

Republic of the Philippines  
**SUPREME COURT**  
Manila

THIRD DIVISION

**G.R. Nos. 181999 & 182001-04**

**September 2, 2009**

**OFELIA C. CAUNAN**, Petitioner,

vs.

**PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN**, Respondents.

x -----x

**G.R. Nos. 182020-24**

**JOEY P. MARQUEZ**, Petitioner,

vs.

**THE SANDIGANBAYAN-FOURTH DIVISION and PEOPLE OF THE PHILIPPINES**, Respondents.

DECISION

**NACHURA, J.:**

At bar are consolidated petitions for review on certiorari under Rule 45 of the Rules of Court which assail the Decision<sup>1</sup> dated August 30, 2007 and Resolution<sup>2</sup> dated March 10, 2008 of the Sandiganbayan in Criminal Case Nos. 27944, 27946, 27952, 27953, & 27954, finding petitioners Joey P. Marquez (Marquez) and Ofelia C. Caunan (Caunan) guilty of violation of Section 3(g) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Marquez and Caunan, along with four (4) other local government officials of Parañaque City<sup>3</sup> and private individual Antonio Razo (Razo), were charged under five (5) Informations, to wit:

The Information in Criminal Case No. 27944 states:

That on January 11, 1996 or thereabout, in Parañaque City, Philippines, and within the jurisdiction of this Honorable Court, accused Public Officers JOEY P. MARQUEZ, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with the members of the aforesaid Committee, namely: SILVESTRE DE LEON, being then the City Treasurer, MARILOU TANAEL, the City Accountant (SG 26), FLOCERFIDA M. BABIDA, the City Budget Officer (SG 26), OFELIA C. CAUNAN, the OIC General Services Office (SG 26) and AILYN ROMEA, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with the accused private individual ANTONIO RAZO, the owner and proprietor of ZARO Trading, a business entity registered with the Bureau of Domestic Trade

and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with said ZARO Trading, for the purchase of 5,998 pieces of "walis ting-ting" at ₱25 per piece as per Disbursement Voucher No. 101-96-12-8629 in the total amount of ONE HUNDRED FORTY-NINE THOUSAND NINE HUNDRED FIFTY PESOS (₱149,950.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱14.00 per piece or a total overpriced amount of EIGHTY THREE THOUSAND NINE HUNDRED SEVENTY TWO PESOS (₱83,972.00), thus, causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27946 states:

That on June 30, 1997 or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers JOEY P. MARQUEZ, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: SILVESTRE DE LEON, being then the City Treasurer, MARILOU TANAEL, the City Accountant (SG 26), FLOCERFIDA M. BABIDA, the City Budget officer (SG 26), OFELIA C. CAUNAN, the OIC General Services Office (SG 26) and AILYN ROMEA, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual ANTONIO RAZO, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 23,334 pieces of "walis ting-ting" at ₱15.00 per piece as per Disbursement Voucher No. 101-98-02-447 in the total amount of THREE HUNDRED FIFTY THOUSAND TEN PESOS (₱350,010.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱4.00 per piece or a total overpriced amount of NINETY THREE THOUSAND THREE HUNDRED THIRTY SIX PESOS (₱93,336.00), thus causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27952 states:

That [in] September 1997, or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers JOEY P. MARQUEZ, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: SILVESTRE DE LEON, being then the City Treasurer, MARILOU TANAEL, the City Accountant (SG 26), FLOCERFIDA M. BABIDA, the City Budget officer

(SG 26), OFELIA C. CAUNAN, the OIC General Services Office (SG 26) and AILYN ROMEA, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual ANTONIO RAZO, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 8,000 pieces of "walis ting-ting" at ₱15.00 per piece as per Disbursement Voucher No. 101-98-02-561 in the total amount of ONE HUNDRED TWENTY THOUSAND PESOS (₱120,000.00), without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on Procurement and Public Bidding, and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱4.00 per piece or a total overpriced amount of THIRTY TWO THOUSAND PESOS (₱32,000.00), thus causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27953 states:

