



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City
THIRD DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-16-CRM-1076
*For: Violation of Section 3(e)
of Republic Act No. 3019*

-versus-

**ADELBERTO FEDERICO YAP,
VERONICA S. ORDOÑEZ,
SIGFREDO V. DUBLIN, MA.
VENUS B. CASAS and MARLON
E. BARILLO,**
Accused.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

Crim. Case No.
SB-16-CRM-1077
*For: Violation of Section 3(g)
of Republic Act No. 3019*

-versus-

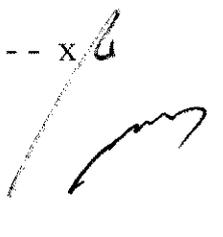
ADELBERTO FEDERICO YAP.
Accused.

Present:
Cabotaje-Tang, A.M., *PJ.*,
Chairperson
Fernandez, B.,R, *J.* and
Moreno, R.,B, *J.*

PROMULGATED:

October 21, 2020 *70*

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by 

RESOLUTION

Moreno, J.:

For resolution are the separate motions for reconsideration filed by accused Adelberto F. Yap, Ma. Venus B. Casas and Marlon E. Barillo assailing the Court's February 14, 2020 Decision in SB-16-CRM-1076-1077, to which the prosecution (through the Office of the Special Prosecutor) filed its *Consolidated Opposition*¹ on July 28, 2020.

The Motions for Reconsideration

In his motion,² Yap essentially claimed that he should not have been convicted of violation of Section 3(e) of Republic Act No. 3019 since he never discharged his functions through manifest partiality, evident bad faith or gross inexcusable negligence in signing the disbursement voucher dated March 10, 2006. He also added that he had no actual participation in the opening of a letter of credit by MCIAA.

Yap further argued that the element of undue injury to the government or unwarranted benefit, advantage or preference to AsiaBorders had not been proven beyond reasonable doubt. He likewise argued that the presence of conspiracy among the accused had not been clearly established.

As regards his conviction for violation of Section 3(g) of R.A. No. 3019, Yap alleged that he only acted under the direction and authority of the MCIAA Board. He added that the prosecution failed to establish that the subject contract had been grossly and manifestly disadvantageous to the government. Yap also argued that the *Arias* doctrine should be applied to him because the subject contract and the disbursement voucher underwent the evaluation and scrutiny of the BAC and the MCIAA department.

In her motion,³ Casas argued that the ₱6 million delivery was not an illegal advance payment since this amount was a precondition to the shipping of the Aircraft Rescue Fire Fighting Vehicle (ARFFV). She also claimed that she did not conspire with the other accused even if she signed the disbursement voucher that led to the release of the ₱6 million. According to Casas, she was not negligent since she exercised the appropriate amount of care demanded of the circumstances.

Casas also alleged that the elements of undue injury and unwarranted benefit had not been proven by the prosecution.

¹ Record, vol. VIII, pp. 336-344.

² *Id.* at 207-245.

³ *Id.* at 246-262.

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In his *Motion for Reconsideration (Ad Cautelam)*,⁴ Barillo essentially argued that the special penal law that governed the giving of advance partial payment is Section 88 of P.D. 1445 (or the Government Auditing Code of the Philippines); and that this law must prevail over R.A. No. 3019 which is a general law. He added that no criminal penalty could be imposed on Barillo since P.D. 1445 only subjects the offender to administrative sanctions.

The Prosecution's Consolidated Opposition

In its *Consolidated Opposition*,⁵ the prosecution countered that the elements of the offenses charged had been proven. It maintained that Yap and Casas gave unwarranted benefit to AsiaBorders when they caused the ₱6 million advance payment, as evidenced by Disbursement Voucher No. 101-2006-03118 and LBP Check No. 0000006621. It belied Yap's claim that he had no actual participation in the opening of a letter of credit since he himself signed the subject disbursement voucher and LBP check.

The prosecution also insisted that Yap, as MCIAA's General Manager, entered into a contract which was manifestly and grossly disadvantageous to the Government. It argued that nothing prevented Yap from judiciously studying the procurement documents considering that these were not voluminous.

The prosecution added that Yap, Ordoñez, Dublin and Casas all admitted in open court that the payment had been made even before the delivery of the vehicle.

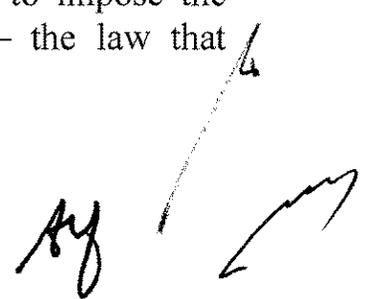
The prosecution also found no error in Barillo's conviction since he conspired with the other accused: he knew that it was the responsibility of AsiaBorders and not MCIAA to open a letter of credit. It added that Barillo himself signed the pertinent documents in behalf of AsiaBorders.

