REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

- versus -

JOHN PAUL K. ALVAREZ, ET AL.,
Accused.

CRIM. CASES NO. SB-11-CRM-0368
For: Violation of Section 3(e) of Republic Act No. 3019, as amended

Present:
FERNANDEZ, SJ, J., Chairperson
MIRANDA, J.,
MUSNGI, J., [1]
QUIROZ, J.,[2] and
MORENO, J. [3]

OCT 25 2021
Promulgated

RESOLUTION

MUSNGI, J.:

This resolves the:

1) *Motion for Reconsideration* dated December 14, 2018 filed by accused Manuel Hechanova Sitchon (Sitchon), Elbert Lutao Magbato (Magbato), Hegel Loriega Dumadia (Dumadia), Alberto Dela Vega Gidalanon (Gidalanon), and Arsenia Ditchon Juanero (Juanero) on December 17, 2018;[4]
2) *Motion for Reconsideration* dated December 21, 2018 filed by accused John Paul Kho Alvarez (Alvarez), the advance copy of which was received by the Court on December 27, 2018[5] while the original copy was received by the Court through registered mail on January 8, 2019;

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[1] Special Member in the Sixth Division, per Administrative Order No. 124-2017 dated April 4, 2017, who took part in the decision sought to be reconsidered; Section 2(a), Rule X, Revised Internal Rules of the Sandiganbayan.
[2] Special Member in the Sixth Division, per Administrative Order No. 2-C-2021 dated February 1, 2021.
[3] *Id.*
[4] Records, vol. 5, pp. 171-181.
[5] *Id.*, pp. 189-220.

3) *Manifestation (Re: Filing of Motion for Reconsideration of the 6 December 2018 Decision)* dated December 27, 2018 filed by Alvarez on the same day;[6]
4) *Very Urgent Motion and Manifestation (For Accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero)* dated December 21, 2018 filed through private courier on December 29, 2018 and received by the Court on January 3, 2019;[7]
5) *Comment (On the Motion for Reconsideration of Accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero)* dated January 3, 2019 filed by the Prosecution on the same day;[8] and
6) *Consolidated Comment/Opposition (On the Motions for Reconsideration filed by Alvarez, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero)* dated January 15, 2019 filed by the Prosecution on January 16, 2019.[9]

In their motion for reconsideration, accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero allege that:

1) a bidding was conducted on November 30, 2004 as shown by the handwritten logbook entry reflecting the minutes of the proceedings;
2) the Commission on Audit (COA) Auditor Jeremias Agui (Agui) and the Supervising Auditor for Legal Services Atty. Gileo Sioson Alojado (Alojado) testified that the COA did not find any irregularity, anomaly or illegality in the conduct of the bidding;
3) the Prosecution did not present evidence of manifest partiality, evident bad faith and gross inexcusable negligence on their part;
4) the Prosecution failed to prove conspiracy as they merely performed their tasks legally and above board; and
5) the Government did not suffer actual damage as the amount of Php93,575.00 representing the cost of repair to the Mitsubishi Pajero was reimbursed in full to the Government.

In his motion for reconsideration, accused Alvarez contends that:

1) his act of signing the check to pay Miasar Car Care, the basis of his guilt, was absent in the information;
2) he did not participate in the unwarranted award of the repair and engine replacement of the Pajero because he neither signed nor prepared the Abstract of Bids, Post Qualification Evaluation Summary, Notice of Award, and other BAC documents;

[6] *Supra* note 5, pp. 222-259.
[7] *Id.*, pp. 262-270.
[8] *Id.*, pp. 276-279.
[9] *Id.*, pp. 318-334.

