



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 243897  
 PHILIPPINES,

Plaintiff-Appellee, Present:

- versus -

RAQUEL AUSTRIA  
 NACIONGAYO, Accused-Appellant.

PERLAS-BERNABE, S.A.J.,  
 Chairperson,  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 GAERLAN,\* JJ.

Promulgated:

08 JUN 2020

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DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal<sup>1</sup> is the Decision<sup>2</sup> dated December 7, 2018 and Resolution<sup>3</sup> dated December 18, 2018 of the Sandiganbayan (SB) in Crim. Case No. SB-16-CRM-0085, which found accused-appellant Raquel Austria Naciongayo (accused-appellant) guilty beyond reasonable doubt of violating Section 3 (e) of Republic Act No. (RA) 3019,<sup>4</sup> entitled the “Anti-Graft and Corrupt Practices Act.”

\* Designated Additional Member per Special Order No. 2780 dated May 11, 2020.

<sup>1</sup> See Notice of Appeal dated January 21, 2019; *rollo*, pp. 23-24.

<sup>2</sup> *Id.* at 3-22. Penned by Associate Justice Lorifel L. Pahimna with Associate Justices Oscar C. Herrera, Jr. and Michael Frederick L. Musngi, concurring.

<sup>3</sup> Not attached to the *rollo*.

<sup>4</sup> Section 3 of RA 3019, as amended, 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:

x x x x

### The Facts

The instant case stemmed from an Information<sup>5</sup> charging accused-appellant with violation of Section 3 (e) of RA 3019, the accusatory portion of which reads:

That on January 5, 2006, or sometime prior or subsequent thereto, in Pasig City and within the jurisdiction of this Honorable Court, accused Raquel Austria Naciongayo, holding the item of City Government Department Head II and being the Head of City Environment and Natural Resources Office (CENRO), office of the City Mayor, Pasig City, (Salary Grade 26), while in the discharge of her official functions, committing the offense in relation to her office, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Enviserve[,] Inc., by procuring its services for the conduct of an environmental congress for a capacity building training for Environment Protection Officers from factories and industries in Pasig City without the required competitive public bidding in violation of Sec. 10 of R.A. 9184 that enabled Enviserve, Inc. to collect the amount of One Thousand Seven Hundred Pesos (P1,700.00) and Two Thousand Pesos (P2,000.00) for the 2006 and 2007 environmental congress, respectively, as participants' registration fees and by requiring a certificate of participation therefrom as a requisite for securing Environmental Permit and renewal of Business Permit to Operate thereby unduly benefiting Enviserve, Inc., to the exclusion of other service providers, to the damage and prejudice of the government and the public interest.

CONTRARY TO LAW.

The prosecution alleged that on January 5, 2006, accused-appellant, acting in her official capacity as City Government Department Head II of the City Environment and Natural Resources Office of Pasig City (Pasig CENRO), procured the services of Enviserve, Inc. (Enviserve) by accepting the latter's proposal to organize and conduct a training seminar known as the "*Environmental Industrial and Commercial Congress*" (Environmental Congress) for the purpose of providing Pasig CENRO personnel and business establishments in the city with technical knowledge on topics related to environmental protection, *e.g.* pollution prevention, waste reduction, recycle management, environmental policy, and sewage operation, in exchange for the payment of registration fees from the participants.<sup>6</sup> The proposal includes the following, to wit:

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(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;

x x x x

<sup>5</sup> *Rollo*, pp. 3-4.

<sup>6</sup> *Id.* at 14.

1. One day training/seminar with focus on pollution prevention; waste reduction, reuse, recycle management; industrial energy efficiency; environmental natural laws and policies; and sewerage treatment plan maintenance and operation. Participating manufacturing companies in Pasig City shall pay corresponding registration fees.
2. Technical experts and resource persons who will provide the training.
3. Certificate of Participation.
4. Free training for [ten (10)] CENRO Staff.<sup>7</sup>

According to the prosecution, accused-appellant's act of entering into the foregoing transaction with Enviserve on behalf of the Pasig City Government is tainted with manifest partiality, evident bad faith, or gross inexcusable negligence, as she procured the latter's services without first conducting a competitive bidding, and despite knowledge of its lack of legal personality, as the company was incorporated only on November 22, 2006, *i.e.*, after the contract between the parties was perfected. Furthermore, the prosecution pointed out accused-appellant's supposed close ties to Enviserve considering that: (a) she ordered one of her staff to register the company's articles of incorporation with the Securities and Exchange Commission (SEC); (b) her father was the one who stood as speaker for the events held by Enviserve; (c) her sister, Aileen Shirly Austria, was one of the incorporators of the company; and (d) accused-appellant herself was made the contact person of Enviserve, as listed in its General Information Sheet submitted to the SEC.<sup>8</sup>

