



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

**DANILO O. GARCIA and  
JOVEN SD. BRIZUELA,**  
Petitioners,

**G.R. No. 197204**

Present:

CARPIO, *J.*, Chairperson,  
BRION,  
DEL CASTILLO,  
PEREZ, and  
REYES, \* *JJ.*

- versus -

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

Promulgated:

**MAR 26 2014**

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**D E C I S I O N**

**CARPIO, J.:**

**The Case**

Before the Court is a petition for review on certiorari<sup>1</sup> assailing the Decision dated 14 October 2010<sup>2</sup> and Resolutions dated 9 March 2011<sup>3</sup> and 1 June 2011<sup>4</sup> of the Sandiganbayan in Criminal Case No. 20574 entitled "*People of the Philippines v. Dir. Gen. Cesar P. Nazareno, P/Dir. Guillermo T. Domondon, C/Supt. Armand D. Agbayani, P/Supt. Van D. Luspo, C/Insp. Joven SD. Brizuela, C/Insp. Juan G. Luna, and C/Insp. Danilo O. Garcia.*"

\* Designated acting member per Special Order No. 1650 dated 13 March 2014. .

<sup>1</sup> Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

<sup>2</sup> *Rollo*, pp. 96-128. Penned by Justice Rodolfo A. Ponferrada with Justices Efren N. de la Cruz and Alexander G. Gesmundo, concurring.

<sup>3</sup> *Id.* at 11-16.

<sup>4</sup> *Id.* at 7-10.

### The Facts

For the 3<sup>rd</sup> quarter of calendar year 1992, the PNP Office of the Directorate for Comptrollership issued and released two Advice of Sub-Allotments<sup>5</sup> (ASA): (1) ASA No. 4363 dated 11 August 1992 for ₱5,000,000, and (2) ASA No. 4400 dated 18 August 1992 for ₱15,000,000, in the total amount of ₱20,000,000, for the purchase of combat clothing and individual equipment (CCIE) items of the Cordillera Regional Command (CRECOM) of the Philippine National Police (PNP) located at Camp Bado, Dangwa, La Trinidad, Benguet.

The ASAs were addressed "For the Chief, Philippine National Police; by Guillermo T. Domondon, Director." The PNP Chief and PNP Director for Comptrollership at the time were Cesar P. Nazareno (Nazareno) and Guillermo T. Domondon (Domondon), respectively. On behalf of Domondon, the ASAs were signed by P/Supt. Van Luspo (Luspo), then Chief, Fiscal Division, Budget and Fiscal Services of the PNP Directorate for Comptrollership, by virtue of a Memorandum<sup>6</sup> dated 31 January 1991, where Domondon gave Luspo and a certain Supt. Reynold Osia, the authority to sign for him and on his behalf, allotments for personal services in the amount not exceeding Five Million Pesos (₱5,000,000), and in his absence, the amount of Twenty Million Pesos (₱20,000,000). Thereafter, the proceeds of the two ASAs were transferred to CRECOM's deposit account with the Land Bank of the Philippines (LBP), Baguio Branch.

After receipt of the ASAs, petitioner Chief Inspector Danilo O. Garcia (Garcia), then CRECOM Assistant Regional Director for Comptrollership, directed the preparation of cash advances in the form of 15 disbursement vouchers,<sup>7</sup> 4 dated 12 August 1992 and 11 dated 21 August 1992, in the total amount of ₱20,000,000. The disbursement vouchers were signed and approved by either Garcia or Armand D. Agbayani (Agbayani), then CRECOM Regional Director, and issued in favor of petitioner Chief Inspector Joven SD. Brizuela (Brizuela), then CRECOM Disbursing Officer, as lone payee and claimant.

After the approval of the disbursement vouchers, Chief Inspector Juan Luna (Luna), then CRECOM Finance Officer, issued 250 LBP checks<sup>8</sup> (Check Nos. 037483-037533 and 037584-037783) of various dates, from 11 to 22 August 1992, in the amounts of ₱50,000 or ₱100,000 totalling to ₱20,000,000. Luna and Garcia were the signatories of the checks issued in the amount of ₱50,000, while Luna and Agbayani were the signatories of checks amounting to ₱100,000. The 250 LBP checks were all issued in favor of Brizuela as payee, in his capacity as disbursing officer.

<sup>5</sup> Records, Vol. II, pp. 55-56.

<sup>6</sup> Id. at 65.

<sup>7</sup> Records, Formal Offer of Documentary Exhibits for the Prosecution, stamped as Exhibits "G<sup>12</sup>" to "J<sup>12</sup>."

