



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MANUEL A. TIO,

Petitioner,

G.R. No. 230132

- versus -

PEOPLE OF THE PHILIPPINES,

Respondent.

X-----X

LOLITA I. CADIZ,

Petitioner,

G.R. No. 230252

- versus -

HONORABLE SANDIGANBAYAN
and the PEOPLE OF THE
PHILIPPINES,

Respondents.

Present:

PERALTA, C.J., Chairperson,
CAGUIOA,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

Promulgated:

JAN 19 2021

X-----X

DECISION

PERALTA, C.J.:

At bench are two appeals¹ assailing the Decision² dated November 29, 2016 and the Resolution³ dated February 27, 2017 of the Sandiganbayan in SB-13-CRM-0575. In the assailed decision, petitioners Manuel A. Tio (*Tio*) and Lolita I. Cadiz (*Cadiz*), who are both public officers, were convicted of violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. On the other hand, the assailed Resolution, upheld that conviction.

The antecedents are not disputed.

1.

Tio and Cadiz used to be mayor and municipal accountant, respectively, of the Municipality of Luna (*Municipality*)—a component of the Province of Isabela (*Province*).

Sometime during the incumbency of Tio and Cadiz, or on January 23, 2008, the Municipality and the Province entered into a Memorandum of Agreement (*MOA*).⁴ Under this MOA, the Province undertook to provide funds in the amount of ₱5,000,000.00 for the construction of a one (1) kilometer concrete road traversing two *barangays*: Harana and Mambabanga, which are both in the said Municipality. On the other hand, the Municipality obligated itself to implement such road concreting project, *by administration*, in accordance with the same MOA.

Around two (2) months after the signing of the MOA between the Province and the Municipality, the road concreting project commenced.⁵

On July 29, 2008, Tio approved and caused the issuance of Disbursement Voucher No. 400-2008-07-068.⁶ The Disbursement Voucher authorized the release of ₱ 2,500,000.00 in favor of Double A Gravel & Sand Corporation (*Double A*). In connection with the road concreting project, the amount was supposedly the partial payment for the construction materials,

¹ Both as Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court.

² Penned by Associate Justice Sarah Jane T. Fernandez for the Special Third Division of the Sandiganbayan, with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Samuel R. Martires (a former member of this Court) concurring; *rollo*, (G.R. No. 230132), pp. 15-44.

³ Penned by Associate Justice Sarah Jane T. Fernandez for the Special Third Division of the Sandiganbayan, with Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Samuel R. Martires (a former member of this Court) concurring; *id.* at 45-50.

⁴ Exhibit 3; *id.* at 203-204.

⁵ TSN, *People v. Tio*, SB-13-CRM-0575, July 28, 2015, Manuel A. Tio; *id.* at 459.

⁶ Exhibit F; *id.* at 191.

and the construction equipment to which Double A supplied and rented, respectively, to the Municipality.⁷ The Disbursement Voucher also bore the signature of Cadiz, who certified that an allotment was obligated for the purpose indicated in the voucher, and that the documents supporting the issuance of the voucher were complete.

On even date, the Municipality drew Land Bank of the Philippines (LBP) Check No. LBP 0000370239⁸ in the amount of ₱2,500,000.00, in favor of Double A. Tio signed the check on behalf of the Municipality. Upon receiving the said check, Double A issued Official Receipt No. 1309.⁹

The payment to Double A was thereafter audited by the Commission on Audit (COA).

On December 2, 2008, the COA issued *Notice of Suspensions* against the payment to Double A. The *Notice of Suspensions* pointed out that the said payment suffered from the following deficiencies: 1) the Value Added Tax (VAT) due from the payment did not appear to have been deducted; and 2) other than Double A's receipt, no documents were attached to the Disbursement Voucher. Thus, the *Notice of Suspensions* requested the Municipality for the submission of the bidding documents, inspection and acceptance report, MOA-equipment rental contract and VAT deduction documents in connection with the road project.

On February 23, 2009, the members of the Bids and Awards Committee (BAC) of the Municipality passed a Resolution¹⁰ declaring that they had been completely unaware of the road project and, thus, could not produce the documents to support the disbursement of the ₱2,500,000.00, in favor of Double A. They concluded this resolution by expressing their mass resignation from the BAC.

On December 16, 2008, the road concreting project was certified as 100% complete and accepted by the affected *barangays* within the Municipality.¹¹ Subsequently, a technical evaluation conducted by the COA found that the road concreting project was properly implemented as to the plans and specifications and Program of Work.¹²

⁷ TSN, Manuel A. Tio, *People v. Tio*, SB-13-CRM-0575, September 21, 2015; *id.* at 509.

⁸ Exhibit E; *id.* at 190.

⁹ Exhibit G; *id.*

¹⁰ BAC Resolution No. 01, series of 2009; *id.* at 188.

¹¹ Exhibits 6-8; *id.* at 208-210.

¹² Exhibit 10-A; *id.* at 215.

2.

On March 6, 2009, Atilano Perez (*Perez*), then vice mayor of the said Municipality, filed an Affidavit Complaint¹³ before the Office of the Ombudsman against Tio, Cadiz, and Eufemia G. Fernandez (*Fernandez*), the treasurer of the Municipality. This complaint eventually led the Ombudsman to file before the Sandiganbayan a criminal information against Tio and Cadiz for violation of Section 3(e) of R.A. No. 3019.

