Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,	**G.R. No. 248699**
	Present:
- versus -	GESMUNDO, *C.J., Chairperson,* HERNANDO, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
JEORGE EJERCITO ESTREGAN, ARLYN LAZARO-TORRES, TERRYL GAMIT-TALABONG, KALAHI U. RABAGO, ERWIN P. SACLUTI, GENER C. DIMARANAN, and MARILYN M. BRUEL, Accused-appellants.	**Promulgated:** FEB 05 2025

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DECISION

ROSARIO, *J.*:

This is an appeal[1] from the Sandiganbayan (SBN) Decision[2] convicting Jeorge Ejercito Estregan[3] (Estregan), Arlyn Lazaro-Torres (Torres), Terryl Gamit-Talabong (Talabong), Kalahi U. Rabago (Rabago), Erwin P. Sacluti (Sacluti), Gener C. Dimaranan (Dimaranan), and Marilyn M. Bruel (Bruel) of violation of Section 3(e) of Republic Act No. 3019.[4]

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1 *Rollo*, pp. 50, 54, and 58.
2 *Id.* at 9–49. The April 5, 2019 Decision in SB-16-CRM-0124 was penned by Associate Justice Bayani H. Jacinto and concurred in by Associate Justices Alex L. Quiroz and Reynaldo P. Cruz of the Fourth Division, Sandiganbayan, Quezon City.
3 Also known as Emilio Ramon P. Ejercito III.
4 Anti-Graft and Corrupt Practices Act (1960), as amended.

I

In 2009, the United Boatmen Association of Pagsanjan (UBAP) filed a complaint for violation of Section 3(e), (g), (h), (i) and (j) of Republic Act No. 3019 and Republic Act No. 9184[5] against Municipality of Pagsanjan, Laguna Mayor Estregan, Vice-Mayor Crisostomo B. Vilar (Vilar), Municipal Councilors Torres, Talabong, Rabago, Sacluti, Dimaranan, and Ronaldo C. Sablan (Sablan; accused public officials),[6] as well as private individual Bruel (collectively, accused-appellants) before the Office of the Ombudsman (OMB), alleging that the accused public officials had unlawfully entered a Memorandum of Agreement (MOA) for Accident Protection and Assistance (APA) with Bruel, proprietor of First Rapids Care Ventures (FRCV), without public bidding and despite the fact that FRCV holds no Certificate of Authority from the Insurance Commission.

After preliminary investigation, the OMB found probable cause to indict all accused for violation of Section 3(e) of Republic Act No. 3019. Thus, on March 16, 2016, the Office of the Special Prosecutor (OSP) filed an Information before the SBN, the accusatory portion of which reads:

> On 23 October 2008, or sometime prior or subsequent thereto, in the Municipality of Pagsanjan, Province of Laguna, Philippines, and within this Honorable Court's jurisdiction; accused public officers of the municipality of Pagsanjan, Laguna, with the following names and public positions:
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> 1. JEORGE EJERCITO ESTREGAN (SG-27)
> Municipal Mayor,
> 2. CRISOSTOMO B. VILAR (SG-25)
> Municipal Vice Mayor,
> 3. ARLYN LAZARO-TORRES (SG-24)
> Municipal Councilor,
> 4. TERRYL GAMIT-TALABONG (SG-24)
> Municipal Councilor,
> 5. KALAHI U. RABAGO (SG-24)
> Municipal Councilor,
> 6. ERWIN P. SACLUTI (SG-24)
> Municipal Councilor,
> 7. GENER C. DIMARANAN (SG-24)
> Municipal Councilor,
> 8. RONALDO C. SABLAN (SG-24)
> Municipal Councilor;
>
> acting in their capacities as Municipal Mayor and as Members of the Sangguniang Bayan ng Pagsanjan, Laguna, committing the crime herein charged in relation to their official functions and taking advantage of their public positions; while in the performance of their administrative and/or official functions; conspiring and confederating with one another and with MARILYN M. BRUEL, Owner and Proprietor of the private entity First

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5 The Government Procurement Reform Act (2003).

6 The Complaint against Sablan was dismissed by reason of his death on March 26, 2011.

> Rapids Care Ventures (FRCV); and acting with manifest partiality, evident bad faith and/or gross inexcusable negligence; did then and there willfully, unlawfully, and criminally give unwarranted benefit, advantage and preference to MARILYN M. BRUEL and/or FRCV by entering into a Memorandum of Agreement (MOA) with FRCV to provide accident protection and financial assistance to Pagsanjan tourists and legitimate and qualified boatmen plying the route to and from the Pagsanjan Gorge Tourist Zone for loss of life, disablement, medical reimbursement, and ambulance/hospital transfer reimbursement, without the requisite public bidding under Republic Act No. 9184 and despite FRCV not being licensed and in possession of a certificate of authority from the Insurance Commission to engage in the insurance business; which MOA was immediately ratified and approved by the accused Sangguniang Bayan members despite the previously stated obvious flaws to the damage and prejudice of the municipality, the covered tourists and boatmen.
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> CONTRARY TO LAW.[7]

On their respective arraignment dates, accused-appellants pleaded *not guilty* to the charge. During pre-trial, the parties stipulated that at the time material to the allegations in the Information, accused public officials were public officials of the Municipality of Pagsanjan, Laguna; Bruel was the proprietor of FRCV; the Sangguniang Bayan (SB) of Pagsanjan passed Municipal Ordinance No. 15-2008 authorizing Estregan to transact, negotiate, and enter into a contract between the Municipality and any competent and qualified entity which can provide APA services to tourists and boatmen during boat rides in the Pagsanjan Gorge Tourist Zone; in a September 22, 2008 letter, FRCV submitted its written proposal detailing the APA services it would provide; on October 23, 2008, Estregan, in behalf of the Municipality, entered a MOA with FRCV for APA services which the SB ratified through Municipal Resolution No. 056-2008. They also stipulated on the existence, due execution, and genuineness of Municipal Ordinance No. 15-2008, Municipal Resolution No. 056-2008, FRCV's Letter dated September 22, 2008, and the MOA, among others.[8] Thereafter, trial on the merits ensued.

With the above stipulations, the prosecution presented its sole witness, Chantal Mae V. Simon of the Administrative Division-Records Section of the Insurance Commission, who identified the certified copy of the Letter-Opinion of Insurance Commissioner Emmanuel F. Dooc to Atty. Adoracion A. Agbada, Director of OMB-Luzon, where he opined that the MOA between the Municipality of Pagsanjan and FRCV is a contract of insurance.[9] After the prosecution rested its case, Estregan, Rabago, Dimaranan, and Sacluti filed a Motion for Leave of Court to File Demurrer to Evidence which the SBN denied.[10] Hence, they proceeded to present their evidence.

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7 *Rollo*, pp. 10–11 (SBN Decision, pp. 2–3).
8 *Id.* at 11–13 (SBN Decision, pp. 3–5).
9 *Id.* at 13 (SBN Decision, p. 5).
10 *Id.* at 14 (SBN Decision, p. 6).

The SBN summarizes the evidence for the defense as follows:

> [Accused Gamit-Talabong and Lazaro-Torres testified that they] were Municipal Councilors when Municipal Ordinances Nos. [14-2008, 15-2008, 56-2008, and 20-2008] were passed. They voted in favor of the said Ordinances, believing that it was for the best interest of the public. Nobody solicited their vote or asked that they endorse said legislative acts. They admit having ratified the MOA entered into by [Estregan] and FRCV after having studied the matter and soliciting opinions from various lawyers. They also discussed whether the Bids and Awards Committee (BAC) should be involved. However, when the issue was referred to the BAC, it refused to act on it since there was no approved budget for the contract, and that the procedures under the procurement law could not be applied.
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> . . . .
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> Accused Estregan, Rabago, Dimaranan, and Sacluti cumulatively presented four witnesses, namely: (i) [Dimaranan]; (ii) Ronie S. Leron, President of UBAP from 11 April 2011 to 31 March 2017; (iii) Minerva L. Boongaling, Municipal Treasurer; and (iv) [Estregan]. In addition to their admissions pertaining to the execution of the MOA with FRCV and the passage of the subject ordinances and resolution, their testimonies may be summarized as follows:
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> The Municipal Government of Pagsanjan saw the need for an APA program due to several accidents involving tourists and boatmen "shooting the rapids" at the Pagsanjan Gorge. In view thereof, the [SB] held public consultative meetings and/or hearings with the Department of Tourism and tour operators to discuss the possibility of increasing the boat ride service fee in order to accommodate the APA.
>
> The [SB] thereafter passed Ordinance No. 14-2008, authorizing [Estregan] to contract with a competent and qualified entity to provide such APA services. Upon such authority, [Estregan] received inquiries from insurance companies such Philamlife, Inc. (Philamlife) and Oriental Insurance (Oriental), but he determined that such companies were unable to provide all of the requirements for the service, namely: (i) accident protection for tourists and boatmen; (ii) deployment of a skilled first aid team; (iii) having a search-and-rescue team; and (iv) maintaining a monitoring team for the entire boat ride. In particular, Philamlife did not agree with the amount of PhP 43.00 for its services, while Oriental did not want to assume the risks entailed by the program.
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> On 22 September 2008, FRCV formally submitted its written proposals containing the services it was willing and competent to provide. [Estregan] found FRCV's proposal to be satisfactory and he was also convinced of its capability to perform the required services. Nonetheless, he insisted that the latter make a presentation before the [SB] so that it can be the judge of the said company's viability. Hence, a certain Mr. Salvador from FRCV conducted a second product presentation before the [SB].
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> On 13 October 2008, a public consultation was held at the Municipal Building, which was attended by members of the [SB], the UBAP, a representative from Cavinti, and representatives from resorts and hotels to discuss the increase in boatmen's take-home pay, apart from the provision

of the APA service.

After finding FRCV's proposal satisfactory and sufficient, [Estregan] entered into the MOA with FRCV on 23 October 2008. By motion of herein accused [SB] members, the said MOA was ratified on the same day.

The funds for the APA Program were to be sourced from the boat ride service fee and as such was deemed as a special fund... held in trust by the Municipal Government in favor of FRCV since it did not involve the disbursement of public funds from the Municipality's general fund.

Under the said MOA, the Municipality's role was limited to the collection of the APA fee through the Municipal Treasurer, who held the funds in trust. This facility was used since her office already served as the collecting agent for the Boatmen's Trust Fund Fee, which likewise formed part of the boat ride service fee.

Boat ride tickets were sold at the Municipal Treasurer's Office. Hotels and resorts providing tour packages bought the tickets in advance ...

A boat ride ticket was sold for [PHP] 160.00 which amount already covers the APA fee and other fees provided in Ordinance 14-2008, as amended by Ordinance 18-2008, as follows:

Provision	Amount
Pagsanjan Boatride Fee Share	PhP 30.00
Cavinti Boatride Fee Share	15.00
Lumban Boatride Fee Share	15.00
Provincial Government Share	6.00
Tourist & Boatman Accident Protection Assistance	48.00
Tourism Promotions	8.00
Barangay Shares	16.00
Trust Fund: Boatmen's Benefit and Welfare	20.00
UBAP Operations Fund	2.00
Total:	**160.00**

The payments collected from the boat ride tickets were deposited on the next banking day at the Land Bank branch wherein the Municipality's General Fund Account was maintained. The collector assigned to the fund submits an Abstract of Collections and Report on Collection Deposits to account for the sums thus received. The Municipal Accountant... accounts for the said funds and inputs the corresponding entries in the Municipality's books. The amounts due to FRCV as its share in the APA fees were remitted via check, accompanied by the corresponding disbursement voucher.

