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REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SPECIAL FOURTH DIVISION

PEOPLE OF THE PHILIPPINES, *Plaintiff,*

SB-16-CRM-1234

For: Violation of Sec. 3 (a) of R.A. No. 3019, as amended

Present:

- *versus* -

Quiroz, J.
Pahimna, J.*
Jacinto, J.
De La Cruz, J.**
Vivero, J.**

Promulgated:

CAMILO LOYOLA SABIO, *Accused.*

APR 01 2022

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RESOLUTION

JACINTO, J.:

This resolves accused Camilo Loyola Sabio's Motion for Reconsideration[1] of the Court's 29 November 2019 Decision[2] in SB-16-CRM-1234, finding him guilty of Violation of Section 3(a) of Republic Act (R.A) No. 3019, as amended.[3]

To recall, on 29 November 2019, the Court promulgated its Decision, finding accused Camilo Loyola Sabio guilty beyond reasonable doubt in SB-16-CRM-1234, while acquitting him in SB-16-CRM-1235 for failure of the prosecution to prove his guilt beyond reasonable doubt. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered as follows:

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* Vice Justice Reynaldo P. Cruz as Senior Member of the Fourth Division per Administrative Order (A.O.) No. 041-2020 dated 24 February 2020.
** Sitting as Special Member per Administrative Circular (A.C.) No. 15-C-2019.
[1] *Motion for Reconsideration of Decision Promulgated Guilty in SB-16-CRM-1234* dated 21 December 2019, filed on 23 December 2019, Records, Vol. I, pp. 520-521.
[2] Id., pp. 487-510.
[3] THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.

1. In **Criminal Case No. SB-16-CRM-1234**, accused Camilo Loyola Sabio is found **GUILTY** beyond reasonable doubt of violation of Section 3(a) of R.A. 3019 and, pursuant to Section 9 thereof, is hereby sentenced to suffer an indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum up to ten (10) years as maximum, with perpetual disqualification from holding public office;

2. In **Criminal Case No. SB-16-CRM-1235**, accused Camilo L. Sabio is hereby **ACQUITTED** of the charge of violation of Section 3(a) of R.A. No. 3019, for failure of the prosecution to prove his guilt beyond reasonable doubt. Since the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused. Furthermore, the hold departure order issued against the accused by reason of this latter case is hereby **LIFTED** and **SET ASIDE** and his cash bond, in the amount of Php30,000.00 is **RELEASED**, subject to the usual accounting and auditing procedures.

SO ORDERED.

For some reason, neither accused Sabio nor his counsel, Atty. Romeo T. Saavedra, secured a copy of the Decision after its promulgation. Nonetheless, as a matter of course, copies thereof were sent to them *via* registered mail.[4]

On 23 December 2019, accused filed his Motion for Reconsideration,[5] which was duly opposed by the prosecution.[6] Said motion, however, was denied for having been filed out of time, counting the 15-day period to file the same from the date of promulgation of the Decision.[7] The dispositive portion of the 27 January 2020 Resolution reads:

IN VIEW THEREOF, the Motion for Reconsideration dated 21 December 2019 of accused Camilo Loyola Sabio is hereby **DENIED**. Accordingly, the failure of the accused to file his motion for reconsideration within the prescribed period renders the judgment of conviction in **Criminal Case No. SB-16-CRM-1234**, final and executory.

Let a Warrant of Arrest be **ISSUED** against the accused and the post-promulgation bond he posted be **CANCELLED**.

SO ORDERED.[8]

On 6 February 2020, accused Sabio filed an undated motion for reconsideration (*Motion for Reconsideration of The Resolution Dated*

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[4] Records, Vol. I, p. 511.
[5] Supra at Note 1.
[6] See *Comment* dated 8 January 2020, Records, Vol. I, pp. 525-529.
[7] Resolution dated 27 January 2020, id., pp. 530-533.
[8] Emphasis in the original.

January 27, 2020 Denying Accused Sabio's Motion for Reconsideration of Decision Guilty in SB-16-CRM-1234),[9] and, on 18 June 2020,[10] he further filed a *Supplemental Motion* dated 16 June 2020,[11] to which the prosecution filed its Comment on 23 June 2020.[12] Both motions were denied.[13]

On 10 July 2020, accused filed a *Notice of Appeal*,[14] which was, however, denied due course in a Resolution dated 14 September 2020[15] for having been filed out of time.

Accused thereafter filed a Petition for *Certiorari* before the Supreme Court under Rule 65 of the Rules of Court to assail the Court's 27 June 2020, 25 June 2020, 10 August 2020, and 14 September 2020 Resolutions. Said case was docketed as G.R. No. 253260.

Accused's Petition was initially dismissed, but on 7 December 2021, the Supreme Court reconsidered its earlier resolution and granted his 2 February 2021 motion for reconsideration thereof. The relevant portion of the 7 December 2021 Resolution's dispositive portion reads:

> **WHEREFORE**, the Court **GRANTS** the Motion for Reconsideration dated February 2, 2021, VACATES its Resolution dated October 14, 2020, **NULLIFIES** the Resolutions dated January 27, 2020, June 25, 2020, August 10, 2020 and September 14, 2020 of the Sandiganbayan in Criminal Case No. SB-16-CRM-1234, and **REINSTATES** and **REMANDS** petitioner's Motion for Reconsideration of the Decision dated November 29, 2019 for resolution of the Sandiganbayan.
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> **FURTHER**, petitioner Camilo Loyola Sabio is ordered **PROVISIONALLY RELEASED** upon posting a cash bond of Two Hundred Thousand Pesos (P200,000.00), unless he is being detained for other lawful cause. The Sandiganbayan is DIRECTED to submit its compliance to the Court within five (5) days from notice.
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Following the remand of the case to this Court, accused filed his *Reiteration of Motions*.[16]

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[9] Records, Vol. I, pp. 543-545.
[10] Supra at Note 2.
[11] Records, Vol. I, pp. 577-596.
[12] Id., Vol. II, pp. 7-14. On 25 June 2020, accused file a *Reply to Comment* dated 25 June 2020 (the physical copy thereof was filed on even date), id., pp. 45-52.
[13] Resolutions dated 25 June 2020 id., pp. 29-31 and 10 August 2020, id., Vol. II, pp. 103-106.
[14] Dated July 2020 (no day indicated), id., pp. 64-65.
[15] Resolution dated 14 September 2020, id., pp. 135-140.
[16] Id., pp. 365-372.

Accused's arguments:

Accused Sabio consistently argues, among others, in his 21 December 2019 Motion for Reconsideration, undated motion for reconsideration, and *Supplemental Motion* that the prosecution failed to establish all the elements of the crime charged. Citing *Baviera v. Zoleta*[17] and the dissenting opinions to the Decision, he submits that Sec. 3(a) of R.A. No. 3019 may only be violated if the offender has the expectation of some consideration, reward, or gain in performing the act complained of.

