



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALEX M. VALENCERINA,
Petitioner,

G.R. No. 206162

Present:

- versus -

CARPIO, J., Chairperson,
VELASCO, JR.,*
VILLARAMA, JR.,**
MENDOZA, and
LEONEN, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:
DEC 10 2014

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DECISION

MENDOZA, J.:

This appeal by *certiorari* under Rule 45 of the Rules of Court¹ assails the October 11, 2012 Decision² and the March 1, 2013 Resolution³ of the Sandiganbayan in Criminal Case No. 27474, finding petitioner Alex M. Valencerina (*Valencerina*), together with Amalio A. Mallari (*Mallari*), guilty beyond reasonable doubt of violating Section 3(e) of Republic Act (*R.A.*) No. 3019, which provides as follows:

* Designated Additional Member in lieu of Associate Justice Mariano C. Del Castillo who inhibited himself due to prior action in a related case, per Raffle dated December 9, 2014.

** Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1888, dated November 28, 2014.

¹ *Rollo*, pp. 8-66.

² *Id.* at 68-126. Penned by Associate Justice Efren N. De La Cruz, with Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos, concurring.

³ *Id.* at 128-139. Penned by Associate Justice Efren N. De La Cruz, with Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos, concurring.

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:

xxx xxx xxx

(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.

The Sandiganbayan found Valencerina, a high-ranking officer of the Government Service Insurance System (*GSIS*), guilty of giving unwarranted benefits to Ecobel Land Incorporated (*Ecobel*) on account of his participation in the unjustified issuance of GSIS Surety Bond GIF No. 029132 (*subject bond*) covering the amount of Ten Million US Dollars (US\$10,000,000.00).

The Facts

As culled from the findings of the Sandiganbayan, it appears that sometime in October 1997, Ecobel, represented by its Chairman and accused Josephine E. Boright (*Boright*), applied for the issuance of a bond with GSIS to guarantee the repayment of a loan in the amount of US\$10,000,000.00, supposedly obtained from the Philippine Veterans Bank (*PVB*) and allegedly for the construction of a 26-storey commercial/residential Ecobel Condominium Tower Building.

Boright approached accused Leticia G. Bernardo (*Bernardo*), the manager of the Suretyship Department of GSIS for said purpose. Bernardo gave Boright the checklist of requirements. Thereafter, Ecobel submitted the listed documents, except the loan agreement.

In a meeting held on December 10, 1997, the GSIS Underwriting Committee, chaired by Bernardo, “*approved in principle*” the surety bond application, but subject to “*analysis and evaluation of the project and the offered collaterals.*” It was noted in the same meeting that the collaterals

offered were the project sites in Malate, Manila, under Transfer Certificate of Title (*TCT*) No. 227727 and in Lipa City under TCT No. 66289.⁴

On January 16, 1998, the Underwriting Committee refused TCT No. 227727 as collateral on the ground that it was already the subject of another mortgage. Under the GSIS policy, second mortgages were not allowed. Ecobel then presented TCT No. 66289 as its collateral.

On January 27, 1998, a memorandum was prepared by Valencerina upon the instructions of accused Mallari, who was then the Senior Vice-President of the GSIS General Insurance Group. It was addressed to the President and General Manager of GSIS (*PGM*) and contained an endorsement of Ecobel's bond for evaluation of the GSIS Investment Committee. It also included Mallari's strong recommendation through a marginal note with the words "*Strong reco. Based on info & collateral herein stated.*"⁵

On March 10, 1998, the GSIS Investment Committee approved the subject bond. The following day, or on March 11, 1998, Surety Bond GIF No. 029132, a high-risk bond, was signed by Boright for Ecobel and by Mallari for the GSIS.

On March 30, 1998, Valencerina certified that the subject bond could be redeemed if Ecobel would default in paying the loan. The letter reads:

30 March 1998

To Whom It May Concern:

Re: GSIS G(16) GIF Bond No. 029132
Bond Amount: US 10,000,000
Issuing Date: 11 March 1998
Maturing Date: 11 March 2000
Bond Principal: Ecobel Land Incorporated
Project Bonded: 26-Storey Commercial/Residential
Condominium Ecobel Tower Building

This is to advise that the above-captioned surety bond may be redeemed following a default by the Bond Principal under the procedures set out below (the "DRAWING CONDITIONS"):

- 1. presentation of original surety bond to GSIS at its office in either Manila or London; together with**

⁴ Id. at 100.

⁵ Id. at 101.

2. presentation of demand for payment stating non-payment in full or in part by the Bond Principal; and
3. notification of assignment to GSIS of US Dollar loan obligations of the Bond Principal

Upon receipt of the above documentation via courier, GSIS will confirm the default by the Bond Principal and will make full payment under the surety bond within ten (10) New York and London Banking days.

(Sgd.)

ALEX M. VALENCERINA

Cc: SVP A. Mallari

xxx.

In another certification, dated January 14, 1999, it was made to appear that the bond was a genuine, valid and binding obligation of GSIS, to wit:

14 January 1999

To Whom It May Concern:

Re: GSIS G(16) GIF Bond No. 029132
Bond Amount: US 10,000,000
Issuing Date: 11 March 1998
Maturing Date: 11 March 2000
Bond Principal: Ecobel Land Incorporated
Project Bonded: 26-Storey Commercial/Residential
Condominium Ecobel Tower Building

This is to advise that the captioned surety bond is genuine, authentic, valid and binding obligation of GSIS, and may be transferred to Bear, Sterns (sic) International Ltd. and any of its assignees and Aon Financial Products, Inc. and any of its assignees within the period commencing at the date above. GSIS has no counterclaim, defense or right of set-off with respect to the surety bond provided that DRAWING CONDITIONS have been satisfied.