That during the period from February 11, 1997 to February 20, 1997, or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers JOEY P. MARQUEZ, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: SILVESTRE DE LEON, being then the City Treasurer, MARILOU TANAEL, the City Accountant (SG 26), FLOCERFIDA M. BABIDA, the City Budget officer (SG 26), OFELIA C. CAUNAN, the OIC General Services office (SG 26) and AILYN ROMEA, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advance of their official positions, conspiring, confederating and mutually helping one another and with accused private individual ANTONIO RAZO, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 10,100 pieces of "walis ting-ting" on several occasions at ₱25.00 per piece without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on procurement and Public Bidding and which purchases are hereunder enumerated as follows:

<u>Date of Transaction</u>	<u>Voucher No.</u>	<u>Amount</u>	<u>Quantity</u>
February 20, 1997	101-97-04-1755	₱ 3,000.00	120 pcs.
February 12, 1997	101-97-04-1756	₱100,000.00	4,000 pcs.
February 11, 1997	101-97-04-1759	₱149,500.00	5,980 pcs.

in the total amount of TWO HUNDRED FIFTY TWO THOUSAND PESOS (₱252,000.00), and which transactions were clearly overpriced as the actual cost per piece of the "walis ting-ting" was only P11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱14.00 per piece or a total overpriced amount of ONE HUNDRED FORTY ONE THOUSAND FOUR HUNDRED PESOS (₱141,400.00), thus, causing damage and prejudice to the government in the aforesaid sum.

The Information in Criminal Case No. 27954 states:

That during the period from October 15, 1996 to October 18, 1996 or thereabout, in Parañaque City, Philippines and within the jurisdiction of this Honorable Court, accused Public Officers JOEY P. MARQUEZ, a high ranking public official, being the City Mayor of Parañaque City and Chairman, Committee on Awards, together with members of the aforesaid committee, namely: SILVESTRE DE LEON, being then the City Treasurer, MARILOU TANAEL, the City Accountant (SG 26), FLOCERFIDA M. BABIDA, the City Budget officer (SG 26), OFELIA C. CAUNAN, the OIC General Services Office (SG 26) and AILYN ROMEA, the Head Staff, Office of the Mayor (SG 26), acting as such and committing the offense in relation to their official duties and taking advantage of their official positions, conspiring, confederating and mutually helping one another and with accused private individual ANTONIO RAZO, the owner and proprietor of ZAR[O] Trading, a business entity registered with the Bureau of Domestic Trade and Industry, with evident bad faith and manifest partiality (or at the very least, with gross inexcusable negligence), did then and there willfully, unlawfully and criminally enter into manifestly and grossly disadvantageous transactions, through personal canvass, with ZAR[O] Trading for the purchase of 8,000 pieces of "walis ting-ting" on several occasions at ₱25.00 per piece without complying with the Commission on Audit (COA) Rules and Regulations and other requirements on procurement and Public Bidding and which purchases are hereunder enumerated as follows:

<u>Date of Transaction</u>	<u>Voucher Number</u>	<u>Amount</u>	<u>Quantity</u>
October 15, 1996	101-96-11-7604	₱ 100,000.00	4,000 pcs.
October 18, 1996	101-96-11-7605	₱ 100,000.00	4,000 pcs.

in the total amount of TWO HUNDRED THOUSAND PESOS (₱200,000.00), and which transactions were clearly grossly overpriced as the actual cost per piece of the "walis ting-ting" was only ₱11.00 as found by the Commission on Audit (COA) in its Decision No. 2003-079 dated May 13, 2003 with a difference, therefore, of ₱14.00 per piece or a total overpriced amount of ONE HUNDRED TWELVE THOUSAND PESOS (₱112,000.00), thus, causing damage and prejudice to the government in the aforesaid sum.<sup>4</sup>

The five (5) Informations were filed based on the findings of the Commission on Audit (COA) Special Audit Team that there was overpricing in certain purchase transactions of Parañaque City. In March 1999, a Special Audit Team composed of Fatima Bermudez (Bermudez), Carolina Supsup, Gerry Estrada, and Yolando Atienza, by virtue of Local Government Audit Office Assignment Order

No. 99-002, audited selected transactions of Parañaque City for the calendar years 1996 to 1998, including the walis tingting purchases.

