

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BENILDA N. BACASMAS, **G.R. No. 189343**
Petitioner,

- versus -

SANDIGANBAYAN and
PEOPLE OF THE PHILIPPINES,
Respondents.

X -----X

ALAN C. GAVIOLA, **G.R. No. 189369**
Petitioner,

-versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

X -----X

EUSTAQUIO B. CESA, **G.R. No. 189553**
Petitioner,

-versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

Présent:

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

Promulgated:

JUL 10 2013

X -----X

DECISION

SERENO, *CJ*:

Before us are three consolidated cases: (1) Petition for Review on Certiorari¹ dated 16 September 2009 (G.R. No. 189343), (2) Petition for Review on Certiorari² dated 15 September 2009 (G.R. No. 189369), and (3) Petition for Review on Certiorari³ dated 12 October 2009 (G.R. No. 189553). All assail the Decision⁴ in Crim. Case No. 26914 dated 7 May 2009 of the Sandiganbayan, the dispositive portion of which reads:

ACCORDINGLY, **accused Alan C. Gaviola (“Gaviola”), Eustaquio B. Cesa (“Cesa”), Benilda N. Bacasmas (“Bacasmas”) and Edna J. Jaca (“Jaca”)** are found **guilty beyond reasonable doubt** for violation of Section 3 (e) of Republic Act No. 3019 and are sentenced to suffer in prison the penalty of **12 years and 1 month to 15 years**. They also have to suffer perpetual disqualification from holding any public office and to indemnify jointly and severally the City Government of Cebu the amount of Nine Million Eight Hundred Ten Thousand, Seven Hundred Fifty-two and 60/100 Pesos (Php 9,810,752.60).⁵ (Emphases in the original)

The Petitions also question the Resolution⁶ dated 27 August 2009 denying the Motions for Reconsideration⁷ of the Decision dated 7 May 2009.

ANTECEDENT FACTS

All the petitioners work for the City Government of Cebu.⁸ Benilda B. Bacasmas (Bacasmas), the Cash Division Chief, is the petitioner in G.R. No. 189343.⁹ Alan C. Gaviola (Gaviola), the City Administrator, is the petitioner in G.R. No. 189369.¹⁰ Eustaquio B. Cesa (Cesa), the City Treasurer, is the petitioner in G.R. No. 189553.¹¹

By virtue of their positions, they are involved in the process of approving and releasing cash advances for the City. The procedure is as follows:

¹ *Rollo* (G.R. No. 189343), pp. 4-24.

² *Rollo* (G.R. No. 189369), pp. 3-52.

³ *Rollo* (G.R. No. 189553), pp. 12-79.

⁴ *Rollo* (G.R. No. 189343), pp. 26-63.

⁵ *Id.* at 62.

⁶ *Id.* at 65-83.

⁷ *Id.* at 65.

⁸ *Rollo* (G.R. No. 189343), p. 4; (G.R. No. 189369), p. 6; (G.R. No. 189553), p. 16.

⁹ *Rollo* (G.R. No. 189343), p. 4.

¹⁰ *Rollo* (G.R. No. 189369), p. 6.

¹¹ *Rollo* (G.R. No. 189553), p. 16.

A written request for a cash advance is made by paymaster Luz Gonzales (Gonzales), who then submits it to Cash Division Chief Bacasmas for approval. Once the latter approves the request, she affixes her initials to the voucher, which she forwards to City Treasurer Cesa for his signature in the same box. By signing, Bacasmas and Cesa certify that the expense or cash advance is necessary, lawful, and incurred under their direct supervision.¹²

Thereafter, the voucher is forwarded to City Accountant Edna C. Jaca (Jaca) for processing and pre-audit. She also signs the voucher to certify that there is adequate available funding/budgetary allotment; that the expenditures are properly certified and supported by documents; and that previous cash advances have been liquidated and accounted for. She then prepares an Accountant's Advice (Advice).¹³

This Advice is returned with the voucher to the Chief Cashier for the preparation of the check. After it has been prepared, she affixes her initials to the check, which Cesa then signs. Afterwards, City Administrator Gaviola approves the voucher and countersigns the check.¹⁴

The voucher, the Advice, and the check are then returned to the Cash Division, where Gonzales signs the receipt portion of the voucher, as well as the Check Register to acknowledge receipt of the check for encashment.¹⁵

Upon receipt of the check, Gonzales encashes it at the bank, signs the voucher, and records the cash advance in her Individual Paymaster Cashbook. She then liquidates it within five days after payment.¹⁶

A report of those cash advances liquidated by Gonzales is called a Report of Disbursement (RD). An RD must contain the audit voucher number, the names of the local government employees who were paid using the money from the cash advance, the amount for each employee, as well as the receipts. The RDs are examined and verified by the City Auditor and are thereafter submitted to the Cash Division for recording in the official cash book.¹⁷

On 4 March 1998, COA issued Office Order No. 98-001 creating a team to conduct an examination of the cash and accounts of the accountable officers of the Cash Division, City Treasurer's Office of Cebu City.¹⁸

¹² *Rollo* (G.R. No. 189343), p. 38.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 38-39.

