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SECOND DIVISION

[G.R. No. 252971; January 11, 2023]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **ALEJANDRO NAVUAL ABARRATIGUE, RAUL ROBERTO TAPIA, and ANALIZA MABONGA BAGRO,** *Accused-Appellants*.

D E C I S I O N

KHO, JR., *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated November 8, 2019 of the Sandiganbayan in Criminal Case No. SB-17-CRM-1805 finding accused-appellants Alejandro Navual Abarratigue (Abarratigue), Raul Roberto Tapia (Tapia), and Analiza Mabonga Bagro (Bagro; collectively, accused-appellants) guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. (RA) 3019,[3] otherwise known as the "Anti-Graft and Corrupt Practices Act."

The Facts

This case stemmed from an Information[4] dated July 10, 2017 charging accused-appellants with violation of Section 3(e) of RA 3019, the accusatory portion of which reads:

> That on 12 August 2008, or sometime prior or subsequent thereto, in the Municipality of Hinabangan, Province of Western Samar, Philippines, and within the jurisdiction of this Honorable Court, accused ALEJANDRO NAVUAL ABARRATIGUE (Abarratigue), a high-ranking officer, and RAUL ROBERTO TAPIA (Tapia), Municipal Mayor and Municipal

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1 See Notice of Appeal dated February 21, 2020; *rollo*, pp. 33–35.

2 Id. at 4–32. Penned by Associate Justice Ronald B. Moreno and concurred in by Presiding Justice and Chairperson Amparo M. Cabotaje-Tang and Associate Justice Bernelito R. Fernandez.

3 Approved on August 7, 1960.

4 *Sandiganbayan rollo*, volume II, pp. 1–4.

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Treasurer, respectively, of the Municipality of Hinabangan, Province of Western Samar, while in the performance of their administrative and/or official functions, conspiring with one another, and with ANALIZA MABONGA BAGRO (Bagro), Administrative Officer II also of the Municipality of Hinabangan, Samar, acting with manifest partiality, evident bad faith, and/or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the government in the amount of at least FIVE HUNDRED THOUSAND PESOS (PhP500,000.00), by purchasing Lot 387-E from the heirs of Isidro A. Abarracoso, without the authority from the Sangguniang Bayan of Hinabangan, Samar, their participation being:

(a) Abarratigue signed Disbursement Voucher No. 100-2008081081 approving the payment of PhP500,000.00 to Ofelia S. Abarracoso, widow of Isidro A. Abarracoso, for the purchase of a portion of Lot 387 situated in the Municipality of Hinabangan, Samar;

(b) Abarratigue entered into a contract of sale with Ofelia S. Abarracoso and her children by signing the Extrajudicial Settlement of Estate among the Heirs with Absolute Deed of Sale in behalf of the Municipality of Hinabangan, Samar;

(c) Tapia certified as to the availability of funds in Disbursement Voucher No. 100-2008081081 and signed Check No. 617805; and

(d) Bagro received Check No. 617805 for and in behalf of Ofelia S. Abarracoso.

CONTRARY TO LAW.[5]

Upon their arraignment, accused-appellants pleaded not guilty. During the pre-trial, the parties stipulated, among others, that: (*a*) accused-appellants held the following positions in the Municipality of Hinabangan, Samar (Municipality): Abarratigue – Municipal Mayor; Tapia – Municipal Treasurer, and Bagro – Administrative Officer II; (*b*) Abarratigue purchased for the Municipality a portion of Lot 387 situated in the same Municipality and covered by Katibayan ng Orihinal na Titulo Blg. 19851[6] (subject lot); (*c*) such purchase is evinced by an Extrajudicial Settlement

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[5] Id. at 2–3.

[6] SB *rollo*, vol. I, pp. 760–764.