In connection with the walis tingting purchases audit, the audit team gathered the following evidence:

1. Documents furnished by the Office of the City Mayor of Parañaque City upon request of the audit team;
2. Sample walis tingting with handle likewise submitted by the Office of the City Mayor of Parañaque City;
3. Samples of walis tingting without handle actually utilized by the street sweepers upon ocular inspection of the audit team;
4. Survey forms accomplished by the street sweepers containing questions on the walis tingting;
5. Evaluation by the Technical Services Department<sup>5</sup> of the reasonableness of the walis tingting procurement compared to current prices thereof;
6. A separate canvass by the audit team on the prices of the walis tingting, including purchases thereof at various merchandising stores;<sup>6</sup> and
7. Documents on the conduct and process of procurement of walis tingting by the neighboring city of Las Piñas.

Parenthetically, to ascertain the prevailing price of walis tingting for the years 1996 to 1998, the audit team made a canvass of the purchase prices of the different merchandise dealers of Parañaque City. All, however, were reluctant to provide the team with signed quotations of purchase prices for walis tingting. In addition, the audit team attempted to purchase walis tingting from the named suppliers of Parañaque City. Curiously, when the audit team went to the listed addresses of the suppliers, these were occupied by other business establishments. Thereafter, the audit team located, and purchased from, a lone supplier that sold walis tingting.

As previously adverted to, the audit team made a report which contained the following findings:

1. The purchase of walis tingting was undertaken without public bidding;
2. The purchase of walis tingting was divided into several purchase orders and requests to evade the requirement of public bidding and instead avail of personal canvass as a mode of procurement;
3. The purchase of walis tingting through personal canvass was attended with irregularities; and

4. There was glaring overpricing in the purchase transactions.

Consequently, the COA issued Notices of Disallowance Nos. 01-001-101 (96) to 01-006-101 (96), 01-001-101 (97) to 01-011-101 (97), and 01-001-101 (98) to 01-004-101 (98) covering the overpriced amount of ₱1,302,878.00 for the purchases of 142,612 walis tingting, with or without handle, by Parañaque City in the years 1996-1998.<sup>7</sup>

Objecting to the disallowances, petitioners Marquez and Caunan, along with the other concerned local government officials of Parañaque City, filed a request for reconsideration with the audit team which the latter subsequently denied in a letter to petitioner Marquez.

Aggrieved, petitioners and the other accused appealed to the COA which eventually denied the appeal. Surprisingly, on motion for reconsideration, the COA excluded petitioner Marquez from liability for the disallowances based on our rulings in *Arias v. Sandiganbayan*<sup>8</sup> and *Magsuci v. Sandiganbayan*.<sup>9</sup>

On the other litigation front, the criminal aspect subject of this appeal, the Ombudsman found probable cause to indict petitioners and the other local government officials of Parañaque City for violation of Section 3(g) of R.A. No. 3019. Consequently, the five (5) Informations against petitioners, et al. were filed before the Sandiganbayan.

After trial and a flurry of pleadings, the Sandiganbayan rendered judgment finding petitioners Caunan and Marquez, along with Silvestre de Leon and Marilou Tanael, guilty of violating Section 3(g) of R.A. No. 3019. As for accused Flocerfida Babida, Ailyn Romea and private individual Razo, the Sandiganbayan acquitted them for lack of sufficient evidence to hold them guilty beyond reasonable doubt of the offenses charged. The Sandiganbayan ruled as follows:

1. The prosecution evidence, specifically the testimony of Bermudez and the Special Audit Team's report, did not constitute hearsay evidence, considering that all the prosecution witnesses testified on matters within their personal knowledge;
2. The defense failed to question, and timely object to, the admissibility of documentary evidence, such as the Las Piñas City documents and the Department of Budget and Management (DBM) price listing downloaded from the Internet, which were certified true copies and not the originals of the respective documents;
3. The Bids and Awards Committee was not properly constituted; the accused did not abide by the prohibition against splitting of orders; and Parañaque City had not been afforded the best possible advantage for the most objective price in the purchase of walis tingting for failure to observe the required public bidding;
4. The contracts for procurement of walis tingting in Parañaque City for the years 1996-1998 were awarded to pre-selected suppliers; and

5. On the whole, the transactions undertaken were manifestly and grossly disadvantageous to the government.

Expectedly, the remaining accused, Caunan, Marquez and Tanael, moved for reconsideration of the Sandiganbayan decision. Caunan and Tanael, represented by the same counsel, collectively filed a Motion for Reconsideration (with Written Notice of Death of Accused Silvestre S. de Leon). Marquez filed several motions,<sup>10</sup> including a separate Motion for Reconsideration.

All the motions filed by Marquez, as well as Caunan's motion, were denied by the Sandiganbayan. However, with respect to Tanael, the Sandiganbayan found reason to reconsider her conviction.

Hence, these separate appeals by petitioners Marquez and Caunan.

Petitioner Caunan posits the following issues:

1. [WHETHER] THE PROSECUTION'S PROOF OF OVERPRICING [IS] HEARSAY.
2. [WHETHER THE] RESPONDENT SANDIGANBAYAN [ERRED] IN ADMITTING WITNESS FATIMA V. BERMUDEZ' TESTIMONY DESPITE THE FACT THAT ITS SOURCES ARE THEMSELVES ADMITTEDLY AND PATENTLY HEARSAY.
3. [WHETHER THE] RESPONDENT SANDIGANBAYAN GRAVELY [ERRED] IN APPLYING AN EXCEPTION TO THE HEARSAY RULE[.] UNDER THIS EXCEPTION, "PUBLIC DOCUMENTS CONSISTING OF ENTRIES IN PUBLIC RECORDS, ETC.," x x x ARE PRIMA FACIE EVIDENCE OF THE FACTS STATED THEREIN.
4. CONSEQUENTLY, [WHETHER] RESPONDENT SANDIGANBAYAN GRAVELY ERRED IN NOT ACQUITTING [CAUNAN].<sup>11</sup>

For his part, petitioner Marquez raises the following:

1. WHETHER [MARQUEZ] MUST BE ACQUITTED FROM THE SUBJECT CRIMINAL CASES BASED ON THE DOCTRINES LAID DOWN IN THE ARIAS AND MAGSUCI CASES EARLIER DECIDED BY THIS HONORABLE COURT AND THE PERTINENT PROVISIONS OF THE LOCAL GOVERNMENT CODE AND OTHER EXISTING REGULATIONS[;]
2. WHETHER [MARQUEZ] MUST BE ACQUITTED FROM THE SUBJECT CRIMINAL CASES SINCE HE WAS ALREADY EXCLUDED FROM LIABILITY BY THE COMMISSION ON AUDIT[;]
3. WHETHER THE ACQUITTAL OF CO-ACCUSED 1) SUPPLIER ANTONIO RAZO WHO WAS THE OTHER PARTY TO, AND RECEIVED THE TOTAL AMOUNT OF, THE QUESTIONED CONTRACTS OR TRANSACTIONS, 2) CITY ACCOUNTANT MARILOU TANAEL WHO PRE-AUDITED THE CLAIMS AND SIGNED THE VOUCHERS, 3) CITY BUDGET OFFICER FLOCERFIDA M. BABIDA, AND 4) HEAD OF STAFF AILYN ROMEA CASTS A BIG CLOUD OF DOUBT ON THE FINDING OF [MARQUEZ'S] GUILT BY THE SANDIGANBAYAN – FOURTH DIVISION[;]