In the Information, Tio and Cadiz were accused of causing undue injury to the government and/or of giving unwarranted benefit to a private entity. They allegedly allowed the Municipality to purchase construction materials, and to rent construction equipment from Double A without prior public bidding, and caused the payment of ₱2,500,000.00.00 to Double A despite absence of the required supporting documents. The accusatory portion of the Information reads:

In the year 2008, or sometime prior or subsequent hereto (sic), in Luna, Isabela, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, [Tio] and [Cadiz], public officers being then the Municipal Mayor and Municipal Accountant, respectively of Luna, Isabela, while in the performance of their official functions and in abuse thereof, acting with manifest partiality, evident bad faith, or gross inexcusable negligence, conspiring and confederating with one another, did then and there willfully, unlawfully, and criminally cause undue injury to the government and give unwarranted benefit to [Double A] owned by a relative of [Tio], by awarding to the said [Double A] the project concreting of the One-Kilometer Barangay Harana-Mambabanga Road in Luna, Isabela without the required public bidding and causing the partial payment in the sum of Two Million Five Hundred Thousand Pesos (P2,500,000.00) to the said [Double A] sans the necessary documents, thereby depriving the Municipality of Luna, Isabela the opportunity to get the most advantageous offer for the said project to the damage and prejudice of the government.

CONTRARY TO LAW.¹⁴

Tio and Cadiz entered separate pleas of “*Not Guilty*” to the above accusation. Trial ensued in due course.

On November 29, 2016, the Sandiganbayan rendered a Decision, finding both Tio and Cadiz guilty as charged and sentencing each to suffer an indeterminate prison term of six (6) years and one (1) month as minimum, to eight (8) years as maximum. Tio and Cadiz were also adjudged perpetually

¹³ Exhibit A; *id.* at 186-187.

¹⁴ *Rollo* (G.R. No. 230132), pp. 15-16.

disqualified from holding public office. The dispositive portion of the Decision thus reads:

WHEREFORE, accused [Tio] and [Cadiz] are found GUILTY beyond reasonable doubt of violation of Sec. 3(e) of [RA] No. 3019, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one month as minimum, to eight (8) years as maximum, with perpetual disqualification from holding public office.

SO ORDERED.¹⁵

The Sandiganbayan predicated the convictions upon the following findings:

1. In connection with the road project, the Municipality indeed entered into a contract for the purchase of construction materials, and the rental of construction equipment with Double A. The Municipality, as partial payment for such contract, consequently issued and delivered a check worth ₱2,500,000.00 to Double A. In turn, this partial payment was authorized by a Disbursement Voucher signed by both Tio and Cadiz.¹⁶
2. The contract with Double A was not preceded by a public bidding as required under R.A. No. 9184. The failure to conduct such a bidding is not justified as the contract does not appear to be a transaction exempted from the application of R.A. No. 9184.¹⁷

In addition, the payment to Double A was irregular. The Disbursement Voucher authorizing that payment had been issued without the required supporting documents. Moreover, the Disbursement Voucher and check issued in favor of Double A actually did not bear the signature of the municipal treasurer.¹⁸

3. As incumbent mayor, Tio may be considered to be responsible for the Municipality entering into a contract with Double A without prior public bidding. Tio is also accountable for the irregular payment to Double A because he approved the Disbursement Voucher for ₱2,500,000.00 in favor of Double A and then signed the corresponding check on behalf of the municipality. For awarding a contract to Double A without public bidding and for causing payment to Double A despite the existence of irregularities, Tio have

¹⁵ *Id.* at 43.

¹⁶ *Id.* at 36-37.

¹⁷ *Id.* at 29-36.

¹⁸ *Id.* at 36-37.

thus exhibited manifest partiality, if not gross inexcusable negligence, in the performance of his official duties.

On the other hand, although municipal accountant Cadiz was not shown to be involved in the award of the anomalous contract, he is at fault for the irregular payment to Double A. Like Tio, Cadiz also signed the Disbursement Voucher to Double A under the same dubious circumstances. For such, Cadiz can be considered to have shown gross inexcusable negligence in the performance of his official functions.

4. The acts of Tio and Cadiz had given unwarranted benefit, advantage or preference to Double A. Hence, even if Double A fulfilled its contractual obligations to the municipality and the road project was eventually completed, Tio and Cadiz remain criminally liable under Section 3(e) of R.A. No. 3019.¹⁹

Tio and Cadiz filed their separate motions for reconsideration, but the Sandiganbayan remained steadfast. Hence, the instant appeals.

3.

In his appeal, Tio essentially raised three arguments:

1. The Sandiganbayan erred when it found the contract between the Municipality and Double A to be subject to the requirement of a prior public bidding under R.A. No. 9184. The contract is exempted from the said requirement as the same was entered into by the Municipality relative to a road project that the latter is implementing “*by administration.*”²⁰
2. Even assuming the contract to be anomalous, the Sandiganbayan still erred when it found him as the person responsible for awarding the said contract to Double A. According to Tio, such finding is not substantiated by any evidence on record and was merely inferred by the Sandiganbayan from his being a mayor. Tio points out that the prosecution never presented in evidence the actual document embodying the contract between the Municipality and Double A; hence, it cannot be concluded that it was him who granted such contract to Double A.²¹

¹⁹ *Id.* at 40-43.

²⁰ *Id.* at 59-60.

²¹ *Id.* at 60-62.

