Suzuki sold pick-up trucks, the specifications and overall performance of these trucks fall short of the stringent requirements of the Province. Moreover, the dealers of these brands, along with other dealers in the Province, were not interested in joining any public bidding for the purchase of the Subject Motor Vehicles as participating in a public bidding was considered to entail a lot of expenses which would not be a worthy investment for a dealer.²³

Even disregarding that these are self-serving, bare claims, these findings hardly demonstrate an exercise of due diligence. That petitioners' preferred make and model of vehicles can efficiently transport passengers do not mean much in the context of procurement rules which requires equal and fair competition among various bidders. In reality, there were no "stringent requirements of the Province"²⁴ to speak of, considering that no technical description was provided for the vehicles petitioner Bautista had specifically requested. Hence, I respectfully maintain that petitioners' claim that "on the basis of their study, this would fill and satisfy the needs of the requisitioner"²⁵ is without basis.

While the majority concedes that "there appears to be a degree of preference for a specific brand, a preference for the brand's performance record and reliability," it finds that this is not a manifest partiality which showed petitioners' ulterior motive or purpose.²⁶

However, evidence that petitioner Bautista "persisted and insisted on sticking to this preferred brand," or a showing that there is malice in his preference are not needed.²⁷ Neither is proof of overpricing required. These are not elements of the offense. Petitioner Bautista's contention that "[t]he Toyota, the Ford, the Mitsubishi and other motor vehicle brands have been with us for years. Their performance is common knowledge and it is normal to have a brand preference as far as motor vehicles,"²⁸ misses the point.

²³ Id. at 25-26.

²⁴ Id. at 26.

²⁵ Id.

²⁶ Id.

²⁷ Id. at 25.

²⁸ Id. at 25.

The dealers of the requested vehicles derived unwarranted benefit, advantage, and preference from the transaction, since that they did not undergo the rigors that typically accompany the sale of goods and services to the government. Borrowing from petitioners' words, these are unwarranted because the transaction "lacked adequate or official support; unjustified; unauthorized or without justification or adequate reason."²⁹ Their profit *per se* from the sale may not be unwarranted, since they reportedly delivered the vehicles. However, as it was in blatant disregard of procurement laws, the transaction was highly irregular at the outset and should not have transpired.

To recall, the vehicles were for the use of petitioner Bautista as the then Governor. He was not an unwitting government official who mistook an important government process, but one who was mandated to execute laws in his province as the local chief executive. He was the requisitioner, and the vehicles which he specifically named the make and model of, were for his beneficial use. The claim that he and the dealers did not gain unwarranted benefit, advantage or preference from this anomalous transaction to the prejudice of the government's interest is inconceivable.

Petitioners Martel, Guiñares, and Mier were grossly negligent for "acting or omitting to act in a situation where there is a duty to act."³⁰ Clearly, the blatant disregard of their duties was not inadvertent but intentional.

I appreciate the majority's conclusion:

Hence, the resort to direct contracting would have been legally permissible only if there were no other vehicles that may have served the general need of the Governor and Vice Governor for pick-up trucks aside from the specific vehicle brands and makes purchased.

In asserting that there are no other suitable vehicles that satisfy the abovementioned purpose, petitioners primarily relied on certifications issued by the three suppliers of the subject vehicles, *i.e.*, Toyota Davao, Kar Asia, and Ford Davao.

However, at most, these certifications merely state that the aforesaid car dealers are the exclusive dealers of Toyota Hilux, Mitsubishi L300 Exceed, and Ford Davao. These certifications do not purport to show whatsoever that there are no other suitable and more affordable vehicle brands and makes that may serve as viable service vehicles of the Governor and Vice Governor.³¹

²⁹ Id. at 29.

³⁰ *Albert v. Sandiganbayan*, 599 Phil. 439, 451 (2009) [Per J. Carpio, First Division].

³¹ Ponencia, pp. 17-18.

The petitioners could not have validly procured suitable vehicle substitutes of the same quality at a lesser price since they were already set on a specific make and model. As *Martel* underscored, referring to brands at an early stage such as the Purchase Request, pre-determined the suppliers, which essentially precluded bidding.³² The Bids and Awards Committee itself made it impossible for there to be other offers for a substitute, when it specifically named the vehicle it was procuring.

In a recent case penned by Chief Justice Diosdado Peralta, we ruled that the former Chair of Presidential Commission on Good Government is guilty of Republic Act No. 3019, Section 3(e) in light of findings that he leased vehicles which likewise did not undergo public bidding.³³

Performing duties imbued with public interest, petitioners as members of the Bids and Awards Committee betrayed their mandate when they facilitated bidding by brand and a direct purchase of preferred vehicles. They patently failed to discharge their duties in clear violation of procurement laws.

The Constitution mandates the public officer's "utmost responsibility, integrity, loyalty, and efficiency"³⁴ in the performance of duties. Procurement laws, specifically the prohibition against naming brands in the purchase of goods, aid us in guarding public coffers. Acquitting public officers who were Bids and Awards Committee members, when there were patent violations manifesting partiality and gross inexcusable negligence, renders their functions inutile.

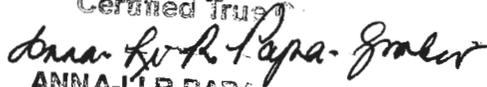
ACCORDINGLY, I vote to **DENY** the Petitions and **AFFIRM** the assailed Decision. Respondents Benjamin P. Bautista, Jr., Richard T. Martel, Allan C. Putong, Abel A. Guiñares, and Victoria G. Mier should be held liable for four counts of violation of Republic Act No. 3019, Section 3(e).


MARVIC M.V.F. LEONEN
Associate Justice

³² *Ombudsman-Mindanao v. Martel*, 806 Phil. 649 (2017) [Per J. Mendoza, Second Division].

³³ *Sabio v. Sandiganbayan*, G.R. Nos. 233853-54, July 15, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65448>> [Per CJ Peralta, First Division].

³⁴ CONST., art. XI, sec. 1.

Certified True

ANNA-LI R. PAPA
Deputy Clerk of Court
OCC En Banc, Supreme Court