Subsequently, accused-appellant then required respective representatives from each business establishment in Pasig City to attend the Environmental Congress by enjoining the attendance thereof as a mandatory requirement for the issuance of an *Environmental Permit to Operate* from her office, which, in turn, was necessary to secure or renew a business permit from the Pasig City Government. As above-stated, the Environmental Congress eventually took place on December 19, 2006 and June 14, 2007, with accused-appellant's father serving as a speaker on both occasions.<sup>9</sup>

In defense, accused-appellant denied the charges against her, claiming that she collaborated with Enviserve in good faith, and that, at the time of the alleged incident, her office had no budget for conducting seminars on environmental matters, and the latter was the only one who made an offer and submitted a proposal to conduct the same at no cost to the Pasig City Government.<sup>10</sup>

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<sup>7</sup> See *id.* at 14-15.

<sup>8</sup> See *id.* at 6 and 15.

<sup>9</sup> See *id.* at 5-7 and 15.

<sup>10</sup> See *id.* at 15-16.

### The SB Ruling

In a Decision<sup>11</sup> dated December 7, 2018, the SB found accused-appellant **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of one (1) year and one (1) month, as minimum, to three (3) years, as maximum, with perpetual disqualification from public office.<sup>12</sup> Giving credence to the evidence presented by the prosecution, the SB found that accused-appellant, as head of the Pasig CENRO, through manifest partiality and evident bad faith, gave Enviserve unwarranted benefit, advantage, and preference, considering that she procured the latter's consultancy services: (a) without competitive bidding; (b) with knowledge of Enviserve's lack of legal personality; and (c) despite her close ties to the latter.<sup>13</sup>

Aggrieved, accused-appellant filed a motion for reconsideration,<sup>14</sup> which was denied in a Resolution<sup>15</sup> dated December 18, 2018; hence, this appeal.

### The Issue Before the Court

The essential issue for the Court's resolution is whether or not accused-appellant is guilty beyond reasonable doubt of the crime charged.

### The Court's Ruling

The appeal is without merit.

Section 3 (e) of RA 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

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<sup>11</sup> Id. at 3-22

<sup>12</sup> Id. at 42.

<sup>13</sup> Id. at 16-21.

<sup>14</sup> Filed on December 17, 2018; id. at 23.

<sup>15</sup> Not attached to the *rollo*.

employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

Verily, the elements of violation of Section 3 (e) of RA 3019 are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>16</sup> As will be explained hereunder, the Court agrees with the findings of the SB that all the elements were proven beyond reasonable doubt in this case.

*As to the first element*, it is undisputed that at the time the crime was committed, accused-appellant was a public officer acting in her official capacity as City Government Department Head II of the Pasig CENRO.

*As to the second element*, it must be noted that there are three (3) means of committing the crime charged – *i.e.*, through manifest partiality, evident bad faith, or gross inexcusable negligence – and proof of any of these in connection with the prohibited acts mentioned in Section 3 (e) of RA 3019 is enough to convict.<sup>17</sup> In *Coloma, Jr. v. Sandiganbayan*,<sup>18</sup> the Court defined the foregoing means of commission as follows:

“Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are.” “Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.” “Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but [willfully] and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.”<sup>19</sup>

<sup>16</sup> *Cambe v. Ombudsman*, 802 Phil. 190, 216-217 (2016), citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 102 (2015).

<sup>17</sup> *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 229 (2014), citing *Sison v. People*, 628 Phil. 573, 583 (2010).

<sup>18</sup> 744 Phil. 214 (2014).

<sup>19</sup> *Id.* at 229, citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687-688.

In this case, accused-appellant acted with manifest partiality and evident bad faith in the procurement of Enviserve's consultancy services, having accepted the latter's proposal to organize and conduct the Environmental Congress notwithstanding: (a) the absence of a competitive bidding; (b) her knowledge that Enviserve was operating as a corporate entity without proper SEC registration; and (c) her close ties to Enviserve – being listed as the contact person in the latter's corporate cover sheet, and the one who ordered the registration of its articles of incorporation, as well as her sister being one of its incorporators.<sup>20</sup>

*As to the third and last element*, case law instructs that “there are two ways by which a public official violates Section 3 (e) of [RA] 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term ‘or’ connotes that either act qualifies as a violation of Section 3 (e) of [RA] 3019. In other words, the presence of one would suffice for conviction.”<sup>21</sup> Here, accused-appellant's act of procuring Enviserve's services without the requisite competitive bidding pursuant to RA 9184<sup>22</sup> gave the latter unwarranted benefits, advantage, and preference, especially considering that the latter was able to derive income through the collection of registration fees from business establishments in Pasig City.<sup>23</sup>

In insisting on her innocence, accused-appellant argues that the requirement of competitive bidding does not apply to the transaction in question, as she merely accepted Enviserve's proposal to organize and conduct the Environmental Congress, which was made without cost to the Pasig City Government.<sup>24</sup>

Accused-appellant's arguments are untenable.

Section 10,<sup>25</sup> Article IV, in relation to paragraphs (n) and (o), Section 5,<sup>26</sup> Article I, of RA 9184, mandates that “all acquisition of goods, **consulting**

<sup>20</sup> See *rollo*, pp. 19-20.

<sup>21</sup> *Coloma, Jr. v. Sandiganbayan*, supra at 231-232.

<sup>22</sup> Entitled “AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES,” approved on January 10, 2003.

<sup>23</sup> See *rollo*, pp. 16-20.

<sup>24</sup> See Appellant's Brief dated July 16, 2019; *id.* at 37-90.

<sup>25</sup> Section 10 of RA 9184 reads:

Section 10. Competitive Bidding.- All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

<sup>26</sup> Section 5 of RA 9184 reads:

Section 5. Definition of Terms. – x x x.

x x x x

**services**, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and **local government units** shall be done through competitive bidding.”<sup>27</sup> “This is in consonance with the law’s policy and principle of promoting transparency in the procurement process, implementation of procurement contracts, and competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.”<sup>28</sup> Notably, Section 4 of the law itself states that it applies to the “Procurement of Infrastructure Projects, Goods and Consulting Services, **regardless of the source of funds** x x x”; to wit:

Section 4. Scope and Application. — This act shall apply to the Procurement of Infrastructure Projects, Goods and **Consulting Services**, **regardless of source of funds**, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and **local government units** x x x. (Emphases and underscoring supplied)

Here, accused-appellant’s acceptance of Enviserve’s proposal, on behalf of the Pasig City Government, to organize and conduct the Environmental Congress, as well as to provide technical experts and resource persons for such purpose, amounted to a “**procurement**” of “**consulting services**,” as respectively defined under paragraphs (i) and (aa), Section 5 of the Implementing Rules and Regulations (IRR) of RA 9184.<sup>29</sup> Particularly,

(n) Procurement - refers to the acquisition of Goods, Consulting Services, and the contracting for Infrastructure Projects by the Procuring Entity. Procurement shall also include the lease of goods and real estate. With respect to real property, its procurement shall be governed by the provisions of Republic Act No. 8974, entitled “An Act to Facilitate the Acquisition of Right-of -Way Site or Location of National Government Infrastructure Projects and for Other Purposes” and other applicable laws, rules and regulations.

(o) Procuring Entity - refers to any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units procuring Goods, Consulting Services and Infrastructure Projects.

<sup>27</sup> *De Guzman v. Office of the Ombudsman*, 821 Phil. 681, 691 (2017).

<sup>28</sup> See *Andaya v. Field Investigation Office of the Office of the Ombudsman*, G.R. No. 237837, June 10, 2019.

<sup>29</sup> Section 5 (i) and (aa) of the IRR of RA 9184 reads:

Section 5. Definition of Terms. –

x x x x

i) Consulting Services. Refer to services for infrastructure projects and other types of projects or activities of the GoP requiring adequate external technical and professional expertise that are beyond the capability and/or capacity of the GoP to undertake such as, but not limited to: (i) advisory and review services; (ii) pre-investment or feasibility studies; (iii) design; (iv) construction supervision; (v) management and related services; and (vi) other technical services or special studies. General principles on Consulting Services are provided for in Annex “B” of this IRR;

x x x x

aa) Procurement. Refers to the acquisition of goods, consulting services, and the contracting for infrastructure projects by the Procuring Entity. In case of projects involving mixed procurements, the nature of the procurement, i.e., Goods, Infrastructure Projects or

the primary purpose of the agreement, which was for Enviserve to train and equip Pasig CENRO personnel and business establishments operating in the city with specialized knowledge on topics related to environmental protection, falls within the definition of “design and execution of training programs,” one of the recognized kinds of consulting services, as provided under Item 6, Annex “B” of the aforementioned IRR.<sup>30</sup>

Notably, the Court observes that the Environmental Congress was organized and conducted under the authority of the Pasig City Government, given for the benefit of Pasig CENRO personnel and business establishments operating in the city.<sup>31</sup> The proposal to conduct the same was addressed to the Pasig CENRO, and was accepted by accused-appellant in her official capacity as head of the aforementioned office.<sup>32</sup> Such finding is further bolstered by accused-appellant’s directive to enjoin attendance in the event as a mandatory requirement for businesses to successfully obtain an *Environmental Permit to Operate* from her office.<sup>33</sup> Hence, as a procurement of consulting services made for the benefit of the Pasig City Government as a procuring entity, the transaction in question fell within the scope of RA 9184, and absent the applicability of any of the recognized exceptions to such rule,<sup>34</sup> as in this case,<sup>35</sup> the same should have been the subject of a competitive bidding.