3. The Sandiganbayan likewise erred when it considered him to have acted with manifest partiality and/or gross inexcusable negligence when he signed the disbursement voucher in favor of Double A. Even assuming the existence of red flags that makes the issuance of the Disbursement Voucher irregular, Tio maintains that he approved the said Disbursement Voucher in good faith—relying on the certification of Cadiz that all the documents necessary for the issuance of the Disbursement Voucher have been complete.²²

On the other hand in Cadiz's appeal,²³ she questions the propriety of her conviction on the ground that the Municipality did not sustain any quantifiable damage as a consequence of her acts.²⁴ Cadiz asks the Court to consider the fact that, as found by the COA, the road project undertaken by the Municipality has been completed and properly implemented as to the plans and specifications and Program of Work.²⁵

The Court's Ruling

The appeal is without merit.

Section 3 (e) of R.A. No. 3019 states:

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:

x x x x

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

The three elements of Section 3 (e) of R.A. No. 3019 are: (1) that the accused is a public officer discharging administrative, judicial, or official functions, or a private individual acting in conspiracy with such public officer;

²² *Id.* at 64.

²³ *Rollo* (G.R. No. 230252), pp. 10-23.

²⁴ *Id.* at 19.

²⁵ *Id.* at 14-17.

(2) that he acted with: (a) manifest partiality, (b) evident bad faith, or (c) gross inexcusable negligence; and (3) that his action caused (a) any undue injury to any party, including the government, or (b) gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.²⁶

For the first element, it is undisputed that at the time the crime was committed, both Tio and Cadiz were public officers acting in their official capacity as Municipal Mayor, and Municipal Accountant of the Municipality, respectively.

Section 444 of the Local Government Code provides for the powers and duties of a municipal mayor:

SEC. 444. The Chief Executive: Powers, Duties, Functions and Compensation. –

x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to section 16 of this Code, the municipal mayor shall:

(1) Exercise **general supervision and control over all** programs, **projects**, services, and activities of the municipal government, **and** in this connection, **shall**:

x x x x

(vi) Upon authorization by the Sangguniang Bayan, **represent the municipality in all its business transactions and sign** on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;

When Tio ordered the construction of the road, approved the Disbursement Voucher, and signed the check for procurement of construction material and rent of construction equipment, Tio exercised his general supervision and control as Municipal Mayor.

As regards a Municipal Accountant, Cadiz's powers and duties include:

SECTION 474. Qualifications, Powers and Duties. –

x x x x

²⁶

People of the Philippines v. Raquel Austria Naciongayo, G.R. No. 243897, June 8, 2020.

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x

(4) Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged;

(5) Review supporting documents before preparation of vouchers to determine completeness of requirements;

Cadiz acted in her capacity as Municipal Accountant, when she certified the availability of budgetary allotment, and reviewed supporting documents to be attached to the Disbursement Voucher.

For the second element, there are three (3) ways to commit the crime charged; either by *dolo*, as when the accused acted through manifest partiality, or with evident bad faith; or by *culpa*, as when the accused committed gross inexcusable negligence.²⁷

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.²⁸ (Citations omitted)

Manifest partiality and gross inexcusable negligence.

Accused Tio

The acts imputed against Tio are: (1) awarding the contract for the road concreting project to Double A without public bidding, and (2) causing the partial payment of ₱2,500,000.00 to Double A despite the absence of lack of supporting documents.

²⁷ *Id.*

²⁸ *Jose Tapales Villarosa v. People of the Philippines*, G.R. No. 233155-63, June 23, 2020.

When Tio awarded the contract to Double A without public bidding, he acted with manifest partiality. He failed to justify his reason for selecting Double A to supply the construction materials, and to rent the construction equipment, to the Municipality. These showed Tio's clear bias over Double A.

As regards whether there is gross inexcusable negligence on the part of Tio, noteworthy is the case of *Ampil v. Office of the Ombudsman, et al.*,²⁹ where the Court ruled:

[P]etitioner was grossly negligent in all the purchases that were made under his watch. Petitioner's admission that the canvass sheets sent out by de Jesus to the suppliers already contained his signatures because he pre-signed these forms only proved his utter disregard of the consequences of his actions. Petitioner also admitted that he knew the provisions of RA 7160 on personal canvass but he did not follow the law because he was merely following the practice of his predecessors. This was an admission of a mindless disregard for the law in a tradition of illegality. This is totally unacceptable, considering that **as municipal mayor, petitioner ought to implement the law to the letter. As local chief executive, he should have been the first to follow the law and see to it that it was followed by his constituency.** Sadly, however, he was the first to break it.³⁰

There was gross inexcusable negligence on Tio's part when he approved the Disbursement Voucher despite the lack of supporting documents. Through this, he showed his indifference as to the repercussions of his act because it was done with disregard to the requirements under the law. Being the local chief executive and having administrative control of the local funds, it is his duty to ensure that public funds are disbursed only after having complied with the law.

In fine, Tio acted with manifest partiality and gross inexcusable negligence.

Tio awarded the contract to Double A without public bidding.

Through Tio, the Municipality directly contracted with Double A for the procurement of construction materials and rent of construction equipment.

²⁹ 715 Phil. 733 (2013).

³⁰ *Id.* at 758, citing *Sison v. People of the Philippines*, 628 Phil. 573, 584 (2010).

