REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

TEDDY ELSON ELMEDOLAN RIVERA, ET AL.,
Accused.

Crim. Case No.
SB-22-CRM-0219
For: Violation of Section 3(e) of R.A. No. 3019, as amended

Present:

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

PROMULGATED:
JUNE 30, 2023

x - x

RESOLUTION

Moreno, J.:

For our resolution is the *Motion to Dismiss the Case and/or to Quash Information with Motion to Defer Arraignment and Pre-Trial*[1] filed by accused-movant Krisanto Karlo E. Nicolas dated February 2, 2023 (adopted

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1 Record, vol. 1, pp. 613-839.

by accused Elvira Canimo Aspa and Jesus Biscocho Cantos),[2] to which the prosecution filed its *Comment/Opposition x x x*[3] on February 16, 2023.

In his motion, Nicolas prayed that the case against him be dismissed due to violation of his Constitutional right to speedy disposition of cases; and the Information be quashed "because the facts charged do not constitute an offense."[4]

Nicolas claimed that inordinate delay attended the preliminary investigation and the filing of the Information; and that the Office of the Ombudsman trifled with his life for almost sixteen (16) years. He added that the Office of the Ombudsman resolved the preliminary investigation beyond the prescribed periods, and that the inordinate and unjustified delay that attended the proceedings extremely prejudiced him. Nicolas also claimed that the filing of two identical cases had been motivated by malice, since both were filed by the same Field Investigation Office utilizing the same documents, receipts, contracts, vouchers, and involving the same both government project, parties, documents, laws and BAC resolution.

Nicolas additionally maintained that he raised the issue of inordinate delay in a timely manner.

In its Comment/Opposition, the prosecution (through the Office of the Special Prosecutor) prayed for the denial of the motion for lack of merit. It countered that the preliminary investigation had been conducted in the regular course and within a reasonable period. The prosecution also argued that certain delays during the resolution of the complaint were attributable to the accused. It further claimed that the complexity of the case and the voluminous documents required a 'more-than-the usual period of time'[5] for review and resolution.

The prosecution likewise claimed that the accused were unable to substantiate the alleged prejudice that they suffered on account of the delay. It also argued that the right to speedy disposition of cases had not been invoked at the earliest opportunity. The prosecution likewise maintained that there was no justification to quash the Information.

The records also disclosed that accused Jacqueline C. Mendoza, through counsel, filed before us a *Motion to Adopt the Motion to Dismiss the Case and/or to Quash Information, with Motion to Defer Arraignment and Pre-trial x x x with Additional Grounds* on May 24, 2023.

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2 During the scheduled arraignment and pre-trial on February 3, 2023, accused Aspa and Cantos manifested that they were adopting the Motion to Dismiss the Case and/or to Quash the Information x x x filed by accused Nicolas.

3 Record, vol. 1, pp. 862-890.

4 *Id.* at 659.

5 *Id.* at 872.

OUR RULING:

After due consideration, we **grant** the present motion.

I. Preliminary Considerations

a. The right to speedy disposition of cases

The Constitution in Article III, Section 16 provides:

> *Section 16.* All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 12, Article XI of the Constitution further requires the Ombudsman to act promptly on all complaints filed before it:

> Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government- owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

This same mandate can be found in Section 13 of RA 6670, otherwise known as the Ombudsman Act of 1989:

> Section 13. Mandate. - The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the government, or of any subdivision, agency or instrumentality thereof, including government- owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

In *Alarilla v. The Honorable Sandiganbayan*,[6] the Supreme Court expounded on the right to speedy disposition of cases in relation to a complaint filed before the office of the Ombudsman, as follows:

> To determine whether inordinate delay exists, *Cagang* explains that a case is deemed initiated upon the filing of a formal complaint prior to the conduct of preliminary investigation. The court must examine whether the Ombudsman followed the specified time periods for the conduct of the preliminary investigation.
>
> In *Javier* and *Catamco*, the Court promptly observed that the rules of the Ombudsman did not provide for specific time periods to conclude preliminary investigations. Thus, as the Rules of Court find suppletory application to proceedings before the Ombudsman, the time periods provided therein would be deemed applicable. Accordingly, Section 3, Rule 112 of the Revised Rules of Criminal

6 G.R. No. 236177-210, February 3, 2021.

Procedure provides that the investigating prosecutor has 10 days "after the investigation x x x [to] determine whether or not there is sufficient ground to hold the respondent for trial." This 10-day period may seem short or unreasonable from an administrative standpoint. However, given the Court's duty to balance the right of the State to-prosecute violations of its laws — vis-a-vis the rights of citizens to speedy disposition of cases, the Court ruled that citizens ought not to be prejudiced by the Ombudsman's failure to provide for particular time periods in its own Rules of Procedure.