¹⁶ *Id.* at 39.

¹⁷ *Id.*

¹⁸ *Id.* at 37.

This team conducted a surprise cash count on 5 March 1998.¹⁹ The examination revealed an accumulated shortage of ₱9,810,752.60 from 20 September 1995 to 5 March 1998 from the cash and accounts of Gonzales.²⁰ The team found that Bacasmas, Gaviola, Cesa, and Jaca failed to follow the above-mentioned procedure, thus facilitating the loss of more than nine million pesos on the part of the city government. Specifically, the team said in its report that there were irregularities in the grant, utilization, and liquidation of cash advances; shortages were concealed; and inaccurate and misleading pieces of information were included in the financial statements.²¹ These irregularities were manifested in the following: additional cash advances were granted even if previous cash advances had not yet been liquidated, cash advance vouchers for salaries were not supported by payrolls or lists of payees, and cash advances for salaries and wages were not liquidated within five days after each 15th day or end-of-the-month pay period.²²

The report stated that Bacasmas, Gaviola, Cesa, and Jaca not only signed, certified, and approved the cash advance vouchers, but also signed and countersigned the checks despite the deficiencies, which amounted to a violation of Republic Act No. (R.A.) 7160; Presidential Decree No. (P.D.) 1445; and the circulars issued by the Commission on Audit (COA), specifically COA Circular Nos. 90-331, 92-382 and 97-002.²³ According to the COA, the violation of the foregoing laws, rules, and regulations facilitated the loss of a huge amount of public funds at the hands of Gonzales.²⁴

Hence, an Information²⁵ was filed with the Sandiganbayan on 30 July 2001 against Bacasmas, Gaviola, Cesa, and Jaca, to wit:

That on or about the 5th day of March 1998, and for sometime prior and subsequent thereto, at Cebu City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, ALAN C. GAVIOLA, EUSTQUIO B. CESA, BENILDA N. BACASMAS and EDNA J. JACA, public officers, being then the City Administrator, City Treasurer, Cash Division Chief and City Accountant, respectively, of the Cebu City Government, in such capacity and committing the offense in relation to Office, conniving and confederating together and mutually helping with each other [sic], with deliberate intent, with manifest partiality, evident bad faith and with gross inexcusable negligence, did then and there allow LUZ M. GONZALES, Accountant I, Disbursing Officer-Designate of the Cebu City Government, to obtain cash advances despite the fact that she has previous unliquidated cash advances, thus allowing LUZ M. GONZALES to accumulate Cash Advances amounting to NINE MILLION EIGHT HUNDRED TEN

¹⁹ Id.

²⁰ Id. at 39.

²¹ Id. at 40-43.

²² Id.

²³ Id. at 39-40.

²⁴ Id.

²⁵ *Rollo* (G.R. No. 189553), pp. 144-146.

THOUSAND SEVEN HUNDRED FIFTY-TWO PESOS AND 60/100 (₱9,810,752.60), PHILIPPINE CURRENCY, which remains unliquidated, thus accused in the performance of their official functions, had given unwarranted benefits to LUZ M. GONZALES and themselves, to the damage and prejudice of the government, particularly the Cebu City Government.²⁶

The prosecution presented the testimonies of the COA Auditors who had conducted the examination on the cash and accounts of Gonzales: Cecilia Chan, Jovita Gabison, Sulpicio Quijada, Jr., Villanilo Ando, Jr., and Rosemarie Picson.²⁷ The COA Narrative Report²⁸ on the results of the examination of the cash and accounts of Gonzales covering the period 20 September 1995 to 05 March 1998 was also introduced as evidence.²⁹

Bacasmas testified in her own defense. She said that she could not be held liable, because it was not her responsibility to examine the cash book. She pointed to Jaca and the City Auditor as the ones responsible for determining whether the paymaster had existing unliquidated cash advances. Bacasmas further testified that she allowed the figures to be rounded off to the nearest million without totalling the net payroll, because it was customary to round off the cash advance to the nearest amount.³⁰

Cesa averred that Jaca was the approving authority in granting cash advances. Hence, when he signed the vouchers, he merely relied on Jaca's certification that Gonzales had already liquidated her cash advances. Besides, he said, he had already delegated the function of determining whether the amount stated in the disbursement voucher was equal to the net pay, because it was humanly impossible for him to supervise all the personnel of his department.³¹

Jaca admitted that cash advances were granted even if there were no liquidations, so that salaries could be paid on time, because cash advances usually overlapped with the previous one. Additionally, she acknowledged that when she affixed her signatures to the vouchers despite the non-attachment of the payrolls, she was aware that Gonzales still had unliquidated cash advances.³²

Lastly, Gaviola claimed that when he affixed his signatures, he was not aware of any anomaly. Allegedly, he only signed on the basis of the signatures of Cesa and Jaca.³³

²⁶ Id. at 144-145.