Despite the existence of a MOA between the Municipality and the Province wherein the latter will release ₱5,000,000.00 worth of funds for the road concreting project to be undertaken by the former, there was no written contract between the Municipality and Double A. However, there were documents to show the transaction between the Municipality and Double A. These are: (1) Disbursement Voucher No. 400-2008-07-068; (2) LBP Check No. LBP0000370239 issued to Double A; and (3) the Official Receipt No. 1309 issued to the Municipality.³¹

Being the local chief executive, head of the procuring entity, and representative of the Municipality in business transactions, it can be gleaned that Mayor Tio personally entered into a contract with Double A, or at the very least, the contract was undertaken with his approval.

As a general rule, procurement shall be done through public bidding.³²

In this case, there were no documents presented to show that public bidding was conducted. The members of the BAC appear to have been unaware of the road concreting project until after its completion.³³ In addition, Tio admitted that the Municipality opted a direct purchase from Double A rather than passing through the Municipality's pre-qualification BAC because the Assistance Fund promised by the Governor of the Province of Isabela did not reach the Municipality.³⁴

Since there was no public bidding, it shall be determined whether the absence of public bidding is justified.

The Court is not convinced that the absence of public bidding is justified.

Section 48 of R.A. No. 9184 provides for exception to the rule that public bidding is required. Section 48 defines the alternative methods of procurement, such as Negotiated Procurement:

Sec. 48. *Alternative Methods.* - Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

³¹ *Rollo* (G.R. No. 230132), pp. 29-30.

³² Republic Act No. 9184, An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes, January, 10, 2003, §10.

³³ *Rollo* (G.R. No. 230132), p. 30.

³⁴ *Id.*

x x x x

- e. *Negotiated Procurement* - a method of Procurement that may be resorted under the **extraordinary circumstances provided for in Section 53** of this Act **and other instances that shall be specified in the IRR**, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

Section 53 of R.A. No. 9184 allows Negotiated Procurement in the following instances:

Sec. 53. Negotiated Procurement. - x x x x

- a. In case of **two (2) failed biddings** as provided in Section 35 hereof;
- b. In case of **imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary** to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- c. **Take-over of contracts**, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;
- d. Where the **subject contract is adjacent or contiguous to an on-going infrastructure project**, as defined in the IRR: Provided, however, That the original contract is the result of a Competitive Bidding x x x; or,
- e. Subject to the guidelines specified in the IRR, **purchases of Goods from another agency of the government**, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

In the 2016 Implementing Rules and Regulations of R.A. No. 9184, the scope of Negotiated Procurement is broadened to include other modes of negotiated procurement, and to emphasize that negotiated procurement is a method of procurement of Goods, Infrastructure Projects:

SEC. 53. Negotiated Procurement. — *Negotiated Procurement* is a **method of procurement of Goods, Infrastructure Projects and Consulting services**, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the following cases:

53.1. *Two Failed Biddings.* x x x x



53.2. *Emergency Cases.* In case of **imminent danger to life or property during a state of calamity, or when time is of the essence** arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. **In the case of Infrastructure Projects, the Procuring Entity has the option to undertake the project through negotiated procurement or by administration** or, in high security risk areas, through the AFP.

53.3. *Take-Over of Contracts.* x x x x

53.4. *Adjacent or Contiguous.* x x x x

53.5. *Agency-to-Agency.* x x x x

53.6. *Scientific, Scholarly or Artistic Work, Exclusive Technology and Media Services.* x x x x

53.7. *Highly Technical Consultants.* x x x x

53.8. *Defense Cooperation Agreement.* x x x x

53.9. *Small Value Procurement.* x x x x

53.10. *Lease of Real Property and Venue.* x x x x

53.11. *NGO Participation.* x x x x

53.12. *Community Participation.* x x x x

53.13. *United Nations Agencies, International Organizations or International Financing Institutions*³⁵

Under Section 53.2 of the IRR, in emergency cases, the Procuring Entity (*Municipality of Luna*), has the option to undertake Infrastructure Projects through: (a) negotiated procurement, or (b) *by administration*. The implementation of an infrastructure is '*by administration*' if it is "carried out under the administration and supervision of the concerned agency, through its own personnel."³⁶

Since it was in the year 2008 when the MOA between the Municipality and the Province to undertake the infrastructure project was perfected, and it was also in the year 2008 when the procurement of construction materials and rental of equipment from Double A were undertaken, the applicable

³⁵ 2016 Revised Implementing Rules and Regulations of R.A. No. 9184.

³⁶ Revised Guidelines for the Implementation of Infrastructure Projects by Administration, Government Procurement Policy Board (GPPB) Resolution No. 018-2006 dated December 6, 2006, §2.1.

Government Procurement Policy Board (*GPPB*) Resolution is GPPB Resolution No. 018-2006. The pertinent portions of Section 3 of GPPB Resolution No. 018-2006 provide for the Conditions and Requirements for the use of ‘*by administration*:’

3.0 Conditions and Requirements for the use of “By Administration”

- 3.1 Projects undertaken by Administration shall be included in the approved Annual Procurement Plan (APP) of the procuring entity concerned. x x x x
- 3.2 To undertake projects by administration, the implementing agency must:
- a. **have a track record of having completed, or supervised a project, by administration or by contract, similar to and with a cost of at least fifty percent (50%) of the project at hand, and**
 - b. **own** the tools and construction equipment to be used or **have access** to such tools and equipment owned by other government agencies.

The criteria for evaluating the track record and capability of implementing agencies shall be in accordance with the guidelines to be issued by the Department of Public Works and Highways in consultation with the leagues enumerated under the Local Government Code.

