



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 268342  
PHILIPPINES,  
*Plaintiff-appellee,*

-versus-

THEODORE B. MARRERO,  
NENITA D. LIZARDO,  
HELEN K. MACLI-ING,  
PAULO P. PAGTEILAN,  
LILY ROSE T. KOLLIN,  
FLORENCE R. GUT-OMEN,  
EDWARD B. LIKIGAN,  
SOLEDAD THERESA F.  
WANAWAN, JEROME M.  
FALINGAO, ABDON A.  
IMINGAN AND RONALD C.  
KIMAKIM,  
*Accused-appellants.*

Members:

LEONEN,\* *S.A.J.*, Chairperson  
LAZARO-JAVIER,\*\*  
LOPEZ, M.,  
LOPEZ, J., and  
KHO, JR., *JJ.*

Promulgated:

MAY 15 2024

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DECISION

LAZARO-JAVIER, J.:

The Case

These Appeals<sup>1</sup> assail the following dispositions of the Sandiganbayan in SB-17-CRM-1495:

\* On Official Business.

\*\* Acting Chairperson.

<sup>1</sup> *Rollo*, pp. 137-182, 188-239, 244-263, 277-294, and 295-323; Temporary *Rollo* pp. 1-33.

1. Decision<sup>2</sup> dated March 24, 2023 convicting accused-appellants Theodore B. Marrero (Marrero),\* Nenita D. Lizardo (Lizardo), Helen K. Macli-ing (Macli-ing), Paulo P. Pagteilan (Pagteilan), Lily Rose T. Kollin (Kollin), Florence R. Gut-omen (Gut-omen), Edward B. Likigan (Likigan), Soledad Theresa F. Wanawan (Wanawan), Jerome M. Falingao (Falingao), Abdon A. Imingan (Imingan), Ronald C. Kimakim (Kimakim), and Abelard T. Pachingel (Pachingel)<sup>3</sup> (collectively, accused-appellants) for violation of Section 3(e)<sup>4</sup> of Republic Act No. 3019, as amended;<sup>5</sup> and
2. Resolution<sup>6</sup> dated June 13, 2023 denying their respective motions for reconsideration.

### Antecedents

In his Complaint dated January 24, 2007, Harry C. Dominguez (Dominguez), then a gubernatorial candidate in the Mountain Province, charged the now-deceased Maximo B. Dalog,<sup>7</sup> then Governor of Mountain Province, Pagteilan, Kollin, Gut-omen, Likigan, Emilio B. Pinangga, and Wanawan with violation of Section 3(e) of Republic Act No. 3019 and violation of Republic Act No. 9184, relative to the procurement of one unit of Mitsubishi van in the amount of PHP 1,000,000.00.<sup>8</sup> Dominguez averred that the bidding was rigged since no public bidding actually took place, there was no posting on the Government Electronic Procurement System (GEPS), the vehicle was purchased from an unauthorized dealer, and there was no transparency in the procurement because there was no consistency in the identification of the source of the funds. The case was docketed as OMB-L-C-07-0106-A.

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<sup>2</sup> *Id.* at 18–80. The March 24, 2023 Decision was penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division of the Sandiganbayan.

\* Also referred to as “Marerra” in some parts of the *rollo*.

<sup>3</sup> *Rollo*, p. 11. Allegedly deceased as manifested by counsel during the promulgation of judgment on March 24, 2023, per note of the Third Division of the Sandiganbayan.

<sup>4</sup> **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:

(e) Causing any 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.

<sup>5</sup> Also known as the Anti-Graft and Corrupt Practices Act.

<sup>6</sup> *Rollo*, pp. 83 to 96. The June 13, 2023 Resolution was penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division of the Sandiganbayan.

<sup>7</sup> *Id.* at 19–20. Upon the prosecution’s filing of Maximo B. Dalog’s Death Certificate with Registry No. 2017-09439 issued by the Philippine Statistics Authority, the case was dismissed against him.

<sup>8</sup> SBN records, p. i74.

In its Resolution<sup>9</sup> dated March 25, 2009, Graft Investigation & Prosecution Officer Judy Anne Doctor-Escalona recommended the dismissal of the charges against therein respondents. As evidenced by the documents submitted by the complainant, the Office of the Ombudsman (OMB) found that a public bidding had, in fact, taken place for the procurement of the vehicle in question. Relative to the posting requirement on GEPS, the OMB, however, found that the Bids and Awards Committee (BAC) failed to post on GEPS, however, there was no internet access or service provider in Bontoc, Mountain Province, at the time the bidding was conducted, thus, preventing them from complying with this requirement. As for the source of the funds, since the National Government deposited the funds in the general fund account of the provincial government of Mountain Province, the indication of "general fund" as the source of the funding was not erroneous. With respect to the allegation that the vehicle was overpriced, the OMB held that complainant failed to support the charge since he did not provide canvass sheets indicating the specifications of the items which should match those items subject to the alleged overpricing. More, the quotation submitted by complainant from Motorplaza, Inc. in the amount of PHP 781,000.00 was only for the Mitsubishi L-300 Versa Van, excluding expenses for the ambulance equipment and accessories. The OMB further found that complainant failed to prove that Ronhil Trading, Inc. was an unauthorized dealer. Ultimately, the OMB concluded that complainant failed to specify the acts indicating corrupt practices to prove that there was indeed a violation of Republic Act No. 3019.<sup>10</sup>

Thereafter, Dominguez filed another Letter-Complaint dated February 5, 2007 requesting the National Bureau of Investigation-Cordillera Administrative Region (NBI-CAR) to investigate the allegations of anomalous transactions regarding the purchase of one unit of Mitsubishi L-300 Versa Van (subject vehicle), the same vehicle subject of the investigation of the OMB. Implicated in this charge were Dalog, Marrero, Lizardo, Macliling, Pagteilan, Kollin, Gut-omen, Likigan, Wanawan, Falingao, Imingan, and Pachingel, who were all officials and employees of the Provincial Government of Mountain Province; together with Kimakim, as the owner/proprietor of Ronhil Trading, Inc. from which the subject vehicle was purchased.<sup>11</sup>

Based on the results of the investigation of NBI-CAR, accused-appellants were indicted by the OMB in OMB-C-C-11-0107-C for violation of Section 3(e) of Republic Act No. 3019, *viz.*:<sup>12</sup>

That on 29 March 2006 or sometime prior or subsequent thereto, in Mountain Province, Philippines, and within the jurisdiction of this Honorable Court, accused public officer, MAXIMO B. DALOG, being then

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<sup>9</sup> *Id.* at pp. 174-186.

<sup>10</sup> *Id.* at pp. 180-185.

<sup>11</sup> *Rollo*, p. 19.

<sup>12</sup> *Id.*

Governor of Mountain Province, THEODORE A. MARRERO, NENITAD. LIZARDO, HELEN K. MACLI-ING, PAULO P. PAGTEILAN, LILY ROSE T. KOLLIN, FLORENCE R. GUT-OMEN, EDWARD B. LIKIGAN, SOLEDAD THERESA F. WANAWAN, JEROME M. FALINGAO, ABDON A. IMINGAN, ABELARD T. PACHINGEL, all officials and employees of the Provincial Government of Mountain Province, committing the offense in relation to their office and taking advantage of their respective official positions, acting with manifest partiality, evident bad faith or gross inexcusable negligence, conspiring with one another and with the accused RONALD C. KIMAKIM, owner/proprietor of Ronhil Trading, Inc., did then and there willfully, unlawfully, and criminally give unwarranted benefits, privilege and advantage to accused RONALD C. KIMAKIM by awarding the contract to Ronhil Trading, Inc., for the purchase of Mitsubishi L-300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509 for ₱843,700.91 paid under Disbursement Voucher No. 100-06030720 dated 29 March 2006, despite irregularities in the procurement process such as specifying the brand of vehicle to be purchased and deviating from the purpose of procurement, in circumvention of Republic Act No. 9184; and cause (sic) undue injury to the government in the amount of ₱87,700.91, more or less, representing the difference between the amount paid to Ronhil Trading, Inc. and the lesser amount stated in the Vehicle Sales Invoice and Delivery Receipt.