<sup>8</sup> Id., stamped as Exhibits "E" to "CC," Exhibits "DD" to "C<sup>3</sup>," Exhibits "D<sup>3</sup>" to "B<sup>5</sup>" (except "Q<sup>3</sup>" and "R<sup>3</sup>"), Exhibits "C<sup>5</sup>" to "E<sup>7</sup>," Exhibits "F<sup>7</sup>" to "T<sup>8</sup>," and Exhibits "U<sup>8</sup>" to "T<sup>10</sup>" (except "V<sup>8</sup>").



On 13 August 1992, Brizuela encashed the check dated 11 August 1992 from the LBP, Baguio Branch. Again, on 26 August 1992, Brizuela encashed the checks dated 18, 19, 20, 21 and 22 August 1992. All the proceeds of the encashed checks amounting to ₱20,000,000 were turned over by Brizuela to Garcia in the presence of Luna.

For the purpose of liquidating the cash advances, CRECOM Regional Accountant Jocelyn Versoza-Hinanay received the following documents: (1) original copies of the disbursement vouchers; (2) 250 LBP checks; (3) corresponding Clothing Requirements and Certifications that were signed by the heads of the various commands and units of CRECOM; and (4) PNP Personnel Payrolls that were also signed by the various CRECOM command heads, "approved payable" by Luna, and certified by Brizuela that the amount of ₱11,270.00 representing CCIE for the 3<sup>rd</sup> quarter of 1992 was paid to each "payee whose name appears on the (above) payroll."

The various CRECOM command and unit heads, who allegedly signed the Clothing Requirements and Certifications and the PNP Personnel Payrolls, were identified as:

- (1) Supt. Manuel T. Raval of PNP Abra;
- (2) Supt. Rolando C. Garcia of PNP Benguet;
- (3) C/Insp. Prospero C. Noble, Jr. of PNP Ifugao;
- (4) Supt. Rodrigo F. Licudine of the Regional Mobile Force;
- (5) Supt. Juan T. Refe of the Northern Luzon Training Center;
- (6) Supt. Conrado R. Peregrino, Jr. of PNP Kalinga-Apayao; and
- (7) Supt. Amparo C. Cabigas of the Headquarter Services.

Thereafter, for post-audit purposes, the documents were submitted to Adelaida C. Urbanozo (Urbanozo), State Auditor II of the Commission on Audit (COA) assigned at CRECOM PNP.

On 26 February 1993, after the post-audit, PNP Chief Inspector General Benjamin Valenton directed a PNP IG Fact-Finding Team to conduct an investigation on the alleged fictitious CCIE purchase of CRECOM PNP worth ₱20,000,000. The fact finding team was composed of team leader P/Supt. Rafael Jayme, P/C Insp. Ricardo M. Orot (Orot) and P/Sr. Insp. Evangeline L. Candia (Candia).

In the course of the investigation, the fact finding team invited for questioning and took the statements of the following:

- (1) Supt. Manuel T. Raval who executed a Sworn Statement dated 23 March 1993 stating that Personnel Payrolls for PNP Abra were fabricated and that his signature indicated in said payrolls was not his;



- (2) Supt. Rolando C. Garcia who executed a Sworn Statement dated 23 March 1993 stating that Personnel Payrolls for PNP Benguet were fabricated and that his signature indicated in said payrolls was not his;
- (3) Ciriaco C. Wagan, then Regional and Supply Accountable Officer of CRECOM, who executed a Sworn Statement dated 17 February 1993 stating that CRECOM did not receive any CCIE for the 3<sup>rd</sup> quarter of 1992;
- (4) Dominador Pamolar, Carlos D. Capinding, and Sanilo Dosdos, Jr., who executed a Joint-Affidavit dated 2 March 1993 stating that no CCIE, in cash or in kind, was received by CRECOM Headquarters for the 3<sup>rd</sup> quarter of 1992;
- (5) SPO4 Romulo B. Rosido, Chief Clerk of the Office of the Regional Inspector, PNP CRECOM; SPO4 Wilson B. Pulido, Chief Clerk of the Office of the Regional Police Legal Service (RPLS); and SPO2 Jorge S. Benitez of the Office of the RPLS, who executed a Joint-Affidavit on 2 March 1993 stating that CRECOM did not receive any CCIE for the 3<sup>rd</sup> quarter of 1992;
- (6) Brizuela who executed a Sworn Statement dated 22 February 1993;
- (7) Garcia; and
- (8) Luna who executed a Sworn Statement dated 4 March 1993.

The fact finding team also gathered Personnel Payrolls, covering the 3<sup>rd</sup> quarter of calendar year 1992, which contained the names of the members of the PNP in Abra, Benguet and Kalinga-Apayao. The payrolls were prepared by CRECOM and signed by Supt. Manuel T. Raval or Supt. Rolando C. Garcia and Brizuela.

In an Investigation Report<sup>9</sup> dated 2 April 1993, the fact finding team revealed the irregularity of the release of the ASAs worth ₱20,000,000 by the PNP Office of the Directorate for Comptrollership. Based on the documents collected and the sworn statements taken from CRECOM personnel and other witnesses, the fact finding team discovered the following: (1) that the ASAs were issued without the corresponding Personnel Program from the PNP Directorate of Personnel, the office which determines the needs of the units of the PNP; (2) that the ASAs were received by CRECOM Comptroller Garcia from PNP Headquarters; (3) that Garcia received the proceeds of the ASAs from CRECOM Disbursing Officer Brizuela in the presence of CRECOM Finance Officer Luna after Brizuela encashed the 250 LBP checks; and (4) that all the liquidating documents, consisting of the Clothing Requirement and Certifications and the list of the PNP Personnel Payrolls, supposedly signed by the various CRECOM command and unit heads, were all fictitious. The signatures appearing in the liquidating documents were forged and the personnel listed

<sup>9</sup> Records, Vol. 1, pp. 73-84.

in the respective Official Rosters of the officers' commands did not receive any CCIE for the 3<sup>rd</sup> quarter of 1992.

On 11 May 1993, the fact finding team filed its Investigation Report and recommended the filing of appropriate criminal charges with the Sandiganbayan against Nazareno, Domondon, Agbayani, Garcia, Luna, and Brizuela for (1) Malversation through Falsification of Public Documents, and (2) violation of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act.

After the preliminary investigation, the Office of the Ombudsman filed an Amended Information<sup>10</sup> dated 28 July 1997 for violation of Section 3(e) of RA 3019, docketed as Criminal Case No. 20574, against all the police personnel, as recommended by the fact finding team, allegedly involved in the procurement of the fraudulent CCIE purchase, including Luspo. The Amended Information states:

That on or about August 1992, and for sometime prior or subsequent thereto, in Quezon City and Baguio City, Philippines, and within the jurisdiction of this Honorable Court, the said accused public officers, namely: Maj. Gen. Cesar Nazareno, then Director General, Philippine National Police (PNP); P/Dir. Guillermo Domondon, then Director for Comptrollership, PNP; C/Supt. Armand Agbayani, then Regional Director, Cordillera Regional Command (CRECOM), PNP; P/Supt. Van Luspo, then Chief, Fiscal Division, Budget and Fiscal Services, Office of the Director for Comptrollership, PNP; C/Insp. Joven Brizuela, then Disbursing Officer, CRECOM, PNP; C/Insp. Juan Luna, then Finance Officer, CRECOM, PNP; and C/Insp. Danilo Garcia, then Comptroller, CRECOM, PNP, **while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally, with evident bad faith, cause undue injury to the government** by: approving without budgetary basis the release of Advise of Sub-Allotment SN No. 4363 dated August 11, 1992 in the amount of PHP 5,000,000.00 and Advise of Sub-Allotment SN No. 4400 dated August 18, 1992 in the amount of PHP 15,000,000.00 for the procurement of combat, clothing and individual equipment (CCIE) for the use of PNP personnel of CRECOM, La Trinidad, Benguet; causing to be issued and encashed Land Bank Check Nos. 037483 to 037533, 037584 to 037611, 037613, 037615 to 037777, 037779 to 037783, 137612 and 137614 with an aggregate amount of TWENTY MILLION PESOS (PHP 20,000,000.00), Philippine Currency, for payment of ghost purchases of the said CCIE items; falsifying the signatures of the military personnel listed in the payroll of CRECOM to make it appear therein that the military personnel of CRECOM have received the said CCIE items; and, thereafter, misappropriating the said amount of PHP 20,000,000.00 to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW.<sup>11</sup> (Emphasis supplied)

<sup>10</sup> Id. at 456-459.

<sup>11</sup> Id. at 457-458.

All the accused, except Agbayani, who was still at large and beyond the jurisdiction of the Sandiganbayan, refused to enter any plea upon their separate arraignments. The Sandiganbayan entered a plea of not guilty for each of them.

In the Pre-Trial Order dated 17 May 2005 issued by the Sandiganbayan, all the accused agreed to the following stipulation of fact and issue:

III  
Stipulation of Fact

The parties stipulated that all the accused were public officers, occupying their respective positions as described in the Information, at the time the matters of this case allegedly occurred.

IV  
Issue

The ultimate issue to be resolved is whether or not the accused, individually or in conspiracy with one another, committed manifest partiality, evident bad faith or gross inexcusable negligence in the performance of their public functions in connection with the subject matter of the Information, thereby causing undue injury to the government.

Respondent People of the Philippines, as plaintiff in the case, presented the following witnesses:

- (1) Retired Senior Supt. Rafael E. Jayme;
- (2) Supt. Rolando C. Garcia;
- (3) Supt. Manuel T. Raval;
- (4) Candia;
- (5) CRECOM Regional Accountant Jocelyn Versoza-Hinanay;
- (6) COA State Auditor Adelaida Urbano;
- (7) Gen. Nicasio Javier Radovan, Jr., then Provincial Commander of Mountain Province;
- (8) SPO1 Carlos D. Capinding, a PNP officer assigned at CRECOM in 1992;
- (9) Ret. PNP Officer Brigilio Balaba, then CRECOM's Assistant Regional Director for Logistic; and
- (10) Ret. Gen. Rufino Ibay, the PNP Director for Comptrollership in April 1993.

During the trial held on 1 August 2006, the Sandiganbayan issued an Order containing the stipulations of the prosecution and defense on the testimonies of five police officers, intended to be called to the witness stand, and dispensed with their testimonies. The relevant portions of the Order state:



1. Gen. Prospero C. Noble, Jr., Provincial Commander, will testify that the signatures appearing on Exhibits "B<sup>43</sup>" up to "N<sup>47</sup>," consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE;
2. Supt. Rodrigo F. Licudine, then Commander of the Regional Mobile Force, will testify that the signatures appearing on Exhibits "C<sup>71</sup>" up to "T<sup>79</sup>," consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE;
3. Supt. Juan T. Refe II, Commander of the Northern Luzon Training Center, will testify that the signatures appearing on Exhibits "P<sup>33</sup>" up to "A<sup>13</sup>," consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE;
4. Supt. Conrado R. Peregrino, Jr., Provincial Commander of Kalinga-Apayao, will testify that the signatures appearing on Exhibits "R<sup>50</sup>" up to "C<sup>57</sup>," consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE; and
5. Supt. Amparo C. Cabigas, Camp Commander, Headquarters Service, will testify that the signatures appearing on Exhibits "U<sup>79</sup>" up to "H<sup>85</sup>," consisting of payrolls, clothing requirements purporting to be his are actually not his signatures.<sup>12</sup>

For the defense, accused Domondon and Luspo intended to present as witness Superintendent Leonilo Lapus Dalut (Dalut), the Program and Budget Officer of the PNP Directorate for Personnel from 1989 until 1993. However, since Dalut had already testified before another division of the Sandiganbayan in other cases, where some of the accused in this case were also the accused in the other cases, Domondon and Luspo merely adopted the testimony of Dalut in those cases, including the cross-examination conducted on Dalut.

Accused Brizuela presented the prosecution's witness, Candia, as his witness pursuant to a *subpoena* issued by the Sandiganbayan. After the presentation of Candia, Brizuela did not present any other testimonial evidence and merely adopted the testimonial and documentary evidence of the other accused.

Likewise, accused Garcia did not present any testimonial evidence and merely adopted the evidence of the other accused.

Accused Luna, on the other hand, testified on his behalf and presented documentary evidence.

<sup>12</sup> Rollo, pp. 106-107.



On 8 December 2005, while this case was pending, Nazareno died. Upon motion to dismiss filed by counsel, with the original certificate of death issued by the Office of the Civil Registrar as basis, the Sandiganbayan issued an Order dated 3 February 2007 dismissing the case against Nazareno.

On 14 October 2010, the Sandiganbayan found Brizuela, Luna and Garcia guilty of the crime charged and acquitted Domondon and Luspo. The dispositive portion of the Decision states:

WHEREFORE, judgment is hereby rendered finding accused JOVEN SD. BRIZUELA, JUAN G. LUNA, and DANILO O. GARCIA, GUILTY beyond reasonable doubt as charged in the Information and sentencing each of them to suffer [the] indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to indemnify, jointly and severally, the Government the total amount of ₱20 Million representing the losses that it suffered, and to proportionately pay the costs; and for insufficiency of evidence, ACQUITTING accused GUILLERMO T. DOMONDON and VAN D. LUSPO with cost *de officio*. In this connection, the respective cash bonds posted by the said two (2) accused are hereby RELEASED to them subject to the usual accounting and auditing procedures, and the Hold Departure Orders issued against them are hereby LIFTED and SET ASIDE.

With respect to accused ARMAND D. AGBAYANI, who is at-large and beyond the jurisdiction of the Court, this case is ordered ARCHIVED.

SO ORDERED.<sup>13</sup>

Luna, Brizuela and Garcia filed their respective motions for reconsideration with the Sandiganbayan.<sup>14</sup> Later, Brizuela and Garcia filed separate supplements to their motions for reconsideration.<sup>15</sup> In a Resolution dated 9 March 2011, the Sandiganbayan denied the motions for reconsideration.

Thereafter, Garcia filed a *Manifestation and Motion to Take a Second Look*<sup>16</sup> dated 30 March 2011 and Brizuela filed a *Motion to Admit Second Motion for Reconsideration*<sup>17</sup> and *Second Motion for Reconsideration*<sup>18</sup> dated 2 April 2011. In separate Resolutions<sup>19</sup> dated 1 June 2011, the Sandiganbayan denied the motions.

Hence, this petition.

<sup>13</sup> Id. at 127.

<sup>14</sup> Id. at 129-150.

<sup>15</sup> Id. at 151-176.

<sup>16</sup> Id. at 228-236.

<sup>17</sup> Id. at 240-244.

<sup>18</sup> Id. at 245-252.

<sup>19</sup> Id. at 7-10 and 91-94.

### The Issues

The issues are (1) whether the Sandiganbayan erred in convicting petitioners of the crime charged, and (2) whether the Sandiganbayan erred in denying their second motions for reconsideration.

### The Court's Ruling

The petition lacks merit.

Petitioners submit that the prosecution failed to prove the second and third essential elements of Section 3(e) of RA 3019 to convict them of anti-graft and corrupt practices.

On the other hand, respondents maintain that all the essential elements of Section 3(e) of RA 3019 had been proven beyond reasonable doubt, and a second motion for reconsideration or a motion to take a second look is a prohibited pleading. Respondents also question petitioners' defense of regularity in the performance of their functions as Assistant Regional Director for Comptrollership and Disbursing Officer which was raised only for the first time before the Sandiganbayan when they filed their separate supplements to their motions for reconsideration.

Petitioners were charged for violation of Section 3(e) of RA 3019 which states:

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

(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 three essential elements for violation of Section 3(e) of RA 3019 are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or



giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>20</sup>

On the first element, the records show that at the time the procurement of the CCIE occurred, petitioners Garcia and Brizuela were public officers discharging their official functions in the Philippine National Police as Assistant Regional Director for Comptrollership and Disbursing Officer, respectively. In the course of the trial, the Sandiganbayan issued a Pre-Trial Order dated 17 May 2005 which contained the stipulation of fact that “all the accused were public officers, occupying their respective positions as described in the Information, at the time the matters of this case allegedly occurred.” Thus, petitioners were public officials holding positions in the PNP on the questioned dates as clearly stipulated in the Amended Information filed by the Ombudsman. Indisputably, the first element was met.

With regard to the second element, that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, the case of *Albert v. Sandiganbayan*<sup>21</sup> explained the different modes by which the crime may be committed:

The second element provides the different modes by which the crime may be committed, that is, through “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence.” In *Uriarte v. People*, this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

In this case, the Amended Information<sup>22</sup> filed by the Ombudsman specifically states “evident bad faith” as the mode by which the crime has been committed. As defined in *Albert*, **evident bad faith** connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating

<sup>20</sup> *Catindig v. People*, G.R. No. 183141, 18 September 2009, 600 SCRA 749; *Soriano v. Marcelo*, 610 Phil. 72 (2009); *People v. Pajaro*, 577 Phil. 441 (2008).

<sup>21</sup> 599 Phil. 439, 450-451 (2009).

<sup>22</sup> *Supra* note 10.

with furtive design or with some motive or self interest or ill will or for ulterior purposes.

In their petition, Garcia and Brizuela maintain that their duties and functions in the PNP show that they did not participate in the alleged crime. Garcia asserts that while he was the Assistant Regional Director for Comptrollership (ARDC) at the time of the purchase of the fictitious CCIE items, his functions as ARDC would show that he did not take part in the anomalous offense. Garcia states that it was incumbent upon him, in his ministerial function as ARDC, to control and employ funds through the preparation of Request for Obligation of Allotment (ROA) and Regional Allotment Advice (RAA). Garcia emphasizes that he was not a signatory to the disbursement vouchers contrary to the allegation of the prosecution that he directed the preparation of the 15 disbursement vouchers totalling ₱20,000,000. Garcia states that it was only a matter of procedure that he affixed his signature at the dorsal portion of the disbursement vouchers to manifest that a pre-audit and inspection had been conducted. As ARDC, it was his management function to conduct the pre-audit and inspection before any payment or disbursement was made. Garcia adds that he merely complied with the directive when the ASAs were issued "For the Chief, Philippine National Police" by Domondon, although the ASAs were signed for Domondon by Luspo, then Chief of the Fiscal Division, Budget and Fiscal Services of the PNP Directorate for Comptrollership. Garcia further claims that he was not privy to and had no direct or implied participation in the payroll presentation although his name appeared in the payrolls submitted. Garcia alleges that his purported signatures affixed in the payrolls were forged.

On the other hand, petitioner Brizuela insists that while he was the payee indicated in the questioned disbursement vouchers and LBP checks, he was merely performing his duty as Disbursing Officer to disburse funds against approved expense vouchers. This assigned task was given by the Regional Director who had the authority and the right to command and demand compliance upon him as a subordinate. Brizuela adds that his compliance with a perceived lawful order does not connote that he committed the offense through manifest partiality, evident bad faith, or gross inexcusable negligence, as defined in the second element of Section 3(e) of RA 3019.

We are not convinced.

Petitioners anchor their defense on the nature of their respective positions to prove that they acted within the bounds of their functions. However, Garcia and Brizuela only raised their functions as ARDC and Disbursing Officer, respectively, for the first time before the Sandiganbayan when they filed their separate Supplements to Motion for Reconsideration and after a decision had already been rendered by the Sandiganbayan.



The settled rule is that issues not raised in the court *a quo* cannot be raised for the first time on appeal<sup>23</sup> — in this case, in a motion for reconsideration — for being offensive to the basic rules of fair play, justice and due process.<sup>24</sup> Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel and cannot be considered by a reviewing court, as these cannot be raised for the first time on appeal. Also, in *United Special Watchman Agency v. Court of Appeals*,<sup>25</sup> we held that a second motion for reconsideration is a prohibited pleading under Section 5, Rule 37 of the Rules of Court.<sup>26</sup> The effect of filing a second motion for reconsideration is to make the questioned decision final and executory.

Nevertheless, we find that the defense of Garcia and Brizuela is weak since their defense mainly rests on the presumption of regularity in the discharge of their official functions.

As shown by the records, Garcia, after receipt of the ASAs, signed and approved the disbursement vouchers, together with Agbayani, as testified to by the Regional Accountant of CRECOM, Jocelyn Versoza-Hinanay. After the vouchers were signed and approved, Luna issued 250 LBP checks in the amounts of ₱50,000 and ₱100,000. Garcia and Luna were the signatories of the ₱50,000 checks and Luna and Agbayani were the signatories of the ₱100,000 checks. The table<sup>27</sup> below shows that Garcia signed a total of 100 pieces of ₱50,000 checks issued on two dates, 18 and 19 August 1992, in the total amount of ₱5,000,000:

<u>Date</u>	<u>Quantity of Checks</u>	<u>Number</u>	<u>Amount</u>
08-11-92	51 pieces (₱100,000 each)	037483-037533	₱ 5,100,000
<b>08-18-92</b>	<b>41 pieces (₱50,000 each)</b>	<b>037584-037624</b>	<b>2,050,000</b>
<b>08-19-92</b>	<b>59 pieces (₱50,000 each)</b>	<b>037625-037683</b>	<b>2,950,000</b>
08-20-92	49 pieces (₱100,000 each)	037684-037732	4,900,000
08-21-92	26 pieces (₱100,000 each)	037733-037758	2,600,000
08-22-92	<u>24 pieces</u> (₱100,000 each)	037759-037783	<u>2,400,000</u>
	<u>250 pieces</u>		<u>₱20,000,000</u>

In his defense, Garcia maintains that he merely complied with the directive of the ASAs. Given that Garcia performed his duty from the preparation of the ROA and RAA until the approval of the disbursement vouchers in accordance with his regular duties and functions in the PNP, he did not refute the allegation made by Brizuela that he turned over the total amount of ₱20,000,000 to Garcia in the presence of Luna. As attested by the

<sup>23</sup> *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35 (2002), citing *Sanchez v. Court of Appeals*, 345 Phil. 155 (1997).

<sup>24</sup> *Imani v. Metropolitan Bank & Trust Company*, G.R. No. 187023, 17 November 2010, 635 SCRA 357.

<sup>25</sup> 453 Phil. 363 (2003).

<sup>26</sup> SEC. 5. *Second motion for new trial.* — x x x No party shall be allowed a second motion for reconsideration of a judgment or final order.

<sup>27</sup> Records, Vol. 1, p. 18.

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Sworn Statement<sup>28</sup> of Brizuela on 22 February 1993 taken by Candia in the presence of Orot at the Office of the PNP Inspector General, Camp Crame, Quezon City, Brizuela admitted that after encashing the 250 LBP checks in the total amount of ₱20,000,000, he gave the entire amount to Garcia:

Candia: Showing you a list of checks and bundle of checks with a total of 250 checks submitted by Ms. Jocelyn S. Versoza, Chief PNP Regional Accountant issued on your name as payee, will you explain why these checks were issued on (sic) your name and the purpose of its issuance?

Brizuela: Since I am the Disbursing Officer, the checks were issued on (sic) my name as payee and that the requisition voucher was on (sic) my name. I was informed by my CO, RFSU that the amount will be cash advanced for the procurement of CCIE.

Candia: Except for [the] requisition voucher, is there [any] other document to support the claim for CCIE?

Brizuela: None.

**Candia: After encashment of the check, to whom did you give the money?**

**Brizuela: I gave the entire amount to the ARCDS6 for Comptrollership C/INSP DANILO GARCIA in the presence of C/INSP JUAN LUNA.**

Candia: Was there a receipt to support your answer in par. 11?

Brizuela: There was no receipt but I gave the money due to trust and confidence. (Emphasis supplied)

Further, Garcia claimed that the signatures appearing above his names in the PNP Personnel Payrolls, as well as the issued LBP checks, were forged. However, Garcia did not endeavor to prove otherwise. Forgery cannot be presumed and must be proved by clear, positive and convincing evidence<sup>29</sup> and the burden of proof lies on the party alleging forgery.<sup>30</sup> In the present case, Garcia merely relied on the evidence of the other accused and did not present his own testimonial and documentary evidence to show that his signature in the personnel payrolls were falsified. Thus, the presumption of validity and regularity prevails over allegations of forgery and fraud.

Brizuela, on the other hand, insists that as the named payee in the questioned disbursement vouchers and LBP checks, he was merely performing his regular duty as disbursing officer to disburse funds against approved expense vouchers. However, contrary to his allegation, Brizuela admitted in his sworn statement that he gave the entire amount of ₱20,000,000 to Garcia after encashing the checks. Brizuela did not even question why the said amount should be turned over to Garcia nor did Brizuela report the unusual transaction to higher authorities. He even raised the defense of compliance with a superior's perceived lawful order and disowned accountability for funds he disbursed which were eventually used for illegal or unauthorized purposes. The facts as established show that

<sup>28</sup> Records, Formal Offer of Documentary Exhibits for the Prosecution, stamped as Exhibit "S11."

<sup>29</sup> *American Express International, Inc. v. Court of Appeals*, 367 Phil. 333 (1999), citing *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, 1 March 1994, 230 SCRA 550.

<sup>30</sup> *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1170 (2000).

Brizuela took part in the act of issuing and encashing government checks, then in misappropriating the funds by submitting documents showing that the funds were allegedly used to pay personnel in the payroll but the personnel later turned out to be fictitious persons. As CRECOM Disbursing Officer, Brizuela should have seen to it that the funds were legally and properly disbursed for the purpose for which they were released. Clearly, Brizuela's actions were tainted with evident bad faith.

Even Luna, in his Sworn Statement<sup>31</sup> on 4 March 1993 taken by Candia in the presence of Orot at the PNP Office of Complaint and Investigation Division, Camp Crame, Quezon City, admitted that he signed the 250 LBP checks and that he was present when the ₱20,000,000 cash was handed by Brizuela to Garcia. The relevant portions of Luna's Sworn Statement state:

Candia: It was mentioned in the sworn statement of P/CHIEF INSP JOVEN BRIZUELA PNP that you (C/INSP LUNA) told him that the amount will be cash advanced for the procurement of CCIE, what can you say about this?

Luna: That is true.

Candia: So, was the amount of Twenty Million Pesos intended for the CCIE for 1992 of CRECOM personnel, cash advanced and if so, who cash advanced [the] same?

Luna: Yes, it was requisitioned for cash advanced by CHIEF INSPECTOR BRIZUELA.

Candia: Were the checks worth ₱20,000,000 encashed? If encashed, who encashed [the] same, from what bank?

Luna: Yes, the checks were encashed by CHIEF INSPECTOR BRIZUELA from Land Bank Baguio City Branch.

**Candia: After encashing the checks worth Twenty Million Pesos, where did the money go?**

**Luna: CHIEF INSPECTOR BRIZUELA personally delivered the ₱20,000,000 cash to C/INSPECTOR GARCIA in my presence.**

Candia: What happened next, after C/INSP BRIZUELA handed the money to C/INSP GARCIA in your presence?

Luna: I have no more knowledge. (Emphasis supplied)

Further, Brizuela certified, in the PNP Personnel Payroll submitted to CRECOM Chief Regional Accountant Jocelyn Versoza-Hinanay, that the amount of ₱11,270.00 representing CCIE for the 3<sup>rd</sup> quarter of 1992 was paid to each "payee whose name appears on the (above) payroll." In its Decision dated 14 October 2010, the Sandiganbayan found that the names in the payroll, who were the personnel who supposedly received the CCIE, were fictitious. The relevant portions of the Decision state:

It appears, however, that the names of the personnel listed in the said *PNP Personnel Payrolls* who purportedly have each received the amount of ₱11,270.00 CCIE for the 3<sup>rd</sup> Quarter of 1992 are fabricated or fictitious because the names listed therein, when compared with the

<sup>31</sup> Records, Formal Offer of Documentary Exhibits for the Prosecution, stamped as Exhibit "T11."



Official Rosters submitted by the heads of the different CRECOM commands, do not appear in the said official rosters. Besides, the heads of the different CRECOM commands, namely, Supt. Manuel Raval of PNP Abra, Supt. Rolando Garcia of PNP Benguet, C/Insp. Prospero Noble of PNP Ifugao, Supt. Rodrigo F. Licudine of the Regional Mobile Force, Supt. Juan T. Refe of Northern Luzon Training Center, Supt. Conrado R. Peregrino, Jr. of PNP Kalinga-Apayao, and Supt. Amparo Cabigas of the Headquarter Services testified that their respective signatures appearing in the Clothing Requirements and Certifications and in the said *PNP Personnel Payrolls* are forgeries because the signatures appearing above their typewritten names in said documents are not theirs and that the personnel of their respective commands listed in the Official Rosters submitted by them, never received any CCIE for the year 1992.

Moreover, a close examination/scrutiny of the signatures of the personnel listed in the said *PNP Personnel Payrolls*, reveals that the said signatures were signed by one person as shown by the similarity of the style and strokes of the signatures therein which is a clear indication that said payrolls are fabricated and the personnel named therein are fictitious or non-existent.<sup>32</sup>

Here, Garcia and Luna were the ones who approved the PNP Personnel Payrolls containing the false entries and it was Brizuela who certified that the police personnel listed in the payrolls received their intended CCIE when in fact they did not. Clearly, these are acts of evident bad faith at the least. In submitting fabricated and forged personnel payrolls as supporting and liquidating documents to cover up the illegal release of ₱20,000,000, petitioners orchestrated a conscious wrongdoing to serve some ulterior motive or self-interest.

Lastly, the third element of the offense — that the act of the accused caused undue injury to any party, including the Government, or gave any private party unwarranted benefit, advantage or preference in the discharge of the functions of the accused — was also established. Proof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible.<sup>33</sup>

In the present case, the prosecution's evidence duly proved that petitioners, using their official positions, by dishonesty and breach of sworn duty, facilitated the approval and release of government funds amounting to ₱20,000,000 supposedly for the purchase of CCIE items of PNP personnel. However, the recipients of the ₱20,000,000 turned out to be fictitious PNP personnel, and up to now the ₱20,000,000 remains unaccounted for. Thus, petitioners should be made liable for their deceit and misrepresentation and should compensate the government for the actual damage the government has suffered.

<sup>32</sup> *Rollo*, pp. 121-122.

<sup>33</sup> *Reyes v. People of the Philippines*, G.R. Nos. 177105-06, 4 August 2010, 626 SCRA 782, citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655, 688.

**WHEREFORE**, we **DENY** the petition. We **AFFIRM** the Decision dated 14 October 2010 and Resolutions dated 9 March 2011 and 1 June 2011 of the Sandigánbayan in Criminal Case No. 20574.

**SO ORDERED.**



**ANTONIO T. CARPIO**  
Associate Justice

**WE CONCUR:**



**ARTURO D. BRION**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



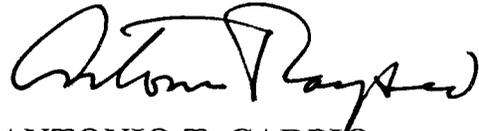
**JOSE PORTUGAL PEREZ**  
Associate Justice



**BIENVENIDO L. REYES**  
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

**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