- 3.3 **Any project costing Five Million (P 5,000,000) or less may be undertaken by administration** or force account by the implementing agency concerned. x x x x

PROVIDED, that **prior authority shall be obtained from the Secretary of Public Works and Highways**, if the project cost is Five Million (P5,000,000) up to Twenty Million (P20,000,000), or from the President of the Philippines, upon the favorable recommendation of the Secretary of Public Works and Highways, if the project cost is more than Twenty Million (P20,000,000).

- 3.4 No contractor shall be used by the procuring entity, directly or indirectly for works undertaken by administration.
- 3.5 Procurement of tools and construction equipment shall be subject to the rules on public bidding.
- 3.6 For projects funded by the National Government and implemented by a Local Government Unit, the latter shall be required to post the necessary warranty security in accordance with Section 62 of RA 9184 and its IRR-A.



- 3.7 The manual labor component of projects undertaken by administration may be undertaken in-house by the implementing agency concerned, by job-order or through the pakyaw contracting system. In-house labor is undertaken if the workers are employees or personnel occupying regular plantilla positions in the implementing agency. Job-order contracts shall be governed by relevant Commission on Audit (COA) and/or Civil Service Commission (CSC) rules.

In order for an infrastructure project to be undertaken by *administration*, the project must be **included in the Annual Procurement Plan (APP)**. Under GPPB Resolution No. 20-2015, it cited Executive (EO) No. 662 series of 2007, as amended. EO No. 662, as amended, was the applicable law at the time when the road concreting project was perfected, and when purchase of construction materials and rent of construction equipment were undertaken by the Municipality. It prescribes the contents of the APP: (i) name of project/procurement; (ii) project management office or end-user unit; (iii) general description of the project/procurement; (iv) procurement methods to be adopted; (v) time schedule for each procurement activity; (vi) source of funds; and (vii) budgetary estimate.³⁷

The implementing agency (*Municipality of Luna*) must also have a **track record of having completed, or supervised a project by administration** or by contract, similar to and with a **cost of at least fifty percent (50%) of the project on hand**; and that the Municipality must **own the tools and construction equipment** to be used **or have access** to such tools and equipment **owned by other government agencies**. A prior authority from the Department of Public Works and Highways (*DPWH*) Secretary is also needed if the infrastructure project costs at least ₱5,000,000.00 to ₱20,000,000.00.

The prosecution's documentary exhibits admitted as evidence, were: an affidavit complaint of Perez; BAC Resolution No. 01 Series of 2009 wherein the members of the BAC tendered their irrevocable resignation; Notice of Suspensions No. 2008-400-01; certified copy of Check No. LBP No. 370239; certified copy of Disbursement Voucher No. 400-2008-07-068; Double A Gravel and Sand Official Receipt No. 1309; and Executive Order No. 012 Series of 2008 dated July 8, 2008.³⁸

On the other hand, Tio submitted the following documentary exhibits:

Exhibit 1 – *Joint Counter-Affidavit* of Tio, Fernandez and Cadiz dated September 22, 2009

³⁷ GPPB Resolution No. 20-2015.

³⁸ *Rollo* (G.R. No. 230132), p. 22; pp. 177-185.



- Exhibit 2 – *2008 Infrastructure Projects of Luna, Isabela*
- Exhibit 3 – *Memorandum of Agreement* dated January 23, 2008
- Exhibit 4 – Message from the Office of the Governor
- Exhibit 5 – Handwritten note of the Provincial Governor dated April 3, 2008
- Exhibit 6 – *Certificate of Completion* of the Project Engineer dated December 16, 2008
- Exhibit 7 – *Certificate of Acceptance* dated December 16, 2008 of Ballesteros
- Exhibit 8 – *Certificate of Acceptance* dated December 16, 2008 of Calaoagan
- Exhibit 9 – Letter dated March 2, 2009
- Exhibit 10 – *Inspection Report for Infrastructure Projects* dated March 31, 2009
- Exhibit 11 – *1st Indorsement* dated March 10, 2009
- Exhibit 12 – *2nd Indorsement* dated March 10, 2009
- Exhibit 13 – *3rd Indorsement* dated April 13, 2009
- Exhibit 14 – *4th Indorsement* dated April 14, 2009
- Exhibit 15 – Letter dated April 17, 2009³⁹

Based on the exhibits submitted by the prosecution and the defense, the requirements under Section 3 of GPPB Resolution No. 018-2006 were not met. *First*, there was no APP submitted before the court. The 2008 Infrastructure Project of Luna, Isabela (*Exhibit 2*),⁴⁰ is not the APP contemplated by law because it merely enumerated the infrastructure projects to be undertaken in 2008 by the Municipality. *Second*, the Municipality did not show that it has a track record of having completed, or supervised a project *by administration* or by contract, similar to and with a cost of at least 50% of the project on hand. *Third*, since the Municipality rented construction equipment from Double A, the requirement that the former must either own the tools and construction equipment to be used, or has access to such tools and equipment owned by other government agencies, was not met. *Fourth*, there was no showing that a prior authority from the DPWH was secured for the road concreting project which costs ₱5,000,000.00.

Since the conditions provided under the law and GPPB Resolution No. 018-2006 were not met, the implementation of the road concreting project '*by administration*' was not justified. Resort to the alternative method of '*by administration*' was not proper. The road concreting project, the purchase of construction materials and the rental of equipment must have been subjected to public bidding.