He also points out that the Supreme Court's Decision in A.M. No. 0808-11-CA[18] could not be the proper basis to hold him liable as charged because it pertains to an administrative proceeding against members of the judiciary. He was not a party thereto nor was he administratively investigated therein.

Prosecution's arguments:

On the other hand, in its comments/oppositions,[19] the prosecution pointed out that accused failed to state the grounds upon which his motion is based, makes no reference to specific evidential matters for reconsideration, or point out any specific portion of the Decision that is contrary to law, facts, or jurisprudence. As such, his motion should be denied for violating Secs. 3 and 4 of Rule 121 of the Rules of Court.[20]

RULING

In resolving accused's Motion for Reconsideration, the Court will primarily address the arguments pertaining to the sufficiency of the prosecution's evidence. Hence, the Court must once again examine and closely analyze the evidence on record "under the lens of the judicial

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[17] G.R. No. 169098, 12 October 2006.
[18] Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete et al. v. Securities and Exchange Commission, et al.], 9 September 2008.
[19] *Comment* dated 8 January 2020, Records, Vol. I, pp. 525-529 and *Comment* dated 23 June 2020, id., Vol. II, pp. 7-14. On 25 June 2020, Accused filed a *Reply to Comment* dated 25 June 2020 (the physical copy thereof was filed on even date), id., pp. 45-52.
[20] RULES OF COURT, Rule 121, Secs. 3 and 4 provide:
"SEC. 3. *Ground for reconsideration.*—The court shall grant reconsideration on the ground of errors of law or fact in the judgment, which requires no further proceedings.
"SEC. 4. *Form of motion and notice the prosecutor.*—The motion for new trial or reconsideration shall be in writing and shall state the grounds on which it is based. If based on a newly-discovered evidence, the motion must be supported by affidavits of witnesses by whom such evidence is expected to be given or by duly authenticated copies of documents which are proposed to be introduced in evidence. Notice of the motion for new trial or reconsideration shall be given to the prosecutor."

microscope,"[21] conscious of the fact that judges are not infallible,[22] and that sometimes, they do err.

To start with, the *Information* alleges that accused Sabio violated Sec. 3(a) of R.A. No. 3019 when he allowed himself –

> xxx to be persuaded, induced, or influenced by Atty. Jesus I. Santos, another public officer, by readily acceding to the latter's request to persuade his brother, Justice Jose L. Sabio, Jr. to help the Government Service Insurance System (GSIS), in case (sic) filed against it by MERALCO, which is pending in the Division of the Court of Appeals, where Justice Jose L. Sabio, Jr. is the Chairperson, which act of (sic) Code of Professional of Responsibility for lawyers which is a rule duly promulgated by competent authority.

Sec. 3(a) of R.A. No. 3019 provides:

> Sec. 3. *Corrupt practices of public officers* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> (a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

The elements of said offense are as follows: (i) the offender is a public officer; (ii) he allowed himself to be persuaded, induced, or influenced to commit an act; and (iii) the act committed by the offender constitutes a violation of the rules or regulations duly promulgated by competent authority or an offense in connection with his official duty.[23] The concurrence of all said elements must be proven beyond reasonable doubt in order for an accused to be convicted of the charge.[24]

To prove its case, the prosecution presented the testimony of its lone witness, Associate Graft Investigation Officer (AGIO) III Corrine Joie M.

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[21] *Miranda v. Sandiganbayan*, G.R. Nos. 144760-61, 2 August 2017.
[22] See *Firestone Ceramics, Inc. v. Court of Appeals*, G.R. No. 127022, 28 June 2000, citing *Limketkai Sons Milling, Inc. v. Court of Appeals*, G.R. No. 118509, 5 September 1996.
[23] See *Ampil v. Ombudsman*, G.R. No. 192685 & 199115, 31 July 2013.
[24] See *People v. Claro y Mahinay*, G.R. No. 199894, 5 April 2017, citing *Patula v. People*, G.R. No. 164457, 11 April 2012.

Garillo, which was summarized in the 29 November 2019 Decision as follows:[25]

> The testimony of the prosecution's lone witness, Corrine Joie M. Garillo ("Garillo"), Associate Graft Investigation Officer III. Office of the Ombudsman, was dispensed with after the parties agreed to stipulate that her Judicial Affidavit[26] and its corresponding attachments would serve as her direct testimony.[27]
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> In her Judicial Affidavit, Garillo said that:
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> a) The complaint against accused Sabio pertains to the phone conversation between him and his brother, Justice Jose L. Sabio, Jr. ("Justice Sabio"), regarding the GSIS-MERALCO deal;
>
> b) The fact-finding investigation found accused Sabio liable for violation of Section 3 (a) of R. A. No. 3019 and Article 243 of the Revised Penal Code ("RPC") for persuading, inducing, and influencing his brother to issue an order in favor of the Government Service Insurance System ("GSIS") and the Securities and Exchange Commission ("SEC"), which the Supreme Court considered to be in defiance of the Code of Professional Responsibility;
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> c) It was also found that accused Sabio allowed himself to be persuaded and influenced by a certain Atty. Jesus I. Santos ("Atty. Santos") to ask help from his brother for the case against GSIS;
>
> d) Accused Sabio himself, in his direct testimony before the panel of investigators constituted by the Supreme Court in relation to A.M. No. 08-08-11CA, admitted that he called his brother, Justice Sabio, to help the GSIS;
>
> e) Accused Sabio, through his sworn testimony which constituted as his direct testimony given to the panel of investigators, further admitted that Atty. Santos from the GSIS Board of Trustees called him, requesting him to help the GSIS, and he readily welcomed such request; and
>
> f) On the basis of the aforementioned findings, a complaint was filed against the said accused.
>
> On cross examination (sic), Garillo clarified that the facts of the Complaint were based on the Decision of the Supreme Court, particularly accused Sabio's alleged inducement of his brother, Justice Sabio, to issue an order in favor of the GSIS and SEC. She emphasized that only the statements of Justice Sabio and accused Sabio were lifted from the Decision of the Supreme Court.[28] Accordingly, she identified paragraphs

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[25] Pages 3 to 4 of the Decision, Records, Vol. I, pp. 489-490. Citations omitted.
[26] Id., pp. 252-263.
[27] TSN, 21 November 2018, pp. 6-7.
[28] Id., p. 10.

5, 6, 9, and 10 of the Complaint, marked as Exhibit "H", to be those statements lifted from the said decision.

It is clear from the foregoing, however, that AGIO Garillo has no personal knowledge of the matters she testified to and that her investigation was solely based on the Supreme Court's decision in A.M. No. 08-8-11-CA.