Barillo's Reply to the Opposition

The records showed that Barillo filed a *Motion for Leave to File and Admit the Attached Reply (Ad Cautelam)*⁶ and the *Reply to the Consolidated Opposition x x x*⁷ on August 5, 2020.

In his *Reply*, Barillo reiterated that it was improper to impose the penalties under R.A. No. 3019 because P.D. No. 1445 – the law that

⁴ *Id.* at 263-272.
⁵ *Id.* at 336-344.
⁶ *Id.* at 366-369.
⁷ *Id.* at 370-378.

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specifically deals with the prohibition on advance payment on government contract – did not make a violation of Section 88 a criminal offense.

Barillo's Supplemental Motion for Reconsideration and the
prosecution's Opposition

Barillo filed a *Motion for Leave to File and Admit the Attached Supplemental Motion for Reconsideration (Ad Cautelam)*⁸ and his *Supplemental Motion for Reconsideration (Ad Cautelam)*,⁹ to which the prosecution filed its *Opposition* x x x¹⁰ on August 20, 2020.

In his *Supplemental Motion*, Barillo essentially maintained that the prosecution gravely abused its discretion in prosecuting the accused for violation of both Section 88 of PD 1445 and Section 3 (e) of R.A. No. 3019.

In its *Opposition*, the prosecution countered that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. No. 3019. It added that the Supreme Court in *Abubakar v. People* affirmed the Sandiganbayan's conviction of the accused for violation of Section 3(e) of R.A. No. 3019 for causing the advance payment x x x which violated Section 88 of P.D. No. 1445.

OUR RULING:

After due consideration, the Court **denies** the separate motions for reconsideration filed by accused Yap, Casas and Barillo.

I. Conviction for violation of Section 3(e) of R.A. No. 3019

a. Elements proven

We point out at the outset that the two ways by which a public official violates Section 3(e) of R.A. 3019 in the performance of his functions, that is, (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 prohibited act of either causing undue injury or giving unwarranted benefits, advantage, or preference may be committed in three ways: through (1) manifest partiality, (2) evident bad faith, or (3) gross inexcusable negligence. Significantly, proof of any of these three in

⁸ *Id.* at 297-301.

⁹ *Id.* at 302-313.

¹⁰ *Id.* at 381-387.

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connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.

In the present case, Yap, Ordoñez, Dublin and Casas did not deny that the ₱6 million payment had been made even before the delivery of the subject aircraft and rescue firefighting truck. Per Paragraph 2(a), Article V of the *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck*, the complete delivery and acceptance of the aircraft and rescue firefighting truck was a precondition before any payment could be made by the purchaser regarding its 20% share on the costs, fees and charges. Casas' insistence on the impossibility of this condition has no basis, as the parties would not have entered into a contract if it was not possible to fulfill.

Significantly, the ₱6 million 'advance payment' would not have been possible if Yap and Casas did not sign Disbursement Voucher No. 101-2006-03118 dated "03/10/2006." It bears reiterating that Casas signed the disbursement voucher even if she knew that the payment of ₱6 million by MCIAA was not proper. That Yap already signed the voucher when it was forwarded to her (Casas') office; and that it had already been reviewed by the Legal Division did not oblige Casas to sign it if she discovered any irregularity in the transaction.

We note, too, that Yap signed the disbursement voucher even if he (like Casas) was *aware* of the non-delivery of the truck because he trusted the people in the Accounting, Finance and Legal Departments; and that he assumed that these people were diligent in their jobs. Notably, Yap signed the disbursement voucher twice: *first*, in the certification section; and *second*, in the approval portion. To our mind, Yap – taking into account his educational background and work experience – coupled with the delicate nature of the position he holds, failed to exercise the degree of diligence required of him to protect the interest of the government.

Contrary to the claims of the accused, the prosecution was able to show the element of causing undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

It bears pointing out that for violation of Section 3(e) of R.A. 3019, what contextually is punishable is the act of causing undue injury to any party, or giving to any private party of unwarranted benefits, advantage or preference in the discharge of the public officer's functions.

The Supreme Court has clarified that "the use of the disjunctive word 'or' connotes that either act of (a) 'causing any undue injury to any party, including the Government'; [or] (b) 'giving any private party

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any unwarranted benefits, advantage or preference,' qualifies as a violation of Section 3(e) of R.A. 3019, as amended." Thus, an accused "may be charged under either mode or both, x x x. In other words, the presence of one would suffice for conviction.¹¹

We emphasize in the present case that the MCIAA shelled out ₱6 million for the opening of a letter of credit which was supposed to be the obligation of the supplier. We reiterate that the ₱6 million had been paid *even without the delivery, inspection and acceptance of the subject fire truck.*

b. Presence of conspiracy established

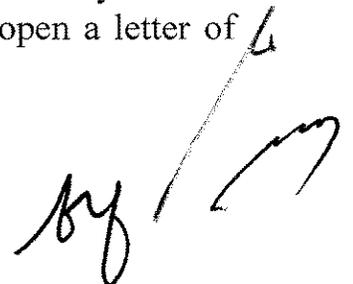
We likewise find unmeritorious the claims of the accused that conspiracy had not been proven. It is settled that conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. Complicity may be determined by concert of action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the fatal wound

As we explained in the decision, the records showed that Barillo went to the office of Atty. Sigfredo Dublin several times to coordinate and to submit a prepared contract. The *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck* had been signed by Yap and Barillo, and attested to by Casas that funds were available.

The records also disclosed that Barillo sent a letter to Yap on March 9, 2006 requesting that the sum of ₱6 million be remitted to AsiaBorders so that it can open a letter of credit. Surprisingly, Yap approved the letter-request of Barillo on the next day, as evidenced by the marginal note "*Approved x x x To: C, Finance For Processing.*"

To be sure, Barillo was a signatory to the *Contract for the Supply*, and as such, was aware of the following stipulations: *first*, the provision requiring the supplier to open an irrevocable letter of credit within 10 days from the execution of the Contract; *second*, the payment chargeable to the purchaser which shall not exceed P6 million could only be paid after the complete delivery and acceptance of the aircraft and rescue firefighting truck; and, *third*, the supplier shall furnish and deliver the aircraft rescue firefighting vehicle within one hundred eighty (180) calendar days x x x reckoned from the 11th day following receipt of the Notice to Proceed by the supplier. We are at a loss why Barillo would request the ₱6 million to be remitted to AsiaBorders even if the subject vehicle had not yet been delivered, and despite the obligation on the latter's part to open a letter of

¹¹ See *Tiongco v. People*, G.R. No. 218709-10, November 14, 2018.

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credit. Even more baffling is the approval of Yap – also a signatory to the Contract – to Barillo’s letter-request a day later.

As earlier stated, Yap signed twice in Disbursement Voucher No. 101-2006-03118: he certified that the expenses and cash advance were necessary and lawful; and approved the voucher for the amount of P6 million. Yap was also a signatory to the LBP Check dated March 10, 2006 amounting to ₱6 million issued to AsiaBorders Philippines, Inc. to which AsiaBorders issued Official Receipt No. 17. It bears stressing that this payment was questioned by State Auditor IV Ma. Divina Janulgue via Audit Query No. 2006-005, wherein the latter pointed out that an advance payment is not allowed by Section 88 of Presidential Decree No. 1445. Casas, for her part, signed the subject disbursement voucher even if she was aware of the non-delivery of the aircraft rescue firefighting truck.

The acts of the accused, taken together, clearly leads to no other conclusion other than that their acts were in pursuance of one common criminal objective.

c. Conviction and imposition of penalty under R.A. 3019 proper

We likewise find without merit Barillo’s contention that he could not be convicted for violation of R.A. No. 3019, since the basis of the charge against him, i.e., giving of advance partial payment was, Section 88 of P.D. No. 1445. In the fairly recent case of *Farouk B. Abubakar v. People of the Philippines*,¹² the Supreme Court affirmed the conviction of therein accused for violation of, among others, Section 3(e) of R.A. No. 3019, for causing advance payment in violation of Section 88 of P.D. No. 1445. For clarity, we reproduce the pertinent portions of the Court’s decision, viz:

Considering that sub-base aggregates are excluded from the list of construction materials allowed to be procured under a pre-payment scheme, the rules on advance payment under Presidential Decree No. 1445 should apply. For an advance payment to be lawful, the materials or supplies should have been delivered in accordance with the contract and should have been duly inspected and accepted. If there is no delivery, prior approval of the President is required.

The Sandiganbayan found that the procurement of sub-base aggregates was not supported by any purchase orders. There were also no receipts to evidence delivery of the materials on-site.^[174] Thus, the disbursement should not have been approved by petitioners due to the absence of appropriate supporting documents. Undue benefit was given to contractors when they were allowed to claim advance payments totaling P14,400,000.00 for undelivered materials. These contractors had no right to receive them under Section 88(1) of Presidential Decree No. 1445.

¹² G.R. No. 202408, June 27, 2018.

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We also note in this regard that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of RA 3019. In short, if there is an allegation of conspiracy, a private person may be held liable together with the public officer, in consonance with the avowed policy of the Anti-Graft and Corrupt Practices Act which is to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto.

II. Yap's conviction for violation of Section 3(g) of R.A. 3019, as amended

The elements of Section 3(g) are: first, the accused is a public officer; second, that he or she entered into a contract or transaction on behalf of the government; and third, that the contract or transaction is grossly and manifestly disadvantageous to the government.

The first element is undisputed as this had been duly stipulated by the parties during the pre-trial. The second element is also present, as Yap, in his capacity as MCIAA's General Manager, transacted with AsiaBorders Philippines, Inc., as evidenced by the *Contract for the Supply and Delivery of One (1) Aircraft Rescue Fire Fighting Truck*.

Yap's argument that the contract was not grossly and manifestly disadvantageous to the government was belied by his own admission that the government would not have been prejudiced in the amount of ₱6 million if he did not sign Disbursement Voucher No. 101-2006-03118.

Yap's insistence on the application of the *Arias* doctrine is misplaced. We recall that in *Arias v. Sandiganbayan*,¹³ the Supreme Court held that heads of offices may, in good faith, rely to a certain extent on the acts of their subordinates who prepare bids, purchase supplies, or enter into negotiations.

In the present case, however, there were numerous circumstances in the present case that should have prompted Yap to make further inquiries, more so since he was aware of the non-delivery of the air and rescue fire-fighting vehicle; the supplier's obligation to open an irrevocable letter of credit; and the latter's obligation to deliver the vehicle within a certain time-frame. We likewise highlight the fact that the difference between the contract price and the declared value of the ARFFV was *so glaring* that could not have been overlooked by Yap had he exercised the diligence demanded by his position. Unlike in *Arias*, where there were no reasons for the heads of offices to further examine each voucher in detail, Yap, by virtue of the duty given to him as head of MCIAA, had the responsibility to

¹³ 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., En Banc]

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examine the subject disbursement voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.

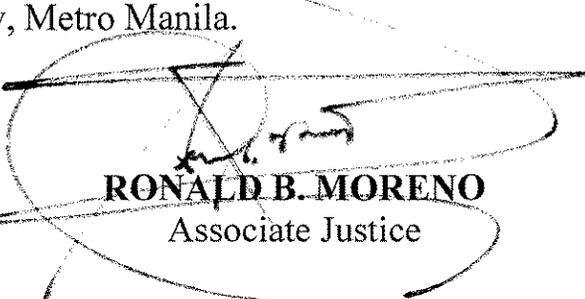
We additionally point out that Yap did not bother to verify from Barillo if the ₱6 million was actually 20% of the cost, fees and charges for the opening of a letter of credit; and that he did not consult anyone from the MCIAA before approving the disbursement voucher because he *trusted* the people who prepared it. We likewise highlight that Yap signed the disbursement voucher even if he was *aware* that there were violations of the terms of the contract. These circumstances make the Supreme Court's pronouncement in *Arias* inapplicable to him.

In fine, the application of the *Arias* doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. Simply put, there exists in the present case exceptional circumstances which should have prodded Yap to be curious and go beyond what his subordinates prepared or recommended. The added reason contemplated in *Arias* which would have put him (Yap) on guard and examine the documents with some degree of circumspection before signing them was obtaining in this case.

WHEREFORE, in light of all the foregoing, the Court **DENIES** the motions for reconsideration filed by Adelberto F. Yap, Ma. Venus b. Casas and Marlon E. Barillo for lack of merit.

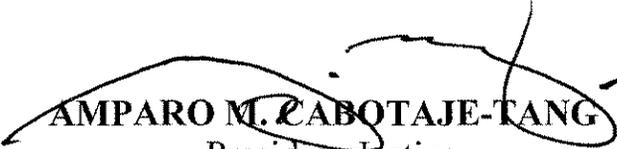
SO ORDERED.

Quezon City, Metro Manila.

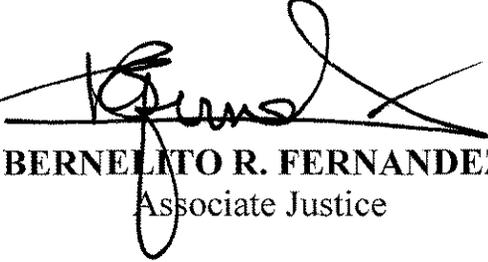


RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson



BERNELITO R. FERNANDEZ
Associate Justice