According to Tio, the MOA required 50% of the project to be completed before the funds are released.⁴¹ However, upon examination of the MOA, the purported provision does not exist. Tio is correct in his claim that

³⁹ *Id.* at 24.

⁴⁰ *Id.* at 238-239.

⁴¹ *Id.* at 495.

public bidding was not possible at the time, because the Municipality did not have the funds.⁴²

R.A. No. 9184 requires the availability of funds prior to public bidding, and before the commencement of the procurement of a government project. As early as the conception of the Approved Budget for Contract (*ABC*), the procuring entity is mandated by law to ensure that its budget is within the General Appropriations Act (*GAA*) and/or continuing appropriation.⁴³ During the procurement planning stage, the procurement must be within its approved budget.⁴⁴ As to the pre-procurement conference, this is a required process prior to the issuance of the invitation to bid, in order to confirm the certification by the proper accounting official and auditor, that the funds for the government project are available.⁴⁵

In sum, the requirements before a government can enter into a contract are: (1) an appropriation law authorizing the expenditure required in the contract; and (2) a certification by the proper accounting official and auditor, attached to the contract, attesting that funds have been appropriated by law and such funds are available.⁴⁶ Non-compliance with any of these requirements shall render the contract void.⁴⁷

Tio posits that the Municipality directly purchased the construction materials from Double A because there was a delay in the release of funds by the Provincial Government of Isabela to the Municipality. Further, it was only Double A that was willing to provide the construction materials on credit:

Q: How were the materials purchased, Mr. Witness?

⁴² *Id.* at 494.

⁴³ Section 5. Definition of Terms. —

x x x x

(a) Approved Budget for the Contract (*ABC*) — refers to the budget for the contract duly approved by the Head of the Procuring Entity, as provided for in the General Appropriations Act and/or continuing appropriations,

x x x x;

Office of the Ombudsman v. Celiz, G.R. No. 236383, June 26, 2019.

⁴⁴ Section 7. Procurement Planning and Budgeting Linkage[.] — **All procurement should be within the approved budget of the Procuring Entity** and should be meticulously and judiciously planned by the Procuring Entity concerned.

x x x x;

Office of the Ombudsman v. Celiz, *supra*.

⁴⁵ Section 20. Pre-Procurement Conference – Prior to the issuance of the Invitation to Bid, the BAC is mandated to hold a pre-procurement conference on each and every procurement, except those contracts below a certain level or amount specified in the IRR, in which case, the holding of the same is optional.

The pre-procurement conference shall assess the readiness of the procurement in terms of confirming the certification of availability of funds, as well as reviewing all relevant documents and the draft Invitation to Bid, as well as consultants hired by the agency concerned and the representative of the [end-user].

Office of the Ombudsman v. Celiz, *supra*.

⁴⁶ *Jacomille v. Sec. Abaya, et al.*, 759 Phil. 248, 272 (2015).

⁴⁷ *Id.*

A: It was purchased directly to the supplier, sir.

Q: At that time, who was the supplier, Mr. Witness?

A: Many suppliers but only one gave us credit at that time.

x x x x

Q: Can you please tell us the reason why was the purchase made directly to Double A, and why it did not pass through the municipality pre-qualification bids and awards committee?

A: During that time, sir, the Assistance Fund that was promised by the Honorable Governor did not reach the municipality of Luna.

Q: Now, because of this delay of the release of funds, what did you do to secure the necessary materials that are important to the project?

A: We asked the supplier if he can give us credit for us to proceed to administer the 1km project.

Q: You said that [it] was only Double A Gravel and Sand who agreed to provide the materials on credit?

A: Yes, sir.⁴⁸

The road concreting project started around two months after the signing of the month, and the payment of ₱2,500,000.00 was only paid after 80% of the road concreting project was finished:

Q: Now when did the project start?

A: Actually Governor Grace Padaca after signing the [MOA] with the Hon. Governor around two (2) months after the signing of the MOA.

x x x x

Q: When did the money actually reach the municipality of Luna?

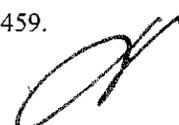
A: After eighty (80%) [was] finished.

Q: Approximately what month and what year was that?

A: I cannot remember the month but the year is 2008.

Q: Now, do you have any proof that this money was disbursed or was released to the municipality of Luna, Isabela by Gov. Padaca?

⁴⁸ TSN, Manuel A. Tio, *People v. Tio*, SB-13-CRM-0575, July 28, 2015; *id.* at 457-459.



A: Yes, it was deposited to the account of the LGU.

Q: Aside from the actual deposit, was there any written communication coming from Gov. Padaca evidencing that the money was released?

A: Yes, sir; there was a short note signed by Gov. Padaca.⁴⁹

Tio, knowing fully well that public bidding could not be conducted because the municipality did not have the funds, still proceeded with the road concreting project. Neither was there an explanation for the haste in implementing the project, nor was it shown that construction of the road was urgently needed. There was nothing in the MOA requiring that the project be finished within a certain period or a specific date.

Since neither the person who purportedly did the canvass of suppliers was presented as witness, nor was there a document presented to show that a canvass of suppliers was actually made, Tio's claim that Double A was the only willing and qualified supplier of the construction materials, is not convincing.

Section 21 of R.A. No. 9184 provides that public bidding includes the publication of the invitation to bid:

SEC. 21. Advertising and Contents of the Invitation to Bid. – In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, **in order to ensure the widest possible dissemination thereof**, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act.

