

Republic of the Philippines
SANDIGANBAYAN
Quezon City

Fourth Division

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-versus-

ELENITA S. BINAY, NICANOR V.
SANTIAGO, LUZ R. YAMANE-
GARCIA, ERNESTO A.
ASPILLAGA, DULCE P. CRUZ,
VIRGILIO M. CLARETE, MABEL B.
ASUNIO, RUDOLFO B.
FERNANDEZ, NESTOR R. BULOS,
EDUARDO G. DE GUZMAN, LILIA
A. NONATO, CONRADO V.
PAMINTUAN, JAIME P. DELOS
REYES, APOLLO B. CARREON,
Accused.

x ----- x

CRIM. CASE NO. SB-12-CRM-
0031

For: Violation of Section 3(e),
Republic Act No. 3019

CRIM. CASE NO. SB-12-CRM-
0032

For: Malversation of Public Funds or
Property under Article 217 of the
Revised Penal Code

Present:
MUSNGI, J., Chairperson
PAHIMNA, J.
JACINTO, J.

Promulgated:

FEB 26 2024 *[Signature]*

RESOLUTION

PAHIMNA, J.

This resolves the *Motion For Partial Reconsideration [Re: Decision dated 22 January 2024]*¹ filed by accused Conrado V. Pamintuan ("Pamintuan") and Jaime P. Delos Reyes ("Delos Reyes"), through counsel, on 6 February 2024. In relation thereto, the prosecution filed its *Comment/Opposition (to accused Pamintuan and Delos Reyes' Motion for Reconsideration dated 5 February 2024)*² on 15 February 2024.

Accused Pamintuan and Delos Reyes seek partial reconsideration of the *Decision*³ dated 22 January 2024 based on the following grounds, to wit:

I. WITH ALL DUE RESPECT, THE HONORABLE COURT
SERIOUSLY ERRED IN HOLDING THAT THE

¹ Record, Vol. 12, pp. 432-452.

² Record, Vol. 12, pp. 453-460.

³ Record, Vol. 12, pp. 329-374.

[Signatures]

Resolution

PP vs. Binay, et al.

Criminal Case Nos. SB-12-CRM-0031 to 0032

Page 2 of 8

x ----- x

ACCUSED COMMITTED GROSS INEXCUSABLE NEGLIGENCE IN RECOMMENDING THE AWARD OF PURCHASE IN FAVOR OF APOLLO MEDICAL EQUIPMENT AND SUPPLIES ("AMES").

- II. WITH ALL DUE RESPECT, THE HONORABLE COURT LIKEWISE ERRONEOUSLY HELD THAT ACCUSED GAVE UNWARRANTED BENEFITS TO AMES.

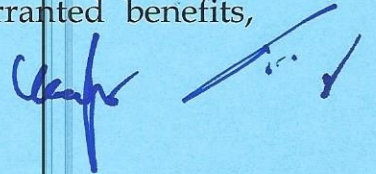
In their *Motion*, accused Pamintuan and Delos Reyes maintain that there is no conclusive evidence that they breached their duties in a blatant and extremely careless manner. They had a valid and sound reason to rely on the face of AMES' documents, which were notarized and issued by the concerned government agencies. According to them, they actually checked and examined the documents the best they could, and found nothing that would arouse suspicion. Accused proceed to question why this Court concluded that the infirmities or defects in the documents were not readily apparent upon visual examination or inspection only insofar as the other accused are concerned, who were then acquitted.

Further, accused assert that their perceived lapses do not automatically equate to conscious indifference to the possible outcome of their acts. They merely recommended the award of purchase to AMES with the information provided to them, and consistent with what the end-user had requested. Since their role was merely recommendatory, which may either be accepted or rejected by their co-accused, the entire blame should not be put on them alone.

The accused also insist that their acts were justified as they honestly believed that the documents were regular and fully compliant with the law. Their persistent explanation that they relied on the face of the documents submitted by AMES is a clear badge of good faith.

Anent the second ground, accused argue that the evidence offered by the prosecution did not establish that they actively decided to give any unwarranted benefit, advantage, or preference to AMES. Citing *Macairan v. People*,⁴ the accused state that "the granting of unwarranted benefits,

⁴ G.R. No. 215104. March 18, 2021.



Resolution

PP vs. Binay, et al.

Criminal Case Nos. SB-12-CRM-0031 to 0032

Page 3 of 8

x-----x

advantage or preference or the causing of undue injury to the government must be inextricably linked to the existence of fraudulent or corrupt motive on the part of the accused." Applying the same, the accused stress that no evidence was presented to prove that the subject procurement was purposely and intentionally pursued by them to fraudulently benefit themselves and the supplier. What is apparent, according to the accused, is that this Court supposedly made them "scapegoats to have someone answer for the perceived crime, where the decision makers were actually acquitted."⁵

In refutation, the prosecution assert that it is incumbent upon accused Pamintuan and Delos Reyes, as members of the Committee on Canvass, to verify the genuineness of AMES' representation as exclusive distributor. They were principally mandated to do the spade work before any recommendation could be made. Yet, they merely relied on the face of the documents submitted by AMES without further validating their authenticity. Also, their claim of good faith is unavailing since even a simple perusal of the documents could have raised doubts as to the truth and veracity of their contents. As such, accused acted with gross inexcusable negligence by being totally remiss of their avowed duties and functions.

RULING

The *Motion* fails to persuade.

It is readily apparent that the issues raised in the instant *Motion* are mere reiterations of grounds and arguments already passed upon and resolved in the assailed *Decision*. Nevertheless, the Court finds the need to briefly discuss certain matters.

First, the evidence on record plainly shows that the actuations of accused Pamintuan and Delos Reyes constituted gross inexcusable negligence as they failed to exercise even the slightest care in the discharge of their duties. Remarkably, the accused summarized in their *Motion* the circumstances that led this Court to conclude that they had committed gross inexcusable negligence in recommending the award of purchase in favor of AMES, thus:

⁵ Record, Vol. 12, p. 450.

Resolution

PP vs. Binay, et al.

Criminal Case Nos. SB-12-CRM-0031 to 0032

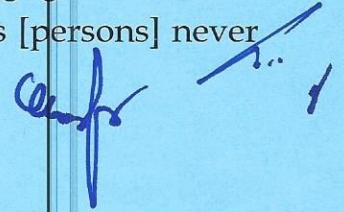
Page 4 of 8

x ----- x

- “14.1. Despite the obvious deficiencies in the Certificate of Sole/Exclusive Distributorship dated March 20, 1999, issued by UGM Medisys in favor of AMES, neither accused Pamintuan nor Delos Reyes required AMES to submit additional certification that it does not have any subdealer selling at lower price.
- 14.2. The record is bereft of any certificate from the requisitioning officer attesting that no suitable substitute of substantially the same quality is available for the medical equipment to be procured.
- 14.3. The expiry of the License to Operate submitted by AMES should have been flagged by the Committee on Canvass if they had indeed conducted an examination of the documents it submitted.
- 14.4. Accused Pamintuan and Delos Reyes’ gross inexcusable negligence is even more amplified by their admission that they merely relied on the documents submitted by AMES, and did not find the need to verify their authenticity, and that this admission defeats all the more their claim of good faith in the discharge of their duties.
- 14.5. Accused expressly testified that they never looked for or even exerted efforts to scout other potential suppliers of the medical equipment. Had they only exercised enough prudence and been more circumspect, Accused purportedly could have easily discovered the obvious infirmities and absence of the necessary documents to support or justify their recommendation.”⁶

It should be underscored that gross inexcusable negligence “entails the omission of care that even inattentive and thoughtless [persons] never

⁶ Record, Vol. 12, pp. 437-438.



Resolution

PP vs. Binay, et al.

Criminal Case Nos. SB-12-CRM-0031 to 0032

Page 5 of 8

x ----- x

fail to take on their own property, and in cases involving public officials[,] it takes place only when breach of duty is flagrant and devious.”⁷

As previously discussed, accused Pamintuan and Delos Reyes shirked their duty to ensure compliance with the basic requirements demanded by applicable laws, rules and regulations on procurement by local government units. They recommended the award of purchase to AMES despite the absence of: (1) a certificate executed by the supplier that there are no subdealers selling at lower prices; and (2) a certificate by the requisitioning officer that no suitable substitute of substantially the same quality is available for the equipment to be procured. These certificates are expressly required under Section 371 of R.A. No. 7160, Section 105 of COA Circular No. 92-386, and Section 443 of COA Circular No. 368-91 before direct purchase from manufacturers or exclusive distributors is allowed. By failing to require the submission of these certificates, notwithstanding the explicitness of the above legal provisions, accused omitted to act in a situation where there is a duty to act.

The License to Operate submitted by AMES is also patently flawed. A mere perusal of its contents would readily reveal that the same has already expired. To recapitulate, the purported License to Operate, which was issued on January 11, 2000, states that it “shall be valid for one year/s from date of issue or until December 31, 2000 unless subsequently renewed by the [BFAD].” Yet, the procurement of the medical equipment began sometime in January 2001 when the Purchase Request No. 98-13935⁸ was prepared and issued.

Further, accused Pamintuan and Delos Reyes only conducted a superficial examination of the License to Operate without efforts to verify the same. The evidence on record showed that Quintin L. Kintanar, supposed signatory of the License to Operate, could not have possibly signed the same as he had already retired from service when the license is said to have been issued. Also, the signature of Quintin L. Kintanar appearing on the license is remarkably different from his usual signature.⁹ Had they verified with the concerned government agency, they would have discovered that the License to Operate was not duly issued.

⁷ People v. Cerezo, et al., G.R. No. 252173. March 15, 2022.

⁸ Exhibit “CC”.

⁹ Judicial Affidavit of Fausto Rivera Quizon, Jr. dated February 11, 2020 (Record, Vol. 6, pp. 87-94).

Resolution

PP vs. Binay, et al.


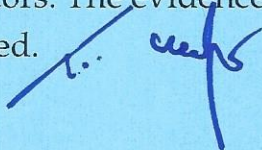
Criminal Case Nos. SB-12-CRM-0031 to 0032

Page 6 of 8

x-----x

As fittingly put forward by the prosecution, it is principally the function of accused Pamintuan and Delos Reyes, as members of the Committee on Canvass, “to do the spade work before any recommendation could be made.”¹⁰ They are specifically “tasked to canvass, review, verify and ascertain not only the suppliers, or their physical and legal existence, but also the authenticity and validity of the documents submitted by them.”¹¹ Upon receipt of the documents submitted by AMES, prudence dictates for both accused Pamintuan and Delos Reyes to first verify their authenticity and whether said documents satisfy the requirements of applicable procurement laws. They cannot blindly rely on the documents submitted by AMES because they were duty-bound to validate their authenticity, and alert the members of the Committee on Awards of any infirmity or deficiency. Likewise, they were mandated to ascertain that there are indeed no subdealers selling at lower prices and no suitable substitute of substantially the same quality is available for the equipment to be procured. Their failure to observe sufficient diligence under the circumstances, and willful indifference in complying with pertinent procurement laws, rules and regulations, clearly amount to gross inexcusable negligence.

The Court did not apply the same ruling with respect to accused Binay, Aspillaga, and Yamane-Garcia simply because their actions cannot be considered to fall under the rubric of gross inexcusable negligence. To restate, “although the members of the Committee on Awards are not bound by the recommendation of the Committee on Canvass and can make their independent assessment, they are, nevertheless, not expected to repeat the same process of canvassing, vetting, and verification. Otherwise, they would be duplicating the primary duties and functions of the members of the Committee on Canvass.”¹² Contrary to accused Pamintuan and Delos Reyes’ claim, the Court did not make them as mere “scapegoats” to take the rap for the real perpetrators. The evidence on record is simply not sufficient to convict their co-accused.



¹⁰ Comment/Opposition (to accused Pamintuan and Delos Reyes’ Motion for Reconsideration dated 5 February 2024), Record, Vol. 12, p. 455.

¹¹ Comment/Opposition (to accused Pamintuan and Delos Reyes’ Motion for Reconsideration dated 5 February 2024), Record, Vol. 12, p. 455.

¹² Decision dated 22 January 2024, Record, Vol. 12, p. 365.

Resolution

PP vs. Binay, et al.

Criminal Case Nos. SB-12-CRM-0031 to 0032

Page 7 of 8

x ----- x

Finally, there is no deviation from the doctrine established in *Macairan v. People*.¹³ In that case, the Supreme Court found the third element, *i.e.*, granting of unwarranted benefits, advantage or preference or the causing of undue injury to the government, wanting because no evidence was presented to establish that petitioners' actions were animated by malicious motive or fraudulent intent to defraud the government. The Supreme Court went on to state that "[t]he acts constituting the elements of a violation of R.A. No. 3019 must be effected with corrupt intent, a dishonest design, or some unethical interest." The Court notes, however, that the petitioners therein were charged with violation of Section 3(e) through evident bad faith and/or manifest partiality.

It must be emphasized that under current jurisprudence, gross inexcusable negligence varies from evident bad faith and manifest partiality. Evident bad faith and manifest partiality are acts committed through *dolo*, while gross inexcusable negligence is committed by means of *culpa*.¹⁴ *Martel, et al. v. People*¹⁵ teaches us that "[g]ross inexcusable negligence under Section 3(e) of R.A. 3019, a culpable felony, does not require fraudulent intent or ill-will. A public officer is guilty of gross inexcusable negligence when there is a breach of duty that is committed flagrantly, palpably, and with willful indifference. Hence, a public officer who seriously breaches his or her duty in a blatant and extremely careless manner is guilty of gross inexcusable negligence under Section 3(e) regardless of whether such breach of duty was done with malicious intent."

Thus, the Court affirms its earlier stance that accused Pamintuan and Delos Reyes committed acts that smack of gross inexcusable negligence, ultimately resulting in unwarranted benefits in favor of AMES. Jurisprudence defines the word "unwarranted" as lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason."¹⁶ In recommending the award of purchase to AMES, despite glaring deficiencies in the requirements to justify resort to direct purchase, accused gave unwarranted benefits to the former.

capr /

¹³ G.R. No. 215104. March 18, 2021.

¹⁴ *Martel, et al. v. People*, G.R. No. 224720-23. February 02, 2021; *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020.

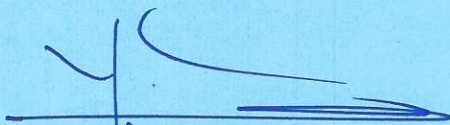
¹⁵ G.R. No. 224720-23. February 02, 2021.

¹⁶ *Libunao v. People*, G.R. Nos. 214336-37, February 15, 2022.


In view of the above, the Court finds no cogent reason to warrant any modification or reversal of the assailed Decision.

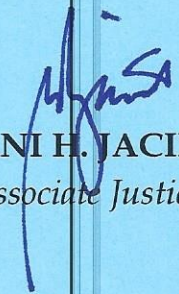
WHEREFORE, the *Motion For Partial Reconsideration* [Re: Decision dated 22 January 2024] filed by accused Conrado V. Pamintuan and Jaime P. Delos Reyes is hereby DENIED for lack of merit.

SO ORDERED.


LORIFEL LACAP PAHIMNA
Associate Justice

We concur:


MICHAEL FREDERICK L. MUSNGI
Chairperson
Associate Justice


BAYANI H. JACINTO
Associate Justice