4. WHETHER [MARQUEZ] CAN BE CONVICTED ON PLAIN HEARSAY, IF NOT DUBIOUS EVIDENCE OF OVERPRICING OR ON MERE CIRCUMSTANTIAL EVIDENCE THAT DO NOT AMOUNT TO PROOF OF GUILT BEYOND REASONABLE DOUBT IN THE SUBJECT CRIMINAL CASES[;]

5. WHETHER THE ALLEGED OVERPRICING WHICH WAS THE BASIS FOR CLAIMING THAT THE CONTRACTS OR TRANSACTIONS ENTERED INTO BY [MARQUEZ] IN BEHALF OF PARAÑAQUE CITY WERE MANIFESTLY AND GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT WAS ASCERTAINED OR DETERMINED WITH REASONABLE CERTAINTY IN ACCORDANCE WITH THE REQUIREMENTS OR PROCEDURES PRESCRIBED UNDER COA MEMORANDUM NO. 97-012 DATED MARCH 31, 1997[;]

6. WHETHER THE QUANTUM OF PROSECUTION EVIDENCE HAS OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE WHICH [MARQUEZ] ENJOYS IN THE SUBJECT CRIMINAL CASES[;]

7. WHETHER THE RIGHT OF [MARQUEZ] TO DUE PROCESS WAS VIOLATED WHEN THE CHAIRMAN (JUSTICE GREGORY ONG) OF THE SANDIGANBAYAN – FOURTH DIVISION REFUSED TO INHIBIT DESPITE SERIOUS CONFLICT OF INTEREST[;]

8. WHETHER [MARQUEZ] IS ENTITLED TO THE REOPENING OF THE SUBJECT CRIMINAL CASES[;]

9. WHETHER THE RIGHT OF [MARQUEZ] TO BE INFORMED OF THE NATURE OF THE ACCUSATION AGAINST HIM WAS VIOLATED WHEN INSTEAD OF ONLY ONE OFFENSE, SEVERAL INFORMATION HAD BEEN FILED IN THE TRIAL COURT ON THE THEORY OF OVERPRICING IN THE PROCUREMENT OF BROOMSTICKS (WALIS TINGTING) BY WAY OF SPLITTING CONTRACTS OR PURCHASE ORDERS[; and]

10. WHETHER [MARQUEZ] IS ENTITLED TO NEW TRIAL SINCE HIS RIGHT TO AN IMPARTIAL TRIAL WAS VIOLATED IN THE SUBJECT CRIMINAL CASES WHEN THE CHAIRMAN (JUSTICE GREGORY ONG) REFUSED TO INHIBIT DESPITE THE EXISTENCE OF SERIOUS CONFLICT OF INTEREST RAISED BY THE FORMER BEFORE THE JUDGMENT BECAME FINAL.<sup>12</sup>

In a Resolution dated February 23, 2009, we directed the consolidation of these cases. Thus, we impale petitioners' issues for our resolution:

1. First and foremost, whether the Sandiganbayan erred in finding petitioners guilty of violation of Section 3(g) of R.A. No. 3019.
2. Whether the testimony of Bermudez and the report of the Special Audit Team constitute hearsay and are, therefore, inadmissible in evidence against petitioners.
3. Whether petitioner Marquez should be excluded from liability based on our rulings in *Arias v. Sandiganbayan*<sup>13</sup> and *Magsuci v. Sandiganbayan*.<sup>14</sup>

Both petitioners insist that the fact of overpricing, upon which the charge against them of graft and corruption is based, had not been established by the quantum of evidence required in criminal cases, i.e., proof beyond reasonable doubt.<sup>15</sup> Petitioners maintain that the evidence of overpricing,



consisting of the report of the Special Audit Team and the testimony thereon of Bermudez, constitutes hearsay and, as such, is inadmissible against them. In addition, petitioner Marquez points out that the finding of overpricing was not shown to a reliable degree of certainty as required by COA Memorandum No. 97-012 dated March 31, 1997.<sup>16</sup> In all, petitioners asseverate that, as the overpricing was not sufficiently established, necessarily, the last criminal element of Section 3(g) of R.A. No. 3019 — a contract or transaction grossly and manifestly disadvantageous to the government — was not proven.*lavvphil*