On 15 August 2020, mere weeks after the promulgation of Javier and Catamco, the Ombudsman introduced welcome developments to its rules of procedure through Administrative Order No. (AO) 1, Series of 2020. Under AO 1, the Ombudsman now has clearly specified time periods for conducting not only preliminary investigations, but also fact-finding investigations and administrative adjudications.

For preliminary investigations, AO 1 provides:

Section 8. Period for the conduct of Preliminary Investigation. - Unless otherwise provided for in a separate issuance, such as an Office Order creating a special panel of investigators/prosecutors and prescribing the period for completion of the preliminary investigation, the proceedings therein shall not exceed twelve (12) months for simple cases or twenty-four months (24) months for complex cases, subject to the following considerations:

(a) The complexity of the case shall be determined on the basis of factors such as, but not limited to, the number of respondents, the number of offenses charged, the volume of documents, the geographical coverage, and the amount of public funds involved.

(b) Any delay incurred in the proceedings, whenever attributable to the respondent, shall suspend the running of the period for purposes of completing the preliminary investigation.

(c) The period herein prescribed may be extended by written authority of the Ombudsman, or the Overall Deputy Ombudsman/Special Prosecutor/Deputy Ombudsman concerned for justifiable reasons, which extension shall not exceed one (1) year.

Violation of the right to speedy disposition of cases has a serious consequence: it results in the dismissal of the case. Particularly for criminal cases, the dismissal is with prejudice, and the accused may no longer be indicted for the same offense on the ground of right against double jeopardy.[7]

In the present case, we find that the right to speedy disposition of cases of the herein accused has been violated.

It bears recalling that the criminal complaint against the accused was filed on July 15, 2015. Aspa and Cantos were able to file their respective

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7 See *Baya v. The Honorable Sandiganbayan*, G.R. No. 204978-83, July 6, 2020.

counter-affidavits both in 2015, while Nicolas requested for documents/records in March 2016. For her part, Mendoza was able to file her counter-affidavit only on September 25, 2017. From this date, it took the Office of the Ombudsman *more than seven months*, that is, on May 30, 2018, to issue a resolution finding probable cause against the accused.

From May 30, 2018, the Office of the Ombudsman was able to file the Information only on October 19, 2022, *or after the lapse of four (4) years from the resolution finding probable cause* against the herein accused.

While it may be true that Aspa and Mendoza filed their respective motions for reconsideration of the resolution finding probable cause on August 15, 2018, *nothing prevented the Ombudsman from immediately filing the Information after its finding of probable cause, pursuant to Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman which sanctions the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration.*

At any rate, the Office of the Ombudsman still took *one (1) year, seven (7) months and five (5) days* to deny the motions for reconsideration of Aspa and Mendoza.

In sum, more than seven (7) years have passed from the time of the filing of the complaint until filing of the Information before this Court.

It is settled that the right to speedy disposition of cases may be waived if raised belatedly. While the records do not show that Aspa and Canto invoked the right to speedy disposition of cases during preliminary investigation, their act of adopting Nicolas' *motion to dismiss the case and/or to quash x x x* prior to arraignment, indicated that they did not sleep on their rights.

The Supreme Court's ruling in *Camson v. Seventh Division of the Sandiganbayan*[8] on this point is instructive:

> Lastly, the Court holds that Javier and Tumamao timely asserted their rights because they filed the Motion to Quash at the earliest opportunity. Before they were even arraigned, they already sought permission from the Sandiganbayan to file the Motion to Quash to finally be able to assert their right to speedy disposition of cases. To the mind of the Court, this shows that Javier and Tumamao did not sleep on their rights, and were ready to assert the same given the opportunity. Certainly, this could not be construed as acquiescence to the delay.

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8 G.R. No. 242892, July 6, 2022.

As in this case, petitioners raised at the earliest possible time, the issue of inordinate delay when they filed a motion to dismiss the case with the Sandiganbayan prior to their arraignment.[9]

II. The charge against Nicolas, Aspa and Cantos

a. The First and Second Complaints

The records showed that the Field Investigation Office (FIO) II of Office of the Ombudsman filed a Complaint for violation of Sections 3(e) and (g), respectively, of R.A. No. 3019, as amended, on July 15, 2015 against the following officials and employees Philippine International Trading Corporation (PITC) Pharma, Inc., namely, Teddie Elson Elmedolan Rivera, Jesus Biscocho Cantos, Jacqueline Catral Mendoza, Atty. Krisanto Karlo Estrada Nicolas and Elvira Canimo Aspa. In the same Complaint, Cantos and Mendoza were also administratively charged with misconduct and conduct prejudicial to the best interest of the service in relation to Rule 10, Section 46(A)(3) and (B)(8) of the Revised Rules on Administrative Cases in the Civil Service. This was docketed as OMB-C-C-15-0243.