²⁷ *Rollo* (G.R. No. 189343), pp. 27-30.

²⁸ *Rollo*, (G.R. No 189553) pp. 198-228.

²⁹ *Rollo* (G.R. No. 189343), p. 29.

³⁰ Id. at 31-32.

³¹ Id. at 32-34.

³² Id. at 34-36.

³³ Id. at 36-37.

The Sandiganbayan, in its Decision dated 7 May 2009, did not give credence to the defense of the accused, but instead afforded significant weight to the COA Narrative Report submitted in evidence. It found that the accused, as public officers, had acted with gross inexcusable negligence by religiously disregarding the instructions for preparing a disbursement voucher and by being totally remiss in their respective duties and functions under the Local Government Code of 1991.³⁴ Their gross inexcusable negligence amounted to bad faith, because they still continued with the illegal practice even if they admittedly had knowledge of the relevant law and COA rules and regulations.³⁵ The Sandiganbayan held that the acts of the accused had caused not only undue injury to the government because of the ₱9,810,752.60 shortage, but also gave unwarranted benefit to Gonzales by allowing her to obtain cash advances to which she was not entitled.³⁶ Lastly, it found conspiracy to be present in the acts and omissions of the accused showing that they had confederated, connived with, and mutually helped one another in causing undue injury to the government through the loss of public money.³⁷

Gaviola, Cesa, Bacasmas, and Jaca individually filed their Motions for Reconsideration of the 7 May 2009 Decision.³⁸ Their motions impugned the sufficiency of the Information and the finding of gross inexcusable negligence, undue injury, and unwarranted benefit.³⁹ To support their innocence, they invoked the cases of *Arias v. Sandiganbayan*,⁴⁰ *Magsuci v. Sandiganbayan*,⁴¹ *Sistoza v. Desierto*,⁴² *Alejandro v. People*,⁴³ and *Albert v. Gangan*,⁴⁴ in which we held that the heads of office may rely to a reasonable extent on their subordinates.⁴⁵ The Motion for Reconsideration of Jaca also averred that her criminal and civil liabilities had been extinguished by her death on 24 May 2009.⁴⁶

The Sandiganbayan, in a Resolution⁴⁷ promulgated 27 August 2009 denied the Motions for Reconsideration of the accused. It ruled that the Information was sufficient, because the three modes of violating Section 3(e) of R.A. 3019 commonly involved willful, intentional, and conscious acts or omissions when there is a duty to act on the part of the public official or employee.⁴⁸ Furthermore, the three modes may all be alleged in one

³⁴ Id. at 45-50.

³⁵ Id. at 53-54.

³⁶ Id. at 55-58.

³⁷ Id. at 59-61.

³⁸ Id. at 65.

³⁹ Id. at 66-70.

⁴⁰ 259 Phil. 794 (1989).

⁴¹ 310 Phil. 14 (1995).

⁴² 437 Phil. 117 (2002).

⁴³ 252 Phil. 412 (1989).

⁴⁴ 406 Phil. 231 (2001).

⁴⁵ *Rollo* (G.R. No. 189343), p. 76.

⁴⁶ Id. at 69.

⁴⁷ Id. at 65-83.

⁴⁸ Id. at 70-73.

Information.⁴⁹ The Sandiganbayan held that the accused were all guilty of gross inexcusable negligence. Claiming that it was the practice in their office, they admittedly disregarded the observance of the law and COA rules and regulations on the approval and grant of cash advances.⁵⁰ The anti-graft court also stated that the undue injury to the government was unquestionable because of the shortage amounting to ₱9,810,752.60.⁵¹ It further declared that the aforementioned cases cited by the accused were inapplicable, because there was paucity of evidence of conspiracy in these cases.⁵² Here, conspiracy was duly proven in that the silence and inaction of the accused – albeit ostensibly separate and distinct – indicate, if taken collectively, that they are vital pieces of a common design.⁵³ Finally, the Sandiganbayan decided that although the criminal liability of Jaca was extinguished upon her death, her civil liability remained.⁵⁴ Hence, the Motions for Reconsideration were denied.⁵⁵

Thus, Bacasmas, Gaviola, and Cesa filed their respective Petitions for Review on Certiorari, in which they rehashed the arguments they had put forward in their Motions for Reconsideration previously filed with the Sandiganbayan.

We resolved to consolidate the three Petitions on 23 November 2009.⁵⁶ The Office of the Special Prosecutor was required to comment on the three Petitions,⁵⁷ after which petitioners were instructed to file a Reply,⁵⁸ which they did.⁵⁹

Petitioners, through their respective Petitions for Review on Certiorari and Comments, bring these two main issues before us:

- I. Whether the Information was sufficient; and
- II. Whether petitioners are guilty beyond reasonable doubt of violating Section 3(e) of Republic Act No. 3019

We deny the Petitions.