Section 3(g) of R.A. No. 3019 provides:

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

x x x x

(g) Entering on behalf of the Government, into any contract or transaction, manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

For a charge under Section 3(g) to prosper, the following elements must be present: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.<sup>17</sup>

The presence of the first two elements of the crime is not disputed. Hence, the threshold question we should resolve is whether the walis tingting purchase contracts were grossly and manifestly injurious or disadvantageous to the government.

We agree with petitioners that the fact of overpricing is embedded in the third criminal element of Section 3 (g) of R.A. No. 3019. Given the factual milieu of this case, the subject contracts would be grossly and manifestly disadvantageous to the government if characterized by an overpriced procurement. However, the gross and manifest disadvantage to the government was not sufficiently shown because the conclusion of overpricing was erroneous since it was not also adequately proven. Thus, we grant the petitions.

In criminal cases, to justify a conviction, the culpability of an accused must be established by proof beyond a reasonable doubt.<sup>18</sup> The burden of proof is on the prosecution, as the accused enjoys a constitutionally enshrined disputable presumption of innocence.<sup>19</sup> The court, in ascertaining the guilt of an accused, must, after having marshaled the facts and circumstances, reach a moral certainty as to the accused's guilt. Moral certainty is that degree of proof which produces conviction in an unprejudiced mind.<sup>20</sup> Otherwise, where there is reasonable doubt, the accused must be acquitted.

In finding that the walis tingting purchase contracts were grossly and manifestly disadvantageous to the government, the Sandiganbayan relied on the COA's finding of overpricing which was, in

turn, based on the special audit team's report. The audit team's conclusion on the standard price of a walis tingting was pegged on the basis of the following documentary and object evidence: (1) samples of walis tingting without handle actually used by the street sweepers; (2) survey forms on the walis tingting accomplished by the street sweepers; (3) invoices from six merchandising stores where the audit team purchased walis tingting; (4) price listing of the DBM Procurement Service; and (5) documents relative to the walis tingting purchases of Las Piñas City. These documents were then compared with the documents furnished by petitioners and the other accused relative to Parañaque City's walis tingting transactions.

Notably, however, and this the petitioners have consistently pointed out, the evidence of the prosecution did not include a signed price quotation from the walis tingting suppliers of Parañaque City. In fact, even the walis tingting furnished the audit team by petitioners and the other accused was different from the walis tingting actually utilized by the Parañaque City street sweepers at the time of ocular inspection by the audit team. At the barest minimum, the evidence presented by the prosecution, in order to substantiate the allegation of overpricing, should have been identical to the walis tingting purchased in 1996-1998. Only then could it be concluded that the walis tingting purchases were disadvantageous to the government because only then could a determination have been made to show that the disadvantage was so manifest and gross as to make a public official liable under Section 3(g) of R.A. No. 3019.

On the issue of hearsay, the Sandiganbayan hastily shot down petitioners' arguments thereon, in this wise:

We find no application of the hearsay rule here. In fact, all the witnesses in this case testified on matters within their personal knowledge. The prosecution's principal witness, Ms. Bermudez, was a State Auditor and the Assistant Division Chief of the Local Government Audit Office who was tasked to head a special audit team to audit selected transactions of Parañaque City. The report which she identified and testified on [was] made by [the] Special Audit Team she herself headed. The disbursement vouchers, purchase orders, purchase requests and other documents constituting the supporting papers of the team's report were public documents requested from the City Auditor of Parañaque and from the accused Mayor Marquez. Such documents were submitted to the Special Audit Team for the specific purpose of reviewing them. The documents were not executed by Ms. Bermudez or by any member of the Special Audit Team for the obvious reason that, as auditors, they are only reviewing acts of others. The Special Audit Team's official task was to review the documents of the walis tingting transactions. In the process of [the] review, they found many irregularities in the documentations —violations of the Local Government Code and pertinent COA rules and regulations. They found that the transactions were grossly overpriced. The findings of the team were consolidated in a report. The same report was the basis of Ms. Bermudez's testimony. x x x.<sup>21</sup>

The reasoning of the Sandiganbayan is specious and off tangent. The audit team reached a conclusion of gross overpricing based on documents which, at best, would merely indicate the present market price of walis tingting of a different specification, purchased from a non-supplier of Parañaque City, and the price of walis tingting purchases in Las Piñas City. Effectively, the

prosecution was unable to demonstrate the requisite burden of proof, i.e., proof beyond reasonable doubt, in order to overcome the presumption of innocence in favor of petitioners.

As pointed out by petitioner Caunan, not all of the contents of the audit team's report constituted hearsay. Indeed, as declared by the Sandiganbayan, Bermudez could very well testify thereon since the conclusions reached therein were made by her and her team. However, these conclusions were based on incompetent evidence. Most obvious would be the market price of walis tingting in Las Piñas City which was used as proof of overpricing in Parañaque City. The prosecution should have presented evidence of the actual price of the particular walis tingting purchased by petitioners and the other accused at the time of the audited transaction or, at the least, an approximation thereof. Failing in these, there is no basis to declare that there was a glaring overprice resulting in gross and manifest disadvantage to the government.

We are not unmindful of the fact that petitioners failed to conduct the requisite public bidding for the questioned procurements. However, the lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government. As we had occasion to declare in *Nava v. Sandiganbayan*,<sup>22</sup> the absence of a public bidding may mean that the government was not able to secure the lowest bargain in its favor and may open the door to graft and corruption. However, this does not satisfy the third element of the offense charged, because the law requires that the disadvantage must be manifest and gross. After all, penal laws are strictly construed against the government.

With the foregoing disquisition, we find no necessity to rule on the applicability of our rulings in *Arias* and *Magsuci* to petitioner *Marquez*. Nonetheless, we wish to reiterate herein the doctrines laid down in those cases. We call specific attention to the sweeping conclusion made by the Sandiganbayan that a conspiracy existed among petitioners and the other accused, most of whom were acquitted, particularly private individual *Razo*, the proprietor of *Zaro Trading*.

Our ruling in *Magsuci*, citing our holding in *Arias*, should be instructive, viz.:

The Sandiganbayan predicated its conviction of [*Magsuci*] on its finding of conspiracy among *Magsuci*, *Ancla* and now deceased *Enriquez*.

There is conspiracy "when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy is not presumed. Like the physical acts constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. While conspiracy need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence therefore must reasonably be strong enough to show a community of criminal design.

x x x x

Fairly evident, however, is the fact that the actions taken by *Magsuci* involved the very functions he had to discharge in the performance of his official duties. There has been no intimation at all

that he had foreknowledge of any irregularity committed by either or both Engr. Enriquez and Ancla. Petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official reports submitted by his subordinate (Engineer Enriquez), but for conspiracy to exist, it is essential that there must be a conscious design to commit an offense. Conspiracy is not the product of negligence but of intentionality on the part of cohorts.

In *Arias v. Sandiganbayan*, this Court, aware of the dire consequences that a different rule could bring, has aptly concluded:

"We would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence—is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

"x x x x

"x x x. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. x x x. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or department is even more appalling."<sup>23</sup>

WHEREFORE, premises considered, the Decision dated August 30, 2007 and Resolution dated March 10, 2008 of the Sandiganbayan in Criminal Case Nos. 27944, 27946, 27952, 27953, & 27954 are REVERSED and SET ASIDE. Petitioners Joey P. Marquez in G.R. Nos. 182020-24 and Ofelia C. Caunan in G.R. Nos. 181999 and 182001-04 are ACQUITTED of the charges against them. Costs de oficio.

SO ORDERED.

**ANTONIO EDUARDO B. NACHURA**

Associate Justice

WE CONCUR:

**CONSUELO YNARES-SANTIAGO**

Associate Justice

Chairperson

**MINITA V. CHICO-NAZARIO**

Associate Justice

**PRESBITERO J. VELASCO, JR.**

Associate Justice

**DIOSDADO M. PERALTA**  
Associate Justice

**ATTESTATION**

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

**CONSUELO YNARES-SANTIAGO**  
Associate Justice  
Chairperson, Third 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.

**REYNATO S. PUNO**  
Chief Justice

**Footnotes**

<sup>1</sup> Penned by Associate Justice Jose R. Hernandez, with Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada, concurring; rollo (G.R. No. 182020-24), pp. 106-135.

<sup>2</sup> Id. at 136-183.

<sup>3</sup> Used to be a municipality and became an incorporated city on February 15, 1998.

<sup>4</sup> Rollo (G.R. No. 182020-24), pp. 106-110.

<sup>5</sup> A department in the Commission on Audit tasked to monitor prices of goods procured by the different agencies of the government.

<sup>6</sup> (i) SM Sta. Mesa Branch, (ii) Welcome Supermarket (Welcome Rotanda), (iii) Shopwise Makati, (iv) Celina Store in Fairview Wet and Dry Market, (v) Edith Store (Parañaque), and (vi) Central Parañaque Construction Supply and General Merchandise.

<sup>7</sup> Rollo, p. 566.

<sup>8</sup> G.R. No. 81563, December 19, 1989, 180 SCRA 309.

<sup>9</sup> G.R. No. 101545, January 3, 1995, 240 SCRA 13.

<sup>10</sup> (i) Motion for New Trial and Motion for Reconsideration Ad Cautelam;

(ii) Supplement to the Motion for New Trial and Motion for Reconsideration Ad Cautelam;

(iii) Motion to Recuse;

(iv) Manifestation and Motion to Adopt Motion to Recuse;

(v) Motion to Reopen Proceedings; and

(vi) Motion for Reconsideration.

<sup>11</sup> Petition in G.R. Nos. 181999 and 182001-04, rollo, p. 22.

<sup>12</sup> Memorandum of petitioner in G.R. Nos. 182020-24; rollo, pp. 915-916.

<sup>13</sup> Supra note 8.

<sup>14</sup> Supra note 9.

<sup>15</sup> See RULES OF COURT, Rule 133, Sec. 2.

<sup>16</sup> Items 3.1 and 3.2 respectively read:

3.1) When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in par. 2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial findings to a reliable degree of certainty.

3.2) To firm up the findings to a reliable degree of certainty, initial findings of overpricing based on market price indicators mentioned in par. 2.1 above have to be supported with canvass sheets and/or price quotations indicating:

a) The identities/names of the suppliers or sellers;

b) The availability of stock sufficient in quantity to meet the requirements of the procuring agency;

c) The specifications of the items which should match those involved in the finding of overpricing; and

The purchase/contract terms and conditions which should be the same as those of the questioned transaction.

<sup>17</sup> Dans, Jr. v. People, G.R. Nos. 127073 and 126995, January 29, 1998, 285 SCRA 504; Luciano v. Estrella, No. L-31622, August 31, 1970, 34 SCRA 769.

<sup>18</sup> Supra note 14.

<sup>19</sup> See Rule 131, Sec. 1, in relation to Rule 133, Sec. 2; Rule 115, Sec. 2(a); CONSTITUTION, Art. III, Sec. 14(2).

<sup>20</sup> Supra note 14.

<sup>21</sup> Rollo (G.R. Nos. 182020-24), p. 121.

<sup>22</sup> Nava v. Palattao, G.R. No. 160211, August 28, 2006, 499 SCRA 745, 772.

<sup>23</sup> Magsuci v. Sandiganbayan, supra note 9, at 17-19. (Citations omitted.)