On February 22, 2016, the FIO, Office of the Ombudsman filed another Complaint for violation of Sections 3(e) and (g) of R.A. No. 3019 against Rivera, Atty. Nicolas, Aspa, Mendoza, Cantos, Gil Divinagracia, Sheila Mae Molina Velilla and Arturo Tolentino; and for violation of Section 65(a)[4] of R.A. No. 9184 against Rivera, Atty. Nicolas, Aspa, Mendoza and Cantos. This Complaint was docketed as OMB-C-C-16-0113.

b. The Resolutions of the Office of the Ombudsman

In its Resolution dated February 28, 2018, the Office of the Ombudsman found probable cause to indict Rivera, Cantos, Mendoza, Nicolas and Aspa in OMB-C-C-15-0243, and directed the filing of an Information for violation of Section 3(e) of R.A. No. 3019, as amended, against them before this Court.[10]

In another Resolution dated November 29, 2019, the Office of the Ombudsman dismissed the complaint against Rivera, Nicolas, Aspa, Mendoza, Cantos, Divinagracia, Velilla and Tolentino in OMB-C-C-16-0113 for lack of probable cause.[11]

c. Dismissal of the case is warranted

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9 Id.
10 Approved by Ombudsman Conchita-Carpio Morales on May 30, 2018.
11 Approved by Ombudsman Samuel R. Martires on August 24, 2021.

On October 19, 2022, an Information for violation of Section 3(e) of R.A. No. 3019, as amended, was filed against Rivera, Cantos, Mendoza, Nicolas and Aspa before this Court, docketed as Criminal Case No. SB-22-CRM-0219, thus:

> x x x x
>
> That from 7 May 2007 to 24 May 2007, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused public officers TEDDIE ELSON ELMEDOLAN RIVERA (Rivera), Chief Operating Officer, JESUS B. CANTOS (Cantos), Vice President, Logistics and Supply Chain, JACQUELINE CATRAL MENDDOZA (Mendoza), Vice President for Finance, ELVIRA CANIMO ASPA (Aspa), Logistics and Procurement Manager, and KRISANTO KARLO ESTRADA NICOLAS (NICOLAS), Legal Manager, all of Philippine International Trading Corporation, Pharma, Inc. (PPI), while in the performance of their administrative and/or officials functions, acting with evident bad faith, manifest partiality, or at the very least, gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefits, preference and advantage to Biolink Pharma, Medgen Laboratories and Alphamed Pharma, Inc. by procuring branded medicines from them through Direct Contracting even without the conditions stated by Section 50 of Republic Act 9184, which branded medicines were more expensive by more or less Php19,697,775.00 compared to their generic counterpart, thereby causing undue injury to the government in the said amount; with the accused acting in conspiracy with one another thusly:
>
> a) Rivera approved the resolution for Direct Contracting and Purchase orders (Pos),
> b) Cantos signed said Resolution and recommended approval of POS,
> c) Mendoza signed said Resolution and Disbursement Vouchers and certified POs,
> d) Nicholas signed said Resolution, and
> e) Aspa signed said Resolution.
>
> CONTRARY TO LAW.[12]

Accordingly, this Court issued a warrant of arrest against accused Rivera, Cantos, Mendoza, Aspa and Nicolas per our resolution of November 17, 2022.

The power of the judge to determine probable cause for the issuance of a warrant of arrest is enshrined in Section 2, Article III of the Constitution:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge

12 Records, pp. 2-3.

> after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Corollarily, Section 6(a), Rule 112 of the Revised Rules of Criminal Procedure provides:

> Sec. 6. *When warrant of arrest may issue.* - (a) By the Regional Trial Court. - Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issuance must be resolved by the court within thirty (30) days from the filing of the complaint or information.

Under this provision, the court is given three options, *viz*: (1) dismiss the case if the evidence on record has clearly failed to establish probable cause; (2) issue a warrant of arrest upon a finding of probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause.

Probable cause for the purpose of issuing a warrant of arrest pertains to facts and circumstances which would lead a reasonably discreet and prudent person to believe that an offense has been committed by the person sought to be arrested. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibration of our technical rules of evidence of which his or her knowledge may be nil. Rather, the person relies on the calculus of common sense of which all reasonable persons have an abundance. Thus, the standard used for issuance of a warrant of arrest is less stringent than that used for establishing the guilt of the accused. So long as the evidence presented shows a *prima facie* case against the accused, the trial court judge has sufficient ground to issue a warrant of arrest against him or her.[13]

If the trial court decides to issue a warrant of arrest, such warrant must have been issued after compliance with the requirement that probable cause be personally determined by the judge. At this stage, the judge is tasked to merely determine the probability, not the certainty of guilt of the accused. In doing so, the judge need not conduct a de novo hearing; he or she only needs

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13 See *Silver v. Judge Daray*, G.R. No. 219157, August 14, 2019.

to personally review the prosecutor's initial determination and see if it is supported by substantial evidence.[14]

Nonetheless, **even after the issuance of a warrant of arrest, the court is not precluded, if it so desires, from going over the records of the case to determine if the pieces of evidence on record warrants the dismissal of the case**. As the Supreme Court held in *People v. Honorable Sandiganbayan*:[15]

> Thus, when the Sandiganbayan chose to issue the corresponding warrants of arrest over the other criminal cases, ordered the prosecution to present the subject SARO which Relampagos, *et al.* denied having signed and processed, and thereafter, upon examination of the subject SARO, dismissed the criminal cases for lack of probable cause, the Sandiganbayan, in fact acted well-within its competence and jurisdiction. There is therefore no reason to ascribe grave abuse of discretion on the part of the Sandiganbayan for having reversed the Ombudsman's earlier determination of probable cause.
>
> x x x x
>
> Thus, we caution that "where the evidence patently demonstrates the innocence of the accused, x x x [there is] no reason to continue with his prosecution; otherwise, persecution amounting to grave and manifest injustice would be the inevitable result."[57] We, thus, affirm the Sandiganbayan's temperance of the Ombudsman's authority to prosecute for want of probable cause not only to save herein respondents from the expense, rigors and embarrassment of trial, but also to prevent needless wastage of the court's limited time and resources.

What do the pieces of evidence on record establish?

c.1 Brand specification was made by LMP

The records showed that sometime on November 29, 2006, the League of Municipalities of the Philippines (LMP) adopted a resolution approving the implementation of the *Gamot na Mabisa Alay ng Pangulo* (GMAP) program intended to benefit its 1,502 member-municipalities. One of the agencies tasked to help in the implementation of this program – specifically in the procurement of the medicines – is the PITC Pharma, Inc. Consequently, the LMP and PITC Pharma executed a Memorandum of Agreement (MOA) authorizing the latter to procure and distribute medicines under the GMAP. It bears pointing out that under Article III of this MOA, PITC Pharma had the following responsibilities:

x x x x

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14 *Id.*

15 G.R. No. 219824-25, February 12, 2019.

3.1 Exclusively procure and/or source the medicines for the unit packages to be distributed under this **PROGRAM** in accordance with the list to be agreed with the **LMP** and upon receipt of the required funds therefor.

3.2 Package the medicines in accordance with the list and specifications agreed on with the **LMP**.

3.3 Deliver the required number of unit packages to **LMP** Provincial Chapters as designated by LMP in writing within the periods to be agreed upon and after the receipt of the funds therefor.

x x x x[16]

Pursuant to this MOA, Mayor Ramon N. Guico, LMP's President, wrote Teddy Elson Rivera, Chief Operating Officer of PITC Pharma, and submitted a list of medicines with brand names equivalent to the generic names provided and agreed upon in the MOA. After three days, Rivera indicated to LMP the selling prices of the branded medicines to be procured, with an advisory for the final composition and specific quantities of the various drugs requested. In its reply via a letter dated April 24, 2007, LMP confirmed the quantities of the branded medicines. On April 26, 2007, PITC Pharma's Bids and Awards Committee enacted a Resolution (No. 2007-013) essentially recommending for Rivera's approval the purchase of drugs and medicines through Direct Contracting "to promote economy and efficiency, and meet the requirements proffered by the LMP."[17]

From these antecedents, it could be gleaned that it was Mayor Guico of the LMP – and not the herein accused – who specified the branded medicines needed, based on the consolidated requirements of the LMP's member-municipalities vis-à-vis their priority health needs and programs. Based on the request by Mayor Guico, PITC Pharma forwarded the selling prices of the medicines to LMP. Accordingly, Mayor Guico confirmed the quantities of the standard unit package of the medicines to be purchased.

It bears highlighting that in the April 20, 2007 letter of Mayor Guico, he stated that "[b]ased on the experience of our member municipalities in the conduct of their health programs, the medicines listed above were found to be acceptable quality and the most frequently used or prescribed."[18]

Simply put, it was LMP (through Mayor Guico), the end user, and not the BAC which made the 'brand specification' in relation to the needs of the member-municipalities.

16 Records, p. 44 (Emphasis in the original).
17 Records, p. 666.
18 Records, p. 49.

Notably, the procurement of the medicines in accordance with the list and specifications agreed on with the LMP was also in accordance with the MOA signed between PITC Pharma and LMP.

We are aware that a document denominated as Annex 'A' indicating the generic names of the medicine requirement of LMP was appended to the MOA. Since this formed part of the MOA, it can reasonably be presumed that Mayor Guico, being a signatory to the MOA, was aware of this document. That Mayor Guico still requested for the prices of medicines with brand names, and then later on conformed to the selling prices given by PITC Pharma, showed LMP's leaning or preference to buy branded medicines. While advocacy for the use of generic medicines should be encouraged, the choice and/or preference of the end-user should be respected as well.

c.2 Resort to Direct Contracting

Direct contracting, otherwise known as "Single Source Procurement," refers to "a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations."[19]

Direct contracting is one of the recognized alternative methods to the usual mode of competitive bidding, pursuant to Sections 48(b) and 50 of Republic Act No. 9184 or the Government Procurement Reform Act which provide:

> Sec. 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:
>
> x x x x
>
> (b) Direct Contracting, otherwise known as Single Source Procurement — a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;
>
> x x x x
>
> Sec. 50. Direct Contracting. — Direct Contracting may be resorted to only in any of the following conditions:

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19 See *Pabillo v. Commission on Elections*, G.R. No. 216098 and 216562, April 21, 2015.

(a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item;

(b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,

(c) Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.

Per Resolution No. 2007-013, a pre-procurement conference had been conducted for the purchase of the drugs and medicines for the GMAP program, and that it had been found that the "subject procurement relates to goods of a proprietary nature, which can be obtained only from the proprietary source, and/or those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at terms more advantageous to the government."[20]

Significantly, there is nothing on the records to show that the Commission on Audit has issued any Notice of Disallowance against the subject procurement. While an Audit Observation Memorandum (AOM) has been issued by the COA Audit Team leader, this cannot be equated to a notice of disallowance. To be sure, the issuance of the AOM is just an initiatory step in the investigative audit being conducted by Audit Team to determine the propriety of the disbursements made. It bears emphasizing that after its issuance there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the auditee/s.

To my mind, COA's CY 2007 Audit Annual Report is inconclusive to establish culpability of the accused for the offense charged. It bears noting that State Auditor Marita A. Yap stated in her Sworn Statement[21] that the COA Audit Team did not conduct canvass or price quotations to compute the price discrepancy, but just based its findings on the other accredited suppliers of PITC Pharma. In any event, that there were price variances between the generic brands and the purchased branded medicines do not *ipso facto* amount to a finding of liability for Section 3(e) of R.A. No. 3019, as amended, more so in the absence of any Notice of Disallowance by the COA.

[20] Records, p. 666.
[21] Id. at p. 81.

We additionally point out that the signatures of BAC members Nicolas and Aspa, BAC Vice Chairperson Mendoza and BAC Chairman Santos in BAC Resolution No. 2007-013 were *still* subject to the approval of PITC Pharma's COO, Rivera, as shown in the dispositive portion of this resolution, thus:

> x x x x
>
> NOW, THEREFORE, We the members of the Bids and Awards Committee (BAC), pro hac vice, hereby RESOLVE as it is hereby RESOLVED:
>
> To recommend for approval by **TEDDIE ELSON E. RIVERA**, Chief Operating Officer of PITC Pharma, Inc. to purchase **drugs and medicines through Direct Contracting**.
>
> x x x x[22]

c.3 The elements of Section 3(e) of R.A. No. 3019

As earlier mentioned, the herein accused had been charged with violation of Section 3(e) of R.A. 3019, as amended, in Criminal Case No. SB-22-CRM-0129, which reads:

> **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:
>
> x x x
>
> e. Causing undue injury to any party, including the Government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

A violation under this provision requires that: (1) the accused is a public officer discharging administrative, judicial or official functions; (2) the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[23]

The first element is undisputed.

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[22] *Id.* (Emphasis supplied)

[23] See *Danilo O. Garcia and Joven SD. Brizuela v. Sandiganbayan*, G.R. No. 197204, March 26, 2014.

The second element provides the modalities by which a violation of Section 3(e) of R.A. No. 3019 may be committed. "Manifest partiality", "evident bad faith", or "gross inexcusable negligence" are not separate offenses and proof of the existence of any of these three (3) in connection with the prohibited acts is enough to convict.[24]

The Supreme Court explained these terms in *Uriarte v. People*[25] in the following manner:

> There is "**manifest partiality**" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

Evidently, mere bad faith or partiality and negligence per se are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest,* respectively, while the negligent deed should both be *gross* and *inexcusable.* It is further required that any or all of these modalities ought to result in undue injury to a specified party.[26]

The accused in the present case cannot be shown to have acted with manifest partiality, evident bad faith, or gross inexcusable negligence when it was the LMP itself, through Mayor Guico, who requested for the prices of medicines with brand names based on the requirements of the member-municipalities. In addition, Mayor Guico later agreed to the selling prices given by PITC Pharma. While PITC Pharma, Inc. is the government owned and controlled corporation) that is tasked to provide low priced quality ensured medicines to the Filipino people, it cannot just supplant the wishes of the end-user to buy branded (instead of generic) medicines, especially in this case when the end-user consisted of different municipalities with varying needs and requirements.

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[24] See *Farouk AB. Abubakar v. People of the Philippines*, G.R. Nos. 202408, 202409 and 202412, June 27, 2018.

[25] *Demie L. Uriarte v. People of the Philippines*, G.R. No. 169251, December 20, 2006; Emphasis in the original.

[26] See *Sistoza v. Desierto*, G.R. No. 144884, September 3, 2002.

The third element of Section 3(e) refers to two separate acts that qualify as a violation of Section 3(e) of Republic Act No. 3019. An accused may be charged with the commission of either or both. An accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures.[27]

The second punishable act under the third element of Section 3(e) of Republic Act No. 3019 is the giving of unwarranted benefits, advantage, or preference to a private party. This does not require actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another.[28]

In the present case, the undue injury to the government had not been clearly shown. All that the evidence pointed to is the price variances between the generic brands and the purchased branded medicines. Per State Auditors Yap and Marquez, they arrived at the price discrepancies by comparing the purchase price from the three suppliers with the price of the generic medicines from PITC Pharma's other accredited suppliers. Corollarily, the records do not show that resort to canvass sheets or price quotations, official receipts from drug stores/pharmacies had been made in order to validate the findings of price discrepancies between the medicines with specified brands.

Moreover, the COA did not issue any notice of disallowance indicating that the use of funds were excessive, irregular, unnecessary or questionable.

In *Sistoza v. Desierto*,[29] the Supreme Court held:

> Furthermore, even if the conspiracy were one of silence and inaction arising from *gross inexcusable negligence*, it is nonetheless essential to prove that the breach of duty borders on malice and is characterized by flagrant, palpable and willful indifference to consequences insofar as other persons may be affected. Anything less is insufferably deficient to establish probable cause. Thus, when at the outset the evidence offered at preliminary investigation proves nothing more than the signature of a public officer and his statements verifying the regularity of prior procedure on the basis of documents apparently reliable, the prosecution is duty-bound to dismiss the affidavit-complaint as a matter of law and spare the system meant to restore and propagate integrity in public service from the embarrassment of a careless accusation of crime as well as the unnecessary expense of a useless and expensive criminal trial.

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[27] See *Abubakar v. People*, G.R. No. 202408, June 27, 2018.
[28] *Id.*
[29] G.R. No. 144784, September 3, 2002.

We also hold that the accused did not give unwarranted benefits, advantage, or preference to Biolink Pharma, Medgen Laboratories and Alpha Pharma Corporation. It bears reiterating that a pre-procurement conference had been conducted for the purchase of the drugs and medicines for the GMAP program, and that it had been found that the "subject procurement relates to goods of a proprietary nature, which can be obtained only from the proprietary source, and/or those sold by an exclusive dealer or manufacturer which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at terms more advantageous to the government."[30] In addition, and as earlier mentioned, the resort to direct contracting was recommended in order to promote economy and efficiency, as well as to meet LMP's requirements. More importantly, BAC Resolution No. 2007-013 did not mention Biolink Pharma, Medgen Laboratories and Alpha Pharma Corporation as the preferred suppliers. To our mind, the recommendation to resort to direct contracting under these circumstances did not amount to the level of giving unwarranted benefits, advantage, or preference that Section 3(e) requires.

In *Martel v. People of the Philippines*,[31] the procurement of five motor vehicles for the use of the Governor and Vice Governor of Davao del Sur was not subjected to competitive public bidding as it was effected through direct purchase. Accordingly, the recommendation was approved by the members of the Bids and Awards Committee (BAC) of the Province. After finding probable cause, the Ombudsman filed before the Sandiganbayan four Informations charging therein petitioners with violation of Section 3(e) of R.A. 3019, alleging that the purchase of the subject vehicles did not conform to existing procurement laws and regulations of the Commission on Audit (COA). After trial on the merits, the Sandiganbayan found the accused guilty beyond reasonable doubt of violating Section 3(e) of R.A. 3019.

In setting aside the judgment of conviction of the accused, the Supreme Court essentially held that while the prosecution may have shown how procurement laws had not been strictly followed, it nonetheless failed to prove beyond reasonable doubt the elements for a violation of Section 3(e) of R.A. 3019. It further explained that:

> x x x x in order to establish a *prima facie* case for violation of Section 3(e) of R.A. 3019, the prosecution must show not only the defects in the procurement procedure but also the alleged evident bad faith, gross inexcusable negligence, or manifest partiality on the part of the accused. Absent a well-grounded and reasonable belief that the accused perpetrated the procurement irregularities in the *criminal manner* that he is accused of, then there is not even a basis for declaring the existence of probable cause, more so a finding of guilt for any violation of Section 3(e) of R.A. 3019. The prosecution should not expect the Court to do its bounden duty of proving each and every element of the crime charged - or to come to its rescue when it miserably fails to discharge this onus.

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[30] Records, p. 665.
[31] G.R. No. 224720-23 and 224765-68, February 2, 2021.

x x x x

> The demand for accountability should not be at the expense of well-meaning public officials who may have erred in the performance of their duties but have done so without a criminal mind. Our penal laws against corruption in the government are meant to enhance, and not stifle, public service. If every mistake, error, or oversight is met with criminal punishment, then qualified individuals would be hindered in serving in the government. If we all continue to "weaponize" each misstep in governmental functions, we run the risk of losing the many good people in the government. Again, it should be underscored that while public office is a public trust, the constitutionally enshrined right to presumption of innocence encompasses all persons - private individuals or public servants alike.

As previously discussed, the herein accused cannot be shown to have acted with manifest partiality, evident bad faith, or gross inexcusable negligence since it was the LMP itself, through Mayor Guico, who requested for the prices of medicines with brand names based on the requirements of the member-municipalities, and later on agreed to the selling prices given by PITC Pharma. In addition, the undue injury to the government or unwarranted benefit, advantage, or preference to the suppliers have not been clearly shown by the evidence on record.

It bears reiterating that the Office of the Ombudsman dismissed the complaint against Rivera, Nicolas, Aspa, Mendoza, Cantos, Divinagracia, Velilla and Tolentino in OMB-C-C-16-0113 for lack of probable cause. To recall, this complaint was filed by the FIO, Office of the Ombudsman for violation of Sections 3(e) and (g) of R.A. No. 3019 against Rivera, Atty. Nicolas, Aspa, Mendoza, Cantos, Gil Divinagracia, Sheila Mae Molina Velilla and Arturo Tolentino; and for violation of Section 65(a)[4] of R.A. No. 9184 against Rivera, Atty. Nicolas, Aspa, Mendoza and Cantos.

In dismissing the complaint, the Office of the Ombudsman ruled that "there is no reasonable ground to indict respondents as charged."[32] It reasoned out that the COA has not issued any notice of disallowance against the assailed procurement; and that a criminal prosecution for violation of Section 3(e) and (g) of R.A. No. 3019 cannot be based on a mere AOM. The Ombudsman added that while the complaint was anchored on a charge of conspiracy, Mayor Guico – the person directly responsible for specifying the brands to PITC Pharma – had not been charged with the other accused.

It is worth highlighting that OMB-C-C-16-0113 and OMB-C-C-15-0243 were both filed by the FIO of the Office of the Ombudsman; had the same parties with the addition of three private individuals in the latter complaint; involved the same issued; arose out of the same facts; and

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[32] *Id.* at 737.

pertained to the violation of the same Sections of the Anti-Graft and Corrupt Practices Act, that is, Sections 3(e) and (g). Significantly, *just like in the dismissed OMB-C-C-16-0113*, Mayor Guico was also not a party in OMB-C-C-15-0243.

We additionally point out that the individual acts of the accused were specified in the Information itself, as follows:

x x x x

a) Rivera approved the resolution for Direct Contracting and Purchase Orders (POs),
b) Cantos signed said Resolution and recommended approval of POS,
c) Mendozza signed said Resolution and Disbursement Vouchers and certified Pos,
d) Nicolas signed said Resolution, and
e) Aspa signed said Resolution[33]

Simply put, the accused were being charged due to their signatures appearing in BAC Resolution No. 2007-013. The Court holds that the allegation of conspiracy against them cannot stand without Mayor Guico being indicted, considering that the latter was the person who: specified the branded medicines; requested for their prices; and, conformed to the selling price. We maintain the mere act of the accused in signing BAC Resolution No. 2007-013 recommending the purchase of drugs through direct contracting, did not warrant an indictment for violation of Section 3(e), more so if we consider that Biolink Pharma, Medgen Laboratories and Alpha Pharma Corporation were not mentioned at all in the said resolution.

In *Lorenzo v. Sandiganbayan*,[34] the Supreme Court allowed evidence *aliunde*, that is, the Ombudsman Resolution dismissing the complaint for lack of probable cause due to the absence of the elements of Section 3(e) of R.A. No. 3019, as amended.in granting the motion to quash the Information before the Sandiganbayan. The Supreme Court reasoned out as follows:

> From the aforementioned jurisprudential guidelines, it becomes clear that in the application of the exception to the general rule on non-admission of evidence aliunde in a motion to quash on the ground that the allegations of the Information do not charge an offense, what is controlling is the presence of facts that are apparent from the records and are admitted, directly or impliedly, or not denied by the prosecution, which destroy the prima facie truth accorded to the allegations of the Information on the hypothetical admission thereof.
>
> Applying the foregoing, the Court finds that the exception applies in the instant case. As readily evident, the previous issuances of the Ombudsman in the Visayas and Mindanao cases, as well as the findings of the Ombudsman in the

[33] Records, p. 2.
[34] G.R. Nos. 242506; 242590-94, September 14, 2022.

> Complaint herein, which are not denied by the prosecution, put in serious doubt the prima facie truth accorded to the allegations in the Informations, as the findings therein negate the presence of the second and third elements of the crime of violation of Section 3(e) of R.A. 3019.
>
> x x x x
>
> Verily, the Sandiganbayan should not have turned a blind eye to the previous issuances of the Ombudsman in the Visayas and Mindanao cases by the simple expedient of the prosecution's opposition, especially when the prima facie truth accorded to the allegations in the Informations have already been put into serious doubt. Had the Sandiganbayan considered the previous Resolution and Order of the Ombudsman in the Visayas and Mindanao cases, it would have already arrived at the same conclusion that the elements of the crime charged are wanting.

Although the factual antecedents in *Lorenzo* differed from the factual milieu in the case before us, the legal reasoning arrived at could be applied in this case. To recall, the November 29, 2019 Ombudsman Resolution in OMB-C-C-16-0113 found that an element required for a charge of Section 3(e) to stand was not present, thus:

> Third, Section 3 (e) of R.A. No. 3019 requires that bad faith be evident, partiality be manifest, and the negligence be gross and inexcusable. However, this Office is not convinced that such circumstances exist in this case. It is true that in the procurement process in this case brands were mentioned and Direct Contracting was resorted to. However, as already earlier pointed out, it was Guico of the LMP, who is not charged herein, who specified the same, stressing that such brands have been found to be effective by its members, and the PITC Pharma BAC and Rivera merely acted accordingly. Absent any allegation that Rivera and/or any of his co-respondents illegally benefitted from the assailed procurement, a criminal indictment against them under said law would not stand.
> x x x x
>
> **WHEREFORE**, for lack of probable cause, the complaint is **DISMISSED**.[35]

While we do not want to second-guess the non-inclusion of Divinagracia, Vellila, Toletino and Guico in the complaint filed before the Ombudsman, later docketed as OMB-C-C-15-0243, their non-indictment makes the conspiracy charge all the more difficult to sustain.

In light of these considerations, we rule that the case against accused Krisanto Karlo E. Nicolas, Elvira Canimo Aspa, Jesus Biscocho Cantos, Teddie Elson Elmedolan Rivera and Jacqueline Catral Mendoza in Criminal Case No. SB-22-CRM-0219 should be dismissed for violation of their Constitutional right to speedy disposition of cases, as well as for want of

[35] Records, p. 738. (Emphasis in the original)

well-founded and reasonable ground to believe that they violated Section 3(e) of R.A. No. 3019 as amended, and/or for absence of probable cause.

WHEREFORE, premises considered, the Court resolves to:

(a) **GRANT** the *Motion to Dismiss the Case and/or to Quash Information with Motion to Defer Arraignment and Pre-Trial* filed by Krisanto Karlo E. Nicolas dated February 2, 2023, and adopted by Elvira Canimo Aspa, Jesus Biscocho Cantos and Jacqueline Catral-Mendoza; and

(b) **DISMISS** Criminal Case No. SB-22-CRM-0219 against all the accused for violation of their constitutional right to the speedy disposition of cases and/or for absence of probable cause.

SO ORDERED.

Quezon City, Philippines.

RONALD B. MORENO
Associate Justice

WE CONCUR:

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

BERNELITO R. FERNANDEZ
Associate Justice