We confirm that any such transfer requires only written or facsimile notification to GSIS by the then current obligee and confirmation or approval from GSIS is not required.

(Sgd.)

ALEX M. VALENCERINA

Cc: SVP J. Navarette

xxx.

Eventually, accused Estela J. Edralin (*Edralin*), as a representative of Ecobel, signed on February 4, 1999 a Term Loan Agreement with Bear, Stearns International, Ltd. (*BSIL*). The following month, Ecobel made a drawdown from the loan in the amount of US\$9,307,000.00.

On February 9, 1999, Valencerina approved the Suretyship Department's request for a facultative reinsurance of the subject bond. On February 12, and 24, 1999, however, he wrote cancellation notices after he was informed by Atty. Norma M. Saldares (*Atty. Saldares*) that TCT No. 66289 was spurious. Meanwhile, Ecobel issued two post-dated checks both dated February 26, 1999, for ₱12,731,520.00 and US\$330,000.00. The peso check was signed by Boright and paid in the Philippines, while the dollar check was signed by Edralin and paid in London.

On May 6, 1999, GSIS received a letter from Atty. Fernando U. Campaña (*Atty. Campaña*) of the GSIS-London Representative Office regarding Escobel's premium payment in the amount of US\$200,625.00 remitted to the Philippine National Bank (*PNB*)-London. Finally, on June 20, 1999, the Bond Cancellation Advice was issued for the reversal of the said premium payment of Escobel.

In a letter, dated March 7, 2000, URSA Minor Limited, the assignee of BSIL, demanded payment from Ecobel. A notice of failure was sent by Banker's Trust, informing GSIS of Ecobel's failure to pay the obligation which became due on March 9, 2001.

On April 5, 2000, Aon Financial Products, Inc., also a subsequent assignee of BSIL, sent a Notice of Demand to the then Secretary of Finance, Pardo de Tavera, calling on the guarantee of the Republic of the Philippines under the subject bond.

Thus, for having participated in, or contributed to the release or issuance of the subject surety bond, an Information was filed before the Sandiganbayan, against Valencerina, along with Campaña, Mallari, Leticia G. Bernardo, Josephine Edralin Boright, and Estela J. Edralin for violation of Sec. 3(e) of R.A. No. 3019. As per the Amended Information,⁶ the allegations were as follows:

⁶ Sandiganbayan Decision, id. at 68-70.

That on or about March 11, 1998, or sometime prior or subsequent thereto, in Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused **ALEX M. VALENCERINA**, being then the Vice-President, Technical Services Group (TSG) Marketing and Support Services, General Insurance Group (GIG) of the Government Service Insurance System (GSIS), and therefore a high-ranking official, **FERNANDO U. CAMPAÑA**, Vice-President for International Operations (IO), London Representative Office (LRO), General Insurance Group, GSIS, and therefore also a high-ranking official, **AMALIO A. MALLARI**, then Senior Vice President of the General Insurance Group (GIG), GSIS and Member of the GSIS-GIG Investment Committee, and likewise a high ranking official and **LETICIA G. BERNARDO**, then Department Manager III of the Suretyship Department of the GSIS, and Chairman of the GSIS Underwriting Committee, Bond Reinsurance Treaty, likewise a high-ranking official, while performing their respective official functions and taking advantage of the same and/or using such official offices and functions, conspiring and confederating with private parties **JOSEPHINE EDRALIN BORIGHT** and **ESTELA J. EDRALIN**, Incorporators of, and who acted as Chairperson at different periods, of Escobel Land Incorporated, did then and there wilfully, unlawfully and criminally, with evident bad faith and manifest partiality, participate, or contribute to, the release or issuance of Surety Bond GIF NO. 029132 in the amount of Ten Million US Dollars (US\$ 10,000,000.00), with Escobel Land, Incorporated then chaired and represented by Josephine Edralin Boright, as the Principal, and Philippine Veterans Bank (PVB) as the supposed Obligee, notwithstanding the legal infirmities and irregularities, as provided by GSIS laws, guidelines, and policies, that attended its release or issuance, which accused public officials are duty-bound to know and therefore comply, viz: (1) Absence of counter-bond prior to issuance as underwriting requirement to protect the interest of GSIS; 2) Absence of sufficient collateral as underwriting safety requirement, as in fact TCT NO. 227727 had an existing encumbrance; 3) Non-payment of the premium prior to issuance and approval of the Surety Bond as a mandatory legal and safety requirement; (4) Issuance of Surety Bond without the prior approval of the GSIS Board of Trustees required for high-risk bonds regardless of the amount; 5) Absence of a Loan Agreement between the bond principal Ecobel Land Incorporated and the supposed Obligee, Philippine Veterans Bank (PVB); 6) Issuance of the said Surety Bond without prior approval from the Central Bank being a foreign-denominated bond; 7) Non-verification of the collateral/s submitted to ensure non-exposure to risks; AND 8) Insufficient and highly irregular evaluation of the bond application and its supporting documents, or of the character, capacity and capital of the applicant, Ecobel Land Incorporated, and subsequently, or almost a year after the issuance of said Surety Bond, it was discovered that one of two titles submitted as supposed collateral, or TCT No. 66289, was spurious, which discovery came after an acknowledgment was made relative to the supposed premium payment of Ecobel Land Incorporated, which premium payment was made almost a year after the issuance of the Surety Bond, and despite being advised of the cancellation of said