⁴⁹ Id. at 73.

⁵⁰ Id. at 73-75.

⁵¹ Id. at 75.

⁵² Id. at 76-77.

⁵³ Id. at 77-78.

⁵⁴ Id. at 81-82.

⁵⁵ Id. at 83.

⁵⁶ *Rollo* (G.R. No. 189343), p. 88; (G.R. No. 189369), p. 189; (G.R. No. 189553), p. 504.

⁵⁷ Id. at 90; 191; 511.

⁵⁸ Id. at 136; 229; 549.

⁵⁹ Id. at 137, unpaginated; unpaginated; unpaginated.

I.**The Information specified when the crime was committed,
and it named all of the accused and their alleged acts or omissions
constituting the offense charged.**

An information is deemed sufficient if it contains the following: (a) the name of all the accused; (b) the designation of the offense as given in the statute; (c) the acts or omissions complained of as constituting the offense; (d) the name of the offended party; (e) the approximate date of the commission of the offense; and (f) the place where the offense was committed.

Cesa and Gaviola question the sufficiency of the Information on three grounds: first, it did not specify a reasonable time frame within which the offense was committed, in violation of their right to be informed of the charge against them; second, not all of the accused were named, as Gonzales was not charged in the Information; and third, the Information did not specify an offense, because negligence and conspiracy cannot co-exist in a crime.

The Sandiganbayan earlier held that the Information was sufficient in that it contained no inherent contradiction and properly charged an offense. We uphold its ruling for the following reasons:

First, it is not necessary to state the precise date when the offense was committed, except when it is a material ingredient thereof.⁶⁰ The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission.⁶¹ Here, the date is not a material ingredient of the crime, not having been committed on one day alone, but rather within a period of time ranging from 20 September 1995 to 5 March 1998. Hence, stating the exact dates of the commission of the crime is not only unnecessary, but impossible as well. That the Information alleged a date and a period during which the crime was committed was sufficient, because it duly informed petitioners that before and until 5 March 1998, over nine million pesos had been taken by Gonzales as a result of petitioners' acts. These acts caused undue injury to the government and unwarranted benefits to the said paymaster.

Second, the Information charges petitioners with violating Section 3(e) of R.A. 3019, to wit:

Sec. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.

⁶⁰ RULES OF COURT, Rule 110, Sec. 11.

⁶¹ *Id.*

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.

Cesa contends that Gonzales should have been included in the Information, because the latter incurred cash shortages and allegedly had unliquidated cash advances.⁶² Cesa is wrong. The Information seeks to hold petitioners accountable for their actions, which allowed Gonzales to obtain cash advances, and paved the way for her to incur cash shortages, leading to a loss of over nine million pesos. Thus, the Information correctly excluded her because her alleged acts did not fall under the crime charged in the Information.

Third and last, the Information sufficiently specified the offense that violated Section 3(e) of R.A. 3019, the essential elements of which are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. The accused must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. The action of the accused caused undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of the functions of the accused.⁶³

The Information is sufficient, because it adequately describes the nature and cause of the accusation against petitioners,⁶⁴ namely the violation of the aforementioned law. The use of the three phrases – “manifest partiality,” “evident bad faith” and “inexcusable negligence” – in the same Information does not mean that three distinct offenses were thereby charged but only implied that the offense charged may have been committed through any of the modes provided by the law.⁶⁵ In addition, there was no inconsistency in alleging both the presence of conspiracy and gross inexcusable negligence, because the latter was not simple negligence. Rather, the negligence involved a willful, intentional, and conscious indifference to the consequences of one’s actions or omissions.⁶⁶

⁶² *Rollo* (G.R. No. 189553), p. 33.

⁶³ *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279, 289-290.

⁶⁴ *People v. Anguac*, G.R. No. 176744, 05 June 2009, 588 SCRA 716.

⁶⁵ *Soriquez v. Sandiganbayan*, 510 Phil. 709 (2005).

⁶⁶ *Albert v. Sandiganbayan*, *supra*.

II.

Petitioners' gross negligence amounting to bad faith, the undue injury to the government, and the unwarranted benefits given to Gonzales, were all proven beyond reasonable doubt.

Petitioners do not controvert the first element of the offense but assail the Sandiganbayan's finding of gross inexcusable negligence, undue injury and unwarranted benefit. Nevertheless, their contention must fail.

Petitioners committed gross negligence amounting to bad faith when they approved and disbursed the cash advances in violation of law and rules and regulations.

Petitioners – being the Cash Division Chief, City Treasurer and City Administrator – have to comply with R.A. 7160, P.D. 1445, and COA Circulars 90-331, 92-382, and 97-002 on the proper procedure for the approval and grant of cash advances. These laws and rules and regulations state that cash advances can only be disbursed for a legally authorized specific purpose and cannot be given to officials whose previous cash advances have not been settled or properly accounted for.⁶⁷ Cash advances should also be equal to the net amount of the payroll for a certain pay period, and they should be supported by the payroll or list of payees and their net payments.⁶⁸

However, petitioners failed to observe the foregoing. We quote hereunder the findings of the COA team as contained in its Narrative Report:

A. Granting, Utilization and Liquidation of cash advances:

1. During the period, September 20, 1995 to March 5, 1998, records and verification documents show that **additional cash advances were granted (Annex 13), even if the previous cash advances were not yet liquidated.**

It resulted in excessive granting of cash advances, which created the opportunity to misappropriate public funds since excess or idle funds were placed in the hands of the paymaster under her total control and disposal. This is **in violation of Section 89, PD 1445; Section 339, RA 7160 and paragraph 4.1.2 of COA Circular No. 97-002.**

2. The **amounts of cash advances for salary payments were not equal to the net amount of the payroll for a pay period in violation of par. 4.2.1. COA Circular No. 90-331. Section**

⁶⁷ P.D. 1445, Sec. 89 (1978).

⁶⁸ COA Circular No. 90-331, par. 4.2.1, 5.1.1; COA Circular No. 92-382, Sec. 48. g, k; COA Circular No. 97-002, par. 4.1.2, 4.2.1, 4.2.2, 5.1.1.

48 (g), COA Circular No. 92-382 and par. 4.2.1, COA Circular No. 97-002. In fact, all cash advance vouchers for salaries were not supported by payrolls or list of payees to determine the amount of the cash advance to be granted, and that the face of the disbursement voucher (sample voucher marked as Annex 14) did not indicate the specific office/ department and period covered for which the cash advance was granted in violation of par. 4.1.5 COA Cir. No. 90-331, Section 48(e) COA Cir. 92-382 and par. 4.1.7 and 4.2.2 COA Cir No. 97-002. The amount of the cash advance could therefore be in excess of the required amount of the payroll to be paid since it can not be determined which payroll, pay period and department employees are going to be paid by the amount drawn. Consequently, the liquidations which were made later, cannot identify which particular cash advances are liquidated, considering that there are other previous cash advances not yet liquidated, thus resulting in the failure to control cash on hand.

3. **Cash advances for salaries and wages were not liquidated within 5 days after each 15 day/end of the month pay period in violation of par. 5.1.1 COA Cir. 90-331 and 97-002 and Section 48 (k) of COA Cir No. 92-382.** In fact, the balance of unliquidated cash advance as of December 31, 1997 per audit, amounted to P 10,602,527.90 consisting of P6,388,147.94, P3,205,373.16 and P 1,009,006.80 for General, SEF and Trust Fund (Annex 15) respectively, in violation of Par. 5.8 COA Cir Nos. 90-331 and 97-002 and Section 48 (o) COA Cir. No. 92-382. However, the balance shown was understated as of December 31, 1997 by ₱2,395,517.08 as discussed in items D.2 pages 15 & 16.

Records showed that part of the total cash advances of ₱12,000,000.00 appears to have been used to liquidate partially the previous year's unliquidated cash advance/balance of ₱10,602,527.90 since the accountable officer liquidated her cash advance by way of cash refunds/returns from January 8-14, 1998 in the total amount of ₱8,076,382.36 (Annex 15 E) in violation of par. 4.1.5 COA Cir. 90-331, Section 48 of COA Cir 92-382 and par. 4.1.7 of COA Cir. 97-002.

The concerned City Officials (refer to Part III of this report) signed, certified and approved the disbursements/cash advance vouchers, and signed and countersigned the corresponding checks despite the deficiencies which are violations of laws, rules and regulations mentioned in the preceding paragraphs.

The accountable officer was able to accumulate excess or idle funds within her total control and disposal, resulting in the loss of public funds, due to the flagrant violations by the concerned city officials of the abovementioned laws, rules and regulations.

On the other hand, the verification and reconciliation of the paymaster's accountability cannot be determined

immediately because the submission of financial reports and its supporting schedules and vouchers/payrolls by the Accounting Division was very much delayed (Annex 16), in violation of Section 122, PD 1445, despite several communications from the Auditor to submit said reports, latest of which is attached as Annex 16.a.

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D. The following practices of the Office of the City Accountant resulted in inaccurate and misleading information in the financial statements including the balance of unliquidated cash advances in violation of Section 111 and 112 of PD 1445:

1. Cash returns made on January 8 to 14, 1998 were recorded in the accounting records as credits to Mrs. Gonzales accountability in December 1997 amounting to ₱8,075,382.36 as shown in the subsidiary ledger (Annex 20. 1-4) and as evidenced by the official receipts (Annex 20a. 1-6) as follows:

x x x x

2. Some liquidations/ disbursements in January 1998 were included as credits to accountability or a reduction of the paymaster's accountability as of December 1997 amounting to ₱2,395,517.08.

x x x x

3. Verification of accounting records maintained in the Accounting Division revealed that the index cards (Annex 21) as a control device in the processing of cash advance voucher recorded only cash advances granted to Paymaster. It failed to show the liquidations/ disposition of public funds. Hence, unliquidated balance of cash advances can not be determined at a glance when a cash advance voucher is being processed by the accounting personnel.

E. Other Deficiencies:

1. **There were two claimants who alleged that they did not receive the financial aid intended for them as fire victims. However, payroll showed that there were initials/signatures indicated therein acknowledging receipt of said claim.**
2. **There were two (2) cash advance vouchers (Annex 22b. 1-2) which bear no approval of proper official in BOX marked as "C" hereof, yet checks were issued in violation of Section 4.5 of PD 1445 which provide that disbursement or disposition of government funds of property shall invariably bear the approval of the proper officials.** x x x
3. Accounting records showed that JV #354 under Trust Fund in the amount of ₱147,200.00 was a liquidation on December 31, 1997. x x x one payroll supporting the JV was signed by only one (1) person x x x. The other two payrolls supporting the JV

were not signed/ approved by the concerned officials, which means that the payrolls were not valid disbursements.⁶⁹ (Emphases supplied)

The above findings of the COA cannot be any clearer in thoroughly describing the illegal and anomalous practices of the accused which led to the loss of ₱9,810,752.60 in people's money.

When he testified before the anti-graft court, Bacasmas admitted that she did not consider the net pay, which was lower than the amount requested, when she affixed her signature to the vouchers, because it was supposedly common practice for the paymaster to round off the figures.⁷⁰ Furthermore, she signed the vouchers after relying on the representation of Jaca, Cesa, and Gaviola.⁷¹

During his direct and cross-examination, Gaviola admitted that he had affixed his signature to the vouchers, because they had already been signed by Bacasmas, Cesa, and Jaca despite the incompleteness thereof – the periods covered by the vouchers were not stated; the employees who were to be paid by the cash advance were not specified; no supporting documents were attached to the cash advances requested; and there was no determination of whether the amounts requested were equivalent to the net pay.⁷²

Cesa said that because it was impossible for him to supervise all the personnel, he instructed Bacasmas to examine and check the documents before signing them.⁷³ Thus, once Cesa saw the signature of Bacasmas, he immediately assumed that the documents were in order, and he then signed the vouchers.⁷⁴

These facts show that petitioners failed to act in accordance with their respective duties in the grant of cash advances. Moreover they **repeatedly** failed to do so. Bacasmas signed 294 requests for cash advance, 11 disbursement vouchers, and 7 checks. Cesa signed cash advance requests and 299 disbursement vouchers. Gaviola approved 303 disbursement vouchers and signed 355 checks.

All these acts demonstrate that petitioners, as correctly found by the Sandiganbayan, were guilty of gross negligence amounting to bad faith. Gross and inexcusable negligence is characterized by a want of even the slightest care, acting or omitting to act in a situation in which there is a duty to act – not inadvertently, but wilfully and intentionally, with conscious

⁶⁹ *Rollo* (G.R. No. 189343), pp. 40-43.

⁷⁰ *Id.* at 52.

⁷¹ *Id.*

⁷² *Id.* at 50-51.

⁷³ *Id.* at 52.

⁷⁴ *Id.*

indifference to consequences insofar as other persons are affected.⁷⁵ Bad faith does not simply connote bad judgment or simple negligence.⁷⁶ It imports a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of a known duty due to some motive or interest or ill will that partakes of the nature of fraud.⁷⁷

Petitioners were well aware of their responsibilities before they affixed their signatures on the cash advance vouchers. Yet, they still chose to disregard the requirements laid down by law and rules and regulations by approving the vouchers despite the incomplete information therein, the previous unliquidated cash advances, the absence of payroll to support the cash requested, and the disparity between the requested cash advances and the total net pay. What is worse is that they continue to plead their innocence, allegedly for the reason that it was “common practice” in their office not to follow the law and rules and regulations to the letter. For them to resort to that defense is preposterous, considering that as public employees they are required to perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.⁷⁸ The law and the rules are clear and do not provide for exceptions.

Petitioners’ acts show that they were unified in illegally approving irregular cash advance vouchers in order to defraud the government.

As found by the Sandiganbayan, petitioners’ acts not only show gross negligence amounting to bad faith, but, when taken together, also show that there was conspiracy in their willful noncompliance with their duties in order to defraud the government.

In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven.⁷⁹ Direct proof is not essential to show conspiracy.⁸⁰ It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them.⁸¹

A cash advance request cannot be approved and disbursed without passing through several offices, including those of petitioners. It is outrageous that they would have us believe that they were not in conspiracy when over hundreds of vouchers were signed and approved by them in a

⁷⁵ *Albert v. Sandiganbayan*, supra at 290.

⁷⁶ *Cojuanco Jr. v. CA*, 369 Phil. 41 (1999).

⁷⁷ Id.

⁷⁸ R.A. 6713, Sec. 4 (b) (1989).

⁷⁹ *People v. Jorge*, G.R. No. 99379, 22 April 1994, 231 SCRA 693.

⁸⁰ *Alvizo v. Sandiganbayan*, 454 Phil. 34, 106 (2003).

⁸¹ Id.

course of 30 months, without their noticing irregularities therein that should have prompted them to refuse to sign the vouchers. Clearly, they were in cahoots in granting the cash advances to Gonzales. By these acts, petitioners defrauded the government of such a large sum of money that should not have been disbursed in the first place, had they been circumspect in performing their functions.

Not only were petitioners unified in defrauding the government, but they were also unified in not reporting the negligence of their cohorts because of their own negligence. Cesa himself admitted knowing that Gonzales had unliquidated cash advances, yet he signed the vouchers. He also failed to inform the other officials that they should not sign the vouchers and tolerated their negligence when they affixed their signatures thereto. Petitioners, through their admissions before the Sandiganbayan, all knew that there were irregularities in the vouchers; still they failed to correct one another, because they themselves signed the vouchers despite the glaring irregularities therein.

Petitioners cannot hide behind our declaration in *Arias v. Sandiganbayan*⁸² that heads of offices cannot be convicted of a conspiracy charge just because they did not personally examine every single detail before they, as the final approving authorities, affixed their signatures to certain documents. The Court explained in that case that conspiracy was not adequately proven, contrary to the case at bar in which petitioners' unity of purpose and unity in the execution of an unlawful objective were sufficiently established. Also, unlike in *Arias*, where there were no reasons for the heads of offices to further examine each voucher in detail, petitioners herein, by virtue of the duty given to them by law as well as by rules and regulations, had the responsibility to examine each voucher to ascertain whether it was proper to sign it in order to approve and disburse the cash advance.

***Petitioners wrongly approved
Gonzales' cash advance vouchers,
thereby causing a loss to the
government in the amount of
₱9,810,752.60.***

The third element of the offense is that the action of the offender caused undue injury to any party, including the government; or gave any party any unwarranted benefit, advantage or preference in the discharge of his or her functions. Here, the Sandiganbayan found that petitioners both brought about undue injury to the government and gave unwarranted benefit to Gonzales. It is not mistaken.

⁸² Supra note 40.

Undue injury means actual damage.⁸³ It must be established by evidence⁸⁴ and must have been caused by the questioned conduct of the offenders.⁸⁵ On the other hand, unwarranted benefit, advantage, or preference means giving a gain of any kind without justification or adequate reasons.⁸⁶

When a cash examination is conducted, the paymaster should present her cashbook, cash, and cash items for examination.⁸⁷ Upon assessment thereof in the instant case, it was discovered that ₱9,810,752.60 was missing, as plainly evidenced by the COA Narrative Report, from which we quote:

Balance last cash examination, September 20, 1995	₱	2,685,719.78
Add: Cash Advances received – September 20, 1995 to March 5, 1998		
Gen. Fund		193,320,350.00
SEF		107,400,600.00
Trust Fund		3,989,783.00
		304,710,733.00
Total:	₱	307,396,452.78
Less: Liquidations – September 20, 1995 to March 5, 1998		
Gen. Fund		187,290,452.66
SEF		105,243,526.99
Trust Fund		2,750,722.51
		295,284,752.16
Balance of Accountability, March 5, 1998	₱	12,111,700.62
Less: Inventory of Cash and Cash Items Allowed		2,300,948.02
Shortage (Emphasis supplied)	₱	9,810,752.60⁸⁸

It is beside the point that no one complained about not receiving any salary from the city government. The fact remains that more than nine million pesos was missing – public funds lost, to the detriment of the government.

This undue injury was brought about by petitioners' act of approving the cash advance vouchers of Gonzales even if they lacked the requirements prescribed by law and rules and regulations, and even if Gonzales had failed to liquidate her previous cash advances, thereby clearly giving her an unwarranted benefit.

⁸³ *Llorente v. Sandiganbayan*, 350 Phil. 820 (1998).

⁸⁴ *Pecho v. Sandiganbayan*, 331 Phil. 1 (1996).

⁸⁵ *Fonacier v. Sandiganbayan*, G.R. No. 50691, 05 December 1994, 238 SCRA 655.

⁸⁶ *Gallego v. Sandiganbayan*, 201 Phil. 379 (1982).

⁸⁷ COA Circular 97-002, par. 9.2.2.

⁸⁸ *Rollo* (G.R. No. 189343), p. 56.

No less than the Constitution declares that public office is a public trust.⁸⁹ Public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty, and efficiency.⁹⁰ Petitioners, by intentionally approving deficient cash advance vouchers, have manifestly failed to live up to this constitutional standard.