Through the public bidding and the publication of the invitation to bid, the Municipality could have determined if there were other qualified suppliers. The absence of public bidding renders the contract between the Municipality and Double A void.

On the other hand, the prosecution failed to present any evidence to prove Cadiz's participation in awarding the road concreting project to Double A.

⁴⁹ *Id.* at 459-460.



Tio caused the partial payment of ₱2,500,000.00 despite absence or lack of supporting documents.

As a general rule, the mayor must approve the Disbursement Voucher whenever local funds are disbursed:

SEC. 344. Certification on, and Approval of, Vouchers. – No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose. Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LBP, DBP, National Printing Office, Procurement Service of the DBM and others, **approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.**

Mayor Tio approved the Disbursement Voucher and caused the payment of ₱2,500,000.00 to Double A despite the incompleteness of the voucher, and the supporting documents.

In the Disbursement Voucher, the signatures of the Municipal Treasurer in Box B and the accounting entries in the lower portion of the voucher are absent. Despite these, Tio still signed the voucher.⁵⁰ Tio also pointed out that the Municipal Treasurer signed the check even if the latter failed to sign the Disbursement Voucher. However, a copy of the LBP Check No. 0000370239 only bears the signature of Tio.⁵¹

The absence of the Municipal Treasurer's signature on the Disbursement Voucher should have made Tio vigilant in making a more careful examination of the Disbursement Voucher before approving it.

There was also an absence of the attachment of supporting documents to the Disbursement Voucher. Auditor Reyes, who conducted the audit of the transactions of the Municipality in the year 2008, testified before the Sandiganbayan, that the necessary attachments to a Disbursement Voucher were absent:

⁵⁰ *Id.* at 521.

⁵¹ *Id.* at 36-37; 181.



Q: Auditor Reyes, you mentioned a while ago that when you audited this specific disbursement voucher, there were no attachments to it?

A: Yes, ma'am.

Q: Can you tell the Honorable Court what are the necessary attachments to a disbursement voucher?

A: As third party liability, Double A Gravel and Sand, there should be a purchase request, purchase order, acceptance or inspection report.

Q: In this disbursement voucher that you identified a while ago, what were the documents, if any, were attached to the same?

A: No attachment, ma'am.

Q: What is the significance of the said absence of the said necessary attachment?

A: This is [an] irregular transaction.⁵²

In addition, by further examination of the Disbursement Voucher, Tio could have discovered the incomplete supporting documents.

On the other hand, Section 338 of R.A. No. 7160 prohibits advance payments, and requires prior delivery of goods:

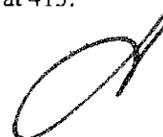
SEC. 338. Prohibitions Against Advance Payments. – No money shall be paid on account of any contract under which no services have been rendered or goods delivered.

Even if there was a delivery of the construction materials, and the road concreting project was finished, it was not shown that there was a delivery of construction materials prior to the approval of the Disbursement Voucher.

Further, neither the bidding documents nor the documents showing that resort to any of the alternative modes of procurement was justified, were attached to the Disbursement Voucher.

Accused Cadiz

⁵² TSN, Mercedes V. Reyes, *People v. Tio*, SB-13-CRM-0575, August 28, 2014; *id.* at 413.



The prosecution was not able to prove that Cadiz participated in the award of the contract to Double A. Nevertheless, it was able to establish Cadiz's participation in the release of the ₱2,500,000.00 to Double A.

When Cadiz signed Box A of the Disbursement Voucher, she certified that the supporting documents were complete, and the allotment of the ₱2,500,000.00 is for the purpose specified in the Disbursement Voucher. However, the allotment had not been obligated, as affirmed and testified by Auditor Reyes, before the Sandiganbayan:

Q: What is the significance of this signature appearing in this portion of the voucher?

A: That the payment was received by the supplier.

Q: In the lower portion of the voucher, Auditor Reyes, what are the entries stated in the journal entry voucher portion?

A: Question mark po, kasi walang entry.

x x x x

Pros. Hernandez:

Q: **What is the significance Auditor Reyes of the absence of the entry in this portion of the voucher?**

A: **It was not obligated, ma'am.**⁵³

Cadiz signed the Disbursement Voucher despite the question mark in place of the entries in the voucher, and even if the allotment had not been obligated. Since there was no proof that she made any objection as to her signing the voucher, there is a presumption that she voluntarily signed the voucher. When she made the certification, she participated in the unlawful disbursement of public funds.

The Court emphasized in *Jaca v. People, et al.*,⁵⁴ the role of a local accountant in ensuring that local funds are properly accounted for:

[A]s the City Accountant, foremost of her duties is to ensure that the local funds out of which the salaries of local government employees would be paid are properly accounted for. As Cesa implicitly argued, the creation of the Office of the City Accountant serves an important function of pre-audit in the chain of processing cash advances of individual paymasters.

⁵³ TSN, Mercedes V. Reyes, *People v. Tio*, SB-13-CRM-0575, August 28, 2014; *id.* at 412.

⁵⁴ 702 Phil. 210 (2013).



A pre-audit is an examination of financial transactions before their consumption or payment; a pre-audit seeks to determine, among others, that the claim is duly supported by authentic underlying pieces of evidence. If the setup then prevailing in the Cebu City government directly conflicts with the COA regulations, Jaca should have, at the very least, informed the City Mayor of the risk in the process of disbursement of local funds or at least she should have set up an internal audit system - as was her duty - to check against possible malversation of funds by the paymaster.⁵⁵ (Citations omitted)

In this case, Cadiz should not have signed the Disbursement Voucher, in the absence or lack of supporting documents. By doing so, there was unlawful disbursement. As a result, there was failure on the part of Cadiz to perform her duty as Municipal Accountant, which is to ensure that public funds are disbursed only after the requirements of law are complied with. She was remiss of her duty as Municipal Accountant,⁵⁶ constitutes gross inexcusable negligence.

