



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

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**THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**Crim. Case No.**

**SB-11-CRM-0272**

For: Violation of Section 3(e),  
Republic Act No. 3019, (Anti-Graft  
and Corrupt Practices Act), as  
amended

- versus -

**ELENITA S. BINAY,  
NICANOR V. SANTIAGO, JR.,  
ERNESTO A. ASPILLAGA,  
VIRGILIO M. CLARETE,  
DULCE P. CRUZ,  
LUZ R. YAMANE - GARCIA,  
CONRADO B. PAMINTUAN,  
JAIME P. DELOS REYES,  
NESTOR R. BULOS,  
APOLLO B. CARREON, and  
CARMEN C. MAANO**

*Accused.*

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**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**Crim. Case No.**

**SB-11-CRM-0273**

For: Malversation (Article 217 of  
the Revised Penal Code)

- versus -

**ELENITA S. BINAY,  
NICANOR V. SANTIAGO, JR.,  
ERNESTO A. ASPILLAGA,  
VIRGILIO M. CLARETE,  
DULCE P. CRUZ,  
LUZ R. YAMANE - GARCIA,  
CONRADO B. PAMINTUAN,  
JAIME P. DELOS REYES,  
NESTOR R. BULOS,  
APOLLO B. CARREON, and  
CARMEN C. MAANO**

*Accused.*

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**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**Crim. Case No.**  
**SB-11-CRM-0274**

For: Malversation (Article 217 of  
the Revised Penal Code)

- versus -

**ELENITA S. BINAY,**  
**NICANOR V. SANTIAGO, JR.,**  
**ERNESTO A. ASPILLAGA,**  
**VIRGILIO M. CLARETE,**  
**DULCE P. CRUZ,**  
**LUZ R. YAMANE - GARCIA,**  
**CONRADO B. PAMINTUAN,**  
**JAIME P. DELOS REYES,**  
**NESTOR R. BULOS,**  
**PASCUALITA CAPAYCAPAY-PEÑAFLOR,**  
**EDGARDO F. MAMUYAC, and**  
**APOLLO B. CARREON**

*Accused.*

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**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**Crim. Case No.**  
**SB-11-CRM-0275**

For: Violation of Section 3(e),  
Republic Act No. 3019, (Anti-Graft  
and Corrupt Practices Act), as  
amended

- versus -

**ELENITA S. BINAY,**  
**NICANOR V. SANTIAGO, JR.,**  
**ERNESTO A. ASPILLAGA,**  
**VIRGILIO M. CLARETE,**  
**DULCE P. CRUZ,**  
**LUZ R. YAMANE - GARCIA,**  
**CONRADO B. PAMINTUAN,**  
**JAIME P. DELOS REYES,**  
**NESTOR R. BULOS,**  
**PASCUALITA CAPAYCAPAY-PEÑAFLOR,**  
**EDGARDO F. MAMUYAC, and**  
**APOLLO B. CARREON**

*Accused.*

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Present:

**CABOTAJE-TANG, A.M.**  
*P.J., Chairperson*  
**FERNANDEZ, B.R., J.**  
**MORENO, R.B., J.**  
**HERRERA, O. C., J.**  
**QUIROZ, A. L., J.**

Promulgated on:

OCTOBER 27, 2021 

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### RESOLUTION



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

For resolution is the Motion dated June 25, 2021 filed by accused Conrado B. Pamintuan and accused Jaime P. de los Reyes, through counsel, seeking a partial reconsideration of the Decision promulgated on June 10, 2021, finding both accused-movants guilty beyond reasonable doubt of two (2) counts of violation of Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended.

The lone argument of the accused-movants is that this Court violated their right to due process when it convicted them for the crime charged.

To support this argument, the accused-movants principally invoke their right to due process as an explicit Constitutional guarantee, particularly, to be apprised of the specific act that they are being prosecuted for. Citing Section 6, Rule 110 of the Rules of Court as well as the case of People vs. Manalili (G. R. No. 121671, August 14, 1998), both accused-movant claim that the Amended Informations did not specifically charged them for failing to conduct a canvass



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of other suppliers and for being grossly and inexcusably negligent for such an omission.

The accused-movants maintain that the overt acts alleged in the Amended Informations are limited to two (2); namely, that they supposedly dispensed with competitive bidding without valid justification; and second, that they failed to validate or ensure the authenticity of the documents submitted by the supplier.

Both accused-movants insist that they cannot be faulted for dispensing with the competitive bidding since it was not their decision to make and that they had no power to override the Committee on Awards. They nevertheless maintain that the only issue should have been the acts pertaining to the review of the documents submitted by Apollo Medical and its deliberate misrepresentation as the sole and exclusive distributor of the hospital beds and sterilizers needed by the Ospital ng Makati. Since the documents submitted by Apollo Medical appear complete on its face, the accused-movants claim good faith.

Additionally, the accused-movants argue that neither the allegations nor any of the evidence of the prosecution establish that they had any knowledge of any irregularity, and, if there was any, either commit or intentionally participate in any conspiracy.

When given time (Minutes, June 25, 2021), the prosecution filed its Opposition dated July 14, 2021.

Initially, the prosecution posits that the assailed Decision exhaustively addressed the grounds raised by the accused-movants.

It adds that, at this stage, the accused-movants can no longer assail the validity of the Amended Informations as these strongly weathered the several motions to quash or dismiss previously filed.

The prosecution also alleges that this Court took into account all the evidence presented. Although the prosecution admitted that the fact of failing to conduct a canvass was not specifically alleged, the evidentiary facts established during

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trial proved or supplemented the ultimate facts alleged in the Amended Informations.

Furthermore, the accused-movants were convicted, based on their participation as members of the Committee on Canvass, by utterly failing to assess or evaluate the qualifications of Apollo Medical as the sole or exclusive distributor of the subject medical equipment, an official function alleged in the Amended Informations. Likewise, the prosecution insists that accepting the plain assertion posed by the accused-movants that they had no foreknowledge of any irregularity committed by Apollo Medical was a blatant mockery of the law and a grave injustice.

We now rule.

To reiterate, the singular issue raised by the accused-movants focuses on a violation of their right to due process when they were convicted for violation of Section 3 (e) of R. A. No. 3019 through gross inexcusable negligence.

The accused-movants, in chorus, claim that they were not specifically charged in the Amended Informations for - failing to perform a canvass of other suppliers, and for being grossly and inexcusably negligent for such an omission.

We disagree.

The Supreme Court, in a long line of cases has consistently ruled that an information need only state the ultimate facts constituting the offense and not the finer details of why and how the crime was committed (People vs. Sandiganbayan (Fourth Division), G.R. No. 160619, September 9, 2015, 769 Phil. 378-394).

We recall that ultimate facts are defined as "those facts which the expected evidence will support. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established." It refers to the facts that the evidence will prove at the trial (Salita vs. Magtolis, G. R. No. 106429, June 13, 1994, 233 SCRA 100, 105).

It has also been defined as the principal, determinative, and constitutive facts on whose existence the cause of action

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rests (Philippine Bank of Communications vs. Trazo, 531 Phil. 636, 653 (2006)); they are also the essential and determining facts on which the court's conclusion rests and without which the judgment would lack support in essential particulars.

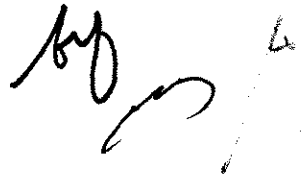


On the other hand, evidentiary facts are the facts necessary to establish the ultimate facts; they are the premises that lead to the ultimate facts as conclusion (Tantuico, Jr. vs. Republic, G. R. No. 89114, December 2, 1991, 204 SCRA 428, 437, citing Womack vs. Industrial Comm., 168 Colo. 364, 451 P.2d 761, 764). They are facts supporting the existence of some other alleged and unproven fact.

In *Bautista vs. Court of Appeals* (413 Phil. 159 (2001)), the Supreme Court explained these two (2) concepts in relation to a particular criminal case, to wit - -

The distinction between the elements of the offense and the evidence of these elements is analogous or akin to the difference between ultimate facts and evidentiary facts in civil cases. Ultimate facts are the essential and substantial facts which either form the basis of the primary right and duty or which directly make up the wrongful acts or omissions of the defendant, while evidentiary facts are those which tend to prove or establish said ultimate facts.

While it is fundamental that every element of the offense must be alleged in the Information, matters of evidence – as distinguished from the facts essential to the nature of the offense – do not need to be alleged. Whatever facts and circumstances must necessarily be alleged are to be determined based on the definition and the essential elements of the specific crimes (*Romualdez vs. Sandiganbayan*, 479 Phil. 265, 288-289 (2004)).

As correctly pointed out by the prosecution, while such particular fact of failing to conduct a canvass was not specifically alleged in the Amended Informations, it remains to be among the evidentiary facts established during trial which proved or supplemented the ultimate facts alleged therein. Thus, a finding of gross inexcusable negligence for the omission gave a private party unwarranted benefits in the



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discharge of their functions remains within the ambit of Section 3 (e) of R. A. No. 3019.





This Court also stresses that the elements of the crime charged have been sufficiently alleged in the Amended Informations, and likewise established and proven beyond a reasonable doubt. To reiterate - -

x x x the elements of the offense are as follows - -  
(1) the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (2) that he acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions (Cambe vs. Ombudsman, G.R. No. 212014-15, December 6, 2016, citing Presidential Commission on Good Government vs. Navarro-Gutierrez, G. R. No. 194159, October 21, 2015).

The fact that the prosecution can properly allege these different modes alternatively in the information only means that the conviction may lie based simply on the evidence that is supportive of a particular mode (Jaca vs. People, G. R. Nos. 166967, 166974 and 167167, January 28, 2013, 702 Phil. 210-262).

Relative to the different modes of violating Sec. 3 (e) of R. A. No. 3019, particularly gross inexcusable negligence, it is imperative for this Court to dwell on the act of canvassing or the lack of it, since it is, as a general rule, the initial step that sets in motion the procurement process. The accused-movants cannot turn a blind eye on the issue of canvassing since they were charged basically as members of the Committee on Canvass, with the official function, among others, of conducting a canvass.

Accused-movant Pamintuan himself, in his sworn Judicial Affidavit dated March 7, 2019, testified on the standard operating procedure followed by the members of the



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Committee on Canvass during his tenure (pp. 4-7, Judicial Affidavit, March 7, 2019), in this wise - -

13.

Q: What were your duties as a member of the said committee?

A: We were tasked with the verification of suppliers for the various needs of Makati City.

14.

Q: How did you verify suppliers?

A: We studied the documentation provided by the suppliers, by inspecting their authority to operate, and all licenses and/or permits from the government that they submitted to us.

15.

Q: In connection with the instant cases, which supplier did you verify for the procurement of the hospital beds and sterilizers, if any?

A: Apollo Medical.

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23.

Q: In making your verification of suppliers, what was the Standard Operating Procedure ("SOP") that was prescribed to the members of Committee on Canvass, if any?

A: The first step is we receive the purchase request from the concerned office of the Makati City government.

24.

Q: What's the next step?

A: Next, we inspect the documents submitted, to see if they are authentic.

25.

Q: How would you determine the authenticity of the documents?

A: My team and I would look at the forms and check if they are (*sic*) duly signed. We would



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check if these were issued by government agencies, or bear notarial seals.

26.

Q: What is the next step, if any?

A: We would go to the address indicated by the supplier to check their showroom or office, to see that they indeed exist.

27.

Q: What would you do next, if any?

A: Next, we would canvass prices given by at least 2 other suppliers offering the same product and compare them against each other.

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30.

Q: You mentioned that you would compare and canvass prices submitted by several suppliers against each other. In this case, against which suppliers did you compare the prices of Apollo Medical, if any?

A: We did not compare with any other suppliers.

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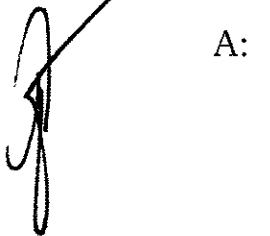
Q: Why did you not compare with any other suppliers?

A: To our knowledge, there were no other suppliers.

Moreover, accused-movant Pamintuan, during cross-examination, maintained that they conducted a canvass (TSN, p. 9, March 14, 2019), to wit - -

Q: Mr. Witness, we go back to the purchase request that you earlier mentioned and that you earlier identified. After you received that purchase request, you conducted a canvass. Is that correct?

A: Yes, Ma'am.



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Q: Do you have proof that you conducted the canvass for the suppliers of the requested sterilizers?

A: There is, Ma'am.

Q: What proof is that?

A: We asked the Requisition Officer where we can procure or purchase.

Q: So you asked from the Requisition Officer, where to buy instead for you searching that?

A: Yes, Ma'am because it is hard.

Q: So there was a purchase request and then when you study the purchase request, before you conduct the canvass, you asked first the Requisition Officer, where to buy?

A: Yes, Ma'am.

Q: What was the result of your canvass?

A: They told us that the item will only be purchased from Apollo.

Q: So it was the Requisition Officer who told you that the supplier is a sole and exclusive distributor?

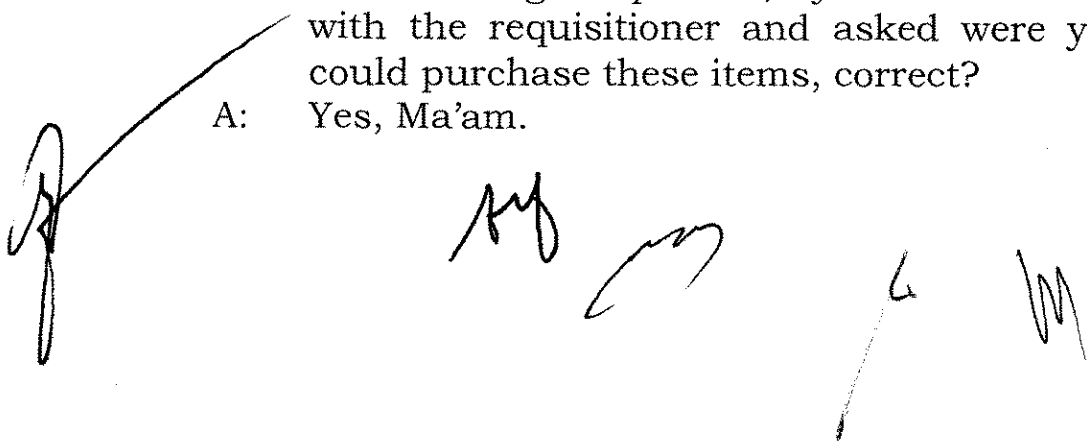
A: Yes, Ma'am.

However, the foregoing "canvass" testified to was simply a query made to the Requisition Officer of the end user and a strong reliance on the latter's response

On the other hand, accused-movant de los Reyes, during cross-examination, confirmed the lack of a canvass (TSN, p. 18, April 4, 2019) - -

Q: And since you were not familiar with the items being requested, you coordinated with the requisitioner and asked were you could purchase these items, correct?

A: Yes, Ma'am.

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Q: And you were told that Apollo Medical was the exclusive distributor of the requested items, correct?

A: Yes, Ma'am.

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Atty. Diaz: After you were told by the requisitioner that Apollo Medical was the exclusive distributor of the requested item, you required Apollo Medical to submit proof of being an exclusive distributor of the items requested?

A: We requested.

Q: And you said in your answer to Question No. 29 that the main responsibility of the Committee on Canvass of which you were a member was to scout or canvass suppliers for the various needs of Makati City, do you confirm that?

A: Yes, Ma'am.

Q: And did you or the Committee on Canvass scout for other suppliers other than Apollo Medical?

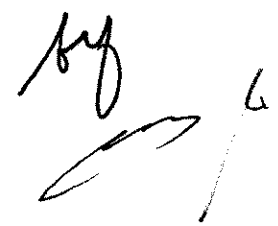

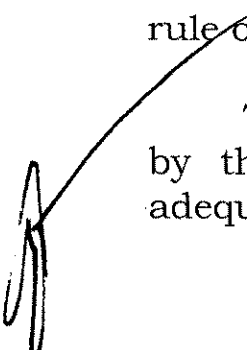
A: Ma'am..

Q: Yes or no? Did you scout or canvass?

A: No, Ma'am.

By failing to conduct a canvass, this Court is more than convinced that accused-movants, being members of the Committee of Canvass, committed gross inexcusable negligence in considering Apollo Medical as an exclusive distributor and concluding that no suitable substitute of substantially the same quality existed in the market or even better and more advantageous to the Government. This determination eventually caused to dispense with the general rule of conducting a public bidding (p. 67, Decision).

This Court can only stress that the singular issue raised by the accused-movants was thoroughly discussed and adequately considered by this Court. There is thus no



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convincing reason to amend, alter, revise or even reverse, wholly or partially, the assailed Decision of June 10, 2021.

**WHEREFORE**, premises considered, the Motion for Partial Reconsideration dated June 25, 2021 of accused-movants Conrado B. Pamintuan and Jaime P. de los Reyes, is hereby **DENIED** for lack of merit.

**SO ORDERED.**



**BERNELITO R. FERNANDEZ**  
Associate Justice

We concur:



**RONALD B. MORENO**  
Associate Justice



**OSCAR C. HERRERA, JR.**  
Associate Justice



**ALEX L. QUIROZ**  
Associate Justice



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