The case was docketed as SB-17-CRM-1495. On their separate arraignments, accused-appellants pleaded “not guilty” to the charge.<sup>13</sup>

During pre-trial, the parties stipulated that on the relevant dates in question, Marrero was the provincial accountant; Lizardo, the health officer; Macli-ing, the provincial nurse; Pagteilan, the chairperson of the BAC; Kollin, the BAC vice-chairperson; Gut-omen, Likigan, and Wanawan, BAC members; Falingao, Budget Officer II, who was also a member of the BAC and the Technical Working Group (TWG); Imingan, Executive Assistant and BAC-Secretariat; and Pachingel, member of the technical and inspection team.<sup>14</sup>

### ***Version of the Prosecution***

NBI-CAR Supervising Agent Paul Alaine Moises (Moises) testified that based on the result of their investigation, the subject vehicle was first sold by Motorplaza, Inc. to Kimakim on March 29, 2006 for PHP 756,000.00, as evidenced by the corresponding vehicle sales invoice and delivery receipt. On even date, Kimakim sold the subject vehicle to the Provincial Government of Mountain Province for PHP 999,000.00.<sup>15</sup> The NBI-CAR observed that there were discrepancies in the bid documents:<sup>16</sup>

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<sup>13</sup> *Id.* at 20.

<sup>14</sup> *Id.* at 20–21.

<sup>15</sup> *Id.* at 22–23.

<sup>16</sup> SBN records, pp. 213–214.

The bid documents referred to in Paragraph 9 of the NBI-CAR Report are:

- a. Undated PURCHASE REQUEST No. 30-06 (Annex O), *re the purchase of L-300 Versa van (Brand New) Body Painting, white color, fully air-conditioned, containing the signatures of GOV.*

- MAXIMO B. DALOG; THEODORE B. MARRERO, Provincial Accountant; and NENITA D. LIZARDO, M.D., Provincial Health Officer;
- b. BIDS AND AWARDS COMMITTEE (BAC) LETTER dated 24 February 2006 (Annex P), *requesting for approval/and approving the purchase of one (1) unit VERSA VAN*, signed by FLORENCE GUT-OMEN, EDWARD LIKIGAN, SOLEDAD THERESA F. WANAWAN, all BAC Members; LILY ROSE T. KOLLIN, Vice-Chairman BAC and Gov. MAXIMO DALOG;
  - c. INVITATION TO APPLY FOR ELIGIBILITY AND TO BID dated 24 February 2006 *for the procurement of ONE (1) UNIT MITSUBISHI VAN* signed by PAULO P. PAGTEILAN, BAC Chairman;
  - d. KIMAKIM'S accomplished BID FORM dated 13 March 2006 (Annex R), *quoting therein the price of Php999,000.00 for 1 unit L300 Mitsubishi Versa Van, Brand New with aircon and markings*;
  - e. ABSTRACT OF BIDS (Annex S), *containing the description of (1) UNIT Mitsubishi Van*, signed by EDWARD LIKIGAN, SOLEDAD THERESA F. WANAWAN, all BAC Members; LILY ROSE T. KOLLIN, Vice-Chairman BAC; PAULO P. PAGTEILAN, BAC Chairman and Gov. MAXIMO DALOG;
  - f. POST-QUALIFICATION EVALUATION REPORT (Annex T), *RE PROCUREMENT OF MITSUBISHI VAN*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;
  - g. POST-QUALIFICATION EVALUATION SUMMARY REPORT (Annex U), *RE PROCUREMENT OF MITSUBISHI VAN*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;
  - h. BID EVALUATION REPORT (Annex V), *RE PROCUREMENT OF MITSUBISHI VAN*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;
  - i. BAC RESOLUTION NO. G-06 (Annex W) DECLARING LOWEST CALCULATED AND RESPONSIVE BID (LCRB) AND RECOMMENDING APPROVAL, *FOR THE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN*, signed by FLORENCE R. GUT-OMEM; SOLEDAD THERESA F. WANAWAN, all BAC Members; LILY ROSE T. KOLLIN, Vice-Chairman BAC; and PAULO P. PAGTEILAN, BAC Chairman;
  - j. NOTICE OF AWARD/ACCEPTANCE (Annex X), *RE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN*, signed by GOV. DALOG and RONALD KIMAKIM;
  - k. PURCHASE ORDER (Annex Y), *for (1) unit MITSUBISHI VAN in the amount of Php999,000.00*, signed by GOV. DALOG and RONALD KIMAKIM;

On the other hand, the bid documents referred to in Paragraph 17 of the NBI-CAR Report are:

- a. Undated and unnumbered PURCHASE REQUEST (Annex LL), *re the purchase of L-300 Versa van (Brand New) Body Painting-white color, fully air-conditioned, 2.5 Diesel, with Ambulance Equipment and Accessories*, containing the signatures of GOV. MAXIMO B. DALOG; THEODORE B. MARRERO, Provincial Accountant; and NENITA D. LIZARDO, M.D., Provincial Health Officer;
- b. BIDS AND AWARDS COMMITTEE (BAC) LETTER dated 24 February 2006 (Annex MM) *requesting for approval/and approving the purchase of Mitsubishi Van with Ambulance Equipment and other Accessories*, FLORENCE GUT-OMEN, EDWARD LIKIGAN, SOLEDAD THERESA F. WANAWAN, all BAC Members; LILY ROSE T. KOLLIN, Vice-Chairman BAC and Gov. MAXIMO DALOG;
- c. INVITATION TO APPLY FOR ELIGIBILITY AND TO BID dated 24 February 2006 (Annex NN), *for the procurement of ONE (1) UNIT MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by PAULO P. PAGTEILAN, BAC Chairman;
- d. Undated CERTIFICATION (Annex OO) issued by SMART Communications, Inc. x x x;
- e. MINUTES OF THE PRE-BID CONFERENCE HELD AT THE BAC OFFICE, PROVINCIAL CAPITOL BONTOC, MT. PROVINCE ON MARCH 3, 2006 (Annex PP), *stating that the same was FOR THE CONSTRUCTION OF BONTOC COMMERCIAL CENTER PHASE I HELD AT THE BAC OFFICE, CALLED TO ORDER AT 10:02AM MARCH 3, 2006 AND WAS PRESIDED BY MR. PAULO PAGTEILAN*;
- f. ABSTRACT OF BIDS (Annex QQ) *containing the description of (1) UNIT Mitsubishi Van with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by EDWARD LIKIGAN, SOLEDAD THERESA F. WANAWAN, all BAC Members; LILY ROSE T. KOLLIN, Vice-Chairman BAC; PAULO P. PAGTEILAN, BAC Chairman and Gov. MAXIMO DALOG;
- g. MINUTES OF THE REGULAR MEETING AND OPENING OF BIDS (March 14, 2006) (Annex RR); NAME OF CONTRACT -- *PROCUREMENT OF ONE (1) UNIT MITSUBISHI L300 with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*;
- h. POST-QUALIFICATION EVALUATION REPORT (Annex SS), *RE PROCUREMENT OF MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;
- i. POST-QUALIFICATION EVALUATION SUMMARY REPORT (Annex TT), *RE PROCUREMENT OF MITSUBISHI VAN WITH AMBULANCE EQUIPMENT AND OTHER ACCESSORIES* signed by JEROME M. FALINGAO, BAC-TWG; and ABDON A. IMINGAN, BAC SECRETARIAT;

Items a, b, c, e, f, g, h, i, j, and k of Paragraph 9 of this Report pertain to the purchase of one unit (basic) Mitsubishi L300 Versa Van with Engine No. 4D56AR6686 and Serial No. PAEL65NV16B001509, that was made to appear to have been procured by the provincial Government of Mt. Province represented by GOV. DALOG in the amount of PhP999,000.00 from KIMAKIM.

On the other hand, items a, b, c, f, h, i, j, k, l, and m of Paragraph 17, which were used as supporting documents in the Counter-Affidavit of GOV. DALOG, pertain to the purchase of a one unit Mitsubishi L300 Versa Van with the same engine and serial numbers to that of the said van mentioned at the preceding paragraph.

However, it is noteworthy that in all said specified documents under Paragraph 17, the phrase "*with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES,*" were already suffixed to the description "*one unit MITSUBISHI L300 VERSA VAN,*" thus, making it appear that what was purchased was one unit MITSUBISHI L300 VAN with AMBULANCE EQUIPMENT and OTHER ACCESSORIES, when in fact and in truth there is no official transaction that transpired between GOV. DALOG and KIMAKIM regarding the acquisition of the said "one unit MITSUBISHI L300 VERSA VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES."

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Seemingly, the replacements of documents were intentionally effected to accommodate the payment of PhP999,000.00, thus these are additional circumstances to substantiate that these said substitute documents are indeed fabricated.