3) he acted in good faith and had every right to rely to a reasonable extent on the assurances of Sitchon, Magbato, Dumadia, Gidalanon, Quijano, the inspectors, mechanic, and the end-user that the bidding was regular and the repairs were properly made before signing the check;
4) the lack of his signature on the undated Notice of Award cannot be equated to an exceptional circumstance which should have prodded him to inquire into the circumstances surrounding the transaction with Miasar Car Care;
5) his failure to inquire further was a mere omission and not an express or implied agreement to overlook the requirements of the law;
6) there was no proof of conspiracy;
7) the Prosecution witnesses Alojado and Agui testified that there was nothing anomalous in the award of the repair and engine replacement of the Pajero;
8) there was no undue injury to the Municipality of Ilog as Miasar Car Care actually repaired the Pajero and rectified it when defects were found, and that he immediately returned the amount involved after the same was disallowed.

Accused Alvarez manifested that he served and filed his motion for reconsideration through registered mail on December 21, 2018. He attached an advanced copy of his motion for reconsideration bearing proofs of service and filing.

In their *Very Urgent Motion and Manifestation*, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero contend that:

1) they filed their motion for reconsideration before the lapse of the prescribed 15-day period but later discovered the unintentional omission of the notice of hearing due to lack of attention, volume of work, excitement and anticipation of the coming Yuletide holidays by the staff of their counsel, and hurried work environment, personal distractions of their counsel caused by the extended holidays;
2) the denial of the motion for reconsideration, even based on technicalities, would work extreme prejudice to them as they were convicted of violation of R.A. No. 3019;
3) they humbly beg the Court's understanding and liberality as a matter of substantial justice and so as not to deprive them of their right to appeal;
4) a stringent application of the rules would hinder rather than serve the demands of substantial justice;
5) a rigid application of the rule will result in a manifest failure or miscarriage of justice, the rule may be relaxed especially if a party

successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein;

6) the procedural rules may be relaxed for the most persuasive of reasons to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the prescribed procedure; and
7) their life and liberty are at stake.

In the *Comment (On the Motion for Reconsideration of Accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero)* dated December 14, 2018, Prosecution alleges that said motion should be denied for being a mere scrap of paper as it lacked the requisite notice of hearing under the Rules of Court.

In the *Consolidated Comment/Opposition (On the Motions for Reconsideration filed by Alvarez, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero)*, the Prosecution states that:

1) the National Bureau of Investigation (NBI), not the COA, conducted the investigation on whether there was actual bidding in the award of the repair and engine replacement of the Pajero to Miasar Car Care;
2) the overt acts of Sitchon, Magbato, Dumadia, Gidalanon, Juanero, Quijano and Alvarez were connected, indispensable and tended towards the award of the repair and engine replacement of the Pajero to Miasar Car Care despite the absence of a public bidding and non-compliance with R.A. No. 9184;
3) the representative and owner of the two (2) entities that allegedly joined the public bidding on November 30, 2004 testified that they were not present in the said public bidding and did not submit a bill of quantities;
4) the accused gave unwarranted benefits, advantage or preference to Miasar Car Care when the repair and engine replacement of the Pajero was awarded to it without public bidding;
5) the Municipality of Ilog suffered damages in the amount of Php98,500.00 representing the amount it paid to Miasar Car Care for the repair and engine replacement of the Pajero;
6) accused Alvarez cannot rely on the Arias doctrine because accused Sitchon's approval of the undated notice of award violated R.A. No. 9184 and its Implementing Rules and Regulations-A (IRR-A) and was an exceptional circumstance which should have alerted accused Alvarez to make further inquiries from his subordinates, inspect the details of documents and check on the Pajero;

7) the arguments raised by the accused have already been passed upon by the Court in its Decision promulgated on December 6, 2018; and
8) the accused failed to point out serious irregularities that would warrant the reversal of the judgment of conviction against them.

RULING

Procedural Issue on the lack of Notice of Hearing

The Motion for Reconsideration of accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero is admitted despite lack of notice of hearing.

Sections 4 and 5, Rule 15 of the Rules of Court provide:

> *Sec. 4.* **Hearing of motion.** — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (4a)
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> *Sec. 5.* **Notice of hearing.** — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (5a)

A motion that fails to comply with the requirements mentioned by the rules is a defective motion. Generally, a motion without a valid Notice of Hearing is a mere scrap of paper as stated in the case of *Fajardo v. CA*[10]:

> A motion without notice of hearing is pro forma, a mere scrap of paper. It presents no question which the court could decide. The court has no reason to consider it and the clerk has no right to receive it. The rationale behind the rule is plain: unless the movant sets the time and place of hearing, the court will be unable to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection. The objective of the rule is to avoid a capricious change of mind in order to provide due process to both parties and ensure impartiality in the trial. *(citations omitted)*

[10] G.R. No. 140356, 20 March 2001.

However, this rule admits of exceptions especially when the adverse party has been given due process and the admission will not result to partiality. The Court in the case of *Basco vs. CA*[11] stated that procedural rules are set ultimately for the attainment of justice and if a strict application of the rules would hinder rather than serve, the procedural rules must yield to the attainment of justice.

In this case, the Prosecution was furnished with a copy of the motion for reconsideration and it was able to comment on the subject motion. Thus, the Prosecution was afforded due process when it was given an opportunity to comment.

Substantive Issues raised by the Motions for Reconsideration

Upon careful reassessment of the attendant facts and circumstances in this case, the Court partially reconsiders the ruling with respect to accused Alvarez in the Decision dated 6 December 2018. However, the Court finds no valid reason to reconsider the Decision with respect to the other accused, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero because the arguments raised have already been considered and passed upon in the said decision.

Accused Alvarez makes valid arguments on the following issues as stated in his *Motion for Reconsideration*:

1. There is a lack of evidence showing that accused Mayor Alvarez participated in the crime and an absence of clear showing that the accused was motivated by malice or gross negligence amounting to bad faith;

2. The mere failure of accused Mayor Alvarez to sign the Notice of Award could be interpreted as a mere administrative lapse and is inadequate to show conspiracy; and

3. The *Arias* doctrine in relation to *Joson III v. COA* decision is applicable in this case as regards accused Mayor Alvarez.

The *Information* charged the accused to have conspired with each other in the preparation of bidding documents, specifically, the *Minutes of the Public Bidding, Abstract of Bids, Bids and Awards Committee Preliminary Examination, Post Qualification Evaluation Summary Report; and Resolution Recommending the Award of Contract.*

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[11] G.R. No. 125290, 9 August 2000.

However, the prosecution was only able to present four (4) documents relating to the bidding, namely, the *Abstract of Bids*[12], *Post Qualification Evaluation Summary Report*[13], *Notice of Award for the Repair and Replacement of Motor Engine of DECS Service Vehicle*[14], and *Inspection and Acceptance Report of the Municipality of Ilog*[15]. It is undisputed that the responsibility and control in the preparation of these documents rests with the Bids and Awards Committee (BAC) where the other accused are members of. Other than Mayor Alvarez's admission that he signed the check that covered the payment of the repair, there is no other evidence that reveals criminal culpability beyond legal cavil.

In the case of *Joson III vs. COA* citing *Albert v. Gangan, et. al.,*[16] the Supreme Court said that a mere signature in the award of the contract and the contract itself without anything more cannot be considered a presumption of liability, to wit:

> The fact that petitioner is the head of the procuring entity and the governor of Nueva Ecija does not automatically make him the party ultimately liable for the disallowed amount. He cannot be held liable simply because he was the final approving authority of the transaction in question and that the employees/officers who processed the same were under his supervision.
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> As this Court held in the case of *Ramon Albert v. Celso D. Gangan, et. al.*
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>> We have consistently held that every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence. The fact that such officer signs or initials a voucher as it is going the rounds does not necessarily follow that the said person becomes part of a conspiracy in an illegal scheme. The guilt beyond reasonable doubt of each supposed conspirator must be established.
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> Petitioner, being the head of the procuring entity in addition to his duties as the governor of Nueva Ecija, is responsible for the whole province. With the amount of paperwork that normally passes through in his office and the numerous documents he has to sign, it would be counterproductive to require petitioner to specifically and meticulously examine each and

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[12] Exhibit "P".
[13] Exhibit "R".
[14] Exhibit "T".
[15] Exhibit "W".
[16] G.R. No. 223762, 07 November 2017.

> every document that passes his office. Thus, petitioner has the right to rely to a reasonable extent on the good faith of his subordinates.
>
> Mere signature of the petitioner in the award of the contract and the contract itself without anything more cannot be considered as a presumption of liability. It should be recalled that mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency. *(citations omitted)*

In *Cruz v. Sandiganbayan,*[17] the discrepancy in the names of the payee in the checks and in the disbursement voucher was considered as an exceptional circumstance which should have alerted the accused therein to investigate further on the procurement.

In *Leycano, Jr., v. Commission on Audit,*[18] the Supreme Court held that the acceptance of Provincial School Board projects prior to its assessment by the Inspectorate teams is an exceptional circumstance that should have alerted the accused in the case.

In *Escara v. People,*[19] the accused knew that the logs subject of the case have been confiscated by the Department of Environment and Natural Resources (DENR) and that should have alerted him prior to approving the Inspection Report and Disbursement Voucher and thus, the ruling in *Arias* should not be made applicable.

A comparison of the attendant facts shows that the *Joson*[20] case is more applicable in the present case than the rulings in *Cruz,*[21] *Leycano*[22] and *Escara*[23] because the prosecution witness admitted that there was confusion during the time of the signing of this *Notice of Award* as to which procurement rules should apply. Witness Alojado testified that:

> "There was confusion as to the procurement rules to be applied because R.A. No. 9184 was implemented only in 2003. Prior to R.A. No. 9184, only the BAC Chairman was required to sign the notice of award. Under COA Circular No. 92-62, it is now the Executive (Head of Procuring Agency) who signs the notice of award."[24]

[17] G.R. No. 134493, 16 August 2005.
[18] G.R. No. 154665, 10 February 2006.
[19] G.R. No. 164921, 8 July 2005.
[20] Supra note 16.
[21] Supra note 17.
[22] Supra note 18.
[23] Supra note 19.
[24] Decision, p. 11 *citing* the Judicial Affidavit dated 3 September 2013, Records, vol. 3. p. 90.

Likewise, it was shown that accused Alvarez did not only obtain assurances from accused Sitchon but likewise approached the other members of the BAC namely accused Magbato, Gidalanon, Quijano and Dumadia to obtain their assurances. Likewise, acused Alvarez inquired about the vehicle from the inspectors, the mechanic, and the end-user.

Contrary to the rulings in *Cruz,*[25] *Leycano*[26] and *Escara,*[27] this testimony counters the presence of an exceptional circumstance which could have alerted Mayor Alvarez to look into the details of the procurement process. The *Arias* doctrine states that "heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies or enter into negotiations."[28] Briefly, the *Arias* case states:

> "We would be setting a bad precedent if a head of office plagued by all too common problems-dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing, his signature as the final approving authority."

The ruling in *Joson*[29] is more relevant in this case because (1) accused's only proof of involvement in this case is his signature in the check issued to pay for the procurement and (2) there is no proof of showing that accused was motivated by malice or gross negligence amounting to bad faith.

In *Joson,*[30] the head of the procuring entity signed the award and the contracts. In this case, the accused only signed a singular check to pay for the repair of the vehicle and this check was <u>not</u> even offered as evidence. Alvarez clearly did not participate in the preparation of the bidding documents. Comparing to *Joson,* Alvarez's failure to be "alerted" to the lack of his signature on the *Notice of Award* should not be interpreted to mean that Alvarez had prior knowledge of the irregularities in the preparation of the bid documents.

Another similarity in *Joson* is the fact that in this case, there is no showing that accused Alvarez committed overt acts that would show malice

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[25] Supra note 17.
[26] Supra note 18.
[27] Supra note 19.
[28] *Arias v. Sandiganbayan,* 180 SCRA 309.
[29] Supra note 16.
[30] *Id.*

and bad faith. Finally, as soon as the COA disallowed the expenditure, the accused reimbursed the full amount.

In view of the foregoing, reasonable doubt exists as to the participation and guilt of accused Alvarez in the crime charged.