III.

The indeterminate penalty of 12 years and one month as minimum to 15 years as maximum is fully justified.

Under the Indeterminate Sentence Law, if the offense is punished by a special law such as R.A. 3019, the trial court shall sentence the accused to an indeterminate penalty, the maximum term of which shall not exceed the maximum fixed by this law, and the minimum term shall not be less than the minimum prescribed by the same law. The penalty for violation of Section 3(e) of R.A. 3019 is “imprisonment for *not less than six years and one month nor more than fifteen years*, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.” Hence, the indeterminate penalty of 12 years and 1 month as minimum to 15 years as maximum imposed by the Sandiganbayan in the present case is within the range fixed by law.

However, we are aware that if the range of imposable penalty under the law were to be divided into three tiers based on the length of imprisonment, the penalty imposed in this case would be on the highest tier. Hence, the Sandiganbayan should have explained the reason behind its imposed penalty, for while Section 9 of R.A. 3019 seems to grant it discretion over the indeterminate penalty to be prescribed for violation of Section 3(e), this Court finds it only proper that the anti-graft court justify the latter’s imposition of the highest possible penalty. Otherwise, the exercise of this discretion would appear to be whimsical – something that this Court will not tolerate. After all, it is our duty to be vigilant in ensuring the correctness and justness of the ultimate adjudication of cases before us.

Nevertheless, we find the imposition of the highest range of imposable penalty in this case to be fully justified. In *Jaca v. People of the Philippines*,⁹¹ promulgated on 28 January 2013, the Court convicted the very same petitioners herein of exactly the same kinds of violation of Section 3(e) of R.A. 3019 as those in the present case and imposed therein the indeterminate penalty of 12 years and 1 month as minimum to 15 years as maximum. The violations in that case arose from acts of gross inexcusable

⁸⁹ CONSTITUTION, Art. XI, Sec. 1.

⁹⁰ *Id.*

⁹¹ G.R. Nos. 166967, 166974, 167167; 28 January 2013.

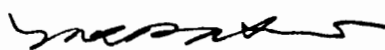
negligence similar in all respects to those committed in this case, except for the amount of cash shortages involved and the identity of the paymaster who benefitted from the acts of petitioners. Even the period covered by the COA audit in *Jaca* – 20 September 1995 to 5 March 1998 – is exactly the same as that in the present case. It is therefore clear that the Court has previously determined these identical acts to be so perverse as to justify the penalty of imprisonment of 12 years and 1 month as minimum to 15 years as maximum. Hence, we adopt the same penalty in this case.

Indeed, the penalty imposed is justified, considering the extent of the negligent acts involved in this case in terms of the number of statutory laws and regulations violated by petitioners and the number of positive duties neglected. The Court emphasizes that petitioners violated not just one but several provisions of various regulations and laws namely: Sections 89 and 122 of P.D. 1445, Section 339 of R.A. 7160, paragraphs 4.1.2, 4.1.7, 4.2.1, 4.2.2, and 5.1.1 of COA Circular No. 97-002, paragraphs 4.2.1, 4.1.5, and 5.1.1 of COA Circular No. 90-331, and Section 48 (g), (e), and (k) of COA Circular No. 92-382. Worse, they admitted being aware of these regulations. These circumstances, coupled with the number of times such instances of violations and negligence were wantonly and systematically repeated, show that their acts bordered on malice. Hence, we are convinced that the penalty imposed by the Sandiganbayan is warranted.

Furthermore, we take judicial notice of the need to stop these corrupt practices that drain local government coffers of millions of pesos in taxpayers' money, which could have been utilized for sorely needed services. In fact, as discussed in its Narrative Report, the COA team found instances where fire victims alleged that they did not receive the financial aid intended for them and yet the payroll showed that there were initials/signatures indicated therein acknowledging receipt of said claim. This diversion of people's money from their intended use has to end.

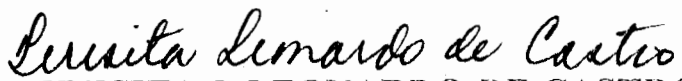
WHEREFORE, in view of the foregoing, the 07 May 2009 Decision and 27 August 2009 Resolution of the Sandiganbayan in Crim. Case No. 26914 are **AFFIRMED**.

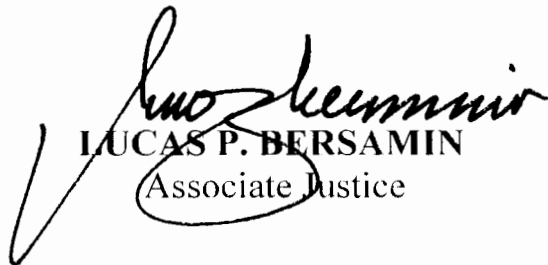
SO ORDERED.




MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice