



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**THIRD DIVISION**

**LEO O. GONZALEZ, et al.,**  
*Petitioner,*

-versus-

**Crim. Cases Nos.**  
**SB-23-SCA-0001 and**  
**0002**

For: violation of Section  
7 (d) of R.A. 6713 (RTC  
Crim Case No. 148, 279-  
F 2013 and RTC Crim  
Case No. 148, 280-F  
2013)


**PEOPLE OF THE PHILIPPINES**  
*Respondent.*

X-----X

Present:

**CABOTAJE-TANG, A.M.**  
*P.J./Chairperson*  
**FERNANDEZ, B. R., J**  
*and MORENO, R. B., J.*

Promulgated on:

OCTOBER 4, 2023 

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**DECISION**

**FERNANDEZ, B. R., J.**

Before this Court is a Petition for Review dated March 6,  
2023 filed under Rule 42 of the Rules of Court by petitioner  
Leo Ocampo Gonzalez, assailing the Decision dated



September 19, 2022 and the Order dated January 23, 2023, both of the Regional Trial Court of Davao City, Br. 53, the dispositive portion of which reads as follows - -

**WHEREFORE**, premises considered, the Consolidated Decision of the Municipal Trial Court in Cities Branch 6, Davao City dated 24 January 2020 is hereby **AFFIRMED in toto**.

**SO ORDERED.**

This assailed Decision of the Regional Trial Court stems from the Consolidated Decision dated January 24, 2020 and the Order dated March 6, 2020, both rendered by the Municipal Trial Court in Cities (MTCC) of Davao City, Br. 6, convicting petitioner Gonzalez of two (2) counts of violation of Section 7 (d) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, the dispositive portion of the Consolidated Decision reads, as follows - -

**WHEREFORE, PREMISES CONSIDERED**, judgment is hereby rendered finding accused ATTY. LEO O. GONZALES GUILTY beyond reasonable doubt of two (2) counts of violation of Section 7(d) of Republic Act 6713, and he is hereby sentenced to suffer a straight penalty of imprisonment of one (1) year in each of the two cases and to pay the cost of the suit.

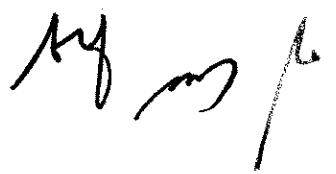
**SO ORDERED.**

The chain of events was sparked by the filing of two (2) criminal Informations against petitioner Gonzalez, as follows

- -

Criminal Case No. 148, 279-F-2013

That on or about May 6, 2008, in Davao City, Philippines, and within the jurisdiction of this Honorable Court, accused Leo O. Gonzales, Chief Revenue Officer IV with salary grade 24, Nelia Monica J. Ramintas, Revenue Officer III with salary grade 16 and Aldrin C. Oliva, Revenue Officer I with salary grade 13, all low ranking public officers of the Bureau of Internal Revenue (BIR), Revenue Region No. 19, Davao City, while in the performance of their official duties, taking advantage of their official positions, committing the offense in relation to their office, conspiring, confederating, and helping one another, did then and there, willfully, unlawfully and criminally request or solicit the amount of Six Hundred Ten Thousand Pesos (P610,000) from Federico T. Barco, representative of BAK BAK Native



Chicken, Atbp. (BAK BAK), Davao City, by asking Mr. Barco to settle BAK BAK's supposed tax liability of P1,304,160.75 that the accused computed after they personally and actively conducted an overt surveillance operation on BAK BAK in their official capacities as Chief and members of the Special Investigation Division of BIR Davao City, which tax liability accused proposed to be settled by Mr. Barco for P 700,000 and that only the amount of P 90,000 would be issued an official receipt by the government while the remaining P 610,000 would be for their personal gain and benefit.

CONTRARY TO LAW.