Surety Bond, Ecobel Land Incorporated, then already represented by Estela J. Edralin, with the assistance of herein accused public officials, was able to obtain an actual drawdown of Ten Million US Dollars (US \$10,000,000.00) from Bear and Stearns International Ltd., and subsequent thereto, despite knowledge of the cancellation of the Surety Bond and return or disregard of the premium payment earlier made, Fernando U. Campaña of the GSIS London Representative Office, received from Estela J. Edralin of Escobel Land Incorporated, the premium payment previously disregarded at the GSIS Manila Office, without the authority or official duty to do so, or even the consent of GSIS, and despite knowledge that Surety Bond No. 029132 was issued with PVB as Obligee and not Bears and Stearns International, Ltd., thereby affording unwarranted benefit, advantage or preference to Ecobel Land Incorporated and/or herein private accused, resulting [in] extreme prejudice to the interest of the government and to exposure to injury in the amount of the actual drawdown of Ten Million US Dollars (US \$10,000,000.00)

CONTRARY TO LAW.

The People, through the Office of the Ombudsman, claimed that all the accused caused the Government injury and/or gave unwarranted benefits to Ecobel when they participated in the issuance of the subject surety bond, despite the obvious legal infirmities and irregularities which attended the same.

These infirmities include the following:

- 1) Absence of counter-bond prior to issuance as underwriting requirement to protect the interest of GSIS;
- 2) Absence of sufficient collateral as underwriting safety requirement, as in fact TCT NO. 227727 had an existing encumbrance;
- 3) Non-payment of the premium prior to issuance and approval of the Surety Bond as a mandatory and legal requirement;
- 4) Issuance of the Surety Bond without the prior approval of the GSIS Board of Trustees required for high-risk bonds regardless of the amount;
- 5) Absence of a loan agreement between the bond principal Ecobel and the supposed obligee, Philippine Veterans Bank (PVB);
- 6) Issuance of the said Surety bond without prior approval from the Central Bank being a foreign-denominated bond;
- 7) Non-verification of the collateral/s submitted to ensure non-exposure to risks;

- 8) Insufficient and highly irregular evaluation of the bond application and its supporting documents, or of the character, capacity and capital of the applicant, Ecobel Land Incorporated; and
- 9) TCT No. 66289, being one of the collaterals, was found to be spurious.

All of those charged pleaded not guilty, except for Boright, who since then, had remained at large. Eventually, the case against Campaña was dismissed in the Sandiganbayan Resolution, dated August 3, 2003.

After the trial, the Sandiganbayan rendered the assailed decision, finding Valencerina and Mallari guilty beyond reasonable doubt and sentencing them to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from holding public office. Bernardo and Edralin were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt. Then, a warrant of arrest for accused Boright was issued.

The Sandiganbayan found that from the GSIS Underwriting Committee, the application for the issuance of the subject bond moved to the office of Valencerina, who then endorsed it for assessment of the GSIS Investment Committee. It stated that Valencerina must have known that Ecobel could not be given such bond to guarantee payment of a loan obtained from foreign entities because his position entailed knowledge of the fact that GSIS could only issue a guarantee payment bond if the government had an interest therein. Yet, despite this rule and his knowledge that the obligee was not actually PVB, as misrepresented by Ecobel, but a foreign funder, Valencerina still submitted the application to the PGM for the evaluation of the Investment Committee. The Sandiganbayan took this as proof of the presence of the element of the offense: that Valencerina acted with manifest partiality, evident bad faith or gross inexcusable negligence in giving unwarranted benefits in favor of Ecobel.

Moreover, the Sandiganbayan took note of the significant role Valencerina played for Ecobel even after the bond had been issued. It pointed out his participation in the loan negotiation between Ecobel and BSIL, with the certifications he himself issued which effectively made the transfer of the bond to an obligee, other than PVB, possible. It appeared that Boright requested Valencerina and Mallari to issue the certifications which were needed to facilitate the foreign loan.

Lastly, Valencerina's declaration that the bond was fully secured by collaterals was taken by the Sandiganbayan against him as he already knew that the said collaterals were defective.

With respect to Mallari, his conviction was premised on the findings by the Sandiganbayan that he strongly recommended the Ecobel bond application for evaluation notwithstanding its infirmities; that he approved and subsequently signed the subject bond on behalf of GSIS; and that he knew beforehand that PVB was not the obligee of the loan as manifested in the correspondence he had with accused Boright, thus, highlighting his active participation in the negotiation with Bear and Stearns International, Ltd. on the subject bond.

Thus, the Sandiganbayan disposed:

IN LIGHT OF ALL THE FOREGOING, the Court hereby renders judgment as follows:

1. Accused ALEX M. VALENCERINA and AMALIO A. MALLARI are found GUILTY beyond reasonable doubt of violation of Section 3 (e) of RA 3019 and, pursuant to Section 9 thereof, are hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from holding office;

2. Accused LETICIA G. BERNARDO and ESTELA J. EDRALIN are hereby ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against accused Bernardo and Edralin.

Let the hold-departure order against accused Bernardo and Edralin by reason of this case be lifted and set aside, and their bonds released, subject to the usual accounting and auditing procedure.

Let a warrant for the arrest of accused Josephine Edralin Boright be issued. Pending her arrest, let this case be archived.

SO ORDERED.⁷

Valencerina and Mallari separately moved for reconsideration, but their motions were subsequently denied by the Sandiganbayan in its March 1, 2013 Resolution.

Hence, this petition.

⁷ Id. at 125-126.

GROUND

1. The Sandiganbayan (First Division) has decided questions of substance not heretofore determined by the Supreme Court; or has decided in a way probably not in accord with law or with applicable decisions of the Supreme Court; or has so far departed from the accepted and usual course of judicial proceedings (*Rules of Court, Rule 45, Section 6*), as shown by the grounds invoked and discussed hereunder,
2. The conclusions, findings and judgment of the Sandiganbayan (First Division) are speculative, surmises or conjectures; or based on misapprehension of facts; or the inferences made are manifestly mistaken, absurd or impossible and rendered in grave abuse of discretion or are beyond the issues of the case at bench (*Office of the President, et al. vs. Calimxto R. Cataquiz, G.R. No. 183445, Sept. 14, 2011*),
3. The Court *a quo* admitted and relied on xerox copies of documentary exhibits, which were not authenticated by the persons who executed them, and whose originals were not presented in court by respondent, who failed to provide any valid reason for not presenting them, in flagrant violation of the best evidence and other rules of evidence.
4. The court *a quo* gravely erred in considering and relying on the hearsay testimonies of witnesses who had no personal knowledge of the contents or due execution and genuineness of the respondent's xerox documentary exhibits or of the facts in issue that they testified on.
5. The records are bereft of any evidence, and the court *a quo* did not find any, that Bear Stearns International, Ltd., granted a loan of US \$10 million to Ecobel Land, Inc. in London.
 - 5.1. There being no such loan, as *corpus delicti* of the second mode of committing the offense, there was no crime of graft or corrupt practice under Section 3(e) of RA 3019, by petitioner giving Ecobel

unwarranted benefit, preference or advantage, with manifest partiality, evident bad faith or gross inexcusable negligence,

5.2. There being no evidence that Estela J. Edralin obtained loan from Bear Stearns, the court *a quo* grievously erred when It convicted petitioner for facilitating the inexistent loan with the use of his alleged two (2) certifications, Exhibits “D-14” dated March 30, 1998 and “D-17,” dated January 14, 1999, that Estela J. Edralin did not receive as unwarranted benefit, preference or advantage.

6. Even assuming *in arguendo* that petitioner’s alleged two certifications, exhibits “D-14” dated March 30, 1998 and “D-17,” dated January 14, 1999, are admissible evidence, their issuance alone did not constitute the crime of graft or corrupt practice committed by way of the second mode of violating Section 3(e) of RA 3019.

6.1. The certifications, which are not even attempted or frustrated acts to commit the crime, were not valid documents to transfer GSIS Surety Bond No. G (16) GIF 029132 to Bear Stearns International, Ltd.,

6.2. Absent any evidence that the drawing conditions provided in the two (2) certifications, Exhibits “D-14” and “D-17”, were fulfilled or complied therewith, GSIS Surety Bond No. G (16) GIF 29132 was not validly transferred to Bear Stearns International, Ltd.

6.3. Furthermore, petitioner cancelled and rendered unenforceable GSIS Surety Bond No. G (16) GIF 029132, thereby rendering the two (2) certifications also legally inoperative and ineffective.

7. **Petitioner's Memorandum dated January 27, 1998, Exhibit "10-Valencerina," was done in the performance of his duty as Vice-President for Marketing and Support Services, following the approval in principle of Ecobel's bond application by the Underwriting Committee headed by Leticia G. Bernardo, who was acquitted by the court *a quo*, and not because he was already "resigned to Ecobel's side,"**
8. **It was PGM Cesar Sarino, not petitioner, who "advanced" Ecobel's bond application to INCOM in performance of duties and not because petitioner was "already resigned to Ecobel side" to give Ecobel unwarranted benefit, preference or advantage, who was the lone bond applicant.**
9. **The court *a quo* violated petitioner's constitutional rights to be informed of the charge against him and to due processes of law by finding him guilty of violating Section 3 (E) of RA 3019 under the second mode, that is, for allegedly giving Ecobel unwarranted benefit, preference or advantage, with manifest partiality considering that the Amended Information accused him of committing the offense under the first mode, which is for participating and contributing to the issuance of the questioned surety bond and causing undue injury to the government.**
 - 9.1. **Petitioner was not validly accused or charged for violation of Section 3 of RA 3019.**
 - 9.2. **Violation of petitioner's constitutional rights to be informed of the accusation against him and to due process of law.**
10. **The court *a quo* erred when it assumed jurisdiction over, in violation of the doctrine of territoriality of criminal laws, and considered incidents and term loan agreement relative to the loan for US 10 Million Dollars that Ecobel Land, Inc. would have obtained in London from Bear Stearns International, Ltd.**

11. Respondent failed to prove beyond reasonable doubt all elements of the crime of giving to Ecobel unwarranted benefit, preference or advantage, with manifest partiality, evident bad faith or gross inexcusable negligence, which is punishable under Section 3 (e) of RA 3019.⁸

Valencerina insists that the complained act of giving unwarranted benefit, preference or advantage in favor of Ecobel with manifest impartiality, evident bad faith or gross negligence was not proved beyond reasonable doubt. He posits that the pieces of evidence, both documentary and testimonial, supporting the Sandiganbayan's judgment of conviction, were hearsay and incompetent, thus, without probative value and that the Sandiganbayan relied merely on the prosecution's "xerox" exhibits (referring to the two certifications), which were not properly identified and authenticated, and, therefore, were not the best evidence to prove his guilt. He adds that the prosecution witnesses had no personal knowledge of the contents and due execution of the documents which were relied upon by the Sandiganbayan, including the incidents, transactions and events on which they testified on.

Valencerina further argues that the memorandum containing his endorsement of the bond application was issued in the performance of his functions and that the alleged act of giving unwarranted benefits in favor of Ecobel was not sufficiently proved as he was the one who cancelled the bond upon learning of the deficiencies in its issuance.

In its Comment,⁹ the prosecution counters, among others, that when the Sandiganbayan considered and gave value to the faxed and photocopied documents claimed by Valencerina as hearsay and incompetent, no mistake was committed inasmuch as all objections raised were duly considered and that no objection was made during the formal offer of evidence. It cites as reference the ruling of this Court in *Interpacific Transit, Inc. v. Rufo Aviles and Josephine Aviles*,¹⁰ where it was held that when secondary or incompetent evidence is presented and accepted without any objection on the part of the other party, the latter is bound thereby and the court is obliged to grant it the probative value it deserves. Moreover, the prosecution was of the view that even if the documents were inadmissible in evidence, conviction would still be inevitable as regards the act of giving undue advantage in favor of Ecobel because testimonial and documentary evidence overwhelmingly established his participation and [guilt]. As to his claim that

⁸ *Rollo*, pp. 17-18, 20-22, 28, 34-38, 40, 44-45, 47, 50, 52, 56. (Emphasis in the original)

⁹ *Id.* at 256-306.

¹⁰ G.R. No. 86062, June 6, 1990, 186 SCRA 385.

the witnesses the prosecution presented in court had no personal knowledge of the matters testified upon, the prosecution argued that the testimonies procured were based on the authentic documents these witnesses themselves issued, seen, collated, gathered, reviewed, evaluated, investigated, and audited by reason of their office.

In his Reply,¹¹ Valencerina reiterates his submissions.

The Court is, thus, called to determine whether the Sandiganbayan erred in finding Valencerina guilty of violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act.

Central to the proper determination of the correctness of the Sandiganbayan's judgment is the question on whether the fact of giving undue preference with bad faith or evident partiality to Ecobel was proved beyond reasonable doubt by the testimonies of the witnesses and the documents presented by the prosecution.

The Court's Ruling

First, it must be emphasized that irregularities did occur in the issuance of the subject bond. These irregularities were adequately proved by the testimonies of both the prosecution and the defense, together with the documentary evidence presented before the Sandiganbayan – that the security bond was issued without the adequate collaterals; that it was used to guarantee a high-risk foreign loan which was disqualified for lack of government interest in it; that it was issued without the approval of the Board of Trustees as required by GSIS for high-risk bonds; that it was issued without the premium for reinsurance being paid; and that Ecobel received undue benefits as it was able to make a drawdown from the loan by reason of the guarantee under the subject bond. All these were clearly established by the evidentiary records. It is also quite clear that the issues surrounding the Ecobel bond had exposed the government to unwarranted risks, which could have been avoided had steps been taken to consciously follow the policies of GSIS.

It is in this light that Valencerina was tried. His participation in the issuance of the subject bond was put to test to determine whether he violated Section 3(e) of R.A. No. 3019. The question, therefore, that remains is whether he, as found by the Sandiganbayan, had a hand in the act of giving unwarranted benefits to Ecobel with the issuance of the subject bond. Stated otherwise, did he participate in the giving of undue benefits to Ecobel with

¹¹ *Rollo*, pp. 312-334.

evident bad faith, or manifest partiality, as punishable under Sec. 3(e) of R.A. No. 3019, when the bond was issued and used by Ecobel to secure a foreign denominated loan?

The Court agrees with the Sandiganbayan in finding Valencerina guilty of violating Section 3(e) of R.A. No. 3019 based upon the pieces of evidence presented by the prosecution.

In all criminal cases, the prosecution is burdened with the duty of establishing with proof beyond reasonable doubt the guilt of an accused.¹² The determination of whether the prosecution has fulfilled such a heavy burden is left to the trial court, which, in turn, must be satisfied with moral certainty that an accused has indeed committed the crime on the basis of facts and circumstances to warrant a judgment of conviction.¹³ Otherwise, where there is reasonable doubt, acquittal must then follow.¹⁴ The premise is that an accused is presumed innocent until the contrary is proved.¹⁵

In finding Valencerina guilty of giving undue advantage or preference to Ecobel, in violation of Section 3(e) of the Anti Graft and Corrupt Practices Act, the Sandiganbayan was convinced that the elements of the crime were duly established. These elements, as enumerated by the Court in *Bautista v. Sandiganbayan*,¹⁶ are as follows:

- (1) the offender is a public officer;
- (2) the act was done in the discharge of the public officer's official, administrative or judicial functions;
- (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and
- (4) the public officer caused any undue injury to any party, including the Government, **or** gave any unwarranted benefits, advantage or preference.

Being the Vice-President for Marketing and Support Services of GSIS, Valencerina was no doubt a public officer, and the alleged acts complained of were done while he was in office.

¹² *Batulanon v. People*, 533 Phil. 336, 352 (2006).

¹³ *People v. Caliso*, G.R. No. 183830, October 19, 2011, 659 SCRA 666, 677.

¹⁴ *People v. Maraorao*, G.R. No. 174369, June 20, 2012, 674 SCRA 151, 160.

¹⁵ 1987 Constitution, Sec. 14(2), Article III.

¹⁶ 387 Phil. 872 (2000).

The Court also believes that the third and last constitutive elements were established. The Sandiganbayan correctly relied on the testimonies of the witnesses, which were based primarily on the January 27, 1998 Memorandum, and the Certifications, dated March 30, 1998 and January 14, 1999, issued by Valencerina himself. These documents purportedly showed his resignation to favor Ecobel in the issuance of the subject bond as well as his alleged participation in the negotiation of the loan sought to be guaranteed under the bond, thus, making him guilty of the offense charged.

The third element of the crime of violation of Section 3(e) of R.A. No. 3019 may be committed in three ways, that is, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.¹⁷ The Court expounds:

[As defined], “[p]artiality” 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 bad 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 wilfully 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.”¹⁸

In this case, Valencerina clearly extended, with evident bad faith, undue advantage to Ecobel in the process of issuing and negotiating the subject bond. His act of endorsing Ecobel’s application to the PGM despite his knowledge that the obligee of the loan was not PVB but a foreign lender, clearly shows his disregard for the policy of GSIS requiring the existence of governmental interest in the transaction. In the observation of the GSIS audit team, as it appeared in a report before the Sandiganbayan, PVB was merely used to show that GSIS has an insurable interest in the loan. The truth, however, is that BSIL was the funder and obligee of the credit sought to be guaranteed by the bond.

Valencerina admitted that he knew Ecobel would have a foreign funder at the time that he prepared the memorandum, despite knowing that to guarantee a loan obtained from a foreign funder was contrary to the

¹⁷ *Alvarez v. People*, G.R. No. 192591, June 29, 2011. <http://sc.judiciary.gov.ph/jurisprudence/2011/june2011/192591.htm>. Last visited November 14, 2014.

¹⁸ *Fonacier v. Sandiganbayan*, G.R. No. 50691, December 5, 1994, 238 SCRA 655, 687-688. (Internal citations omitted)

policies of GSIS since no government interest was involved in it. The transcript reveals these statements as follows:

Q And on that basis you have made that statement in this memorandum and you are telling that to the Court?

A Yes, I did, sir.

Q You are also alleged to have knowledge even at that time that the Ecobel who applied for payment guarantee bond would have foreign funder, do you confirm that?

A Yes, sir, I was informed by Mr. Mallari about it, sir.

Q You know for a fact that an official of the GSIS, one requirement in the issuance of surety bond, you would see to it that there is a government interest in the transaction, do you remember that?

A Yes, sir.

Q And yet in spite of your knowledge that eventually this bond would have a foreign funder, you made the endorsement to the President and General manager of the GSIS?

A My information from Mr. Mallari is that the funds would have to be coursed to the Veterans Bank since the Philippine Veterans Bank is a government bank, it carries with it insurable interest of the government.¹⁹

In addition, Valencerina's declaration in the same memorandum to the PGM that the bond was fully secured by collaterals, strengthens the conclusion that he was in bad faith. As correctly observed by the Sandiganbayan, the collaterals presented by Ecobel appeared to be questionable. TCT No. 227727 had an existing mortgage while TCT No. 66289 was found to be spurious since it was different from what was on file with the Registry of Deeds of Lipa City. These circumstances clearly show that Valencerina failed to thoroughly review Ecobel's compliance with GSIS policies before endorsing the application to the PGM. Thus, his endorsement of Ecobel's application was nothing but a conscious doing of a wrong and a breach of his duty to uphold not only the interest of the GSIS but also of the Republic. It is clearly an indication of bad faith on his part as he should have realized that his position required the utmost prudence knowing that to guarantee a high-risk loan was, as the name implied, highly risky on the part of GSIS and could very well affect the entire membership of the system.

Valencerina's defense that the memorandum was prepared and issued pursuant to the instructions of Mallari, who was higher in rank, cannot exculpate him from liability. As Vice-President, his duties were not mere perfunctory in the greater scheme of the process. He knew that GSIS could only issue a guarantee payment bond if it had an interest in the transaction,

¹⁹ Sandiganbayan Records, TSN, March 22, 2001, p. 32.

and that the bond must be secured by adequate collaterals. Yet, he still endorsed the Ecobel application which he could have denied at sight. He could have at least made some remarks as to the propriety of the application in light of his information that a foreign funder was the obligee of the loan which would violate GSIS policies in the issuance of a high-risk bond, but he did not.

The Court, moreover, notes the finding of the Sandiganbayan that Valencerina also participated in the negotiations of the loan using the guarantees available under the bond. It appears from the records that BSIL required Ecobel to verify the authenticity of the signatures in the subject bond. Boright then requested Mallari to issue certifications containing declarations that he was authorized to sign the subject bond, including a certification that he was authorized to sign certain letters that were requested apparently referring to the certifications that Valencerina himself issued on January 14, 1999, together with the first one he issued on March 30, 1998, both directed to an unnamed addressee. The certifications read as follows:

30 March 1998

To Whom It May Concern:

Re: GSIS G(16) GIF Bond No. 029132
Bond Amount: US 10,000,000
Issuing Date: 11 March 1998
Maturing Date: 11 March 2000
Bond Principal: Ecobel Land Incorporated
Project Bonded: 26-Storey Commercial/Residential
Condominium Ecobel Tower Building

This is to advise that the above-captioned surety bond may be redeemed following a default by the Bond Principal under the procedures set out below (the "DRAWING CONDITIONS"):

- 1. presentation of original surety bond to GSIS at its office in either Manila or London; together with**
- 2. presentation of demand for payment stating non-payment in full or in part by the Bond Principal; and**
- 3. notification of assignment to GSIS of US Dollar loan obligations of the Bond Principal**

Upon receipt of the above documentation via courier, GSIS will confirm the default by the Bond Principal and will make full payment under the surety bond within ten (1) New York and London Banking days.

(Sgd.)

ALEX M. VALENCERINA

Cc: SVP A. Mallari

xxx xxx xxx

14 January 1999

To Whom It May Concern:

Re: GSIS G(16) GIF Bond No. 029132
Bond Amount: US 10,000,000
Issuing Date: 11 March 1998
Maturing Date: 11 March 2000
Bond Principal: Ecobel Land Incorporated
Project Bonded: 26-Storey Commercial/Residential
Condominium Ecobel Tower Building

This is to advise that the captioned surety bond is genuine, authentic, valid and binding obligation of GSIS, and may be transferred to Bear, Sterns (sic) International Ltd. and any of its assignees and Aon Financial Products, Inc. and any of its assignees within the period commencing at the date above. GSIS has no counterclaim, defense or right of set-off with respect to the surety bond provided that DRAWING CONDITIONS have been satisfied.

We confirm that any such transfer requires only written or facsimile notification to GSIS by the then current obligee and confirmation or approval from GSIS is not required.

(Sgd.)

ALEX M. VALENCERINA

Cc: SVP J. Navarette

xxx.

It appears now that without these letters, BSIL would not have approved and granted the loan to Ecobel. It was even affirmed therein the validity of the obligation of GSIS under the subject bond, despite Valencerina knowing at that time that the bond had not been secured by adequate collaterals, and that the premium payment for reinsurance had not been paid. Records show that the said premium was paid only on February 26, 1999, or almost a year after the issuance of the bond. This would necessarily render the bond void because an insurance policy is valid only if the actual premium is paid.²⁰

²⁰ *UCPB General Insurance, Co., Inc. v. Masagana Telemart, Inc.*, 408 Phil. 423, 433 (2001).

Worse, these certifications made the transfer of the bond effective as it was specifically mentioned by Valencerina that the bond may be transferred to BSIL and any of its assignees. This he did despite knowing that the obligee should have been PVB and not any other creditor with which GSIS had no interest in.

All these demonstrate Valencerina's conscious doing of a wrong. It was, thus, proven beyond reasonable doubt that he acted in bad faith by making significant and unjustified contributions to the issuance of an irregular bond and giving undue advantage to Ecobel which could have cost millions of dollars to GSIS and the government.

In a last ditch attempt to save himself, Valencerina argues that the documents, especially the above certifications from which the testimonies of the witnesses and eventually his conviction were based, could not be used as evidence against him for being incompetent and hearsay as they were mere photocopies that were not properly authenticated.

Indeed, these documents serve as the bedrock of the prosecution's position that he violated Sec. 3(e) of the Anti-Graft and Corrupt Practices Act. It is true that these were mere photocopies and, as a general rule, if the original copy cannot be produced, a photocopy, can only be admitted in evidence if it is shown that the original is unavailable²¹ by proving (1) the existence or due execution of the original; (2) the loss and destruction of the original or the reason for its non-production in court; and (3) on the part of the offeror, the absence of bad faith to which the unavailability of the original can be attributed.²² The correct order of proof is as follows: existence, execution, loss, and contents.²³

Here, Valencerina claims that the prosecution failed to even attempt to prove the authenticity and due execution of the memorandum and the certifications it presented and, thus should be enough reason to conclude that the Sandiganbayan based its conviction on mere conjectures.

The Court finds the argument untenable.

²¹ Section 5, Rule 130 of the Rules of Court states:

SEC.5 When original document is unavailable. — When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

²² *Santos v. Court of Appeals*, 420 Phil. 110, 120 (2001), citing Francisco, *Evidence: Rules of Court in the Philippines* (3rd ed., 1996), Rules 128-134.

²³ *De Vera v. Aguilar*, G.R. No. 83377, February 9, 1993, 218 SCRA 602, 606.

Valencerina cannot now say that the certifications were not properly authenticated and their existence not properly proved because the records would show that, during the trial, he himself adopted their contents and admitted that he indeed issued the same certifications. For instance, he testified as follows:

Q The prosecution offered a document purportedly a Certification by one Alex Valencerina dated March 30, 1998 which the prosecution marked as Exhibit D-14 which I am now showing you. Could you please go over this document and inform the Honorable Court if you are aware of such a document?

A Yes, sir, I am aware of this document, sir.

Q Now, this is a certification prepared by one Alex Valencerina. Are you the same Alex Valencerina who prepared this particular document?

A Yes, sir. It is me, sir.

Q Why did you prepare this document?

A This document was prepared upon the request of Senior Vice-President Amalio Mallari to simply draft a statement of facts and procedures in relation to the bond itself, Ecobel bond.

Q We noticed, Mr. Valencerina, that this document was addressed to "To Whom It May Concern". Could you inform the Honorable Court why you addressed it to "To whom it may concern"?

A It is actually a generic statement, simply a statement of facts and procedures and it is basically a GSIS policy, for information only.

Q And what are the facts and procedures that you are referring to which you mentioned in this particular memorandum?

A These are actually referring to the drawing conditions which actually refer to the event in which case there is a default in the bond. So are the documents that must be presented by the obligee.

Q Are you referring to this bond which is mentioned in this memorandum, Bond No. 092132, issued on March 11, 1998 and maturing on 11 March 2000?

A Yes, sir, I am referring to that particular transaction, sir.

Q The prosecution also marked Exhibit "D-17". It was testified to by a witness and offered in evidence by the prosecution which is a memorandum by one Alex M. Valencerina dated 14 January 1999. Could you please go over this memorandum and inform the Honorable Court if you are aware of that memorandum?

A Yes, sir, I am aware of this letter.

Q Why did you prepare this memorandum?

A Again, this letter or this memorandum actually is requested upon by my Senior Vice-President Amalio Mallari, sir.

- Q** Again, this is addressed only “To whom it amy concern” and not to anybody in particular. Why did you address it only to “To whom it may concern”?
- A** Again, it is a statement of facts and procedures which practically govern the policies of the GSIS, sir.²⁴ (Emphases supplied)

By testifying as to the contents of the certifications he himself signed, Valencerina, in effect, admitted that the said documents exist and that the same were duly executed by him. He himself built upon the said documents to draw his defense that the certifications were mere statements of facts and procedures. He did not contradict their existence but even went further to elaborate as to the reasons behind their issuance. As such, the Court cannot give merit to his position that, being mere photocopies, the certifications could not be relied on in determining his culpability. Conversely, the testimonies of the prosecution witnesses, assuming they had no personal knowledge of the contents and due execution of the said documents, would now be a superfluity as he himself used the certifications to forward his defense.

The Court finds no value either to Valencerina’s submission that no crime was proven to have been committed because no evidence had been presented showing that BSIL actually granted a loan of US \$10 million to Ecobel, it being the *corpus delicti* of the second mode of committing the offense under Sec. 3(e) of R.A. No. 3019. The reason is simple. The *corpus delicti* of the crime is not dependent upon whether a loan had been granted to Ecobel, but more on proving the fact of giving unwarranted preference or benefit to another with evident bad faith, manifest partiality or gross inexcusable negligence. It is sufficient that such fact has been established, as the prosecution did in this case.

Besides, the Court gives credence to the report and findings of the audit investigation team, affirmed by the Sandiganbayan, that Ecobel failed to pay the loan from BSIL, which then gave rise to a notice making known the decision of the assignee under the loan to collect on the surety bond subject of this case. This by itself cemented the fact that, indeed, Ecobel received benefit by reason of the unjustified actions committed by no less than the high-ranking officers of GSIS.

Furthermore, Valencerina’s contention that his constitutional right was violated because he was not validly charged with violation of Sec. 3(e) of R.A. No. 3019 deserves no consideration. It is his theory that his right to be informed of the crime he committed was violated as the Sandiganbayan convicted him for giving undue advantage to Ecobel (second mode), which

²⁴ Sandiganbayan Records, TSN, March 21, 2011, pp. 23-26.

was contrary to the crime as alleged in the information - that he caused undue injury to the government by participating in the issuance of the subject bond (first mode).


The Court cannot agree. There are two ways by which Section 3(e) of R.A. No. 3019 may be violated – first by causing undue injury to any party, including the government and second, by giving any private party any unwarranted benefit, advantage or preference. Although neither mode constitutes a distinct offense, an accused may be charged under either mode or both. In the amended information, the prosecution charged him for both. A perusal of the same simply yields no other conclusion that Valencerina, together with the other accused, was charged with violation of Section 3(e) of R.A. No. 3019 for “[w]ilfully, unlawfully and criminally, with evident bad faith and manifest partiality, participat[ing], or contribut[ing] to, the release or issuance of Surety Bond GIF NO. 029132 xxx x hereby affording unwarranted benefit, advantage or preference to Ecobel Land Incorporated.”

In the same breath, the Court dismisses or cannot allow the petitioner’s defense that no action, criminal or civil, arises because the bond in itself was null and void. The subject bond’s nullity was precisely brought about by his actions and had he not acted the way he did, this would not even have existed. Suffice it to state that to exculpate him from liability just because the bond cannot be made effective is to justify his wrongdoings, which the Court cannot allow.

Finally, Valencerina’s act of cancelling the bond upon information that the collateral submitted was spurious does not negate the fact that at the time that the bond was issued as well as during the process of negotiating for the loan using the same bond, the act of giving undue preference to Ecobel already existed. Indeed, the cancellation was merely an afterthought as he did the same only when the irregularities had become too apparent that they could no longer be overlooked.

WHEREFORE, the petition is DENIED.


SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



PRESBITERO J. VELASCO, JR.
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



MARVIC M.V.F. LEONEN
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.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

**MARIA LOURDES P. A. SERENO**

Chief Justice