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In response to NBI-CAR's invitation, Moises alleged that Kimakim, together with his counsel, appeared before NBI-CAR where he executed and signed his sworn statement regarding the purchase in question. According to Kimakim, Macli-ing approached and instructed him to fill-out a blank bid form for the purchase of an ambulance for Bontoc General Hospital. Macli-ing then made him sign a disbursement voucher, after which, a check was

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- j. BID EVALUATION REPORT (Annex UU), *RE PROCUREMENT OF MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES* signed by JEROME M. FALINGAO, BAC-TWG; and ABIDON A. IMINGAN, BAC SECRETARIAT;
  - k. BAC RESOLUTION NO. G-06 (Annex VV) *DECLARING LOWEST CALCULATED AND RESPONSIVE BID (LCRB) AND RECOMMENDING APPROVAL, FOR THE PROCUREMENT OF ONE (1) UNIT L300 MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by FLORENCE R. GUT-OMEM; SOLEDAD THERESA F. WANAWAN, all BAC Members; LILY ROSE T. KOLLIN, Vice-Chairman BAC; and PAUL G. P. PAGTEILAN, BAC Chairman;
  - l. NOTICE OF AWARD/ACCEPANCE (Annex WW), *RE PROCUREMENT OF ONE (1) UNIT MITSUBISHI VAN with AMBULANCE EQUIPMENT AND OTHER ACCESSORIES*, signed by GOV. DALOG only ;
  - m. PURCHASE ORDER dated March 17, 2007 (Annex XX), *for (1) unit MITSUBISHI VAN WITH AMBULANCE EQUIPMENT AND OTHER ACCESSORIES in the amount of Php999,000.00* signed by GOV. DALOG and RONALD KIMAKIM;

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issued to him in the total amount of PHP 843,700.91. For this amount, he issued an official receipt. Both of them encashed the check, after which, Macli-ing took the money and handed him PHP 10,000.00 as service fee. He denied having transacted with Motorplaza, Inc., claiming that his signatures on the vehicle sales invoice and delivery receipt were forged as it was Macli-ing who personally transacted with Motorplaza, Inc., and who made him sign a deed of sale on the subject vehicle.<sup>17</sup> The NBI-CAR concluded that the entire amount of PHP 999,000.00 was misappropriated by accused-appellants and that no purchase of the subject vehicle had actually taken place, although they admitted having actually seen the subject vehicle.<sup>18</sup>

The sales manager of Motorplaza, Inc., Adelon T. Espiritu (Espiritu), testified that Motorplaza, Inc. does not sell ready-made Mitsubishi ambulance vehicles. To his knowledge, the subject vehicle was sold as a plain van without any ambulance equipment and accessories. Macli-ing purchased the subject vehicle on Kimakim's behalf in accordance with the policy of Motorplaza, Inc. allowing any person to purchase a vehicle on behalf of another but only for cash purchases. He also confirmed that Macli-ing did not present a written authority to purchase from Kimakim, who was not present at the time of purchase.<sup>19</sup>

### *Version of the Defense*

The defense presented Lizardo, Marrero, Kollin, Likigan, Gut-omen, Pageitan, Wanawan, Imingan, Kimakim, Benedict P. Yodong, Jr., Eleanor B. Bantag, and Sigfredo A. Eusebio.

Lizardo testified that on top of being the provincial health officer, she was also the Chief of the Bontoc General Hospital. Sometime in 2006, they received an allotment as financial assistance from the Department of Budget and Management per Special Allotment Release Order No. ROCS-05-05321. After consultation with the senior staff of Bontoc General Hospital, they decided to use the funds to purchase an ambulance. When she consulted the driver and other technical staff of Bontoc General Hospital, they advised her that the ambulance vehicle must not be a "lower class" Asia Utility Vehicle such as a Delica or Kia.<sup>20</sup> She then signed purchase request No. 30-06 where her staff specified the subject vehicle as "L-300 Versa Van (Brand New) Body Painting - white color, Fully Air-conditioned, 2.5 Diesel". During the BAC meeting on March 3, 2006, she requested to defer the installation of the equipment and accessories of the ambulance as they planned to use it temporarily as a service vehicle since their actual service vehicle was still under repair at that time. The subject vehicle was then delivered to Bontoc General Hospital where it was used to take patients for treatment outside of

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<sup>17</sup> *Rollo*, pp. 23-24

<sup>18</sup> *Id.* at 24.

<sup>19</sup> *Id.* at 24-25.

<sup>20</sup> *Id.* at 62.



Mountain Province. Each trip was covered by a requisition and issue slip and driver's trip ticket. On cross, Lizardo clarified that she did not specify that the requested vehicle be an ambulance because she was advised by the General Services Office that there was no ready-made ambulance available for purchase; only a vehicle yet to be converted into an ambulance. She initially thought that the purchase would require two steps: the purchase of the vehicle and its conversion into an ambulance.<sup>21</sup>

When the subject vehicle was delivered to the provincial government, it was brand new, bearing the mark "AMBULANCE". The ambulance accessories though were separately delivered and forwarded to the General Services Office for safekeeping.<sup>22</sup> These accessories were later on installed by Kimakim upon her instruction.<sup>23</sup> Marrero then consulted with her and told her that there was an error in the preparation of the purchase request that she had initially submitted. She explained to him though why they did not include the ambulance equipment and accessories in the description of the subject vehicle. In response to the claim of the OMB that they no longer incorporated "ambulance equipment and accessories" in the papers for the procurement and use of the subject vehicle, she explained that when they applied for insurance coverage with the Government Service Insurance System (GSIS), the GSIS inspected the subject vehicle and confirmed that it was an ambulance. This was the reason the certificate of cover stated that the subject vehicle was a "MITS L300 VERSA VAN DSL (AMBULANCE)".<sup>24</sup>

Marrero testified that on March 28, 2006, he received a statement of account requesting payment for one Mitsubishi Van. He checked the subject vehicle then parked outside the Bontoc General Hospital. He saw the marking "AMBULANCE" on the vehicle itself. Upon further verification with the provincial health office, he was informed that the "L-300 Versa Van (Brand New) Body Painting, white color, fully air-conditioned, 2.5 diesel" was to be used as an ambulance but the provincial health officer had requested to defer the installation of equipment and accessories thereon. Wanawan and Pachingel began preparing the acceptance and inspection report, which initially stated that what was inspected and accepted was only one unit of Mitsubishi Van. They later confirmed to him that the accessories and equipment, including the ambulance bed, sirens, medical cabinet, etc., were already in the custody of the General Services Office, a fact reflected in the acceptance and inspection report. Fully satisfied that what was delivered, inspected, and accepted was "1 unit Mitsubishi Versa Van Brand New with Ambulance Equipment and Other Accessories," he and Lizardo agreed that the Purchase Request will have to be revised to fully support the payment of the delivered items and the subsequent booking of the property in the inventory account. He then referred all the procurement documents to the BAC with an accompanying request to change the documents to reflect what

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<sup>21</sup> *Id.* at 39-41.

<sup>22</sup> *Id.* at 39-41.

<sup>23</sup> SBN records, p. 196.

<sup>24</sup> *Id.* at 640-643.



was actually delivered, instead of just describing the subject vehicle as a "Mitsubishi Van." After the documents were corrected, he signed the disbursement voucher. He also explained that the disbursement voucher did not indicate the complete description "ambulance with equipment and accessories" in keeping with their customary practice to avoid making any lengthy descriptions. He further admitted that aside from the revised acceptance and inspection report, no other supporting document initially showed the entry "ambulance equipment and accessories" until these were revised upon his request.<sup>25</sup>

Kollin testified that as provincial planning and development coordinator, she was the head secretariat of the Provincial Development Council, a regular member of the Local Finance Committee, and vice-chairperson of the BAC. While the purchase request initially indicated "L-300 Versa Van (Brand New) Body Painting, white color, fully air-conditioned, 2.5 diesel", it was clear to the BAC that what was being purchased and awarded was an ambulance vehicle. Instead of correcting the original purchase request to reflect the item "ambulance equipment and accessories," the BAC proceeded to opt for public bidding as the mode of procurement for the said item. During the pre-bidding conference, the provincial health officer mentioned that the ambulance equipment and accessories should not be installed yet since they intended to temporarily use it first as a service vehicle. The purchase request was subsequently amended to reflect the item "ambulance equipment and accessories" since what was delivered was a van with ambulance equipment and accessories.<sup>26</sup>

Likigan, Gut-omen, Pagteilan, Falingao, Wanawan, and Imingan also attested to the alleged absence of irregularities in the procurement process. According to Likigan, based on the purchase order, what was being procured was an ambulance, particularly a Mitsubishi L-300 Versa Van, which apparently is being exclusively manufactured by Mitsubishi. It was the choice of the provincial health officer, as the end-user. Provincial budget officer Gut-omen explained that the discrepancy between the bid amount and the amount indicated in the sales invoice pertained to the price of the ambulance equipment and accessories although no document indicated the said discrepancy. Pagteilan admitted that the amended purchase request was not the request originally evaluated and bid out by the BAC.

Wanawan testified that she inspected the subject vehicle for which she accomplished and issued a property issue slip. The same reflected that the delivery referred to an "ambulance van with equipment and accessories." She explained that while it is prohibited to specifically mention a brand for the request, what they understood from the description "L-300 Versa Van (Brand New) Body Painting, white color, fully air-conditioned, 2.5 diesel" was that it was only to serve as the base vehicle for the ambulance. She also admitted

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<sup>25</sup> *Rollo*, pp. 41-44 and SBN records, pp. 583-688.

<sup>26</sup> *Rollo*, pp. 43-44.

that they prepared a revised acceptance and inspection report upon the instruction of Marrero since the delivery of the ambulance included accessories and equipment.<sup>27</sup>

Imingan testified that during the BAC meeting, Lizardo explained that the purchase request referred to an ambulance vehicle, but he was not sure how to proceed with it because he was advised that there were no ready-made ambulance vehicles available for sale and that the purchase itself might take a two-step process. The BAC agreed that the purchase should be a one-time transaction wherein the supplier shall take care of the purchase of the van, its reconfiguration, and the installation therein of the ambulance equipment and accessories, as well as the painting and installation of siren. But per the request of Lizardo herself, the reconfiguration and installation should be done at a later time. He (Imingan) caused the preparation of the invitation to bid and subsequently, a supplemental bid bulletin indicating that the provincial government was procuring an ambulance vehicle complete with painting/markings, equipment, and accessories. Finally, he confirmed that Kimakim was engaged in reconditioning and reconfiguration of vehicles and was not a dealer of brand-new Mitsubishi vehicles.<sup>28</sup>

As for Kimakim, he testified that sometime in February 2006, he went to the Provincial Capitol and saw an invitation to bid for an “L-300 Versa Van (Brand New) Body Painting, white color, fully air-conditioned, 2.5 diesel” posted on the bulletin board. He inquired from the Office of the BAC Secretariat regarding the post and the mechanics for the bidding and it was clarified that the subject of the procurement was an ambulance. He then purchased bid documents and computed the cost for a brand-new van, paintings, sirens, and other standard equipment for an ambulance. Upon consultation with his wife who is a licensed physician, he determined that the amount allocated by the provincial government was not actually sufficient to cover the entire cost of the ambulance with equipment and accessories. Nevertheless, he decided to still submit a bid at his wife’s behest since she advised him that the Bontoc General Hospital really needed an ambulance. He also attended the pre-bid conference wherein the provincial health officer requested to defer the installation of the ambulance accessories and equipment. Despite such request, he no longer amended his bid documents.<sup>29</sup>

A few days later, Macli-ing and her husband, Atty. Bartolome Macli-ing (Spouses Macli-ing), who are his godparents, had lunch at a restaurant he owned. He mentioned that he won in the bidding but had not yet found an appropriate unit to supply and deliver to the local government. He further told them that he intended to go to Motorplaza, Inc., the sole dealer of Mitsubishi vehicles in the Cordillera region. Spouses Macli-ing offered to help him negotiate with Motorplaza, Inc. as they were acquainted with its manager after

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<sup>27</sup> *Id.* at 44–45.

<sup>28</sup> *Id.* at 47–48.

<sup>29</sup> *Id.* at pp. 45 – 46.

they purchased a pick-up truck from them. Hence, they proceeded together to Motorplaza, Inc. Spouses Macli-ing were able to get him a discounted price for the subject vehicle as evidenced by the Sales Invoice signed by Macli-ing on his behalf.<sup>30</sup> Thereafter, he purchased ambulance accessories and equipment, albeit he was not able to retain their receipts. On March 28, 2006, he delivered to the local government the subject vehicle, together with the accessories and equipment. A few weeks later, on April 16, 2006, he received a letter-request from the provincial health office for the installation of the accessories and equipment in the subject vehicle. Again, he was not able to retain a copy of the letter.<sup>31</sup>

As for his sworn statement before the NBI, he explained that his counsel, Atty. Enrique A. Palsiw, Jr. (Atty. Palsiw) was not with him when he was with the agents of the NBI. In the course thereof, he was made to sign a prepared statement. He felt compelled to sign the statement after having been repeatedly told to reflect on whether he wanted to be incarcerated or if he would prefer to just cooperate with them. When Atty. Palsiw joined them again, the NBI agents informed him that all he needed to do was sign the statement which Kimakim had already signed. But Atty. Palsiw told the NBI agents that he could not sign the sworn statement as he was not present when it was taken. At that point, NBI Regional Director Pangan got mad and instructed Moises to talk it out with Atty. Palsiw. After their discussion, Atty. Palsiw returned and told him (Kimakim) that they needed to leave.<sup>32</sup> Even Moises who questioned him, did not sign the supposed sworn statement.<sup>33</sup>

Benedict P. Yodong, Jr., Office of the Provincial Auditor of Mountain Province testified that the Commission on Audit (COA) did not issue a notice of suspension, notice of disallowance, or any adverse finding on the transaction. He did admit, however, that there were no documents indicating that the transaction had been audited.<sup>34</sup>

The defense also presented Eleanor B. Bantag, Administrative Officer of the General Services Office, the custodian of property documents of the province. She testified that the office currently has custody of the ambulance, which has been assigned to the Bontoc General Hospital. While photographs of the ambulance were presented, she admitted that she was not present at the time the photographs were taken.<sup>35</sup>

Sigfredo A. Eusebio, Administrative Officer of the Records Division of the OMB, identified and authenticated the certified true copy of the Resolution of the Ombudsman in OMB-L-C-07-0106-A entitled "Harry C.

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<sup>30</sup> SBN records, pp. 193-194.

<sup>31</sup> *Rollo*, pp. 47-48; SBN records, pp. 192-193.

<sup>32</sup> SBN records, pp. 199-201.

<sup>33</sup> *Rollo*, p. 249.

<sup>34</sup> *Id.* at 38-39.

<sup>35</sup> *Id.* at 39.

Dominguez v. Governor Maximo B. Dalog, et al.”, dismissing the charges against therein respondents.<sup>36</sup>

### **Ruling of the Sandiganbayan**

Under Decision<sup>37</sup> dated March 24, 2023, the Sandiganbayan found accused-appellants guilty of violating Section 3(e) of Republic Act 3019, *viz.*:

WHEREFORE, premises considered, this Court finds accused **THEODORE B. MARRERO** (“Marrero”), **NENITA D. LIZARDO** (“Lizardo”), **HELEN K. MACLI-ING** (“Macli-ing”), **PAULO P. PAGTEILAN** (“Pagteilan”), **LILY ROSE T. KOLLIN** (“Kollin”), **FLORENCE R. GUT-OMEN** (“Gut-omen”), **EDWARD B. LIKIGAN** (“Likigan”), **SOLEDAD THERESA F. WANAWAN** (“Wanawan”), **JEROME M. FALINGAO** (“Falingao”), **ABDON A. IMINGAN** (“Imingan”), **ABELARD T. PACHINGEL** (“Pachingel”), and **RONALD C. KIMAKIM** (“Kimakim”) **GUILTY** beyond reasonable doubt of the crime of violation of Section 3 (e) of R.A. No. 3019, as amended, and pursuant to Section 9 thereof, are hereby ordered to each suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum.

In addition, accused Marrero, Lizardo, Macli-ing, Pagteilan, Kollin, Gut-omen, Likigan, Wanawan, Falingao, Imingan, and Pachingel shall suffer perpetual disqualification from holding any public office and loss of all retirement or gratuity benefits under the law.

SO ORDERED.

Quezon City, Metro Manila, Philippines. (Emphasis in the original)

The Sandiganbayan found that: *first*, accused-appellants, with the exception of Kimakim, were public officers, being officials and employees of the Provincial Government of Mountain Province. As regards Kimakim, settled is the rule that private persons acting in conspiracy with public officers may be indicted and found guilty of offenses under Section 3 of Republic Act No. 3019, as amended. The conspiracy among accused-appellants was apparent from their collective actions in the irregular procurement of the subject vehicle;<sup>38</sup> *second*, accused-appellants acted with manifest partiality, evident bad faith, or gross inexcusable negligence relative to the procurement process. In violation of Republic Act No. 9184, they (1) deliberately referred to “Mitsubishi,” a particular brand, in the procurement documents; (2) deviated from the original purpose of the procurement, which was to purchase a service vehicle, not an ambulance; and (3) revised the procurement documents upon discovery of their deviation from the original purpose of the

<sup>36</sup> *Id.* at 46–47.

<sup>37</sup> *Id.* at 18–80. The March 24, 2023 Decision was penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez of the Third Division of the Sandiganbayan.

<sup>38</sup> *Id.* at 58.

procurement.<sup>39</sup> *Finally*, through their acts, accused-appellants caused undue injury to the government *and* gave Kimakim unwarranted benefit. The undue injury caused to the government amounted to PHP 87,700.91 representing the difference between the amount paid by Kimakim to Motorplaza, Inc. for the purchase of the vehicle, and the amount paid by the Provincial Government of Mountain Province to him for the same vehicle. Too, Kimakim received an unwarranted benefit considering that the procurement process had been consummated despite its apparent irregularities.<sup>40</sup>

In their respective motions for reconsideration,<sup>41</sup> accused-appellants argued that the elements of the offense charged were not proven: (1) they were not charged with violation of Republic Act No. 9184; (2) they did not deviate from the original purpose of the procurement, or in any case, supplemental bid documents were issued to clarify that the subject of the bid was an ambulance with equipment and accessories; (3) there was no loss or injury to the government since the subject vehicle was actually purchased and delivered as an ambulance with complete accessories and equipment; (4) the correction of bid documents was not intended to conceal the irregularities but to correct the mistakes therein; and (5) there was no conspiracy.

By Resolution<sup>42</sup> dated June 13, 2023, the Sandiganbayan denied accused-appellants' motions for reconsideration. It held that accused-appellants cannot rely on the case of *Martel v. People*,<sup>43</sup> since it is not on all fours with the present case. There, the Court found that the accused acted in good faith as direct purchase, not public bidding, was only made upon allowance by the COA, whereas here, the COA was not consulted before accused-appellants proceeded with the irregular procurement procedure.<sup>44</sup> It likewise maintained its findings on the undue injury caused to the government, the unwarranted benefit in favor of Kimakim, and the existence of conspiracy among accused-appellants.<sup>45</sup>

### The Present Appeals

Accused-appellants now separately seek anew a verdict of acquittal. In their respective appeal briefs,<sup>46</sup> they similarly argue that the prosecution failed to prove each element of the offense, warranting a reversal of their conviction.

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<sup>39</sup> *Id.* at 60–69.

<sup>40</sup> *Id.* at 69–72.

<sup>41</sup> *Id.* at 83–84. Paulo, Lily, Florence, Edward, Soledad, and Jerome filed their Motion for Reconsideration on April 10, 2023. Theodore, Nenita, Helen, and Abdon filed their Motion for Reconsideration on April 11, 2023. Ronald likewise filed his Motion for Reconsideration on April 11, 2023.

<sup>42</sup> *Id.* at 83 to 96. The June 13, 2023 Resolution was penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice Amparo M. Cabotaje-fang and Associate Justice Bernelito R. Fernandez of the Third Division of the Sandiganbayan.

<sup>43</sup> G.R. Nos. 224720-23, February 2, 2021 [Per J. Caguioa, *Et. Banc*].

<sup>44</sup> *Rollo*, p. 91.

<sup>45</sup> *Id.* at 92–94.

<sup>46</sup> *Id.* at 137–182, 188–239, 244–263, 277–294, 295–323

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Foremost, no undue injury or loss was suffered by the government. An ambulance with accessories and equipment was actually delivered and had passed inspection as confirmed by agents of the NBI-CAR who themselves testified for the prosecution. Espiritu, another prosecution witness, admitted on cross that there were no ready-made ambulances for sale available either in their store or in the stores of their competitors. Thus, any discrepancy in the amount received by Kimakim from the provincial government and the amount which he paid to Motorplaza, Inc. can be easily explained by the fact that the quote presented by the prosecution failed to account for the reconfiguration of the plain van into an ambulance and the installation of the ambulance equipment and accessories.<sup>47</sup> In failing to take into account the cost of the reconfiguration and installation of the ambulance equipment and accessories, the government would be unjustly enriched, and accused-appellants, criminally penalized for a benefit that had been clearly provided to the government.<sup>48</sup> Accused-appellants also point out that the winning bid was well within the approved budget for the contract.<sup>49</sup>

As regards the Sandiganbayan's ruling that by specifying the brand name "Mitsubishi," accused-appellants gave undue preference to the brand, causing unfair competition to the other bidders, accused-appellants contend that they were not charged with giving advantage and preference to Mitsubishi, but only to Kimakim. Kimakim, in turn, had no connection with the owner of Mitsubishi and only bought the vehicle from Motorplaza, Inc. Per testimony of the prosecution's own witness, it was the sole distributor of Mitsubishi vehicles in Baguio City. Thus, there can be no unwarranted benefit, advantage, or preference in specifying a brand when the winning bidder is not the owner of or was a complete stranger in relation to such brand.<sup>50</sup>

Accused-appellants likewise assert that the original and only intent was to procure an ambulance – this was clarified and explained by Lizardo during the pre-bidding conference. Mere error in designating the intended object of the procurement in *some* of the bidding documents cannot disregard the original intent of the procurement which at any rate resulted in the delivery of the ambulance with equipment and accessories. Even the evidence from the prosecution included statements from Lizardo regarding the procurement of an ambulance, albeit the installation therein of the ambulance equipment and accessories was deferred so the vehicle may be temporarily used as a service vehicle. But since upon delivery to the provincial government of the vehicle and the ambulance equipment and accessories, the repair of the service vehicle had already been completed, they no longer saw the need to defer the installation of the ambulance equipment and accessories. Hence, she instructed Kimakim to immediately install the same as soon as its delivery was completed.<sup>51</sup> In any event, error in the designation of the vehicle was

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<sup>47</sup> *Id.* at 156–164, 210–214, 255–261, 321–327.

<sup>48</sup> *Id.* at 159, 190–191.

<sup>49</sup> *Id.* at 304.

<sup>50</sup> *Id.* at 165–167, 220–222.

<sup>51</sup> *Id.* at 169–172, 224–229.



acknowledged by Marrero who sought to correct the documents to reflect what had actually been delivered by Kimakim for proper accounting and registration of the assets of the provincial government.<sup>52</sup> Having sufficiently explained the confusion regarding the specification of the object of procurement, it cannot be said that respondents acted with manifest partiality and evident bad faith.<sup>53</sup>

Finally, they invoke the rule of *in dubio pro reo*. On one hand, the prosecution's own evidence shows the delivery of what had always been intended to be procured, an ambulance, complete with paraphernalia not accounted for in the quotation of Motorplaza, Inc. At the same time, accused-appellants satisfactorily explained the confusion in the procurement process of the ambulance. Any doubt, therefore, as to the criminal design allegedly carried out by accused-appellants should be resolved in their favor.<sup>54</sup>

As for Macli-ing, she also argues that while she was an employee of the Bontoc General Hospital at the time of the transaction, she had no official role, duty, or authority relative to the procurement of the ambulance. She was likewise not a BAC member. She was not a signatory, approving authority, or inspecting authority at any stage of the procurement process or in any of the bidding documents. Her only involvement was helping her godson Kimakim obtain a discount from Motorplaza, Inc. since she was previously able to get good deals from them. Her act of assisting Kimakim negotiate a discount has not *per se* been proven by the prosecution as a criminal act or to have been indispensable to the commission of the offense charged.<sup>55</sup>

Kimakim ripostes that there was no evidence that he had been pre-determined as supplier for the ambulance. Not having taken part in the evaluation of the bids, he was unaware of and could not be held liable for violations of the procurement law, which was not even charged in the Information. He had no hand in specifying the brand name of the vehicle or in deciding the purpose of the procurement.<sup>56</sup> There was likewise no allegation or proof of any overt act showing that he conspired with the other accused-appellants. His presence during the delivery of the ambulance does not constitute proof beyond reasonable doubt of their supposed collective criminal design. In the absence of conspiracy, therefore, Kimakim could only be held liable for his own act, *i.e.*, delivery of the ambulance in fulfillment of his obligation under the bid, which is not a criminal act.<sup>57</sup> The prosecution also failed to present any evidence that he overpriced the ambulance as there was no proof of the actual price of identical goods because clearly, a plain van is not the same as an ambulance.<sup>58</sup> Further, he faults the Sandiganbayan for

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<sup>52</sup> *Id.* at 197–201.

<sup>53</sup> *Id.* at 175–179, 231–234.

<sup>54</sup> *Id.* at 162, 216.

<sup>55</sup> *Id.* at 252–253.

<sup>56</sup> *Id.* at 303–304.

<sup>57</sup> *Id.* at 307–308, 316.

<sup>58</sup> *Id.* at 330–334.

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violating his right to due process for denying his formal offer of evidence after the trial got terminated. As a result, he involuntarily waived his right to present documentary evidence showing his good faith.<sup>59</sup>

On the other hand, the People of the Philippines through the Office of the Special Prosecutor (OSP), defends the Sandiganbayan's Decision in its brief.<sup>60</sup> The OSP maintains that the modalities of manifest partiality and evident bad faith are present as proven by the irregularities in the procurement process. Notwithstanding the circumvention of Republic Act No. 9184, accused-appellants proceeded to award the contract to Kimakim and actively participated in the commission of the crime by revising the procurement documents.<sup>61</sup> The undue injury to the government was evident not only in the award of the contract to Kimakim despite the defective procurement process but also in the amount of PHP 87,700.91 representing the difference between the amount paid by Kimakim to Motorplaza, Inc. and the amount he received from the provincial government.<sup>62</sup> Since accused-appellants had all cooperated in the questioned procurement in a way violative of the procurement law and rules, giving unwarranted benefits to Kimakim to the prejudice of the government, the OSP concludes that accused-appellants acted in conspiracy with each other.<sup>63</sup>

In their Consolidated Reply Brief,<sup>64</sup> Marrero, Lizardo, Iningan, and Macli-ing emphasized that the specification of the brand name was made to prevent a situation where bidders would have a higher chance of winning the bid on a vehicle that does not have the same performance as a Mitsubishi L-300 van in the rugged mountain roads of Mountain Province. Thus, bidders were placed on a level playing field as they would be bidding based on the same base vehicle and the evaluation of the bid would be centered on the quality and cost of the configuration into an ambulance plus the equipment and accessories.<sup>65</sup> Too, if accused-appellants intended to conceal the alleged irregularities in the procurement process, then they could have also deleted the specification of the brand name in the revised bidding documents which is one of the violations raised by the prosecution.<sup>66</sup> As regards the claim of the OSP that there was no record showing that the ambulance equipment and accessories came from Kimakim other than Kimakim's own testimony, accused-appellants point out that the Acceptance and Inspection Report likewise states this fact. Marrero also testified that there was a turn-over from Kimakim to the General Services Office of the ambulance equipment and accessories as evidenced by the Property Issue Slip which was likewise used by the prosecution as evidence. In fact, the Property Issue Slip was not a

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<sup>59</sup> *Id.* at 242-244.

<sup>60</sup> *Id.* at 104-131.

<sup>61</sup> *Id.* at 116-118.

<sup>62</sup> *Id.* at 122-123.

<sup>63</sup> *Id.* at 125-128.

<sup>64</sup> *Id.* at 277-293.

<sup>65</sup> *Id.* at 278-279.

<sup>66</sup> *Id.* at 280.

revised document and was prepared upon the delivery of the “Mitsubishi van with ambulance equipment and accessories” in real-time.<sup>67</sup>

### **Ruling**

We acquit.

Violation of Section 3(e) of Republic Act No. 3019 requires the following elements: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he or she must have acted with manifest partiality, or evident bad faith, or gross inexcusable negligence; and (3) his or her action caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.<sup>68</sup>

#### ***Public officer requirement***

There is no issue as to the presence of the first element. Except for Kimakim, accused-appellants are all public officers. As for Kimakim though, he is a private individual who allegedly received unwarranted benefit from the questioned transaction and acted as a co-conspirator of his co-accused.<sup>69</sup>

#### ***Manifest partiality and evident bad faith***

Anent the second element, the Court has held that:

The second element provides the different modes by which the crime may be committed, that is, through “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence.” In *Uriarte v. People*, this Court explained that Section 3 (e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. 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. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive of 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 wilfully

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<sup>67</sup> *Id.* at 288.

<sup>68</sup> *Tiongco v. People*, 843 Phil. 225, 247 (2018) [Per J. Carpio, Second Division].

<sup>69</sup> Republic Act No. 3019 (1960), sections 3 and 9, as amended.

and intentionally, with conscious indifference to consequences insofar as other persons may be affected.<sup>70</sup> (Emphasis supplied)

These three mental elements are distinct from one another and the existence of any of them suffices to support a conviction for violation of Section 3(e) of Republic Act No. 3019.

The Sandiganbayan held that accused-appellants acted with manifest partiality when they proceeded with the procurement process and awarded the contract to Kimakim despite alleged irregularities in the bidding procedure. They purportedly violated Republic Act No. 9184 when they specified the brand name and model of the vehicle in the procurement documents, when they deviated from the purpose of the procurement, and when they revised the procurement documents upon discovery of the deviation from the original intent of the procurement.<sup>71</sup>

To begin with, the prosecution failed to establish the liability of each accused-appellant in designating the specific brand name, deviating from the purpose of the procurement, and in revising the procurement documents. Mere allegation of conspiracy among the accused is not sufficient. The conspiracy itself must be established by positive and conclusive evidence and must be shown to exist as clearly and convincingly as the commission of the offense itself.<sup>72</sup> More, “[g]uilt must be premised on a more knowing, personal, and deliberate participation of each individual who is charged with others as part of a conspiracy.”<sup>73</sup> On this score, the Court has held:<sup>74</sup>

**Simply because a person in a chain of processing officers happens to sign or initial a voucher as it is going the rounds, it does not necessarily follow that he becomes part of a conspiracy in an illegal scheme. The guilt beyond reasonable doubt of each supposed conspirator must be established.** It is all too easy to be swept into a long prison term simply because the guilt of some conspirators is overwhelming and somehow it attaches to all who happen to be charged in one indictment.

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Under these circumstances, we find that the petitioner, a mere budget officer, signed the vouchers and prepared the necessary "Request for Obligation and Allotment" as part of standard operation procedures. It does not follow that he was part of the conspiracy to defraud. The petitioner claims that as a budget officer he had no authority or duty to go beyond what appears on the face of the documents supporting the vouchers, as this duty properly belongs to the other officers who individually prepared the documents. He should have been more careful. His lack of care, however,

<sup>70</sup> *People v. Atienza*, 688 Phil. 122, 132 (2012) [Per J. Peralta, Third Division]. Citations omitted.

<sup>71</sup> *Rollo*, pp. 57–59.

<sup>72</sup> *Macadangdang v. Sandiganbayan*, 252 Phil. 316, 335 (1989) [Per J. Gutierrez, Jr., *En Banc*].

<sup>73</sup> *Arias v. Sandiganbayan*, 259 Phil. 794, 798 (1989) [Per J. Gutierrez, Jr., *En Banc*].

<sup>74</sup> *Macadangdang v. Sandiganbayan*, 252 Phil. 316, 335–336 (1989) [Per J. Gutierrez, Jr., *En Banc*].

may be ground for administrative action but it does not give rise to criminal culpability absent more evidence against him. (Emphasis supplied)

In *Pareño v. Sandiganbayan*,<sup>75</sup> the Court explained that conspiracy may be established “by evidence of actual agreement between the parties to commit the crime, or evidence of concerted acts of the parties indicative of a common objective to commit the crime.” The Court therein held that there was no proof of actual agreement between the accused. While their acts may be considered concerted, it was only because they performed interrelated functions.<sup>76</sup> Conspiracy must be founded on facts, not mere inferences, and presumptions.<sup>77</sup>

Applying these principles, the Court first takes note of the fact that Imingan was charged in his capacity as BAC Secretariat. In his judicial affidavit, Imingan described the functions of the BAC Secretariat as providing “administrative support to the BAC, including the taking and preparation of minutes of BAC meetings.”<sup>78</sup> With respect to the purchase of the subject vehicle, his participation included “attendance in three meetings of the BAC and the preparation of the Invitation to Apply for Eligibility and to Bid, Minutes of the Pre-Bid Conference, Post-Qualification Evaluation Report, Minutes of the Regular Meeting and Opening of Bids dated March 14, 2006.” **Having no discretion in the manner or results of the procurement and merely preparing documents and reports based on the instructions of the TWG and the BAC, it cannot be concluded that Imingan acted with specific criminal intent to defraud the government. Thus, he must be acquitted.**

The Court shall now proceed to the existence of the second element in relation to the alleged irregularities in the procurement process. In *Sabaldan Jr. v. Office of the Ombudsman for Mindanao*,<sup>79</sup> the Court ordained:

**[E]ven granting that there may be violations of the applicable procurement laws, the same does not mean that the elements of violation of Section 3(e) of R.A. No. 3019 are already present as a matter of course.** For there to be a violation under Section 3 (e) of R.A. No. 3019 based on a breach of applicable procurement laws, one cannot solely rely on the mere fact that a violation of procurement laws has been committed. It must be shown that (1) the violation of procurement laws caused undue injury to any party or gave any private party unwarranted benefits, advantage or preference; and (2) the accused acted with evident bad faith, manifest partiality, or gross inexcusable negligence. (Emphasis supplied)

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<sup>75</sup> 326 Phil. 255, 286 (1996) [Per J. Kapunan, *En Banc*].

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> SBN records, p. 94.

<sup>79</sup> 874 Phil. 144, 156 (2020) [Per J. J.C. Reyes, Jr., First Division].

***Indication of brand name***

The Sandiganbayan found that accused-appellants deliberately indicated the specific brand name “Mitsubishi” in all the procurement documents in violation of Section 18<sup>80</sup> of Republic Act No. 9184, which amounts to acting with manifest partiality and evident bad faith.

We cannot agree.

The Sandiganbayan’s own summation of facts negates any showing that accused-appellants acted with partiality and evident bad faith when they respectively dealt with the subject transaction. Lizardo, then the provincial health officer, testified that from the start of the procurement process, she was unsure what to write on the purchase request because she was advised by the General Services Office that there was no readily available ambulance in the market but only a vehicle which still had to be converted into an ambulance. Thus, she thought a brand-new van had to first be purchased which would then be reconfigured into an ambulance. When she consulted with the driver and other technical staff of Bontoc General Hospital, they advised her that the ambulance vehicle must not be of a “lower class” Asia Utility Vehicle such as a Delica or Kia.<sup>81</sup> Thus, the initial purchase request did not even indicate a brand, it only stated “L-300 Versa Van (Brand New) Body Painting, white color, fully air-conditioned 2.5 diesel”. While an L-300 Versa Van refers to a specific model manufactured solely by Mitsubishi, it appears from the information then available to Lizardo that this was the only model suitable for conversion into an ambulance.

Too, it was only when Marrero had inspected the ambulance and spoken to Lizardo about the subject vehicle that they agreed to correct the description to “Mitsubishi Versa Van Brand New with Ambulance Equipment and Other Accessories” to account for what had actually been delivered by Kimakim. The revision of the documents was made to properly account for what had been procured and delivered, as well as to facilitate to proper booking of the property for the provincial government’s inventory. Although the revision was not necessary, and in fact worked to the disadvantage of accused-appellants, it is clear that the insertion of the brand name “Mitsubishi” was meant not to undo what was done but to properly account for the item actually delivered to the province.

As for the other accused-appellants, there is no showing that they ever had any hand in the designation of the brand name in question.

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<sup>80</sup> SECTION 18. *Reference to Brand Names.*— Specifications for the Procurement of Goods shall be based on relevant characteristics and/or performance requirements. Reference to brand names shall not be allowed.

<sup>81</sup> *Rollo*, p. 62.



Kollin, the vice-chairperson of the BAC, and Likigan, a BAC member, stated that the purchase request received by the BAC did not indicate a brand name but only “L-300 Versa Van.” Wanawan, one of the BAC members, also explained that they understood “L-300 Versa Van” to be a description of the base vehicle of the ambulance, and not a brand of the ambulance itself. Pagteilan and Gut-omen, also members of the BAC, testified that there were no irregularities in the procurement of the ambulance.

In sum, accused-appellants, including Macli-ing and Falingao, vigorously asserted that they acted in good faith and relied on the description provided by Lizardo. As for Kimakim, he admitted that in the invitation to apply for eligibility to bid, he understood that the item to be delivered was a Mitsubishi L-300 Van. He later inquired with the Office of the BAC Secretariat regarding the procurement and it was clarified that the subject of the procurement was an ambulance. He had nothing to do with the specification of this brand in the relevant public documents for the purchase of the subject ambulance.

It thus appears that the specification of Mitsubishi as a brand was not knowingly made for corrupt and partial purpose. Rather, the various iterations of the subject vehicle in the procurement documents arose from a lack of knowledge as to the proper term and description of the subject vehicle intended for conversion into an ambulance. This confusing state of things should not be taken against Lizardo, who simply signed the purchase request prepared by her staff based on their limited understanding of how such a high-breed kind of vehicle should be properly described; nor against Marrero, who sought only to properly document what had been delivered; much less, against the other accused-appellants who had no hand at all in the designation of the brand “Mitsubishi”.

In *People v. Januto*,<sup>82</sup> the local government resorted to direct contracting where they specifically mentioned the brand name of the fertilizer to be procured in the procurement documents. The Court held that while there was an overt preference for a specific brand, the election of the preference did not rise to the level of *manifest* partiality that would show an ulterior motive or purpose on the part of accused-appellants.

In *People v. Adana*,<sup>83</sup> the local government’s public bidding was riddled with procedural lapses, including the specification of Isuzu as part of the description of the heavy equipment in the Invitation to Apply for Eligibility and to Bid. The Court nonetheless held that other than the lapses in the conduct of the bidding, there was no sufficient evidence to prove that the acts of the accused-appellants were done with manifest partiality, evident bad faith, or gross inexcusable negligence.

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<sup>82</sup> G.R. No. 252973, March 1, 2023.

<sup>83</sup> G.R. No. 250445, March 29, 2022 [Per J. Inting, First Division].

In *Renales v. People*,<sup>84</sup> the procurement officer issued the purchase order for the medicine after receiving paperwork which included prescriptions of branded medicines made by the doctors from the technical personnel divisions and certifications that the suppliers were exclusive distributors of the prescribed branded medicines. The Court then ruled that the procurement officer and price monitoring officer's reliance on the prescription and certification issued by the doctors who have medical backgrounds and who are familiar with the pharmaceutical products cannot be stretched to mean that they acted in evident bad faith and/or with manifest partiality.

In the same vein, Lizardo's indication of the L-300 Versa Van was not indicative of any ulterior motive. She simply did not possess adequate information regarding the makes and models of ambulances and relied on the advice given to her by the hospital's drivers. Thus, no manifest partiality, evident bad faith, or gross inexcusable negligence may be inferred from the specification of the brand name in the procurement documents. Consequently, since the other accused-appellants acted in good faith on the description of the object to be procured, as provided by Lizardo, and the prosecution having failed to show their manifest partiality, evident bad faith, or gross inexcusable negligence in retaining such description, none of them may be held liable for the specification of a brand name in relation to the offense charged.

***Purpose of the procurement  
and revision of procurement  
documents***

Contrary to the finding of the Sandiganbayan, the Court observes that there has always been a single purpose for the procurement: to purchase an ambulance. The revision of procurement documents was not intended to conceal the supposed deviation but was made to ensure consistency in the procurement documents and proper accounting for what had been actually delivered by Kimakim to the provincial government. Again, the prosecution did not prove that any one of the accused-appellants had a hand in any irregularity pertaining to the designation of the particular brand "Mitsubishi." Too, the Court notes that not every one of the accused-appellants was involved in identifying the purpose of the procurement and revising the procurement documents.

Lizardo admitted that she had requested the deferment of the installation of the equipment and accessories so they could still use it as a service vehicle while the hospital's service vehicle was under repair. But as it turned out, the subject vehicle was never used for that purpose as the repair of the hospital's service vehicle had already been completed.<sup>85</sup>

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<sup>84</sup> G.R. Nos. 231530-33 & 231603-08, June 16, 2021 [Per J. Carandang, First Division].

<sup>85</sup> *Rollo*, p. 40.

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According to Marrero, he referred back all the procurement documents to the BAC, together with a request to change the documents to reflect the item which had been actually delivered, inspected, and accepted: one unit Mitsubishi Versa Van Brand New with ambulance equipment and accessories.

Gut-omen and Wanawan confirmed the testimonies of Lizardo and Marrero. Kollin admitted that notwithstanding the confusion in the terminology, it was clear, that the subject vehicle would be utilized as an ambulance.<sup>86</sup> Also, the BAC issued a supplemental bid bulletin to clarify to all bidders that the provincial government was purchasing an ambulance complete with painting/markings, equipment, and accessories.<sup>87</sup>

Further, Kimakim testified that during the pre-bid conference, he understood that the intent of the acquisition included the conversion of the subject vehicle into an ambulance. He also witnessed and heard the request of Lizardo not to immediately install the equipment accessories upon delivery of the subject vehicle.

Accused-appellants, including Macli-ing and Falingao, argued that the intent has always been to procure an ambulance. Had they intended to deceive and defraud the public, they would not have made the effort to properly account the delivery of the equipment and accessories as this would only serve to expose their alleged misdeeds. Instead, in the fulfillment of his duty, Marrero insisted on verifying the deliveries and executing a correct acceptance and inspection report. The Court has held that “in situations of fallible discretion, good faith is nonetheless appreciated when the document relied upon and signed shows no palpable nor patent, no definite nor certain defects or when the public officer's trust and confidence in his subordinates upon whom the duty primarily lies are within parameters of tolerable judgment and permissible margins of error.”<sup>88</sup>

The prosecution alleged that accused-appellants attempted to circumvent the provisions of Republic Act No. 9184 by amending the procurement documents to conceal the deviation from the original intent of the procurement. The evidence shows, however, that there was no deviation to speak of as the provincial government only intended to procure an ambulance with ambulance equipment and accessories. Despite the failure of the accused-appellants to use the proper nomenclature to specify the object of the procurement in the Purchase Request, the BAC did in fact issue a Supplemental Bid Bulletin to clarify what the provincial government intended to procure.

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<sup>86</sup> *Id.* at pp. 43 – 48.

<sup>87</sup> *Id.* at p. 50.

<sup>88</sup> *Sistoza v. Desierto*, G.R. No. 144784, September 3, 2022 [Per J. Bellosillo, Second Division].

If the accused-appellants were truly ill-motivated, they would not have issued the Supplemental Bid Bulletin or corrected the Acceptance and Inspection Report. In any case, other than a general averment that accused-appellants attempted to circumvent the provisions of Republic Act No. 9184, the prosecution was unable to establish the supposed violation committed by accused-appellants in amending the procurement documents.

The Court agrees that the specification of the brand name and revision of the procurement documents are deviations from the requirements of the procurement laws and rules. But that is all they are. Without more, specifically the dishonest purpose to commit an act partaking of the nature of fraud, these deviations do not warrant the conviction of accused-appellants for violation of Section 3(e) of Republic Act No. 3019.

To be clear, the Court is not sanctioning the commission of these deviations. The Court in fact implores public officers to be more circumspect and precise in identifying the subject matter of procurement, and strictly adhere to the guidelines for procurement as laid down in Republic Act No. 9184 and the applicable Implementing Rules and Regulations. The remedy, however, for irregularities in public bidding is not to indict and jail every person who ordered the procurement, signed a document in relation to the procurement, or had a hand somewhere in its implementation.<sup>89</sup> The procurement law and rules have been legislated for a public purpose – to promote transparency in the government’s acquisition of goods and services and competitiveness and equal opportunity for eligible and qualified parties, and maintain a system of accountability.<sup>90</sup> Indeed, it is the duty of public officers not only to uphold but also to maintain public trust.

***Injury to any party or the giving of unwarranted benefits***

Going now to the third element - injury to any party including the government or the giving of unwarranted benefits, advantage, or preference, the Court has maintained that “in the **absence of the requisite mental element** of manifest partiality, evident bad faith, or gross inexcusable negligence, there can be **no resulting undue injury** to any party, specifically to the government.”<sup>91</sup> In any case, there is neither damage to the government nor unwarranted benefit given to Kimakim.

Kimakim was found to be the Lowest Complying and Responsive Bid for an amount within the amount certified available by the Provincial Accountant Marrero. He then delivered the subject vehicle with the equipment and accessories to the Provincial Government. In turn, the Provincial

<sup>89</sup> *Arias v. Sandiganbayan*, 259 Phil. 794, 797–798 (1989) [Per J. Gutierrez, Jr., *En Banc*].

<sup>90</sup> Republic Act No. 3019 (1960), section 3.

<sup>91</sup> *People v. Ramirez*, G.R. No. 254552, July 20, 2022 [Per J. Lazaro-Javier, Second Division].

Government received the subject vehicle which was fitted with equipment and accessories for its intended use as an ambulance. The subject vehicle was inspected and accepted by the Provincial Government and has since been used as an ambulance as evidenced by requisition and issue slips and driver's trip tickets. The GSIS also inspected the subject vehicle and confirmed that it was an ambulance, as indicated in the subject vehicle's certificate of cover.

Wanawan testified that she was able to confirm the delivery of the equipment and accessories to the General Services Office after she inspected the subject vehicle. Thereafter, she issued a property issue slip specifying that the provincial government had received an ambulance van with equipment and accessories.

The mere existence of discrepancy between the amount in the sales invoice issued by Motorplaza, Inc. and the amount ultimately paid to Ronhil Trading, Inc. does not necessarily equate to an unwarranted benefit in Kimakim's favor. Kimakim did not deny that he had purchased the vehicle from Motorplaza, Inc. for PHP 756,000.00. As found by the OMB, however, this amount did not yet include the amount he paid for the ambulance equipment and accessories, which had actually been delivered. Thus, the vehicle quoted by Motorplaza, Inc. and the ambulance delivered by Kimakim are not comparable. In the absence of comparable evidence as to the actual value of the van fitted with ambulance equipment and accessories, it cannot be concluded that Kimakim received unwarranted benefits from this procurement.

More, the Sandiganbayan did not even rely on the sworn statement allegedly issued by Kimakim before the NBI-CAR that he did not personally purchase the vehicle or that Macli-ing took the payment of the local government from him and merely gave him a share. Notably, the NBI-CAR did not refute Kimakim's defense that the sworn statement was prepared by an investigator of NBI-CAR and Kimakim was only made to sign it without the assistance of counsel. Too, the document was unsigned by NBI-CAR's own agent. Ultimately, the Sandiganbayan gave no credence to the NBI-CAR's finding that no purchase of the subject vehicle had actually taken place.

The plain reality is that, notwithstanding the confusion as to the proper term and description of the subject vehicle intended for conversion into an ambulance, Kimakim, as the winning bidder, actually delivered an ambulance complete with ambulance equipment and accessories found satisfactory by the provincial government. It may appear unusual that Macli-ing, a provincial nurse coming from the same local government that sought the procurement of the ambulance, accompanied Kimakim to Motorplaza, Inc. and offered to negotiate and sign the deed of sale on his behalf. While perhaps motivated to be of assistance to her godson (Kimakim), in her capacity as a public officer though, prudence dictates that she conduct herself in a manner that would not



invite speculation as to her interest and involvement in the procurement. Such acts may subject both Kimakim and Macli-ing to further prosecution or administrative liability. The mere allegation, however, that Macli-ing was the actual purchaser of the subject vehicle does not amount to proof beyond reasonable doubt of the crime charged, considering that this was not substantiated by the prosecution and not even given credence by the Sandiganbayan.

Verily, the prosecution failed to prove the specific act of each of the accused-appellants in the alleged conspiracy to defraud the government as well as the elements of the offense charged beyond reasonable doubt. It is fundamental that the burden of proving the guilt of an accused lies with the prosecution who must rely on the strength of its own evidence and not on the weakness of the defense.<sup>92</sup> This is a necessary consequence of the right of each accused to be presumed innocent until proven guilty. Thus, “when moral certainty hangs in the balance, acquittal on reasonable doubt inevitably becomes a matter of right.”<sup>93</sup> A verdict of acquittal is therefore in order.

**ACCORDINGLY**, the Appeals are **GRANTED**. The assailed Decision dated March 24, 2023 and Resolution dated June 13, 2023 of the Sandiganbayan in SB-17-CRM-1495 are **REVERSED**. Accused-appellants **THEODORE B. MARRERO, NENITA D. LIZARDO, HELEN K. MACLI-ING, PAULO P. PAGTEILAN, LILY ROSE T. KOLLIN, FLORENCE R. GUT-OMEN, EDWARD B. LIKIGAN, SOLEDAD THERESA F. WANAWAN, JEROME M. FALINGAO, ABDON A. IMINGAN**, and **RONALD C. KIMAKIM** are **ACQUITTED**.

Let an entry of judgment be issued immediately.

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

<sup>92</sup> *Cabarios v. People*, G.R. Nos. 228097-103 & 228139-41, September 29, 2021 [Per J. Lazaro-Javier, First Division] citing *People v. Claro* 808 Phil. 455 (2017) [Per J. Bersamin, Third Division].

<sup>93</sup> *XXX261920 v. People*, G.R. No. 261920, March 27, 2024 [Per J. Lazaro-Javier, Second Division] citing *Zafra v. People* 686 Phil. 1095 (2012) [Per J. Perez, Second Division].



**WE CONCUR:**

(On Official Business)  
**MARVIC M.V.F. LEONEN**  
*Senior Associate Justice*  
*Chairperson*

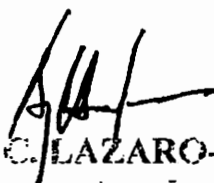
  
**MARIEN LOPEZ**  
*Associate Justice*

  
**JHOSEP Y. LOPEZ**  
*Associate Justice*

  
**ANTONIO T. KHO, JR.**  
*Associate Justice*

**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*  
*Acting Chairperson*

**CERTIFICATION**

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

  
**ALEXANDER G. GESMUNDO**  
*Chief Justice*

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