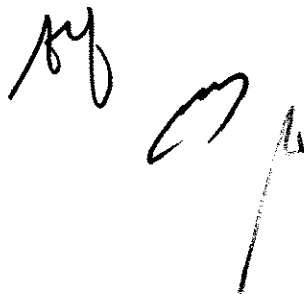
Criminal Case No. 148, 280-F-2013

That on April 19, 2008, or sometime prior or subsequent thereto in Davao City, Philippines, and within the jurisdiction of this Honorable Court, accused LEO GONZALES y OCAMPO, a low ranking public officer being a Revenue Officer IV with salary grade 24 and Chief of the Special Investigation Division (SID) of the Bureau of Internal Revenue (BIR), Revenue Region No. 19, Davao City, while in the course of performing his official functions, taking advantage of his official position, committing the offense in relation to office, while conducting overt surveillance operation on BAK BAK Native Chicken, Atbp., (BAK BAK) Davao City from April 17 to 26, 2008 which he personally and actively led on his official capacity as Chief of the Special Investigation Division of the BIR Davao City, did then and there, willfully, unlawfully and criminally ask or request for his own personal gain and benefit from Federico T. Barco, representative of BAK BAK, a 10-hectare slice out of the 130-hectare agricultural land occupied by Mr. Barco and planted with highland Cavendish banana in Arakan, North Cotabato.

CONTRARY TO LAW.

Although there are some parallelisms, the parties, nevertheless, posed divergent narratives of the incident subject of these cases.

Nonetheless, the factual milieu of these cases, as could be culled from the two assailed Decisions, are substantially similar, this Court will instead quote the two narratives from the assailed Decision dated September 19, 2022 of the Regional Trial Court, to wit - -

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### VERSION OF THE PROSECUTION

On 17 April 2008 to 26 April 2008, the members of the Special Investigation Division (SID) of the Bureau of Internal Revenue (BIR) - Revenue Region No. 19 conducted an overt surveillance operation on Bak Bak Native Chicken House, a business enterprise located at Prime Square Compound, F. Torres St., Davao City.

Bak Bak is a single-proprietorship business registered under the name of Roselle Barco. Roselle Barco is the daughter of sole Prosecution witness, Mr. Federico T. Barco.

The operation was conducted by Nelia Ramintas, Aldrin Oliva, Rex Vincent Perido, Dennis Dimalanta and Gervacio Angco (the SID team) pursuant to a Mission Order. The operation was headed by the accused-appellant Leo Ocampo Gonzalez, who was, then, the Chief of the SID of the BIR Revenue Region No. 19, although his name was not included in the said Mission Order.


On 17 April 2018, the SID team, headed by Accused-Appellant Gonzalez, proceeded to Bak Bak to monitor the sales and/or the place of business of Bak Bak. They occupied a big table in front of the cashier's counter and asked for stubs, unused booklets of sales invoices, CRM tapes, and other business-related documents available.

On 18 April 2018, Accused-Appellant Gonzalez learned from his conversations with Mr. Barco that the latter is occupying one hundred thirty (130) hectares of agricultural land planted with highland Cavendish bananas in Arakan, North Cotabato. Later, Gervacio Angco, a member of the SID team, intimated to Mr. Barco of Accused-appellant Gonzalez' desire to visit the said farm.

Not wanting to offend Accused-Appellant Gonzalez, Mr. Barco brought the former to the said farm in Arakan, North Cotabato on 19 April 2008. While thereat, Accused-Appellant Gonzalez shamelessly demanded from Mr. Barco to give him at least ten (10) hectares of the land that the latter is occupying in Arakan, North Cotabato. When told that there were other farmers in the area who might want to sell or part possession of their farms, Accused-Appellant Gonzalez insisted that Mr. Barco should just give him ten (10) hectare-portion of the property.

The SID team concluded their operations on Bak Bak on 26 April 2008. Thereafter, Accused-Appellant Gonzalez requested a meeting with Mr. Barco purportedly to discuss the result of the surveillance operations.

Mr. Barco, the SID team, and the Accused-Appellant Gonzalez met on three (3) occasions. The first meeting took

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place on 30 April 2008 at Probinsya Restaurant. During the said meeting, the SID team informed Mr. Barco that Bak Bak's tax liability would reach over One Million Pesos (P1,000,000), but they did not give him any details as to how they arrived at the said amount despite the prodding of Mr. Barco. However, Accused-Appellant Gonzalez appeased Mr. Barco and said that he would help him with Bak Bak's tax liability. Accused-Appellant Gonzalez even asked Mr. Barco as to how much he would be willing to give to settle the said tax liability.

The second meeting happened on 06 May 2008 at Nanay Bebung Restaurant. During the said meeting, Accused-Appellant Gonzalez again insisted that Bak Bak's liability is more or less One Million Three Hundred Thousand Pesos (P1,300, 000. 00). However, he proposed that Mr. Barco could settle the same at a considerable amount of Seven Hundred Thousand Pesos (P700,000.00), with the understanding that only Ninety Thousand Pesos (P90, 000.00) would be officially receipted by the government. When confronted as to why the difference of Six Hundred Ten Thousand Pesos (P610, 000) would not be issued an official receipt, Accused-Appellant Gonzalez retorted "*marami kami*".

On the third and last meeting that transpired on 27 May 2008 at Probinsya Restaurant, Accused-Appellant Gonzalez insisted that Mr. Barco should accept his proposal. Accused-appellant Gonzalez even added that the amount is negotiable and that should he decide to settle, it had to be done immediately because the thirty (30) day-period given to the SID team to submit their report had already lapsed. However, Mr. Barco did not accept the said proposal.

### **VERSION OF THE DEFENSE**

On 16 April 2008, a Mission Order was issued by the BIR for the conduct of an overt surveillance from April 17 to 26, 2008 on Bak Bak Native Chicken House (Bak Bak) owned by Roselle G. Barco (Roselle), located at F. Torre St., Davao City due to initial findings of numerous violations of the National Internal Revenue Code (NIRC) and other tax laws. Roselle is the daughter of the Prosecution's sole witness, Mr. Federico Barco (Mr. Barco).

Accused-Appellant Gonzalez, as Chief of the BIR's SID, accompanied the BIR implementing officers named in the Mission Order, namely: (a) Nelia Monica J. Ramintas (Ramintas); (b) Aldrin C. Oliva (Oliva); (c) Rex Vincent O. Perido (Perido); (d) Dennis C. Dimalanta (Dimalanta); and (e) Gervacio B. Angco (Angco).

During the conduct of the surveillance, Accused-Appellant Gonzalez and other members of his team named

in the said Mission Order cannot fail but discuss among themselves and notice, based on their long experience and expertise in dealing with anomalous taxpayers subjected to overt surveillance operations, that it effectively appears that Mr. Barco is in direct control of Bak Bak and not his daughter, Roselle.

When Mr. Barco mentioned to Accused-Appellant Gonzalez and Angco that he grows highland Cavendish bananas in his alleged one hundred thirty (130) hectares of land in Arakan, North Cotabato, the latter then took the opportunity to investigate further in order to properly build the cases that they may file against Mr. Barco and/or Roselle as mandated on them as members of the SID by the BIR Revenue Administrative Order No. 10-2000 and BIR Revenue Memorandum Order No. 54-2000. Accused-Appellant Gonzalez and Angco then went with Mr. Barco to his farm and continued to get more details from him regarding the operation of Bak Bak, as well as his and his family's other sources of income.

After the 10-day overt surveillance operation, the BIR team informed Roselle of the necessary records, documents and receipts required in order for them to complete their report within thirty (30) days as expressly stated in the Mission Order. The team then arranged for a meeting with Roselle within Bak Bak's premises or at the BIR Office. However, Mr. Barco asked that the meeting should be held at Probinsya Restaurant on 30 April 2008. Mr. Barco attended the meeting without Roselle. Also, he did not bring the required documents and records.

A second meeting was scheduled on 06 May 2008 at Nanay Bebeng Restaurant, wherein Mr. Barco promised to secure the required documents from his accountant. Only Mr. Barco appeared and he failed again to bring any of the documents and records requested by the BIR team.

Lastly, on the third meeting held on 27 May 2008 at Probinsya Restaurant, Mr. Barco came with his accountant, in the person of Mr. Froilan Ampil (Ampil), who holds the esteemed position as one of Ateneo de Davao University's deans and college professor. Surprisingly, Mr. Barco did not mention this in his Affidavit-Complaint filed before the Ombudsman, marked as Exhibit "B" for the prosecution nor in his direct testimony via Judicial Affidavit.

Despite a considerable lapse of time, Roselle and Mr. Barco had failed to produce the records being asked by the surveillance team. Hence, the team found it prudent to serve Roselle a *subpoena duces tecum* to compel her to produce the required documents and record. Despite the



issuance of two (2) notices of subpoena, Roselle adamantly failed to comply.

In a letter (BIR Letter dated December 8, 2008), Chief of the BIR Legal Division Felix B. Pepito, Jr. informed Roselle of the results of the surveillance finding substantial under declaration of sales constituting prima facie evidence of fraud and gave her a period of forty-eight (48) hours to explain. Two more notices and/or letters were sent by the BIR for Roselle to comply with the requirements thereon. Still, Roselle and Mr. Barco continued to defy the BIR's directives.

Unexpectedly, instead of complying with the notices sent by the BIR, Roselle filed a Petition for the Declaration of Nullity and/or Unconstitutionality of (a) Revenue Memorandum Order No.31-2002 and (b) Revenue Memorandum Order No. 20-2002 before the Regional Trial Court against the Hon. Secretary of the Department of Finance, Commissioner of the Internal Revenue and other BIR employees, including Accused-Appellant Gonzalez in his official capacity as SID Chief.

To further show defiance in the aforestated BIR directives, Mr. Barco filed an Affidavit-Complaint for alleged violations of Republic Act Nos. 3019 and 6713, the Revised Administrative Code and other laws before the OMB charging accused-appellant Gonzalez, together with all members of the SID Team, namely, Ramintas, Oliva, Perido, Dimalanta and Angco. Surprisingly, the OMB issued a Resolution finding probable cause to indict only Accused-Appellant Gonzalez, Ramintas and Oliva for alleged violation of Section 7 (d) of Republic Act No. 6713 based merely on Mr. Barco's bare, uncorroborated and implausible malicious allegations.

The Regional Trial Court (RTC), in its assailed Decision found the presence of the three elements to sustain the offense charged, namely - - (1) that the accused is a public official or employee; (2) the accused solicited or accepted, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person; and, (3) such solicitation or acceptance was done in the course of his official duty or in connection with any operation being regulated by, or any transaction that may be affected by the functions of his office. Its discussions are as follows - -

First Element:

At the time the alleged solicitation was committed, Accused-Appellant Gonzalez was a public officer holding the position of Revenue Officer IV with salary grade 24 and



the Chief of the Special Investigation Division of the Bureau of Internal Revenue - Revenue Region No. 19.

Third Element:

The alleged solicitations were made in the course of Accused-Appellant's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office. The incidents were in the course of the overt surveillance operation pursuant to Mission Order No. 00044789 on Bak Bak Native Chicken House.

There being no dispute as to the presence of the first and third elements, the issue in this case revolves around the presence or absence of the second element, which is the act of the alleged solicitation.

On the second element - the accused solicited or accepted, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person - the RTC elaborated further and likewise found its presence and described its finding in the following manner -

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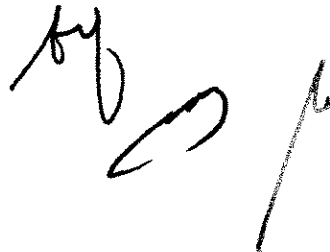
Criminal Case No. 148, 279-F-2013

The prosecution presented the sole testimony of Mr. Federico Barco to prove the fact of the act of solicitation. On the other hand, the Accused-Appellant interposed the defense of denial and countered with his own version of the facts.

Supreme Court has ruled in various cases that denial is inherently a weak defense as it is negative and self-serving. Corollarily, alibi is the weakest of all defenses for it is easy to contrive and difficult to prove. The defenses of denial and alibi are inherently weak and unreliable due to the ease by which they may be fabricated or concocted. If not substantiated by clear and convincing evidence, such defenses are considered self-serving and are bereft of weight in courts of law.

x x x

In the case at bar, the Order denying accused-appellant's Demurrer to Evidence, required him to present his evidence. His defense of denial was not supported by clear and convincing evidence to overthrow the prosecution's prima face case against him.



## Criminal Case No. 148, 280-F-2013

During the trial, it was pointed out that the surveillance operation was neither supported by a Mission Order, a Travel Order, nor an Itinerary of Travel. As a defense, accused-appellant presented Atty. Pepito, who testified that a prelude or preliminary investigation does not require a Mission Order.

However, the Court *a quo* observed that while Defense witness Atty. Pepito did mention the exception on the requirement of a Mission Order, it was only after several clarifications propounded upon him by Defense counsel that he came upon the said exception.

In fact, Atty. Pepito was quite steadfast in his narration that all surveillance operations require the issuance of a Mission Order.

X X X

It can be noted that both the Prosecution and the Defense used the provisions of Revenue Memorandum Order No. 54-2000, as the bases of their respective arguments.

For the accused-appellant, he used Part IV, Section 1.1 as the basis of his defense that no Mission Order is required when he went to Mr. Barco's farm in Arakan, North Cotabato. X x x.

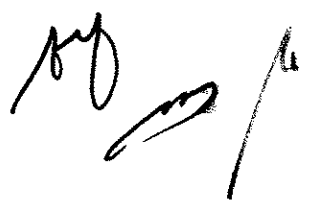
For the Prosecution, the provision under Part IV, Section 1.2 was used as the basis. X. x. x.

X X X

Applying the foregoing principles to the case at bar, the Court finds it well worth emphasizing that Part IV of the Revenue Memorandum Order No. 54-2000 was meant as a guideline or procedure for the conduct of surveillance on the business operations of any person, natural or juridical. To ascertain whether a Mission Order is required or not, the provisions of the Part IV must be taken into consideration and be construed together.

X X X

With respect to accused-appellant's argument that he went to Mr. Barco's farm in order to build a case against the latter, it is essential to point that Mr. Barco was not the proprietor of Bak Bak. The Court *a quo* was correct in giving scant consideration to the argument since Mr. Barco was not the one who is under investigation pursuant to Mission Order No. 00044789 dated 16 April 2008. Instead, it was



Roselle Barco's, private complainant's daughter, tax liabilities which were the subject of the investigation. With the apparent lack of credibility in the testimony of Accused-Appellant Gonzalez, the Court a quo was also correct in giving more credence to Mr. Barco's straightforward account.

In view of the totality of the evidence presented, the Court finds that the second element, the act of solicitation, is present.

Hence, this Petition for Review.

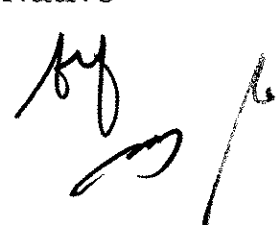
Principally, petitioner Gonzalez contends that the RTC committed a reversal error when it affirmed his conviction of two (2) counts of violation of Section 7 (d) of R. A. No. 6713, based on the alleged biased and malicious testimony of Federico Barco, the sole witness for the prosecution, and his Affidavit-Complaint dated April 17, 2009, as the only documentary evidence.

Petitioner Gonzalez grounds this position by claiming that for Crim. Case No. 148, 279-F-2013, there was no solicitation as he did not solicit the amount of P610,000 from Federico T. Barco.

Insisting that no solicitation took place, petitioner Gonzalez argues that prosecution witness Barco is not a credible witness as he (Barco) has been caught lying on the material points of his testimony. Witness Barco tried to hide the fact that he was accompanied by Froilan Ampil, his accountant, during some of the meetings with the BIR Special Investigation Division (SID) team. Witness Barco would not have lied about the presence of Ampil if he was not trying to hide the actual circumstances that transpired during the meetings with the Special Investigation Division team.

In fact, witness Barco confirmed during his cross examination that it was the SID team that suggested to him to coordinate with his accountant and to bring the latter to their meetings in order to finalize the results of the surveillance.

Petitioner Gonzalez maintains that, as part of due process, the BIR gave the taxpayer and his representative the opportunity to produce the necessary documents such as invoices, books of account and records of Bakbak Native

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Chicken prior to the surveillance since these were not available in the BIR.

Thus, petitioner Gonzalez alleges that it is contrary to human logic and experience for the BIR SID team to solicit from witness Barco since at the onset they had already asked him to hire an accountant to help him with the results of the surveillance.

Second, the MTCC granted the demurrer of one Ramintas. It found that the exchanges between witness Barco and the BIR examiners, as confirmed by the former during trial, "could mean merely payment of the legal taxes imposed upon him by the BIR since at this time, the case has already been submitted to the BIR authorities and that he and his full-time accountant were already contesting their tax liability."

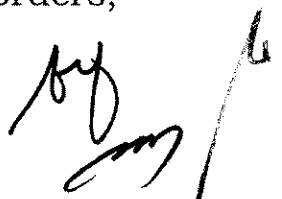
Third, petitioner Gonzalez further noted the Decision dated November 13, 2015 of the Court of Appeals on the Petition for Review filed by Ramintas acquitting her of the offenses charged. This Decision eventually attained finality and Ramintas was reinstated to her original position in the BIR.

Consequently, petitioner Gonzalez claims that the case against him should likewise be dismissed because the Amended Information charged him and Ramintas alleges a conspiracy between them.

On the other hand, for Criminal Case No. 148, 280-F-2013, petitioner Gonzalez maintains that there was likewise no solicitation made. He neither asked nor requested for a 10-hectare slice out of the 130-hectare agricultural land occupied by witness Barco located in Arakan, North Cotabato.

He alleges that, in affirming the MTCC Consolidated Decision, the RTC gave credence to the alleged positive and categorical testimony of witness Barco and the alleged lack of a mission order, a travel order and an itinerary of travel of petitioner Gonzalez in travelling to Arakan, North Cotabato.

Petitioner Gonzalez further cites BIR Revenue Memorandum Order (RMO) No. 54-2000 dated December 4, 2000 and claims that not all preliminary surveillance activities conducted by the BIR require mission orders,



particularly if performed by the head of the Special Investigation Division.

He insists that he was still in the process of gathering information when he went to the farm of witness Barco in Arakan but admits that this investigation was separate from the mission order issued against Bakbak Native Chicken. The visit to the farm was to determine the alleged tax violations of witness Barco which was part of his functions as Chief of the Special Investigation Division.

To further support his contention that a mission order was unnecessary, petitioner Gonzalez submits the testimony of his witness, Atty. Felix B. Pepito, Jr., former head of the BIR Legal Division, that only actual surveillance requires mission orders. Preliminary surveillance does not require mission orders because this will be the basis for a request for a mission order.

Petitioner Gonzalez further maintains that there was no proof to overturn the presumption of regularity in the performance of official functions in his favor and that he has a wide latitude of discretion in the performance of his functions including conducting preliminary investigations outside of Davao City.

When given time (Minutes, March 24, 2023 and April 11, 2023), respondent People, represented by the Office of the Ombudsman (OMB), through the Office of the Special Prosecutor (OSP), filed its Comment dated May 9, 2023.

Respondent People maintains that petitioner Gonzalez neither raise any novel question to warrant the reversal of the questioned RTC Decision and the Consolidated Decision of the MTCC of Davao City nor did the Courts deviate from established jurisprudence in convicting petitioner Gonzalez of a violation of Section 7 (d) of R. A. No. 671320 as all the elements thereof were duly proven with moral certainty by the prosecution.

It further maintains that the elements of the crime charged are all present.

On the first and third elements, petitioner Gonzalez was a public officer holding the position of Revenue Officer IV with salary grade 24 and the Chief of the SID, BIR-RR 19 and that



his alleged solicitations as requested by him from witness Barco for a sum of money and a 10-hectare slice from the 130-hectare farm of witness Barco was made while petitioner Gonzalez was performing his official duties or functions as a revenue officer and tax investigator.

The respondent People further alleged that the second elements is likewise present.

Reliance by the two Courts on the sole testimony of witness Barco was not tainted with abuse of discretion. The MTCC was able to observe the demeanor of both witness Barco and petitioner Gonzalez, thus, had the opportunity to assess the credibility and quality of their testimonies, leading to the conclusion that the positive and guileless testimony of witness Barco was more credible than the self-serving denial of petitioner Gonzalez.

It further claims that petitioner Gonzalez failed to substantiate his insistence that witness Barco was motivated by ill-motive or furtive design to get even with him because their business was assessed with huge amount of taxes. Neither did the two Courts give credence to the inability of witness Barco to mention the presence of his accountant during the meetings.

On the issue of the mission order, the respondent People insists that petitioner Gonzalez, who was not even named in the same, actively participated in the surveillance conducted against Bak Bak. He likewise divulged the computation of the tax liabilities allegedly incurred by the business establishment for the previous and taxable year/s for the purpose of allowing the taxpayer to settle with them their tax liabilities and to make witness Barco and his daughter believe that there was already a final notice of tax assessments and a demand to pay.

Although out of office conferences or meetings were not expressly prohibited by BIR rules, as admitted by the respondent People, the manner by which these were conducted buttressed the irregularities or illegalities of their activities.

In its Comment (on the Petition for Review on Certiorari filed by BakBak and represented by Rosselle before the Supreme Court in G. R. No. 217610 entitled BakBak (1 and 2) Native Restaurant vs. Secretary of Finance, *et al.*), the Commissioner of Internal Revenue (CIR),



through the Office of the Solicitor General (OSG), counters that the activities of certain BIR employees in the aforesaid meetings with Federico (Barco) were irregular and were already subject of criminal and administrative proceedings. Thus, the irregular activities of the BIR officials should be better threshed out in the proper forum. These meetings cannot be considered demand for payment of taxes under the NIRC which would be tantamount to an assessment and which would trigger the application of the provisions of Section 228. The OSG points out that Rosselle and Federico were actually fully aware and even complicit to the illegal activities of the BIR officers. Reiterating its argument that RMO Nos. 20-2002 and 31-2002 do not form part of the procedure for protesting an assessment, the OSG states that Section 228 of the NIRC and Section 115, which the subject RMOs are implementing, pertain to different procedures in revenue collection and administration. The OSG also cited the differences between a five-day VAT Compliance Notice and a Final Assessment Notice.

The respondent People insists that the illegal activities of petitioner Gonzalez were made manifest by his immediate response after learning that witness Barco had a 130-hectare farm in Arakan, North Cotabato. Although witness Barco was not the subject of the Mission Order issued by the BIR-RR 19, still petitioner Gonzalez requested witness Barco to bring the team to the said farm, which was neither an extension of Bak Bak nor its branch. Besides, the farm of witness Barco was already outside the area of jurisdiction of BIR Davao City.

It reiterated the testimony of defense witness Atty. Pepito that in all surveillance activities to be conducted by the BIR against a taxpayer should be accompanied by a mission order duly issued by an authorized revenue official, in this case the head of the BIR-RR 19 or the Regional Director. Although petitioner Gonzalez claims that the farm visit was a prelude to a surveillance operation not requiring a mission order, the MTCC correctly noted that the farm visit was pursuant to Mission Order dated April 16, 2008. Therefore, there was nothing preliminary or initiatory about said investigation.

On the Ramintas exoneration, respondent People maintains that this is irrelevant to the conviction of petitioner Gonzalez. As aptly ruled by the MTCC, where there is no showing that conspiracy exists, the liability of defendants is dealt with separately and individually. Hence, the evidence or

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lack thereof in favor of Ramintas cannot be used by petitioner Gonzalez or vice-versa.

The respondent People further alleged that the formalities of tax assessment of and notification to the subject taxpayer must be observed by petitioner Gonzalez and his team, citing Section 228 of the NIRC. However, herein these procedures were not complied with.

We now rule.

Initially, a petition for review under Rule 42 *vis-à-vis* a petition for review on *certiorari* under Rule 45, both of the Rules of Court, are two distinct remedies and modes of appeal.

The former seeks to review a judgment rendered by the regional trial court in the exercise of its appellate jurisdiction on questions of law or of fact or both (Sec. 2, Rule 42). While a petition for *certiorari* (appeal by *certiorari*) must only raise pure questions of law (Sec. 1, Rule 45).

On the other hand, the Sandiganbayan, in its own revised Internal Rules, particularly Sec. 2, Rule XII, Part III, thereof, provides - -

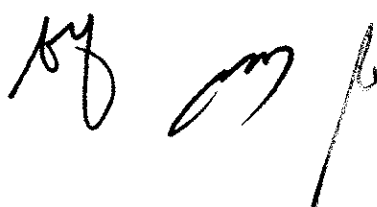
*Section 2. Petition for Review.* - Appeal to the Sandiganbayan from the Decision of the Regional Trial Court in the exercise of its appellate jurisdiction shall be by Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure.

Herein, petitioner Gonzalez is charged in two Informations, both for violation of Sec. 7 (d) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials, as earlier quoted.

Section 7 (d) of R. A. No. 6713 provides - -

*Section 7. Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x



(d) *Solicitation or acceptance of gifts.* - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

Hence, to be convicted, the prosecution has the burden of proving the following elements, namely, (a) the accused is a public official or employee; (b) he or she solicited or accepted any loan or anything of monetary value from any person; and, (c) the act was done in the course of the accused's official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office (*Malicse-Hilaria vs. Reyes*, G.R. No. 251680, November 17, 2021).

The MTCC and the RTC found the presence of the foregoing three (3) elements. Initially, the first and third elements as being uncontested and, eventually, the second element.

Relative to Crim. Case No. 148, 279-F-2013, the RTC found that - -

In the case at bar, the Order denying accused-appellant's Demurrer to Evidence required him to present his evidence. His defense of denial was not supported by clear and convincing evidence to overthrow the prosecution's prima facie case against him.

Finding that the second element, act of solicitation is present, the Court upholds accused-appellant's conviction for violation of Section 7d) of Republic Act No. 6713 in Criminal Case No. 148,279-F-2013."

While in Crim. Case No. 148, 280-F-2013, the RTC ruled that a mission order must first be obtained before the conduct of the surveillance may take place, to wit - -

With respect to accused-appellant's argument that he went to Mr. Barco's farm in order to build a case against the latter, it is essential to point that Mr. Barco was not the proprietor of Bak Bak. The Court *a quo* was correct in giving scant consideration to the argument since Mr. Barco was not the one who is under investigation pursuant to Mission Order No. 00044789 dated 16 April 2008. Instead, it was Roselle Barco's, private complainant's daughter, tax liabilities which were the subject of the investigation. With



the apparent lack of credibility in the testimony of Accused-Appellant Gonzalez, the Court a quo was also correct in giving more credence to Mr. Barco's straightforward account.

In view of the totality of the evidence presented, the Court finds that the second element, the act of solicitation, is present.

From the discussions and finding of both lower courts, petitioner Gonzalez failed to overcome the positive and candid testimony of Federico Barco, the sole witness of the prosecution.

Although it may be true that the prosecution presented only one witness, however, jurisprudence has consistently taught us that, so long as the testimony is credible and convincing, one witness may suffice.

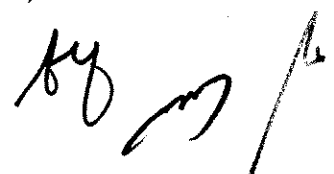
It is settled that - -

It is axiomatic that the testimonies of witnesses are weighed, not numbered, and the testimony of a single witness may suffice for conviction if found trustworthy and reliable. That the prosecution had only one eyewitness to implicate appellant hardly negates its cause. There is no law which requires that the testimony of a single witness needs corroboration except where the law expressly mandates such corroboration. Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder. Hence, a finding of guilt may be based on the uncorroborated testimony of a single witness when the trial court finds such testimony positive and credible (People vs. Pirame, G. R. No. 121998, March 9, 2000; 384 Phil. 286-302).

The straightforward testimony of prosecution witness Barco posed alongside the defenses of denial and alibi of petitioner Gonzalez will clearly show that the latter must fail.

It has been consistently held that - -

Time and again, the Court has consistently ruled that a denial and alibi cannot prevail over the positive identification of the assailants made by a credible witness. In fact, a denial is often viewed with disfavor especially if it is uncorroborated. Also, an alibi will only prosper, if the accused can show that it was physically impossible for him/her to be at the scene of the crime. Thus, as between the categorical testimony which has a ring of truth on the one hand, and a mere denial and alibi on the other, the



former is generally held to prevail (*Oliva y Ocate vs. People* (G. R. No. 252707 (Notice), September 30, 2020))

Likewise, this Court is reminded of *Villanueva vs. People* (G. R. No. 237738, June 10, 2019) where the high standards of ethics that public service demands was clearly underscored, to wit- -


The overarching policy objective of RA 6713 is "to promote a high standard of ethics in public service." Accordingly, certain acts which violate these ethics, such as that provided under Section 7 (d), have been declared unlawful and accordingly, classified as *mala prohibita*. Notably, RA 6713 exhorts that "[p]ublic officials and employees shall always uphold the public interest over and above personal interest." Thus, public officials do not enjoy the same autonomy as that of private individuals, and hence, usually normal transactions such as that of obtaining loans - as in this case - come with necessary restrictions whereby personal interests take a back seat for the sake of preserving the pristine image and unqualified integrity of one's public office.


It is well settled that the factual findings of the trial courts, more so when affirmed by the original and appellate courts herein, are entitled to great weight and respect (*Villarba vs. CA and the People*, G. R. No. 227777, June 15, 2020).

Thus, this Court sees no cogent reason to disturb the findings of the trial court particularly after these findings were reviewed and scrutinized by the Regional Trial Court and the Municipal Trial Court in Cities concerned.

**WHEREFORE**, in view of the foregoing, the Petition for Certiorari filed by petitioner Leo O. Gonzalez dated March 6, 2023 is hereby **DENIED** for lack of merit.

**SO ORDERED.**

  
**BERNELITO R. FERNANDEZ**  
Associate Justice



*We concur:*

**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice/Chairperson*

**RONALD B. MORENO**  
*Associate Justice*

### ATTESTATION

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

**AMPARO M. CABOTAJE-TANG**  
*Chairperson, Third Division*  
*Presiding Justice*

### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

**AMPARO M. CABOTAJE-TANG**  
*Presiding Justice*

*fy*