For the third element, there are two modes that a public officer violates Section 3(e) of R.A. No. 3019. These are: (a) by causing undue injury to any party including the Government; or (b) by giving any private party any unwarranted benefits, advantage, or preference.⁵⁷

The Court has treated undue injury in the context of Section 3(e) of R.A. No. 3019 as having a meaning akin to the civil law concept of actual damage:

Undue injury in the context of Section 3(e) of R.A. No. 3019 should be equated with the 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

⁵⁵ *Id.* at 255.

⁵⁶ Section 474 (b)(4) and (5), R.A. No. 7160.
SECTION 474. Qualifications, Powers and Duties. –
x x x x

(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

x x x x

(4) Certify to the availability of budgetary allotment to which expenditures and obligations may be properly charged;

(5) Review supporting documents before preparation of vouchers to determine completeness of requirements[.]

⁵⁷ *Liberty B. Tiongco v. People of the Philippines*, G.R. Nos. 218709-10, November 14, 2018.

the undue injury be specified, quantified and proven to the point of moral certainty.⁵⁸

In this case, the Court finds that the prosecution was not able to prove that the government, or any party suffered undue injury. Despite the irregularities in the procurement of construction materials and rent of construction equipment, Tio was able to prove that the road concreting project was completed.⁵⁹ There was actual delivery of the construction materials, and rent of construction equipment, which facilitated the completion of the road concreting project. For these reasons, Tio and Cadiz did not cause undue injury to the government or to any party.

As regards the other mode of violating Section 3(e) of R.A. No. 3019, the terms “unwarranted benefits, advantage or preference” are defined as:

The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another.⁶⁰

Here, when Tio awarded the contract to Double A without public bidding, and when he and Cadiz caused the payment of ₱2,500,000.00 to Double A despite the incomplete documents, they gave Double A unwarranted benefits, advantage and preference.

In fine, Tio acted with manifest partiality in awarding the road concreting project to Double A, in the absence of public bidding, which gave unwarranted benefit, advantage or preference to Double A. Both Tio and Cadiz acted with gross inexcusable negligence in causing the payment of ₱2,500,000.00 to Double A despite the incomplete supporting documents, giving unwarranted benefit, advantage or preference in favor of Double A.

WHEREFORE, the appeals are **DISMISSED**. The Decision dated November 29, 2016 and the Resolution dated February 27, 2017 of the Sandiganbayan in SB-13-CRM-0575 are hereby **AFFIRMED**. Accused Manuel A. Tio and Lolita I. Cadiz are found **GUILTY** beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019, otherwise known as the “Anti-Graft and Corrupt Practices Act,” and accordingly sentenced to suffer the penalty of imprisonment for an indeterminate period of six (6) years

⁵⁸ *Id.*

⁵⁹ *Rollo* (G.R. No. 230132), Exhibits 6-8, p. 461.

⁶⁰ *Rivera v. People*, 749 Phil. 124, 143 (2014).

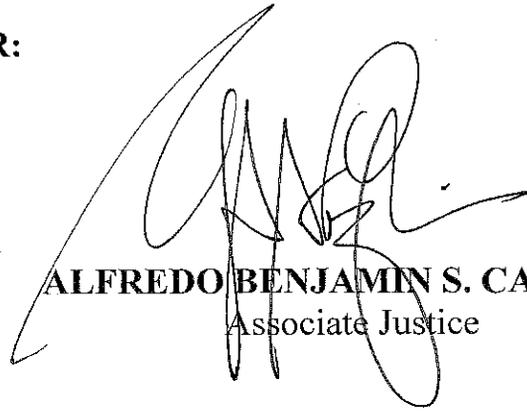
and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

SO ORDERED.

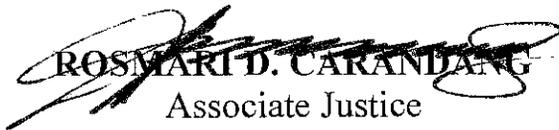
A handwritten signature in black ink, appearing to read 'Diosdado M. Peralta', written in a cursive style.

DIOSDADO M. PERALTA
Chief Justice

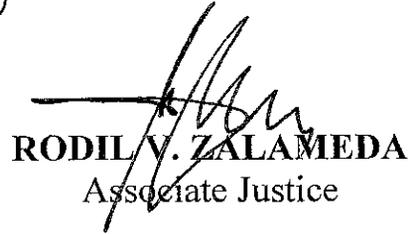
WE CONCUR:



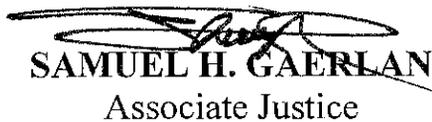
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ROSMARID D. CARANDANG
Associate Justice



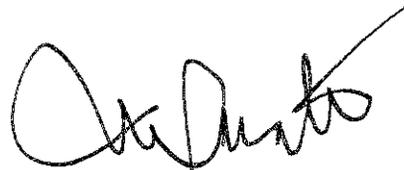
RODIL V. ZALAMEDA
Associate Justice



SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice