

FIRST DIVISION

[G.R. Nos. 243029-30, March 18, 2021]

**TITO S. SARION, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

DECISION

GAERLAN, J.:

Before this Court is a Petition for Review on *certiorari*^[1] filed by petitioner Tito S. Sarion (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision^[2] dated September 29, 2017 and Resolution^[3] dated November 8, 2018 of the Sandiganbayan in SB-11-CRM-0256 to 0257. The assailed rulings adjudged the petitioner guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act; and Malversation of Public Funds or Property under Article 217 of the Revised Penal Code (RPC).

The Antecedent Facts

The instant controversy arose from a *Contract Agreement*^[4] entered into on December 29, 2003 by herein petitioner, in his capacity as Municipal Mayor for the Municipal Government of Daet, Camarines Norte, and Billy Aceron (Aceron), General Manager of Markbilt Construction (Markbilt), represented by his attorney-in-fact, Architect Romeo B. Itturalde. The agreement had for its purpose the Phase II construction of the Daet Public Market for the amount of P71,499,875.29, which must be completed within a period of 365 calendar days.^[5]

On January 5, 2005, the petitioner approved a *Notice to Commence Work*^[6] authorizing Markbilt to commence with the construction project on the 10th day from receipt of the said Notice. Thereafter, construction works proceeded.^[7]

Meanwhile, the petitioner's term ended and Elmer E. Panotes (Mayor Panotes) was elected as Municipal Mayor of Daet, Camarines Norte, during the May 2004 national and local elections.^[8]

On December 4, 2005 Markbilt, through its engineer Carlito A. Torero, wrote a letter to Mayor Panotes, requesting the verification and proper evaluation of therein attached monthly computation of variation in the prices of materials.^[9]

The construction of the Daet Public Market was completed sometime in 2006.^[10]

On November 13, 2006, the Office of Mayor Panotes received a letter from Markbilt, requesting the processing and payment of contract price escalation in the amount of P5,222,903.75, in relation to the Daet Public Market (Phase II) project. Mayor Panotes, refused to act on the demand.^[11]

During the local elections held in 2007, the petitioner was re-elected as Mayor of the Municipality of Daet.^[12]

On January 21, 2008, in a letter addressed to the petitioner, Markbilt reiterated its request for payment of the contract price escalation. A similar demand was made by Markbilt in a letter dated February 7, 2008, this time with the information that it will impose 15% interest *per annum* on their claim.^[13]

With this, the petitioner instructed Municipal Administrator Elmer Nagera (Administrator Nagera) to look for sources of fund to satisfy Markbilt's claim. This gave rise to the creation of Supplemental Budget No. 1. After the same was signed by Municipal Budget Officer Amelia P. Laborte (Budget Officer Laborte) and approved by Administrator Nagera, by authority of the petitioner, Supplemental Budget No. 1 was submitted to the Sangguniang Bayan.^[14]

On March 6, 2008, the Sangguniang Bayan passed Resolution No. 063^[15] unanimously approving Supplemental Budget No. 1-2008 and appropriating the amount of P11,222,088.00 of the municipality's internal revenue allotment; of such amount, designated under the Special Account, P4,400,000.00 was allotted for the *Construction of Market*.^[16] Resolution No. 063 was later approved by the petitioner.^[17]

In another letter dated April 14, 2008, Markbilt reiterated its demand for payment of contract price escalation.^[18]

After Budget Officer Laborte certified the existence of available appropriation, Administrator Nagera prepared Obligation Request No. 100-08-03-402 certifying that "the charges to appropriation/allotment are necessary, lawful and under his direct supervision" and that "the supporting documents are valid, proper and legal."^[19]

Subsequently, administrator Nagera issued Disbursement Voucher No. 08041239 in the amount of P1,000,000.00, payable to Markbilt, in partial satisfaction of its demand for price escalation.^[20]

Concerned with the applicability of R.A. No. 9184, Municipal Accountant Caroline Maisie Robles (Accountant Robles) consulted the Commission on Audit Auditor assigned to the municipality, who in turn, advised him to seek the opinion of the Municipal Legal Officer.^[21]

In his opinion, Municipal Legal Officer Edmundo Deveza II (Legal Officer Deveza) found, on the basis of Presidential Decree (P.D.) No. 1594, that there was no reason to refuse the payment of obligation in favor of Markbilt.^[22] Thus, on April 21, 2008, Accountant Robles certified the supporting documents complete and the allotment for partial payment of Markbilt. After Municipal Treasurer Arlyn O. Aberia certified that funds were available, the petitioner approved the release of the funds for payment.^[23]

On April 24, 2008, Markbilt received payment of P1,000,000.00 made through Landbank Check No. 0272388, and evidenced by Official Receipt No. 1156 dated April 24, 2008.^[24]

On June 17, 2008, the Sangguniang Panlalawigan of Camarines Norte approved Resolution No. 229-2008 declaring as operative Supplemental Budget No. 1-2008 of the Municipality of Daet.^[25]

On November 27, 2008, Zenaida Baluca, a resident of Daet, Camarines Norte, filed a Complaint^[26] against the petitioner before the Deputy Ombudsman for Luzon (Omb-Luzon). The complainant charged the petitioner for violation of Section 3(e) of R.A. No. 3019 relative to the payment of price escalation in the Daet Public Market (Phase II) Project.

After investigation, Graft Investigation and Prosecution officer Judy Anne Doctor-Escalona found merit in the complaint and charged the petitioner with violation of Section 3(e) of R.A. No. 3019, as amended and Malversation, in two separate Informations, the accusatory portions of which read:

SB-11-CRM-0256

That on 24 April 2008 or sometime prior or subsequent thereto, in Daet, a first class municipality in the Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the accused, Tito S. Sarion, a public officer, being the Mayor of the Municipality of Daet, committing the crime in the discharge of his official functions, through manifest partiality, evident bad faith, or gross inexcusable negligence, did then and there willfully, unlawfully, and criminally cause undue injury to the government in the gross amount of One Million Pesos, Philippine Currency (PhP1,000,000.00), by then and there approving the disbursement in the absence of certificate of availability of funds, of public funds in said gross amount in favor of Markbilt Construction, the contractor for the construction of Daet Public Market (Phase II), as partial payment for its claim for price escalation which it is not entitled to so receive but which it received nevertheless per its Official Receipt No. 1156 dated 24 April 2008 through the approval of the disbursement voucher by the accused even without the approval from the Government Procurement Policy Board (GPPB) and the determination by the National Economic Development Authority (NEDA) as to the propriety of the claim for price escalation in violation of the GPPB Guidelines for Contract price Escalation to the prejudice of the Municipality of Daet in said amount.

CONTRARY TO LAW.^[27]

SB-11-CRM-0257

That on 24 April 2008, or sometime prior or subsequent thereto, in Daet, a first class municipality in the Province of Camarines Norte, Philippines, and within the jurisdiction of this Honorable Court, the accused, Tito S. Sarion, a public officer, being the Mayor of the Municipality of Daet, while in the performance of his official functions, committing the offense in relation to his office, and taking advantage of his official position, and in grave abuse thereof, having control of public funds in the gross amount of One Million Pesos, Philippine Currency (PhP1,000,000.00), which was placed under his administration by reason of the duties of his office, and is accountable for said amount of public funds pursuant to Section 340 of the Local Government Code, did then and there willfully, unlawfully and

feloniously consent, or through abandonment or negligence, permit Markbilt Construction, the contractor for the construction of Daet Public Market (Phase II), to take such amount of public funds which it is not entitled to receive but which it received nevertheless per its Official Receipt No. 1156 dated 24 April 2008, by then and there allowing the disbursement through his approval of the disbursement voucher even in the absence of certificate of availability of funds in said gross amount in favor of Markbilt Construction as partial payment for its claim for the price escalation even without the approval from the Government Procurement Policy Board (GPPB) and the determination by the National Economic Development Authority (NEDA) as to the propriety of the claim for price escalation in violation of the GPPB Guidelines for Contract price Escalation.

