

Republic of the Philippines
SANDIGANBAYAN
Quezon City

FOURTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**
Plaintiff,

-versus-

Crim. Case No. SB-17-CRM-0744
For: *Violation of Section 3(e),*
Republic Act No. 3019

OSCAR C. MONTILLA, JR.,
Accused.

Present:

QUIROZ, J., Chairperson
CRUZ, J., and
JACINTO, J.

Promulgated:

JAN 06 2020

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RESOLUTION

QUIROZ, J:

This resolves the *Motion for Reconsideration*¹ filed by accused Oscar C. Montilla, Jr., (hereinafter referred to as "*Montilla*") which seeks to set aside the Court's *Decision*² dated October 11, 2019 finding him guilty beyond reasonable doubt of Violation of Sec. 3 (e) of Republic Act (R.A.) No. 3019.

To recapitulate, herein accused Montilla was previously indicted for Violation of Sec. 3 (e) of R.A. No. 3019 for delaying the implementation of the Office of the Ombudsman of Visayas' (*Ombudsman*) suspension order in OMB-V-A-04-0189-D against Evangeline A. Seneres, Eva A. Sabusap, Fernando R. Balbin and Noel Villanueva, all employees of the Local Government of Sipalay, Negros Occidental (collectively hereinafter referred to as "*Sipalay employees*"), to wit:

"In 2008 or sometime prior or subsequent thereto, in Sipalay City, Negros Occidental, Philippines and within this Honorable

¹ Records, Vol. IV, pp. 62-84.

² *Id.*, pp. 25-48

Court's jurisdiction, the above-named accused OSCAR C. MONTILLA, JR., a public officer being then the Mayor of Sipalay City, Negros Occidental, while in the performance of his official functions, with manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit and advantage to Evangeline A. Seneres, Eva A. Sabusap, Fernando R. Balbin, Noel Villanueva and Renato Manilla, employees of the local government of Sipalay City suspended from service by the Office of the Ombudsman under administrative case No. OMB-V-A-04-0189-D for Negligence, by delaying for years without legal basis the implementation of said suspension despite repeated directives from the Office of the Ombudsman-Visayas, to the detriment of public service.

CONTRARY TO LAW.”³

In the presently assailed decision, the Court found Montilla guilty of the above-quoted charge after finding that the delay in the implementation of the Ombudsman's suspension order was attributable to his act of listening to the erroneous advice of the City Legal Officer of Sipalay, Atty. Elmer C. Balbin (Atty. Balbin), who in turn counseled against the implementation of the Ombudsman' suspension order on the ground that the same had not yet attained finality. In view of the fact, however, that the Sipalay employees subject of the suspension order were also being represented by Atty. Balbin, the Court held that Montilla's act of taking advice from the lawyer of the very same persons being sought to be suspended by the Ombudsman is tantamount to gross inexcusable negligence.

In his present motion, Montilla again argues that he is not guilty of gross inexcusable negligence because the delay in the implementation of the Ombudsman's suspension order was due to his honest reliance on the advice given to him by Atty. Montilla. He reiterates his previous argument that he is not a lawyer hence he was constrained to rely on the advice of Atty. Balbin regarding the propriety of the suspension order's implementation. Montilla also emphasizes that the letters that were sent to him by Assistant Ombudsman Virginia Palanca-Santiago (*Assistant Ombudsman Santiago*) did not mention that the suspension order against the Sipalay employees in OMB-V-A-04-0189-D is immediately executory; thus, he believed Atty. Balbin's advise that the same cannot be implemented because a motion for reconsideration thereof had been filed. Montilla further highlights that he promptly ordered the suspension of the Sipalay employees after he was subsequently informed by Assistant Ombudsman Santiago that the suspension orders of the Ombudsman cannot be stayed by the filing of a motion for reconsideration. The fact that he eventually ordered the suspension of the said employees is also proof, according to Montilla, that the said employees did not obtain any benefit from his postponement of the implementation of the Ombudsman's suspension order.

The Court is not persuaded.

³ Records, Vol. I, p. 1

As previously stated by the Court in the presently assailed decision, jurisprudence defines *gross negligence* 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.”⁴ In ruling that Montilla is guilty of the same, the Court again wishes to emphasize that the latter had readily accepted the erroneous advice of Atty. Balbin about the implementation of the Ombudsman’s suspension order despite his knowledge that the persons subject of the same were also being represented by Atty. Balbin. Considering Atty. Balbin’s apparent conflict of interest on the issue at hand and more importantly, Assistant Ombudsman Santiago’s repeated inquiries about the suspension of the Sipalay employees, the Court believes it was highly improper for Montilla to rely solely on the advice that was given by the City Legal Officer. Montilla’s contention of honest reliance to Atty. Balbin’s advice simply fails to persuade.

As another ground, however, to escape criminal liability, Montilla argues for the first time that he did not have knowledge that he had been directed by the Ombudsman to implement the suspension order against the Sipalay employees in OMB-V-A-04-0189-D because he was never furnished a copy of the Ombudsman’s September 22, 2008 Order.

Again, this argument fails to persuade.

To recap, it was the September 22, 2008 Order of the Ombudsman which denied the motion for reconsideration that was previously filed by the Sipalay employees from the Ombudsman’s November 14, 2005 Decision. The dispositive portion of the said order also expressly directed Montilla, as Mayor of Sipalay, to implement the penalty of suspension that was meted against the Sipalay employees in OMB-V-A-04-0189-D. Even assuming, however, that Montilla was not furnished a copy of the aforesaid order, it would appear that such circumstance did not have any bearing whatsoever on his capability to implement the Ombudsman’s suspension order as borne by the fact that he was able to eventually order the suspension of the Sipalay employees despite not having a copy of the Ombudsman’s September 22, 2008 *Order*. More importantly, Montilla’s receipt of the three letters that were sent by Assistant Ombudsman Santiago effectively negates his assertion that he was not aware that he had been instructed to implement the Ombudsman’s suspension order in OMB-V-A-04-0189-D. In fact, an examination of Montilla’s *Letter*⁵ dated July 21, 2011 to Assistant Ombudsman Santiago reveals that he was fully aware of the three-month suspension order against the Sipalay employees and that his office was being directed to implement the same.

⁴ *Giangan v. People*, G.R. No. 169385, August 26 2015.

⁵ Exhibit “4” of the Defense.




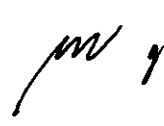
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The Court is also not persuaded by Montilla's claim that he was justified in taking the advice of Atty. Balbin because the letters of Assistant Ombudsman Santiago did not mention that the suspension order against the Sipalay employees are already executory. First, the Court wishes again to emphasize the apparent conflict of interest on the part of Atty. Balbin when he advised against the implementation of the Ombudsman's suspension order concerning his clients. For this reason, it was incumbent on the part of Montilla to seek clarification from Assistant Ombudsman Santiago, at the earliest possible time, as to whether there is merit to Atty. Balbin's advice concerning the latter's clients. The fact also that he had already received two letters from Assistant Ombudsman Santiago about the implementation of the suspension order against the Sipalay employees should have already raised doubts on the mind of Montilla whether the legal advice that he had been receiving up to that time was correct. Verily, it had to take a *third* letter from Assistant Ombudsman Santiago before Montilla finally chose to seek clarification from the former about the legal advice given by Atty. Balbin which, in turn, was subsequently found to be erroneous. Clearly, the manner by which Montilla chose to handle the implementation of the Sipalay employees' suspension reveals his utter indifference to the consequences of his actions. The Court thus finds and so rules that Montilla exhibited gross inexcusable negligence in delaying the implementation of the suspension order against the Sipalay employees.

Finally, Montilla argues that even assuming he is guilty of gross inexcusable negligence, he still cannot be held liable for Violation of Sec. 3 (e) of R.A. No. 3019 because he eventually ordered the suspension of the Sipalay employees and hence it cannot be said that the latter received any unwarranted benefit or advantage from him. Assuming such unwarranted benefit or advantage had been given to the Sipalay employees, Montilla argues that he still cannot be convicted since the aforesaid employees are public officers and Sec. 3 (e) of R.A. No. 3019 only punishes the giving of unwarranted benefit or advantage when the same is given to a "*private party*."

The contention is not meritorious.

Again, the elements of Violation of Sec. 3 (e) of R.A. No. 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/she acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
 - (c) that his/her action caused any undue injury to any party, including the government, or gave any private party
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unwarranted benefits, advantage, or preference in the discharge of his functions.⁶

As stated in the presently assailed decision, jurisprudence defines “*unwarranted*” as lacking adequate or official support; unjustified; unauthorized or without jurisdiction or adequate reason.⁷ “*Advantage*,” on the other hand has been defined as a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action.⁸ From these definitions, it can be readily seen that an unwarranted advantage has been given to the Sipalay employees when the suspension order against them was unjustifiably delayed by Montilla for almost three years. The advantage being referred to have been given in the present case clearly pertains to delay in the implementation of the Ombudsman’s suspension order hence the fact that Montilla eventually ordered the suspension of the Sipalay employees is inconsequential.

Lastly, the Court also finds no merit in Montilla’s contention that the Sipalay employees do not fall under the definition of a “private party” for purposes of applying Sec. 3 (e) of R.A. No. 3019 because they are public officers. In *Ambil v. Sandiganbayan*,⁹ the Supreme Court held:

“In drafting the Anti-Graft Law, the lawmakers opted to use ‘private party’ rather than ‘private person’ to describe the recipient of the unwarranted benefits, advantage or preference for a reason. The term ‘party’ is a technical word having a precise meaning in legal parlance as distinguished from ‘person’ which, in general usage, refers to a human being. **Thus, a private person simply pertains to one who is not a public officer. While a private party is more comprehensive in scope to mean either a private person or a public officer acting in a private capacity to protect his personal interest.**” (citations omitted, emphasis supplied)

Thus, when Montilla delayed the implementation of the suspension order against the Sipalay employees, he in effect gave the aforesaid employees an unwarranted advantage, not in their capacities as employees of the Local Government of Sipalay, Negros Occidental, but rather as persons who were found guilty of “Negligence in the Performance of Official Duties” for purchasing over-priced medicines.¹⁰ Consequently, the Court finds and so rules that the Sipalay employees can be considered a “*private party*” for purposes of applying the provisions of Sec. 3 (e) of R.A. No. 3019.

ACCORDINGLY, the instant motion for reconsideration is **DENIED**.

⁶ *Consigna v. People*, G.R. No. 175750, April 2, 2014.

⁷ *Ambil v. Sandiganbayan*, G.R. No. 175457, July 6, 2011.

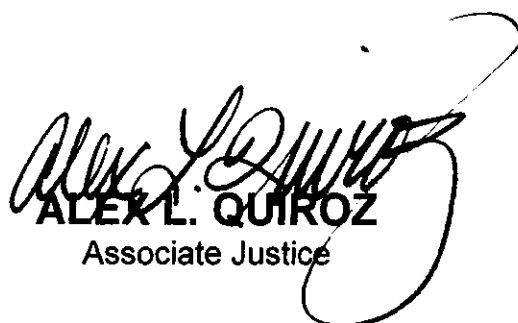
⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Records, Vol. 1, pp. 21-45.

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SO ORDERED.


ALEX L. QUIROZ
Associate Justice

WE CONCUR:


REYNALDO P. CRUZ
Associate Justice


BAYANI H. JACINTO
Associate Justice