The prosecution's documentary exhibits, on the other hand, are as follows:

Exhibit	Description
A	Certification dated 14 November 2008 issued by Supreme Court Deputy Clerk of Court and Reporter Ma. Piedad B. Ferrer-Campaña certifying that a Resolution promulgated on October 15, 2008 was issued by the Supreme Court in A.M. No. 08-8-11-CA entitled "Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete, et al. v. Securities and Exchange Commission, et al.], consisting of thirty-three (33) pages, duly sealed and signed on the left margin of each and every page thereof.
A-1 to A-33	Resolution dated 15 October 2008 issued by the Supreme Court in A.M. No. 08-8-11-CA entitled "Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete, et al. v. Securities and Exchange Commission, et al.]
B	Certification dated 11 December 2008 issued by Felipa Borlongan-Anama, Supreme Court Assistant Clerk of Court certifying that upon comparison with the original on file with the Supreme Court, the photocopy of the Decision (Exhibits B-1 to B-58) in A.M. No. 08-8-11-CA entitled "Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete, et al. v. Securities and Exchange Commission, et al.] consisting of fifty-eight (58) pages is a true and correct copy
B-1 to B-58	Photocopy from the original on file of the Decision dated September 9, 2008 in A.M. No. 08-8-11-CA entitled "Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete, et.al. v. Securities and Exchange Commission, et al.]
B-6 to B-7	Accused Sabio's testimony which he read before the panel of investigators, as quoted from the Supreme Court Decision in A.M. No. 08-8-11-CA entitled "Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692 [Antonio Rosete, et al. v. Securities and Exchange Commission, et al.]
C	Service Record of Camilo Loyola Sabio dated 18 October 2017
D	Appointment Paper of Camilo Loyola Sabio as Acting Chairperson of PCGG
E	Transmittal Letter dated 27 April 2005 addressed to Camilo Loyola Sabio, Office of the President, Malacañang Palace
F	Duly-filled up CSC Form No. 1, Position Description Form of Camilo Loyola Sabio
H	Complaint dated 14 January 2009 filed by the Office of the Ombudsman

	Field Investigation Office represented by Associate Graft Investigation Officer Corinne Joie M. Garillo

It is noteworthy that the prosecution's documentary evidence is limited to the Supreme Court Decision and accused Sabio's service record.

For sure, Exhibits "C" to "F" are enough to prove the first element – that accused Sabio was a public officer at the time he committed the act complained of.

As to the second element - that he allowed himself to be persuaded, induced, or influenced to commit an act - the prosecution's evidence merely consists of pages 6 and 7 of the Supreme Court's Decision, which quoted portions of accused's signed testimony before the Panel of Investigators (Exhs. "B-6" and "B-7"). The relevant portions thereof read as follows:

> In his signed testimony, which he read before the Panel of Investigators, Chairman Sabio narrated the circumstances of this call to his brother on May 30, 2008. It appears to have been prompted by a call from a member of the Board of Trustees of GSIS. To quote from Chairman Sabio's testimony:
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> > Last May 30, 2008 I was in Davao City Airport with my wife, Marlene, waiting for our 1:25 P.M. PAL flight to Manila.
> >
> > As we were boarding, I received a call from Atty. Jesus I. Santos, a Member of the Board of Trustees of GSIS. We had known each other and had become friends since before Martial Law because as Chief Counsel of the Federation of Free Farmers (FFF) we were opposing counsel in various cases in Bulacan.
> >
> > Attorney Santos informed me that the dispute between the GSIS and MERALCO was now in the Court of Appeals; and, that as a matter of fact, my brother, Justice Sabio, was chair of the Division to which the case had been assigned. Being a Trustee, Attorney Santos requested me to help. I readily welcomed the request for help and thanked him. There was no mystery about his having known of the results of the raffle because the lawyers are notified thereof and are present thereat. As a Trustee, Attorney Santos should be concerned and involved. As such it is his duty to seek assistance for the GSIS where he could legitimately find it. He was right in seeking my assistance.
> >
> > I was aware of the controversy between the GSIS and MERALCO. In essence this was in fact a controversy between the long suffering public and the mighty — financially and politically — controlling owners of MERALCO. MERALCO is not only a public utility but also a monopoly. Fortunately, GSIS

> had taken up the cudgels for the long suffering public, who are at the mercy of MERALCO.
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> XXX XXX XXX
>
> Immediately, I tried to contact Justice Sabio. But due to the noise I could not hear him. So I waited until we would arrive in Manila.
>
> As we were leaving the Airport, I again got in touch with Justice Sabio. After, he confirmed that he was in fact in the Division to which the petition of MERALCO had been raffled. I impressed upon him the character and essence of the controversy. I asked him to help GSIS if the legal situation permitted. He said he would decide according to his conscience. I said: of course.
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The prosecution did not submit a copy of accused Sabio's Sworn Statement.

Moving on, the word "induced" is not defined in R.A. No. 3019. However, resort may be made to jurisprudence where said word or term, as used in the Revised Penal Code (RPC),[29] was explained as follows:

> The verb "induce" is sufficiently broad, generally speaking, to cover cases where there exists on the part of the inducer the most positive resolution and the most persistent effort to secure the commission of the crime, together with the presentation to the person induced of the very strongest kind of temptation, as well as words or acts which are merely the result of indiscretion or lack of reflection and which carry with them, inherently, almost nothing of inducement or temptation. A chance word spoken without reflection, a wrong appreciation of a situation, an ironical phrase, a thoughtless act, may give birth to a thought of, or even a resolution to, crime in the mind of one for some independent reason predisposed thereto without the one who spoke the word or performed the act having any expectation that his suggestion would be followed or any real intention that it produce a result. In such case, while the expression was imprudent and the results of it grave in the extreme, he would not be guilty of the crime committed. Therefore, in applying the principles laid down to concrete cases it is necessary to remember only that the inducement must be made directly with the intention of procuring the

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[29] REVISED PENAL CODE, Art. 17, Par. 2 reads: "Art. 17. *Principals.* – The following are considered principals:
1. xxxx
2. Those who directly force or induce others to commit it;
3. xxxx"

commission of the crime and that such inducement must be the determining cause of the crime. (underscoring supplied)[30]

Thus -

One is *induced directly* to commit a crime either by *command*, or for a *consideration*, or by any other similar act which constitutes the real and moving cause of the crime and which was done for the purpose of inducing such criminal act and was sufficient for that purpose.[31]

Santos, Jr. v. People[32] is more restrictive:

xxx A person may be induced to commit a crime in two ways: (1) by giving a price or offering a reward or promise and (2) by using words of command.

Finally, *People v. Parungao*[33] instructs that:

xxx the inciting words must have great dominance and influence over the person who acts; they ought to be direct and as efficacious, or powerful as physical or moral coercion or violence itself.

It is clear from the aforesaid cases that the inciting words must be the "determining cause" of the act complained of.

In this case, the Court could not completely appreciate and give full weight to the prosecution's evidence, which only consists of portions of accused's affidavit as quoted by the Supreme Court in its Decision. Mere reference thereto cannot be a substitute for the evidence required in this criminal proceeding: the full, authenticated copy of accused's Sworn Statement.

More importantly, the quoted portions of accused's statement do not provide enough details - such as exactly what Atty. Santos told accused to do, or even the tenor of their conversation - to allow the Court to conclude that accused Sabio allowed himself to be induced to call his brother and convince the latter to favor GSIS in its case against MERALCO.

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[30] *United States v. Indanan*, G.R. No. 8187, 29 January 1913.
[31] Id., citing Viada. Italics in the original.
[32] G.R. No. 167671, 3 September 2008, citing *People v. Yanson-Dumancas*, G.R. Nos. 133527-28, 13 December 1999.
[33] G.R. No. 125812, 28 November 1996.

In fact, all that accused Sabio admitted to was that Atty. Santos called him and "requested" him to help without specifying what kind of help or course of action he was requested to do. As such, and without further details of their conversation, the Court cannot determine the extent of the alleged inducement, if any, that went into accused Sabio's act of calling his brother to tell him to help the GSIS in its case against MERALCO.

In this connection, there is merit in the dissenting opinions to the Decision that there is no evidence that accused Sabio acted out of some expected consideration or remuneration. However, this must be viewed as just another mode or manner of "inducement," rather than an additional element of the offense itself since inducement can be achieved through other means.[34]

In addition, the offense, as charged, may also be committed through persuasion or influence, both of which do not necessarily require the presence of remuneration. Instead, "persuade" is commonly defined as "to move by argument, entreaty, or expostulation to a belief, position, or course of action.[35] On the other hand, "influence" is "the act or power of producing an effect without apparent exertion of force or direct exercise of command"[36] or "the power or capacity of causing an effect in indirect or intangible ways."[37]

Given the above definitions, it can be inferred that two factors may be taken into consideration to determine whether they obtain in this case: (i) the stature of the "influencer" or "persuader" in relation to the accused; and (ii) the presence of factors that may convince the accused to accede to the "influencer's" or "persuader's" will.

Marzan v. People[38] helps illustrate how an individual's stature and public position figures into the level of influence he can exert within the purview of Sec. 3(a) of R.A. No. 3019. In said case, accused was influenced by his co-accused the Provincial Legal Officer into unlawfully releasing detention prisoners, *to wit*:

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[34] The Supreme Court *En Banc* in *Villa v. Sandiganbayan* (G.R. No. 87186, 24 April 1992) found the accused therein guilty under Sec. 3(a) of R.A. No. 3019 even in the absence of proof that they received any material remuneration from the transaction subject of the said case.

[35] Persuade, Merriam-Webster's Collegiate Dictionary (11th Ed. 2020), see also Persuade, *Merriam-Webster's Unabridged Dictionary*, Merriam-Webster, https://unabridged.merriam-webster.com/unabridged/persuade (last accessed on 13 March 2022).

[36] Influence, Merriam-Webster's Collegiate Dictionary (11th Ed. 2020)

[37] Influence, *Merriam-Webster's Unabridged Dictionary*, Merriam-Webster, https://unabridged.merriam-webster.com/unabridged/persuade (last accessed on 13 March 2022).

[38] *Marzan v. People*, G.R. No. 226167, 11 October 2021.

xxx The records show that in an Investigation Relative to Complaint filed against Marzan dated June 13, 2001, the following findings as to how Marzan was influenced by both Ciriaco and Rupisan was reported:

> That upon commitment and receipt by Jail Offenders of said District Jail, the father of one of the accused immediately peddled for influence for the release of his son and his son's co-accused.
>
> That the accused successfully secured a document signed by the **Provincial Legal Officer, a prominent figure in the political and legal arena and a close ally of the Provincial Governor stating therein that he will take under his custody abovenamed accused, disregarding proper judicial process, verbally citing further, in apparent intent to confuse subject personnel that the commitment and detention of the accused are unlawful since no warrant for their arrest was issued which should preclude the issuance of a commitment order, without mentioning with which he was clearly knowledgeable as a man of law, cases of apprehension thru *in flagrante delicto* as it was applicable in the case at hand**;
>
> That aside from said Provincial Legal Officer, one of the accused, through his father dropped the name of the Vice-Mayor [of] this municipality, the same upcoming mayor, with whom they are, to the knowledge of the undersigned, related by consanguinity.
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The Sandiganbayan aptly held that Atty. Rupisan took advantage of his position as Provincial Legal Officer to exert influence on Marzan as a jail officer. It held that:

> It is thus easy to perceive that accused [Atty. Rupisan] took advantage of his position as the Provincial Legal Officer of Nueva Vizcaya to exert influence on a jail officer. **As Provincial Legal Officer of Nueva Vizcaya, he had considerable authority and influence over other public officials in the province especially when it came to legal matters. His issuance of the *Recognizance* undoubtedly demonstrated sufficient persuasion, inducement and influence which led his co-accused SJO3 Dominador G. Marzan to release Cyrus Dulay and Wendell Pascua.**[39]

Here, there is no evidence to show that Atty. Santos exercised some ascendancy over accused Sabio or that they had such a level of personal

[39] Emphases added.

relationship that the latter was expected to act in the manner that Atty. Santos directed him to do.

Thus, the prosecution failed to conclusively show that accused Sabio was persuaded or influenced by Atty. Santos to call his brother and advocate for GSIS's cause. In fact, the same evidence that the Court is confronted with is also susceptible to the interpretation that accused Sabio called his brother on his own volition and out of his misplaced or mistaken belief that there was nothing wrong in doing so. The following portion of his statement reflects his personal sentiment on the matter:

> I was aware of the controversy between the GSIS and MERALCO. In essence this was in fact a controversy between the long suffering public and the mighty – financially and politically – controlling owners of MERALCO. MERALCO is not only a public utility but also a monopoly. Fortunately, GSIS had taken up the cudgels for the long suffering public who are at the mercy of MERALCO.[40]

This brings to mind the *equipoise rule*, which in essence holds that –

> xxx where the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction. The equipoise rule provides that where the evidence in a criminal case is evenly balanced, the constitutional presumption of innocence tilts the scale in favor of the accused.
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> It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[41]

Accused Sabio may have been grossly misguided in his assumption, with the Supreme Court itself concluding that he acted in violation of Canon 13 of the CPR. It also bears stressing that said acts are considered inherently wrong and may even be penalized under Art. 243 of the RPC.[42] Nonetheless,

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[40] Exhs. "B-6" and "B-7."
[41] *People v. Erguiza*, G.R. No. 171348, 26 November 2008.
[42] REVISED PENAL CODE, Art. 243 provides: "ARTICLE 243. *Orders or Requests by Executive Officers to Any Judicial Authority.* — Any executive officer who shall address any order or suggestion to any judicial

regardless of his liability under the CPR, which is clearly within the purview of "rules or regulations duly promulgated by competent authority," the prosecution still bears the burden of proving the presence of the second element of the offense: that the act resulted from having been persuaded, induced, or influenced by another. This the prosecution failed to do on the strength of its own evidence. In this regard, the following pronouncement in *People v. Berroya*[43] is *apropos*:

> xxx The State is required, in the discharge of the burden imposed upon it, to establish by proof all the essential elements of the crime with which the defendant is charged in the indictment, and to establish beyond a reasonable doubt that the accused is guilty of said crime. In the absence of such a degree of proof of the defendant's guilt, he is entitled to an acquittal, regardless of whether his moral character is good or bad. It is not sufficient that the preponderance or the weight of the evidence points to the guilt of the accused . . . as evidence showing a mere possibility of guilt is insufficient to warrant a conviction.