It is well-settled that conviction in criminal actions demands proof beyond reasonable doubt. While not impelling such a degree of proof as to establish absolutely impervious certainty, the quantum of proof required in criminal cases nevertheless charges the prosecution with the immense responsibility of establishing moral certainty, a certainty that ultimately appeals to a person's very conscience. While indeed imbued with a sense of altruism, this imperative is borne, not by a mere abstraction, but by constitutional necessity.[31]

The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Corollary thereto, conviction must rest on the strength of the prosecution's evidence and not on the weakness of the defense. In this case, the prosecution's evidence failed to overcome the presumption of innocence, and thus, the accused is entitled to an acquittal.[32]

Indeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right.[33]

Nonetheless, the prosecution was able to prove that a crime was committed by the other accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero, as they acted with manifest partiality and evident bad faith in the award of the repair and engine replacement of the Pajero to Miasar Car Care despite the absence of competitive public bidding. It was shown that:

1) Eduardo Azuelo Panes (Panes), owner of Elaine's Car Care, did not join the public bidding supposedly held on November 30, 2004 for the repair and engine replacement of the Pajero;

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[31] *Daayata et al. v. People of the Philippines*, G.R. No. 205745, 08 March 2017.
[32] *People v. Maraorao*, G.R. No. 174369, 20 June 2012.
[33] *Fernandez v. People*, G.R. No. 138503, September 28, 2000, 341 SCRA 277, 299.

2) Panes neither issued the job estimate nor signed the Bill of Quantities which were presented in evidence;
3) Rebecca Nequia-de Guzman (Nequia-de Guzman), secretary of Panes, denied any participation of Elaine's Car Care in the said public bidding;
4) Jose Austero Rivas (Rivas), owner of Rivas Engine Rebuild Service, neither joined the public bidding nor signed any document relative to the repair of any government vehicle;
5) Panes, Rivas, and Nequia-de Guzman were not present during the alleged November 30, 2004 public bidding;
6) Anulfo Serlicula Lirazan (Lirazan) did not see any representative from Miasar Car Care and Elaine's Car Care in the public bidding;
7) accused Magbato never saw any of the claimed bidders; and
8) the undated Notice of Award was signed only by accused Sitchon and not by accused Alvarez, the Head of the Procuring Entity in violation of Section 37, Article XI of R.A. No. 9184.

When the violation of Section 3 (e) of R.A. 3019 is committed by giving unwarranted benefits, advantage or preference, as in this case, proof of damage is not required. The lack of competitive public bidding clearly shows that unwarranted benefits, advantage, or preference was afforded to Miasar Car Care.

Still, the Prosecution showed that the Municipality of Ilog suffered damages in the amount of Ninety- Eight Thousand Five Hundred Pesos (Php98,500.00) which represents the amount paid by it to Miasar Car Care for the repair and engine replacement of the Pajero.

Lastly, conspiracy was established by the Prosecution among accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero who prepared the Abstract of Bids and Post Qualification Evaluation Summary Report, and other BAC documents, and made it appear that a public bidding was conducted on November 30, 2004 even if two of the alleged bidders testified that they did not participate in the said public bidding. Without the concerted action of overt acts of these accused to award, approve, and pay the repair and engine replacement of the Pajero, the crime would have not been committed.

WHEREFORE, in view of the foregoing, the Very Urgent Motion and Manifestation (For Accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero) dated December 21, 2018 is **GRANTED**. The Motion for Reconsideration dated December 21, 2018 of accused Alvarez is **GRANTED**. The Motion for Reconsideration dated December 14, 2018 of accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero, is DENIED for lack of merit. The Decision of the Court promulgated on December 6, 2018 is **PARTIALLY MODIFIED,** the judgment against accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero are **AFFIRMED** and judgment is hereby rendered **ACQUITTING** accused Alvarez.

The cash and surety bond posted accused Alvarez for his provisional liberty is ordered returned to him, subject to the usual accounting and auditing procedures. The Hold Departure Order issued against him is ordered **LIFTED.**

SO ORDERED.

MICHAEL FREDERICK L. MUSNGI
Associate Justice

WE CONCUR:

ALEX J. QUIROZ
Associate Justice

RONALD B. MORENO
Associate Justice

WE DISSENT:

I concur in so far as it affirms the conviction of accused Sitchon, Magbato, Dumadia, Gidalanon and Juanero. I dissent as to the acquittal of accused Alvarez. I join the concurring and dissenting opinion of Associate Justice Karl B. Miranda.

SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

KARL B. MIRANDA
Associate Justice

Please see attached concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

MIRANDA, J.:

I respectfully **concur** with the resolution admitting the Motion for Reconsideration dated December 14, 2018 filed by accused Manuel Hechanova Sitchon (Sitchon), Elbert Lutao Magbato (Magbato), Hegel Loriega Dumadia (Dumadia), Alberto Dela Vega Gidalanon (Gidalanon), and Arsenia Ditchon Juanero (Juanero), and affirming their conviction for violation of Section 3(e) of Republic Act (R.A.) No. 3019. I respectfully **dissent**, however, on the resolution acquitting accused John Paul Kho Alvarez (Alvarez) of the same charge.

There was manifest partiality and evident bad faith in the procurement of the repair and engine replacement of the Pajero.

There is no valid reason to reconsider the Court's Decision dated December 6, 2018 finding accused Alvarez guilty beyond reasonable doubt of violation of Section 3(e) of R.A. No. 3019.

The following pieces of evidence show that accused Alvarez, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero acted with manifest partiality and evident bad faith in the award of the repair and engine replacement of the Pajero to Miasar Car Care despite the absence of competitive public bidding: 1) Eduardo Azuelo Panes (Panes), owner of Elaine's Car Care, did not join the public bidding supposedly held on November 30, 2004 for the repair and engine replacement of the Pajero; 2) Panes neither issued the job estimate nor signed the Bill of Quantities which were presented in evidence; 3) Rebecca Nequia-de Guzman (Nequia-de Guzman), secretary of Panes, denied any participation of Elaine's Car Care in the said public bidding; 4) Jose Austero Rivas (Rivas), owner of Rivas Engine Rebuild Service, neither joined the public bidding nor signed any document relative to the repair of any government vehicle; 5) Panes, Rivas, and Nequia-de Guzman were not present during the alleged November 30, 2004 public bidding; 6) Arnulfo Serlicula Lirazan (Lirazan) did not see any representative from Miasar Car Care and Elaine's Car Care in the public bidding; 7) accused Magbato never saw any of the claimed bidders; 8) the undated Notice of Award was signed only by accused Sitchon and not by accused Alvarez, the Head of the Procuring Entity; and 9) accused Alvarez signed the check to pay Miasar Car

Care despite the existence of an exceptional circumstance which should have led him to inquire further into the details of the procurement of the repair and engine replacement of the Pajero.

Accused Alvarez avers that his act of signing the check to pay Miasar Car Care was not in the information.

The contention of accused Alvarez deserves scant consideration.

The Information dated January 26, 2010 provides *"and thereupon paid the amount of Ninety-Eight Thousand Five Hundred Pesos (P98,500.00), Philippine Currency, as full payment for the said vehicle repair and engine replacement to Miasar Car Care, as per Check Disbursement Journal Entry Voucher dated December 21, 2004."* The said statement provides sufficient information for accused Alvarez to understand that payment through check comprised one of the acts in the charge of violation of Section 3(e) of R.A. No. 3019.

Accused Alvarez asserts that he had the right to rely on the assurances of accused Bids and Awards Committee (BAC) members that the bidding process was regularly conducted.

The assertion of accused Alvarez does not hold water.

In *Arias v. Sandiganbayan*,[1] the Supreme Court held that heads of offices can rely to a reasonable extent on their subordinates unless there is an added reason why they should personally examine a reimbursement voucher in detail.

In *Cruz v. Sandiganbayan*,[2] however, the Supreme Court held that the discrepancy in the names of the payee in the checks and in the disbursement voucher is an added reason or exceptional circumstance which should have prodded petitioner therein to look beyond what his subordinates did.

In *Leycano, Jr. v. Commission on Audit*,[3] the Supreme Court held that the acceptance of Provincial School Board projects prior to the assessment of the projects by the Inspectorate Teams and its issuance of a certificate of inspection is an exceptional circumstance that should have called the attention of the petitioner therein.

[1] G.R. Nos. 81563 & 82512, December 19, 1989.
[2] G.R. No. 134493, August 16, 2005.
[3] G.R. No. 154665, February 10, 2006.

In *Escara v. People*,[4] the Supreme Court held that petitioner therein failed to observe the requisite caution required by the circumstances because he had prior knowledge that the subject logs have been confiscated by the Department of Environment and Natural Resources (DENR). When petitioner therein signed the Inspection Report and Disbursement Voucher No. 001-9302-957, he had clearly taken himself out of the ambit of the protective blanket given to public officers by the *Arias* ruling.

In this case, an exceptional circumstance exists that should have alerted accused Alvarez and caused him to make further inquiries from his subordinates, inspect the details of the documents submitted to him, and even check on the Pajero rather than merely ask the BAC members, inspectors, mechanic, and end-user if the claimed bidding was regularly conducted. The Notice of Award can only be signed by accused Alvarez, the Head of the Procuring Entity, or his duly authorized representative. Accused Sitchon cannot approve the Notice of Award because he was not authorized by accused Alvarez and he was the BAC Chairman. Accused Alvarez cannot therefore claim protection under the *Arias* doctrine.

There was undue injury to the government, and unwarranted benefits, advantage, or preference was given to Miasar Car Care.

The third element in the violation of Section 3(e) of R.A. No. 3019 is present when the acts of the accused are proven to have caused undue injury to any party, including the government, or have given any private party unwarranted benefits, advantage, or preference. The accused may be charged under either mode or both. The presence of one is sufficient to convict them.[5] In this case, both undue injury to the Municipality of Ilog and unwarranted benefits given to Miasar Car Care were present.

The Municipality of Ilog suffered damages in the amount of Ninety-Eight Thousand Five Hundred Pesos (Php98,500.00) which represents the amount paid by it to Miasar Car Care for the repair and engine replacement of the Pajero. Even if the said amount was refunded, accused Alvarez, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero will still be convicted because damage is not required in the second mode which is giving unwarranted benefits, advantage or preference.[6]

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[4] G.R. No. 164921, July 8, 2005.
[5] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.
[6] *Id.*

The Prosecution proved beyond reasonable doubt that accused Alvarez, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero gave unwarranted benefits, advantage, or preference to Miasar Car Care when the repair and engine replacement of the Pajero was awarded to Miasar Car Care despite lack of competitive public bidding.

Conspiracy exists.

Conspiracy was established by the Prosecution. *First*, accused Sitchon, Magbato, Dumadia, Gidalanon, and Juanero prepared the Abstract of Bids and Post Qualification Evaluation Summary Report, and other BAC documents, and made it appear that a public bidding was conducted on November 30, 2004 even if two of the alleged bidders testified that they did not participate in the said public bidding. *Second*, accused Alvarez signed the check to pay for the repair and engine replacement of the Pajero despite the presence of an exceptional circumstance that should have caused him to inquire further from his subordinates, inspect the details of the documents, and check on the Pajero.

Taken together, these overt acts of accused Alvarez, Sitchon, Magbato, Dumadia, Gidalanon, and Juanero point to a joint purpose and design, concerted action, and community of interest, which is the unwarranted award, approval, and payment of the repair and engine replacement of the Pajero to Miasar Car Care.

Finally, findings of fact of an administrative agency must be respected so long as they are supported by substantial evidence. But lacking support, the factual findings of the COA cannot stand on its own and is therefore not binding on the court.[7]

Respectfully submitted.

KARL B. MIRANDA
Associate Justice

[7] *Cruz v. Gangan*, G.R. No. 143403, January 22, 2003.