CONTRARY TO LAW.^[28]

The petitioner was conditionally arraigned on September 2, 2011, and assisted by counsel, entered a plea of "not guilty."^[29]

After trial, the Third Division of the Sandiganbayan rendered the herein assailed Decision^[30] on September 29, 2017, the dispositive portion of which reads:

WHEREFORE, this Court finds accused TITO SARION:

1. Guilty beyond reasonable doubt of Violation of Section 3(e) of Republic Act No. 3019, and he is accordingly sentenced to:
 - a. Suffer an indeterminate penalty of imprisonment of Six (6) years and One (1) month, as minimum, to Eight (8) years, as maximum, and,
 - b. Suffer the penalty of perpetual special disqualification from holding public office; and,
2. Guilty beyond reasonable doubt of *Malversation of Public Funds or Property* under Article 217 of the Revised Penal Code, and he is accordingly sentenced to:
 - a) Suffer an indeterminate penalty of imprisonment of Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to Six (6) years and One (1) day of *prision mayor*, as maximum;
 - b) Pay a fine in the amount of One Million pesos (PhP1,000,000.00); and,
 - c) Suffer the penalty of perpetual special disqualification from holding public office.

Accused Sarion shall indemnify the Municipality of Daet the amount of One Million Pesos (PhP1,000,000.00) as actual damages, plus interest at

the rate of 6% per annum to be reckoned from the date of finality of the Decision until its full satisfaction.

SO ORDERED.^[31]

Foremost, the Sandiganbayan found that the prosecution was able to establish the elements of Malversation. Mainly, it held that the petitioner erred in approving Disbursement Voucher No. 08041239 which facilitated the partial payment of contract price escalation in favor of Markbilt although the latter is not entitled to be compensated. The Sandiganbayan ruled that the certificates attesting to the availability of funds and appropriation issued by the municipal officials were irregular and that Appropriation Ordinance No. 1 did not allocate funds for the payment of contract price escalation.^[32]

Furthermore, the Sandiganbayan made it clear that under Section 81 of R.A. No. 9184, contract price escalation during the implementation of the contract is expressly prohibited except under extraordinary circumstances as determined by the National Economic Development Authority (NEDA) and upon prior approval of the Government Procurement Policy Board (GPPB).^[33] In this case, the Sandiganbayan noted that no such determination and approval were obtained prior to the approval of payment and release of the funds to Markbilt.^[34] The petitioner's act of authorizing the release of partial payment to Markbilt without personally confirming compliance with supporting documents is tantamount to gross negligence which subjects him to liability for the crime of Malversation of Public Funds.^[35]

With respect to violation of Section 3(e) of RA. No. 3019, the Sandiganbayan equally found the petitioner guilty of the offense. It held that the same act of approving the release without complying with the provisions of RA. No. 9184, constitute gross inexcusable negligence; whereas the payment of contract price escalation in the amount of P1,000,000.00 is an unwarranted benefit in favor of Markbilt and, correspondingly the amount of undue injury caused to the Municipality of Daet.^[36]

The petitioner filed a Motion for Reconsideration, but the same was denied by the Sandiganbayan in its Resolution^[37] dated November 8, 2018, viz.:

WHEREFORE, accused Tito S. Sarion's *Motion for Reconsideration Re: Decision dated September 29, 2017* is DENIED for lack of merit.

SO ORDERED.^[38]

Thus, this petition for review on *certiorari* whereby the petitioner raises the following arguments in support thereof:

1. The Sandiganbayan seriously erred in convicting him of Malversation of Public Funds under Article 217 of the Revised Penal Code when not all the elements thereof were proved by the plaintiff, through prosecution, beyond reasonable doubt.
2. The Sandiganbayan seriously erred in convicting him of Violation of Section 3(e) of Republic Act No. 3019 when not all the elements thereof were proved by the plaintiff, through the prosecution, beyond reasonable doubt.^[39]