In sum, the evidence on record fails to establish all the elements of the crime, for which reason, accused's guilt has not been proven beyond reasonable doubt. As held in *People v. Mahinay*:[44]

> Requiring proof of guilt beyond reasonable doubt necessarily means that mere suspicion of the guilt of the accused, *no matter how strong*, should not sway judgment against him. It further means that the courts should duly consider every evidence favoring him, and that in the process the courts should persistently insist that accusation is not synonymous with guilt; hence, every circumstance favoring his innocence should be fully taken into account. That is what we must do herein, for he is entitled to nothing less. (italics in the original)

In view of the above discussion, there is no need to tackle the third element and the other issues or arguments raised by accused in his other motions.

WHEREFORE, in light of the foregoing, the Motion for Reconsideration filed by accused **CAMILO LOYOLA SABIO** is **GRANTED**.

The Decision dated 29 November 2019, finding accused guilty for Violation of Sec. 3(a) of R.A. No. 3019 is **VACATED** and **SET ASIDE** and a new one is hereby entered, **ACQUITTING** accused **CAMILO LOYOLA**

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authority with respect to any case or business coming within the exclusive jurisdiction of the courts of justice shall suffer the penalty of *arresto mayor* and a fine not exceeding 500 pesos."

[43] G.R. No. 122487, 12 December 1997.

[44] G.R. No. 199894, 5 April 2017.

SABIO of the charge of Violation of Sec. 3(a) of R.A. No. 3019 for failure of the prosecution to establish his culpability therefor beyond reasonable doubt.

The Bench Warrant of Arrest dated 27 January 2020[45] and the Commitment Order dated 8 June 2020[46] are hereby **RECALLED** and the Director of the Bureau of Corrections, Muntinlupa City, is **DIRECTED** to cause his **RELEASE**, unless he is being detained for other lawful cause. The cash bonds[47] he posted are likewise ordered **RELEASED**, subject to the usual accounting procedures, and the Hold Departure Order issued against him is ordered **LIFTED**.

SO ORDERED.

BAYANI H. JACINTO
Associate Justice

WE CONCUR:

ALEX L. QUIROZ
Associate Justice
Chairperson

LORIFEL LACAP PAHIMNA*
Associate Justice

EFREN N. DE LA CRUZ**
Associate Justice

I DISSENT:

KEVIN NARCE B. VIVERO**
Associate Justice

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* Vice Justice Reynaldo P. Cruz as Senior Member of the Fourth Division per A.O. No. 041-2020 dated 24 February 2020.
** Sitting as Special Member per A.C. No. 15-C-2019.
[45] Records. Vol. I, p. 535.
[46] Id., p. 571-573.
[47] Order 29 November 2019, id., p. 515.

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation with the Justices of the Special Division.

ALEX L. QUIROZ
Associate Justice
Chairperson, Fourth Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Special Division.

AMPARO M. CABOTAJE-TANG
Presiding Justice

SEPARATE CONCURRING OPINION

APR 0 1 2022

I agree with the *ponente* that the accused cannot be held criminally liable under Section 3(a) of R.A. No. 3019, which reads:

> "Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> (a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense."

Proceeding from the above, the crime charged has the following elements:

(1) The accused is a public officer;

(2) He persuades, induces, or influences another public officer to perform an act or allows himself to be persuaded, induced, or influenced to commit such violation or offense; and

(3) The act performed by the other public officer or committed by the accused constitutes a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duty of the latter.

In this regard, I maintain my position in my earlier Dissenting Opinion that the accused should be acquitted because of the absence of the second element. As I stated therein, *Baviera v. Zoleta,* [1] the leading case on Section 3(a) of R.A. No. 3019, teaches us that the intention of the legislature is to make criminal only those acts of using one's influence where there is a consideration, except only in situations where the inducement refers to the commission of a criminal act. In other words, for an act of inducement to clearly constitute graft and corruption under Section 3(a) of R.A. No. 3019, the same must either be: (i) with consideration; or (ii) for the purpose of committing a crime. Thus:

> "It is worthy to note the following Senate deliberations on the aforementioned provision of Republic Act 3019, to wit:
>
> "Senate deliberations (July 13, 1960)
>
> Senator MARCOS. I see. Now, I come to the second most important point. Is it true as charged that this bill does not punish influence peddling which does not

[1] G.R. No. 169098, October 12, 2006.

result in remuneration, or rather in which remuneration cannot be proved? I refer to Section 3, subsection (a), lines 10 to 13 on page 2 of the bill. It is to be noted that this section reads, as the first corrupt practice or act of a public official:

xxx

Now, suppose the influence that is extended to influence another public official is for the performance of an act that is not a crime like the issuance of license by the Monetary Board (p. 226)

Senator TOLENTINO. I see. (p. 226)

Senator MARCOS. It is claimed and charged by observers that this bill is deliberately watered down in order to save influence peddlers who peddle their influence in the Monetary Board, in the Reparations Commission, in government banks and the like. I would like the author to explain the situation. (p. 226)

Senator TELENTINO (sic). In the first place, I cannot conceive of an influence peddler who acts gratis. The very term "influence peddler" implies that there is something being sold, that is, the influence. So that when we say influence peddler who does not receive any advantage, that is inconsistency in terms because that would apply to any congressman, for instance, and precisely it was made clear during the debates that if a congressman or senator tries to use influence in the act of another by, let us say, trying to obtain a license for his constituent, if he does not get paid for that he does not use any influence. (p. 226)

xxx

Senator MARCOS. So, it is admitted by the author that the lending or utilization of influence x x x provided that there is no proof that he has been given material remuneration is not punished by this Act. (pp. 226-227)

Senator TOLENTINO. No, **the mere fact of having used one's influence so long as it is not to induce the commission of a criminal act would not be punished if there is no consideration. It would not be graft**. (p. 227)

Senator MARCOS. There is no proof of consideration because that is one thing difficult to prove. (p. 227)

Senator TOLENTINO. If you say there is no proof of consideration, as far as the bill is concerned, there is no offense. **So, so long as there is no proof of the consideration in the use of the influence, the offense is not committed under the bill because that would not be graft.**

Senator MARCOS. But we all admit that it is an immoral act for a public official like the President, the Vice-President, members of the Senate to unduly influence the members of the Monetary Board even without remuneration and say, "You better approve this license, this application of a million dollars of my good friend and compadre Mr. Cheng Cheng Po" or whatever he may be. **But he does not receive any reward, payment or remuneration for it.** Under the bill, he can get away with this act.

Senator TOLENTINO. If Your Honor considers it in that light, **I don't think that would constitute graft** and I don't think that would be included.

Senator MARCOS. **But it is immoral.**

Senator TOLENTINO. **It may be so,** but it depends on the circumstances. **But our idea, the main idea of the bill is to punish graft and corrupt practices. Not every act maybe, that is improper would fall under the provision of the bill.** (p. 227)" (Emphasis and underscoring supplied.)

In *Baviera,* the Supreme Court held that the Office of the Ombudsman did not commit grave abuse of discretion in dismissing the complaints before it for lack of probable cause, to wit:

> "On the merits of the petition, the Court finds that petitioner failed to establish that the respondent officials committed grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.
>
> **The Court has reviewed the assailed resolutions of the Office of the Ombudsman, and finds that petitioner likewise failed to establish probable cause for violation of Sections 3(a), (e) and (j) of RA No. 3019.** Indeed, in the absence of a clear case of abuse of discretion, this Court will not interfere with the exercise of the Ombudsman's discretion, who, based on his own findings and deliberate consideration of the case, either dismisses a complaint or proceeds with it." (Emphasis and underscoring supplied. Citations omitted.)

To me, if the absence of the aforesaid element, as discussed in *Baviera,* may correctly be cited as legal anchor in dismissing a case on preliminary investigation, all the more that it should be used in acquitting an accused after a trial on the merits of the case, considering the quanta of evidence required in both proceedings.

In the present cases, it was neither alleged in the *Informations* nor established during trial that the accused received or expected to receive any consideration in exchange for his act of "inducement" or that he induced his brother to commit a crime. Succinctly, while I agree that such act is immoral and unethical, it is not by itself criminal.

All told, I maintain my vote to acquit the accused of both charges and grant his Motion for Reconsideration.

ALEX L. QUIROZ
Chairperson/Associate Justice

SB-16-CRM-1234 – PEOPLE OF THE PHILIPPINES v. CAMILO LOYOLA SABIO

Promulgated:
APR 01 2022

x----------x

DISSENTING OPINION

VIVERO, *J.:*

I respectfully dissent.

Notwithstanding Justice Quiroz' very compelling discussion, I find it difficult to give overarching importance to ***Baviera v. Zoleta, et. al.***.[1]

In ***Baviera v. Zoleta, et. al.***,[2] Acting BID[3] Secretary, Gutierrez,[4] allowed Raman[5] to depart the country despite the latter having a Hold Departure Order issued by the Secretary of Justice in connection with complaints filed by Baviera against him. Baviera then filed a complaint against Gutierrez for violation of Section 3(a) of R.A. No. 3019, among other charges. However, following Graft Investigation and Prosecution Officer II Zoleta's recommendation, Baviera's complaint was dismissed for insufficiency of evidence. In particular, the Ombudsman found no evidence showing that Gutierrez received material remuneration as consideration for her alleged use of influence on her decision to allow Raman to travel abroad. When Baviera's petition for *certiorari* assailing the Ombudsman's ruling was dismissed by the Court of Appeals on a technicality, he elevated the matter to the Supreme Court, but said petition was denied for lack of merit. Though it was not the *ratio decidendi* of the Decision, the Supreme Court quoted Zoleta's recommendation, which included congressional records culled from Senate deliberations regarding the application of Section 3(a) of R.A. No. 3019.

Based on Senate deliberations,[6] Section 3(a) punishes influence peddling, which may be committed: (1) where an official influences another official to commit a crime, ***or*** (2) where the act

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[1] G,R. No. 169098, October 12, 2006, 535 Phil. 292-314 [Per J. Callejo, Sr.].

[2] *Ibid.*

[3] Bureau of Immigration and Deportation.

[4] MA. MERCEDITAS N. GUTIERREZ, (Then) Undersecretary, Department of Justice.

[5] Sridhar Raman, an Indian national who was the Chief Finance Officer of Standard Chartered Bank (SCB).

[6] Supra, Note 1.

which an official influenced another official to commit is *NOT* a crime, but the influenced official received a reward, payment or remuneration therefor.[7]

The final wording of the subject provision of law, as passed, apparently amended the description of the law from *"crime"* to *"violation of rules and regulations promulgated by competent authority or an offense in connection with the official duty of the latter."* [8]

What Section 3(a) prohibits is not any kind of persuasion, inducement or influence by a public officer towards another public officer, but the kind that resulted in either: (i) a violation of rules and regulations promulgated by competent authority; or (ii) an offense in connection with the official duties of the latter. Thus, there must be a prior or simultaneous finding of such violation or offense.

The generally accepted meanings of the words *"persuade"*, *"induce"*, and *"influence"* are:

1. **Persuade** – **to induce**, to act; to incline the will; to prevail upon by argument, advice, expostulations or reasons; to induce one by argument, entreaty, or expostulation into a determination, decision, conclusion, belief or the like.

2. **Induce** – to being on or about, to affect, cause, influence to an act or course of conduct, **lead by persuasion** or reasoning, incite by motive, prevail on; to lead on, to influence reasons.

3. **Influence** – to alter, move, sway of (sic) affect reasons most frequently used in connection with "undue" and **refers to persuasion**, machination or constraint of will presented or exerted to procure a disposition of property, by gift, conveyance or will.[9] (Emphasis and Underscoring Supplied.)

Prescinding from the foregoing, these three verbs have an interplay of meanings. Also, Section 3(a) does not require that the offender commit all the modes specifically mentioned. Thus, any act which constitutes either *"persuading"*, *"inducing"* or *"influencing"* alone, and independent of the others, will constitute a violation of Section 3(a) of R.A. No. 3019, as amended.[10] Fundamentally, the

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[7] *People v. Norbideiri B. Edding, et. al.,* Crim. Case No. SB-16-CRM-0336, July 23, 2021.

[8] *Ampil v. Office of the Ombudsman,* G.R. Nos. 192685, 199115, July 31, 2013 [715 Phil. 733, 754-755, 703 SCRA 1]; *People v. Ayesa F. Quirao,* Crim. Case No. SB-15-A/R-0005, May 20, 2016.

[9] Justice Romeo Escareal and Rosanna Escareal-Velasco, CPA, GRAFT AND CORRUPTION: THE TWIN SCOURGES OF PHILIPPINE SOCIETY (2012 Edition), pp. 87 – 88; Citations omitted; Emphasis Supplied.

[10] *People v. Enojo,* Criminal Case No. SB-18-CRM-0122, October 18, 2019.

penal statute's legislative intent[11] must be subserved. ***Verba intentione, non e contra, debent inservire*** (Words are to be subservient to the intent, not the intent to the words.).

In the Decision dated November 29, 2019, the Court, thru the late Justice Reynaldo P. Cruz, laid firmly the basis for its judgment of conviction thusly:

> "The evidence on record also confirms that accused Sabio indeed allowed himself to be persuaded and induced by Atty. Santos to call Justice Sabio for the purpose of persuading the latter to favor the cause of the GSIS against MERALCO. **This is evident from ACCUSED SABIO'S SIGNED TESTIMONY**, which he read before the Panel of Investigators, and **was quoted in the Supreme Court *En Banc*'s Decision dated 09 September 2008,**[12] x x x
>
> > x x x Last May 30, 2008 I was in Davao City Airport with my wife, Marlene, waiting for our 1:25 P.M. PAL flight to Manila. xxx xxx xxx.
> >
> > As we were boarding, I received a call from Atty. Jesus I. Santos, a Member of the Board of Trustees of GSIS. x x x x x x
> >
> > Attorney Santos informed me that the dispute between the GSIS and MERALCO was now in the Court of Appeals; and, that as a matter of fact, my brother, Justice Sabio, was chair of the Division to which the case had been assigned. Being a Trustee, Attorney Santos requested me to help. x x x x x x
> >
> > x x x x x x
> >
> > Immediately, I tried to contact Justice Sabio. But due to the noise I could not hear him. So I waited until we would arrive in Manila.
> >
> > As we were leaving the Airport, I again got in touch with Justice Sabio. After, he confirmed that he was in fact in the Division to which the petition of MERALCO had been raffled. I impressed upon him the character and essence of the controversy. **I asked him to help GSIS if the legal situation permitted.** x x x
>
> x x x x x x x x x

[11] R.A. No. 3019, as amended, provides:

> **Section 1.** *Statement of policy.* It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, **to repress certain acts of public officers** and private persons alike **which constitute graft or corrupt practices OR WHICH MAY LEAD THERETO.** (Emphasis and Capitalization Supplied.)

[12] *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692* [Antonio Rosete, et. al. v. Securities and Exchange Commission, et. al.], A.M. No. 08-8-11-CA, September 9, 2008 [Per Curiam, En Banc].

"Notably, in his **JUDICIAL AFFIDAVIT** dated 06 February 2019, accused Sabio **REITERATED HIS ADMISSIONS** when he stated that:

Q2. You have been accused of two (2) counts of violation of Sec. 3(a) for persuading, inducing and influencing your brother, the late Justice Jose L. Sabio, Jr. to help GSIS and SEC in the case filed by MERALCO against them over the phone, what do you say to that?

"A2. Knowing my late brother, Jose Sabio, to be intelligent and a hard man to convince, **I JUST LET HIM KNOW AND CALLED HIS ATTENTION TO THE RIGHTNESS OF THE STAND OF SEC for the GSIS in exercising its jurisdiction of cease and desist and show cause order to MERALCO, if legally permitted, IN RESPONSE TO THE REQUEST OF ATTY. JESS SANTOS of Bulacan in behalf of GSIS members**. x x x (Emphasis and Capitalization Supplied.)

I humbly submit that based on the foregoing discussion, accused Sabio crossed the line. However, the opinion of the majority engendered the belief that:

"x x x [T]he quoted portions of accused's statement do not provide enough details – such as exactly what Atty. Santos told accused to do, or even the tenor of their conversation – to allow the Court to conclude that accused Sabio allowed himself to be induced to call his brother and convince the later to favor GSIS in its case against MERALCO."[13]

The Supreme Court's *dictum* in its Decision dated September 9, 2008, whose factual backdrop is inextricably linked to the issue herein, should have been uppermost. The findings and conclusions of the Court *en banc* deserve utmost respect and credence, to wit:

The circumstances of the telephone call of Chairman Sabio to his brother Justice Sabio showed that Justice Sabio failed to uphold the standard of independence and propriety expected of him as a magistrate of the appellate court.

In his testimony before the Panel, Chairman Sabio **ADMITS** that he called up Justice Sabio on May 30, 2008 from Davao City, in response to a request for help from a member of the Board of Trustees of Meralco. Notwithstanding the fact that **CHAIRMAN SABIO CALLED TO RELAY TO JUSTICE SABIO THE "RIGHTNESS" OF THE GSIS' CAUSE AND ASKED HIM "TO HELP GSIS"** and that Justice Sabio allegedly told his brother that he would act in accordance with his conscience, the same still constituted a violation of **Canon 13 of the *Code of Professional Responsibility*** for lawyers, which provides that:

> **"A lawyer shall x x x refrain from any impropriety which tends to influence, or gives the appearance of influencing the Court."**

AS THEY WERE BOTH MEMBERS OF THE BAR, IT IS INCOMPREHENSIBLE TO THIS COURT HOW THE BROTHERS CAN

[13] Majority Opinion.

JUSTIFY THEIR IMPROPER CONVERSATION REGARDING THE MERALCO CASE. As the Panel observed in its Report:

> Ironically, both of them found nothing wrong with brother Camilo's effort to influence his younger brother's action in the Meralco case, because both believe that our Filipino culture allows brother-to-brother conversation, even if the purpose of one is to influence the other, provided the latter does not agree to do something illegal.

For the Panel, Justice Sabio violated Sections 1, 4, and 5, Canon 1 of the *New Code of Judicial Conduct for the Philippine Judiciary*, which provide that -

> **Sec. 1. Judges shall exercise the judicial function independently x x x free from extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.**
>
> **xxx xxx xxx**
>
> **Sec. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.**
>
> **Sec. 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.**

In the Investigators' mind, although Justice Sabio signed the TRO in favour of Meralco contrary to his brother's advice, Justice Sabio's "unusual interest in holding on to the Meralco case," seemed to indicate that he may have been actually influenced by his brother "to help GSIS." In arriving at this conclusion, the Panel noted the following circumstances: (1) Justice Sabio adamantly refused to yield the chairmanship of the Special Ninth Division although the regular chairman, Justice Reyes had returned to duty on June 10, 2008; and, (2) Justice Sabio officiously prepared and signed a resolution (a chore for the *ponente* Justice V. Roxas to perform), requiring the GSIS and the SEC to comment on Meralco's "Motion for Justice B. Reyes to Assume the Chairmanship of the 9th Division," which he probably intended to delay the decision on the preliminary injunction beyond the life of the TRO to the prejudice of Meralco and the advantage of the GSIS.

x x x x x x (Capitalization and Emphasis Supplied.)

The Supreme Court's resolution[14] of the motions for reconsideration of its Decision dated September 9, 2008, is even more telling, *viz:*

[14] Re: Letter of Presiding Justice Conrado M. Vasquez, Jr., A.M. No. 08-8-11-CA, October 15, 2008 [Per Curiam, En Banc].

x x x The Panel of Investigators indeed used Canon 13 to characterize his conversation with his brother as improper and the same provision was the basis for this Court to refer Chairman Sabio's act to the Bar Confidant for appropriate action. However, as Justice Sabio noted in his own motion, the Panel found him in violation of the following provisions of the Canon of Judicial Conduct on independence:

Canon 1

Independence

> Sec. 1. Judges shall exercise the judicial function independently x x x free from extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.
>
> x x x
>
> Sec. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.
>
> Sec. 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

This Court agrees with the panel that Justice Sabio, by his own action, or more accurately inaction, failed to maintain the high standard of independence and propriety that is required of him.

While it is true that Justice Sabio could not have possibly known prior to his brother's call that his brother intended to speak to him about the Meralco-GSIS case, **THE FACT REMAINS THAT JUSTICE SABIO *CONTINUED TO ENTERTAIN* A CALL FROM HIS BROTHER**, who also happens to be an officer of the executive branch, despite realizing that the conversation was going to involve a pending case. In his Motion, Justice Sabio asks the Court if he should have immediately slammed the phone on his brother. Certainly, such boorish behavior is not required. However, as soon as Justice Sabio realized that his brother intended to discuss a case pending before him or in his division, Justice Sabio should have respectfully but firmly ended the discussion. **JUSTICE SABIO IN HIS OWN AFFIDAVIT NARRATED THAT CHAIRMAN SABIO TOLD HIM OF MATTERS IN THE MERALCO-GSIS CASE THAT JUSTICE SABIO HIMSELF HAD NOT BEEN FORMALLY INFORMED.** He further alleged that **HIS BROTHER TRIED TO CONVINCE HIM OF RIGHTNESS OF THE STAND OF GSIS AND THE SECURITIES AND EXCHANGE COMMISSION**. The improper substance of the conversation was confirmed in Chairman Sabio's own statement before the Panel. **Justice Sabio had no business discussing with his brother court matters (such as his assignment to a particular case, the possibility of issuance of a TRO, etc.) which by his own account are not yet "official" and more importantly, he should not have allowed the conversation to progress to a point that his brother was already discussing the merits of the case and persuading him (Justice Sabio) to rule in favor of one of the parties.**

That Justice Sabio did not do as his brother asked is of no moment. Section 5, Canon 1 of the Code of Judicial Conduct maintains such a high bar of ethical conduct that actual influence is not a prerequisite before a violation is deemed committed. If a magistrate's actions allow even just the appearance of being influenced, it is deemed a violation. To be sure, as a complement to Canon 1, the Code of Judicial Conduct likewise provides:

Canon 4

Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

SECTION 1. Judges shall avoid impropriety **and the appearance of impropriety** in all of their activities.

x x x

BY ALLOWING HIS BROTHER TO DISCUSS WITH HIM THE MERITS OF ONE PARTY'S POSITION, JUSTICE SABIO GAVE HIS BROTHER THE OPPORTUNITY TO INFLUENCE HIM. Any reasonable person would tend to doubt Justice Sabio's independence and objectivity after such a conversation with a close family member who also happens to hold a high government position. As a magistrate, Justice Sabio has the duty to prevent any circumstance that would cast doubt on his ability to decide a case without interference or pressure from litigants, counsels or their surrogates.

This Court further notes that had Justice Sabio been prudent enough to nip the improper conversation with his brother in the bud, he would have prevented his own brother from violating Canon 13 of the Code of Professional Responsibility. **If Justice Sabio and his brother find themselves in such a quandary, it is a quandary of their own making.**[15] (Capitalization and Emphasis Supplied.)

To reiterate, the imbroglio that placed the Court of Appeals in a bad light sprung from accused Sabio's indiscretion. The findings and conclusions of the Supreme Court on the matter cannot be sidetracked, much less, ignored. ***Res judicata pro veritate accipitur*** (A matter adjudicated is taken for truth.). In other words, the binding effect and enforceability of that earlier *dictum* pervades in a later case since the issue has already been resolved and finally laid to rest in the earlier case.[16] ***Conclusiveness of judgment*** [17] estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case.[18]

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[15] 590 Phil. 1.

[16] *Miranda v. Court of Appeals,* G.R. No. L-59730, February 11, 1986 (225 Phil 261, 265-266).

[17] This is traditionally known as **collateral estoppel**; in modern terminology, it is called **issue preclusion.** *(Philtranco Service Enterprises, Inc. v. Cual, et. al.,* G.R. No. 207684, July 17, 2017). It does not have the same barring effect as that of a *bar by former judgment* (i.e. claim preclusion [Rule 39, Section 49 (b), Revised Rules of Court]) that proscribes subsequent actions.

[18] *Camara v. Court of Appeals and Hernaez,* G.R. No. 100789 July 20, 1999 (369 Phil 858, 868).

The crime of violation of Section 3(a) of R.A. No. 3019, as amended, may be committed in either of the following modes: (1) when the offender persuades, induces or influences another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the public officer; or (2) when the public officer allowed himself to be persuaded, induced or influenced to perform said act which constitutes a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the public officer.[19]

Accused Sabio's transgression comes within the purview of the first mode. No less than the Supreme Court has unraveled concrete evidence of such fact.

More.

The majority opinion puts a premium on ***"some ascendancy,"*** [20] based on ***"an individual's stature and public position."***[21] Ostensibly, the absence of proof thereon effectively negates a showing of influence peddling. With all due respect, this is inconsequential. Suffice it to say that it is not an essential element of the offense under Section 3(a) of R.A. No. 3019, as amended.

The gravamen of the offense relates to the public officer's act of *persuading, inducing* or *influencing* another,[22] which has been proven beyond moral certainty in this case. That accused Sabio was persuaded to call Justice Sabio after he spoke over the phone to Atty. Jesus Santos, who asked for his help, finds support in the Supreme Court *en banc*'s Decision dated September 9, 2008.[23]

In sum, I am inclined to affirm the verdict enunciated in the *ponencia* of the late Justice Cruz, to wit:

> "x x x [T]he prosecution established all the elements of the crime beyond reasonable doubt, and the evidence adduced are sufficient to support the conviction of the accused."

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[19] *Marzan v. People,* G.R. No. 226167, October 11, 2021 [Per J. Hernando].

[20] Majority Opinion, p. 12.

[21] Id., p. 11.

[22] See *Villa v. Sandiganbayan and People* , G.R. Nos. 87186 87281, 87466, 87524,, April 24, 1992 [Per J. Cruz, En Banc].

[23] Decision dated November 29, 2019, in SB-16-CRM-1234 to 1235, p. 10 of 15.

Based on these premises, I vote to **DENY** the motion for reconsideration and **AFFIRM** the Court's verdict in SB-16-CRM-1234.

KEVIN NARCE B. VIVERO
Associate Justice