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of Estate Among Heirs with Absolute Deed of Sale[7] entered into by Abarratigue purportedly on behalf of the Municipality, and the sellers, Ofelia S. Abarracoso and her children (Abarracoso *et al.*); (*d*) in connection with such sale, Disbursement Voucher No. (DV) 100-2008081081[8] was issued, indicating therein that Tapia certified as to the availability of funds, while Abarratigue approved said DV; (*e*) pursuant to the DV, Tapia and Abarratigue issued and signed Check No. 617805[9] which was then received by Bagro purportedly on behalf of Abarracoso *et al*.[10] Thereafter, the prosecution proceeded to present its witnesses, which included then vice mayor Flordelino A. Abadiano (Abadiano), then designated secretary of the *Sangguniang Bayan* (SB) Evelyn M. Costuna (Costuna), and then Municipal Accountant and Member of the Local Finance Committee Elena M. Dieza (Dieza).[11]

Abadiano, testifying on the ordinary procedure observed prior to the execution of a contract by the local chief executive, stated that the mayor ordinarily submits a request to the SB secretary to include the same to enter into a contract in the SB's agenda. The SB deliberates whether to grant the mayor's request. Thereafter, the SB will issue a resolution and/or ordinance denying the request or authorizing the mayor to enter into a contract. As then vice mayor, Abadiano was the presiding officer of the SB. He testified that fie does not recall Abarratigue submitting any request to the SB to enter into the subject Contract of Sale. He could not produce the resolution and/or ordinance authorizing the mayor to enter into the same as no such document ever existed.[12]

For her part, Costuna similarly testified that after exerting great efforts, she could not find a resolution and/or ordinance authorizing the mayor to enter into the contract of sale.[13]

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[7] Id. at 757–759.

[8] Id. at 766.

[9] See Pre-Trial Order; id. at 316-325. See also id. at 767.

[10] See *rollo*, pp. 5–6.

[11] See id. at 7, 11, and 13.

[12] Id. at 7–8.

[13] Id. at 13.

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For her part, Dieza recalled that there was no budgetary allotment for the purchase of a lot to be used as public cemetery in Brgy. Rawis, Hinabangan, Samar. This is supported by the documents regarding income and expenses for the year 2008 of the municipality of Hinabangan that she signed as the municipal accountant. Dieza pointed out that as a member of the Local Finance Committee, she signed various documents[14] included in the Annual Budget of the Municipality of Hinabangan, Samar (2008 Annual Budget) for Fiscal Year 2008,[15] but there was nothing indicated therein which pertains to the purchase of the subject lot for the purpose of creating a public cemetery. Neither was there any provision in the 2008 Annual Budget nor in the Appropriation Ordinance No. 02-2007 attached thereto for the said purchase.[16]

Further, Dieza testified that under the Details of Program/ Project/Activity by Sector[17] in the 2008 Annual Budget of the Municipality, the amount of ₱500,000.00 was allocated in the item "Expansion of Municipal Cemetery," which refers to the budgetary allocation for the expansion of the existing municipal cemetery. Dieza stated that this is what was used to purchase the lot. Dieza noted that the lot purchased was in a different area from the existing municipal cemetery. She further stated that she is not aware if the purchased lot is registered in the Municipality's name, but an evacuation center was built by the Municipality thereon.[18]

Finally, Dieza explained that as the municipal accountant, she had the ministerial duty to sign a DV after the budget officer certified it. When the transaction for the subject lot was forwarded

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[14] Such documents are as follows: (*a*) Certified Statement of Income; (*b*) Certified Statement of Income and Expenditures; (*c*) Program Appropriation and Obligation by Object for Fiscal Year 2008; (*d*) Statement of Long-Term Obligation and Indebtedness; and (*e*) Functional Statement, Objectives and Expected Results.

[15] See *rollo*, p. 11. See also SB *rollo*, vol. II, pp. 266–345.

[16] See *rollo*, p. 11.

[17] SB *rollo*, vol. II, p. 345.

[18] *Rollo*, p. 12.

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to Dieza, she made corrections to the documents to indicate that it was for the expansion of the cemetery and returned the documents so that the payee may be corrected from "Analiza M. Bagro" to "Ofelia S. Abarracoso." When Bagro returned the documents, however, Dieza was constrained to sign the same after learning from Bagro that Abarratigue was already angry.[19]

In his defense, Abarratigue argued that the SB had approved the expansion of the municipal cemetery in Resolution No. 23-2007,[20] and the corresponding allocation of ₱500,000.00 for this purpose was duly made in the 2008 Annual Budget as part of the Priority Development Fund. The expansion of the cemetery was necessary considering that all the burial lots in the existing municipal cemetery were already occupied.[21]

For her part, Bagro asserted that she had no actual participation in the negotiation and consummation of the sale at whatever stage except for the encashment of Check No. 617805. She claimed that the check was issued in her name simply to facilitate encashment as Abarracoso stated she would have difficulty encashing the check because she had no identification cards and had difficulty transacting with banks. Bagro further pointed out that Abarracoso also executed a letter[22] dated August 8, 2008 addressed to Abarratigue, and an Affidavit.[23] Bagro claimed that the check could not have been encashed without an accountant advice signed by the municipal accountant, who at the time, was Dieza.[24]

Tapia, on the other hand, stated that he certified the availability of the funds because the expansion of the municipal cemetery was included in the 2008 Annual Budget. He admitted that when Check No. 617085 was forwarded to his office, there was no authority from the heirs of Abarracoso allowing Bagro to be the

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[19] Id. at 12–13.

[20] See id. at 19. See also SB *rollo*, vol. II, pp. 362–364.

[21] *Rollo*, pp. 19–20.

[22] SB *rollo*, vol. II, p. 369.

[23] Id. at 368.

[24] See *rollo*, p. 16.

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payee of the check which was also forwarded to him. He noted, however, that the signatures of the municipal accountant and the municipal budget officer were prerequisites before he could affix his signature in the disbursement voucher or in the obligation request.[25]

Finally, the defense also presented Esmeralda H. Frincillo (Frincillo), the municipal budget officer of the Municipality from September 1992 up to present. Frincillo stated that one of the priority projects identified by the Municipal Development Council (MDC) in Resolution No. 01-S2007[26] was the expansion of the municipal cemetery. This was submitted to the SB along with other budget considerations and became part of the 2008 Annual Budget, and a budget was specially allocated for this item in Resolution No. 23-2007 approving Appropriation Ordinance No. 02-2007.[27] She also testified, on re-direct examination, that the 2008 Annual Budget, MDC Resolution No. 01-S2007, SB Resolution No. 23-2007, and Appropriation Ordinance No. 02-2007 constituted sufficient authority to purchase the subject lot.[28]

The Sandiganbayan Ruling

In a Decision[29] dated November 8, 2019, the Sandiganbayan found accused-appellants guilty beyond reasonable doubt of the crime charged and accordingly, sentenced them to suffer the penalties of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and perpetual disqualification from holding public office.[30]

The Sandiganbayan held that all elements of the crime were established by the prosecution. *First*, it was undisputed that accused-appellants are public officers who were in the exercise

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[25] See id. at 17.

[26] Id. at 18. See also SB *rollo*, vol. II, pp. 346–348.

[27] *Rollo*, p. 18.

[28] Id. at 17–19.

[29] Id. at 4–32.

[30] Id. at 31.

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of their official functions. *Second*, Abarratigue exhibited gross inexcusable negligence in the purchase of the subject lot without authority from the SB of Hinabangan, Samar, in violation of Section 22(c) of RA 7160,[31] otherwise known as the Local Government Code (LGC), which states that "no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall." The Sandiganbayan further noted that this rule is reiterated again in Section 444 of the LGC. In this connection, the Sandiganbayan found that the SB Resolution No. 23-2007 and MDC Resolution No. 01-S2007 invoked by Abarratigue cannot be considered as his authority to purchase the subject lot. This is considering that nowhere in the said resolutions does it provide for the **purchase** of a lot, only for the **expansion** of the municipal cemetery. According to the Sandiganbayan, "expansion" and "purchase" cannot be treated synonymously. Finally, Abarratigue's act of purchasing the lot without the authority required by the LGC caused a disbursement of ₱500,000.00, constituting undue injury on the government.[32]

Furthermore, the Sandiganbayan held that Tapia and Bagro were in conspiracy with Abarratigue. Citing *Baldebrin v. Sandiganbayan*,[33] the Court, through Associate Justice Angelina Sandoval-Gutierrez, explained that there is conspiracy where the accused "by their acts aimed at the same object, one performing one part, and the other performing another part so as to complete it, with a view to the attainment of the same object, and their acts though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding

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[31] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

[32] *Rollo*, pp. 21–30.

[33] 547 Phil. 522 (2007) [First Division].

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that said defendants were engaged in a conspiracy."[34] Here, the Sandiganbayan stated that it was expressly admitted by Tapia that he, himself certified the availability of the funds and that he was aware that the allocation of such funds was only for the expansion of the cemetery. Such act signified his assent to the unlawful disbursement of funds[35] Finally, Bagro was held to be equally liable with Tapia and Abarratigue. Bagro was indicated as the payee in Check No. 617805 although DV 100-2008081081 for the said check indicated that the claimant for the sum thereof was Abarracoso. Aside from Abarracoso's written request, which was not duly authenticated, Bagro was not able to present proof to justify why she was named as the payee of the said check. In this regard, the Sandiganbayan stressed that both Abarratigue and Tapia authorized the issuance of Check No. 617805 in the name of Bagro, as evinced by their signatures affixed therein. The individual acts of all the accused contributed to the end result of causing undue injury to the government. The Sandiganbayan held that collectively, accused-appellants' acts satisfactorily prove the existence of conspiracy among them.[36]

Hence, this appeal.[37]

The Issue Before the Court

The issue for the Court's resolution is whether or not accused-appellants are guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019.

The Court's Ruling

The appeal is bereft of merit.

Section 3(e) of RA 3019 reads:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the

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[34] Id. at 534.

[35] *Rollo*, pp. 27–29.

[36] Id. at 30.

[37] Id. at 33–35.

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following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(*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.

Verily, the elements of Section 3(e) of RA 3019 are: "(*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions."[38]

As to the first element, it is undisputed that at the time the crime was committed, Abarratigue, Tapia, and Bagro held the positions of municipal mayor, municipal treasurer, and Administrative Officer II, respectively, and that they acted in their official capacities.[39]

As to the second element, it is well to note that there are three (3) means of commission of this crime, namely, through manifest partiality, evident bad faith, or gross inexcusable negligence. In *People v. Naciongayo*,[40] the Court, through Associate Justice Estela M. Perlas-Bernabe, expounded on these means as follows:

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[38] See *People v. Naciongayo*, G.R. No. 243897, June 8, 2020 [Per J. Perlas-Bernabe, Second Division]; citing *Cambe v. Ombudsman*, 802 Phil. 190, 216–217 (2016) (Per J. Perlas-Bernabe, *En Banc*]; further citing *Presidential Commission on Good Government v. Navarro-Gutierrez*, 772 Phil. 91, 102 (2015) [Per J. Perlas-Bernabe, First Division].

[39] See *rollo*, p. 5.

[40] G.R. No. 243897, June 8, 2020.

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"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote had judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but [willfully] and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[41]

Here, accused-appellants do not dispute that the SB Resolution No. 23-2007, MDC Resolution No. 01-S2007, the 2008 Annual Budget, and Appropriation Ordinance No. 02-2007 allocated funds for the expansion of the municipal cemetery, and not specifically for the purchase of a lot. Neither do they dispute that there is no other document which may feasibly serve as authority from the SB. Finally, accused-appellants also admit that it was Bagro who was indicated as payee on Check No. 617805, which was issued pursuant to DV 100-2008081081 and which was meant for the seller of the property, Abarracoso. However, in an attempt to absolve themselves from liability, accused-appellants insist that the authority to purchase a lot is necessarily included in the authority to expand the cemetery. Further, they presented as evidence an authorization, purportedly written by Abarracoso, allowing Bagro to be indicated as payee in the check for the purpose of facilitating the encashment of the amount indicated thereon.

However, and as aptly pointed out by the Sandiganbayan, Abarratigue failed to secure the proper authority from the SB to purchase the lot. Although the act of expanding a public cemetery may include obtaining property on which the expansion may be built, an allocation of funds for this purpose does not give a local chief executive blanket authority to enter into any contract of sale without the SB's prior authorization. In this regard, Section 22

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[41] Id.; citing *Coloma, Jr. v. Sandiganbayan*, 744 Phil. 214, 229 (2014).

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(c) and Section 444(b) (1) (vi) of the LGC expressly require such authorization from the SB, *viz.*:

> Section 22. *Corporate Powers*. – (a) Every local government unit, as a corporation, shall have the following powers:
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> x x x x
>
> (c) Unless otherwise provided in this Code, **no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the Sanggunian concerned**. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or Barangay hall.
>
> x x x x
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> Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation*. –
>
> x x x x
>
> (b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:
>
> (1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:
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> x x x x
>
> (vi) **Upon authorization by the Sangguniang Bayan, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance[.]**(Emphases and underscoring supplied)

In this relation, it bears stressing that for an appropriation ordinance to constitute authority to enter into a contract, it must refer *specifically* to such contract. If the appropriation ordinance refers only to projects in generic terms, a separate authorization from the *sanggunian* is needed.[42] The Court's pronouncement

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[42] See *Municipality of Corella v. Philkonstrak Development Corp.*, G.R. No. 218663, February 28, 2022 [Per J. Hernando, Second Division; citing *Verceles, Jr. v. Commission on Audit*, 794 Phil. 629, 645 (2016) [Per J. Brion, *En Banc*].

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in *Quisumbing v. Garcia*,[43] through Associate Justice Dante O. Tinga, is instructive on this matter, to wit:

> The question of whether a *sanggunian* authorization separate from the appropriation ordinance is required should be resolved depending on the particular circumstances of the case. Resort to the appropriation ordinance is necessary in order to determine if there is a provision therein which specifically covers the expense to be incurred or the contract to be entered into. Should the appropriation ordinance, for instance, already contain in sufficient detail the project and cost of a capital outlay such that all that the local chief executive needs to do after undergoing the requisite public bidding is to execute the contract, no further authorization is required, the appropriation ordinance already being sufficient.
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> On the other hand, **should the appropriation ordinance describe the projects in generic terms** such as "infrastructure projects," "inter-municipal waterworks, drainage and sewerage, flood control, and irrigation systems projects," "reclamation projects" or "roads and bridges," **there is an obvious need for a covering contract for every specific project that in turn requires approval by the *sanggunian*. Specific sanggunian approval may also be required for the purchase of goods and services which are neither specified in the appropriation ordinance nor encompassed within the regular personal services and maintenance operating expenses**.[44] (Emphases and underscoring supplied)

Here, it is admitted that the purchase of the subject lot was not referenced with particularity in the SB Resolution No. 23-2007, MDC Resolution No. 01-S2007, 2008 Annual Budget, and Appropriation Ordinance No. 02-2007. They do not specifically cover the said contract of sale, and only refer in general terms to an expansion project for the municipal cemetery. Neither was the manner for expansion specifically provided for. As the Sandiganbayan correctly observed, the purchase of a lot is only one manner by which the municipal cemetery could be expanded. Thus, a separate SB authorization was required in this case.

As to the written authority purportedly prepared by Abarracoso, the Court agrees with the Sandiganbayan that the same was not

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[43] 593 Phil. 655 (2008) [*En Banc*].

[44] Id. at 676–677.

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properly authenticated. Notably, accused-appellants failed to present Abarracoso as witness and they were not able to present evidence of the genuineness of her handwriting following Section 20, Rule 132 of the Rules of Court.[45] While accused-appellants presented a notarized affidavit executed by Abarracoso to affirm the genuineness of her handwriting on the written authority, as well as to affirm the fact that Abarracoso had received the ₱500,000.00 from Bagro, the same is hearsay evidence as Abarracoso was not presented as witness.[46] Thus, neither the written authorization nor the affidavit may be received in evidence, and therefore, there is neither proof that Bagro was authorized by Abarracoso to receive the purchase price for the lot nor proof that Abarracoso received the said purchase price of ₱500,000.00 from Bagro. What the admitted facts show, therefore, is that Bagro, with the authorization and consent of Abarratigue and Tapia, disbursed public funds amounting to ₱500,000.00 for an unauthorized purpose.

Assuming *arguendo* that the SB authorization to enter into the contract was properly obtained, such authorization would have only allowed the release of the payments to the seller or owner of the property under the authorized contract and not to any other third party. To recall, accused-appellants argue that Bagro was constituted by Abarracoso as her agent for the purpose of facilitating the encashment of the purchase price under the contract of sale. This is patently illegal, as this would mean that Bagro would be engaging in a business transaction with the Municipality as Abarracoso's agent. Under Section 89 of the LGC, it is unlawful for any local government official or employee to engage, directly or indirectly, in any business transaction with the local government unit in which they are an official or employee, or any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm. The transaction in this

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[45] See *Salas v. Sta. Mesa Market Corp.*, 554 Phil. 343, 349 (2007) [Per J. Corona, First Division].

[46] See *People v. Maniquez*, 292-A Phil. 406, 418 (1993) [Per J. Campos, Jr., Second Division].

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case is a transaction whereby money was paid and falls clearly within this prohibition.

The mere act of becoming the agent of a private person or entity with which the government is transacting is also contrary to law following Section 9 of RA 6713,[47] which provides that a public official or employee shall avoid conflicts of interest at all times. Therefore, even assuming accused-appellants' contention that Abarracoso provided authorization is true, this would not absolve them of liability for allowing the check to be issued with Bagro as payee. On the contrary, it would be further evidence of accused-appellants' guilt. In any case, the act of allowing sums intended for private persons or entities with which a local government unit has contracted, to be paid to or encashed by officers or employees of said local government unit on the private person's or entity's behalf, indicates wrongdoing. To countenance it is prone to abuse and would open the gates to corruption.

The acts performed and admitted by accused-appellants do not merely constitute negligence as the Sandiganbayan opines. Rather, they are conscious wrongdoings for a perverse motive—that is, the disbursement of public funds for unauthorized purposes and to a person not authorized to receive the same—and constitute evident bad faith. Hence, it is clear based on all the facts already admitted and stipulated by the parties that the second element of the offense charged is present.

Finally, ***as to the third element***, case law instructs that "there are two ways by which a public official violates Section 3 (e) of [RA] 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage

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[47] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," approved on February 20, 1989.

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or preference. The accused may be charged under either mode or both. The disjunctive term 'or' connotes that either act qualifies as a violation of Section 3(e) of [RA] 3019. In other words, the presence of one would suffice for conviction."[48] In this case, the government suffered undue injury when Abarratigue entered into a contract of sale without the authorization of the SB contrary to the requirements under the LGC; and when, through his, Tapia, and Bagro's concerted actions, the ₱500,000.00 was disbursed for unauthorized causes. Furthermore, by transacting with Abarracoso without complying with the legal requirements under the LGC, accused-appellants gave Abarracoso undue preference and advantage as the terms of her sale were never subject to the scrutiny and approval of the SB.

With regard to the presence of conspiracy, the following elements must be established: (1) two or more persons came to an agreement; (2) the agreement concerned the commission of a felony; and (3) the execution of the felony was decided upon. Proof of the conspiracy need not be based on direct evidence, because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime.[49] Conspiracy can be presumed from and proven by acts of the accused themselves when the said acts point to a joint purpose, design, concerted action, and community of interests.[50]

In this case, Abarratigue entered into a contract of sale without the authorization of the SB contrary to the requirements under the LGC. He and Tapia thereafter approved the disbursement of the ₱500,000.00 and the issuance of the check with Bagro as payee. Subsequently, Bagro encashed the check. There was a clear joint purpose, design and community interest—the disbursement and

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[48] *People v. Naciongayo*, supra note 38; citing *Coloma, Jr. v. Sandiganbayan*, supra note 41, at 231–232.

[49] See *People v. Domingo*, G.R. No. 241248, June 23, 2021 [Per J. Delos Santos, Third Division]; citing *People v. Lago*, 411 Phil. 52, 59 (2001) [Per J. Panganiban, Third Division].

[50] See *People v. Buntag*, 471 Phil. 82, 93 (2004) [Per J. Callejo, Sr., Second Division]. See also *People v. Domingo*, supra.

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encashment of the ₱500,000.00 check. Through their concerted actions, the ₱500,000.00 was disbursed for unauthorized causes and to a person not authorized to receive the same. Verily, these circumstances sufficiently establish the presence of conspiracy among accused-appellants.

In view of the foregoing discussions, the Court finds no reason to overturn the findings of the Sandiganbayan that establishes accused-appellants' guilt beyond reasonable doubt, as there was no showing that the latter court overlooked, misunderstood, or misapplied the surrounding facts and circumstances of this case. In fact, the Sandiganbayan was in the best position to assess and determine the evidence presented by both parties.[51] As such, accused-appellants' conviction for violation of Section 3(e) of RA 3019 must be upheld.

Accused-appellants' criminal liability having been established, the Court now goes to the proper penalties to be imposed against them. In this regard, suffice it to say that the Sandiganbayan correctly sentenced accused-appellants to suffer the penalties of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and perpetual disqualification from holding public office, as the same are in accord with RA 3019 and Act No. 4103 or the "Indeterminate Sentence Law."[52]

ACCORDINGLY, the appeal is **DENIED**. The Decision dated November 8, 2019, of the Sandiganbayan in Criminal Case No. SB-l7-CRM-1805 is hereby **AFFIRMED** *in toto*. Accused-appellants Alejandro Navual Abarratigue, Raul Roberto Tapia, and Analiza Mabonga Bagro are hereby found **GUILTY** beyond reasonable doubt of the crime of violation of Section 3(e) of Republic Act No. 3019 or the "Anti-Graft and Corrupt Practices

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[51] See *People v. Naciongayo*, supra note 38; citations omitted.

[52] Entitled "AN ACT TO PROVIDE FOR AN INDETERMINATE SENTENCE AND PAROLE FOR ALL PERSONS CONVICTED OF CERTAIN CRIMES BY THE COURTS OF THE PHILIPPINE ISLANDS; TO CREATE A BOARD OF INDETERMINATE SENTENCE AND TO PROVIDE FUNDS THEREFOR; AND FOR OTHER PURPOSES," approved on December 5, 1933.

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Act." They are sentenced to suffer the penalties of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and perpetual disqualification from holding public office.

SO ORDERED.

Leonen, S.A.J. (Chairperson), Lazaro-Javier, M. Lopez, and *J. Lopez*, *JJ.*, concur.

APPEARANCES OF COUNSEL

Office of the Special Prosecutor for plaintiff-appellee.
Galit Law Firm for accused-appellants.