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Consulting Services, shall be determined based on the primary purpose of the contract. x x x.

<sup>30</sup> Item 6, Annex “B” of the IRR of RA 9184 reads:

6. Types of Consulting Services

The services to be provided by consultants can be divided into six (6) broad categories, namely: (a) advisory and review services; (b) pre-investment or feasibility studies; (c) design; (d) construction supervision; (e) management and related services; and (f) other technical services or special studies.

x x x x

6.6. Other Technical Services or Special Studies. The Technical Services may include the following:

x x x x

b) Design and execution of training programs at different levels;

x x x x

Technology and knowledge transfer should be considered an important objective in the provision of consulting services.

<sup>31</sup> See also *rollo*, pp. 14-16.

<sup>32</sup> See *id.*

<sup>33</sup> See *id.*

<sup>34</sup> “There are recognized exceptions to the bidding requirement, as can be gleaned in the above-quoted provision. The exceptions are laid out on the provisions of ‘Alternative Modes of Procurement’ under Section 48, Article XVI of RA 9184, which [are]:

x x x x

- a. Limited Source Bidding, otherwise known as Selective Bidding x x x;
- b. Direct Contracting, otherwise known as Single Source Procurement x x x;
- c. Repeat Order x x x; d. Shopping — x x x; [or]
- x x x x
- e. Negotiated Procurement x x x.”

(See *Capalla v. Commission on Elections*, 697 Phil. 644 [2012].)

<sup>35</sup> The recognized exceptions to the bidding requirement only apply if prior approval of the head of the procuring entity or his duly authorized representative was obtained (see Section 48, Article XVI of RA 9184), which was not shown in this case.



In fine, accused-appellant's acts as a public officer, which as previously discussed, were made with manifest partiality and evident bad faith, allowed Enviserve to unduly derive unwarranted benefit, advantage, and preference from the transaction. Therefore, the Court finds no reason to overturn the SB's findings, as there was no showing that the court *a quo* overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case.<sup>36</sup> It bears pointing out that the SB was in the best position to assess and determine the credibility of the witnesses presented by both parties.<sup>37</sup> As such, accused-appellant's conviction for violation of Section 3 (e) of RA 3019 must stand.

Finally, there is a need to adjust the penalty imposed by the SB. Section 9 (a)<sup>38</sup> of RA 3019, as amended, provides that a violation of Section 3 of the same law shall be punished with, *inter alia*, "imprisonment for not less than six years and one month nor more than fifteen years" and "perpetual disqualification from public office." Applying the provisions of the Indeterminate Sentence Law, accused-appellant should be sentenced with the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, together with the aforementioned perpetual disqualification from public office.

**WHEREFORE**, the appeal is **DISMISSED**. The Decision dated December 7, 2018 and the Resolution dated December 18, 2018 of the Sandiganbayan in Crim. Case No. SB-16-CRM-0085 are hereby **AFFIRMED with MODIFICATION**, in that accused-appellant Raquel Austria Naciongayo is 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) year and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

<sup>36</sup> See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, 817 Phil. 554 (2017).

<sup>37</sup> *Cahulogan v. People*, *id.*, citing *Peralta v. People*, *id.*, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

<sup>38</sup> Section 9 (a) of RA 3019, as amended, reads:

Section 9. Penalties for violations. – (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

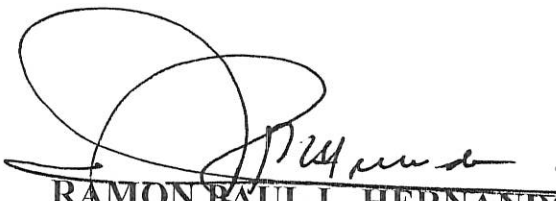
Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.


x x x x

**SO ORDERED.**


  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice


  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

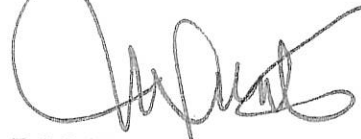
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

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

**DIOSDADO M. PERALTA**

Chief Justice