During the entire course of FRCV's contract with the Municipality of Pagsanjan, it was able to provide coverage for accident protection assistance to tourists and boatmen who suffered injury or death in relation to the use and maintenance of tourist services at the Pagsanjan Gorge.

Finally, accused point out that the current Board of Directors of the UBAP executed Resolution No. 19-2013 to signify its intent to desist from the affidavit-complaint dated 6 August 2009 filed by its former Board of

> Directors against herein accused. The affidavit-complaint was filed because the previous Board was not in favor of the APA program... whereas the new Board... decided to desist because of their belief that there was a mere misunderstanding and misapprehension of facts on the part of the previous [Board], and have now realized the need for the said services.[11]

In its assailed Decision, the SBN acquitted Vilar for failure of the prosecution to prove his guilt beyond reasonable doubt, but found Estregan, Torres, Talabong, Rabago, Sacluti, Dimaranan, and Bruel guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019. It found that the accused public officials entered a contract for casualty insurance with FRCV despite the latter not being legally capacitated to engage in the business of insurance as it did not possess a Certificate of Authority from the Insurance Commission. According to the SBN, Estregan's acts were attended by evident bad faith when he used his office to obligate the Municipality to enter a contract with FRCV without the requisite determination by a BAC of its qualification, ability, and capacity, in violation of Republic Act No. 9184 and the Local Government Code. He also exhibited manifest partiality in favor of FRCV by declaring its capacity, which is equivalent to pre-qualification, to render services.

As for the acts of accused SB members, their own admissions betray the unlawfulness of their actions, and their complicity in the intent to award the contract to FRCV. They ratified the MOA on the same day that it was entered, with full knowledge that the contract was not vetted through public bidding. The SBN disregarded their defense of good faith and belief that no bidding was required since the legal opinions on said matter were sought only after the MOA had already been signed by Estregan and ratified by the SB. The haste by which they ratified the MOA admits of their predilection to favor Bruel's offer and serves as evidence of their concurrence and unity in purpose with Estregan. The decretal portion of the SBN's assailed Decision reads:

> **WHEREFORE**, in view of the foregoing, judgment is rendered as follows:
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> Accused **JEORGE EJERCITO ESTREGAN, ARLYN LAZARO TORRES, TERRYL GAMIT-TALABONG, KALAHI U. RABAGO, ERWIN P. SACLUTI, GENER C. DIMARANAN,** and **MARILYN M. BRUEL** are hereby found **GUILTY** beyond reasonable doubt of Violation of Sec. 3(e) of [Republic Act] No. 3019, as amended, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment of [six] years and [one] month as minimum to [eight] years as maximum, with perpetual disqualification from holding public office.
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> Accused **CRISOSTOMO B. VILAR** is hereby **ACQUITTED** of the charge of Violation of Sec. 3(e) of [Republic Act] No. 3019, for failure of the prosecution to prove his guilt beyond reasonable doubt...

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[11] *Id.* at 6–9.

SO ORDERED.[12] (Emphasis in the original)

The SBN denied accused-appellants' respective motions for reconsideration in its assailed Resolution.[13]

Aggrieved, all accused-appellants appealed before this Court and filed their briefs except for Estregan who sought additional time to file the same.

In their Memorandum Brief,[14] Torres and Talabong claimed that: (1) they acted in good faith and were merely performing their official function as SB members when they signed Resolution No. 056-2008; (2) they had no knowledge that the source of the fund for the project of providing APA services was public in nature; (3) there could be no conspiracy in this case, especially since Talabong was in the opposition during Estregan's administration; and (4) the MOA was not an insurance contract but one for special services.

On the other hand Rabago, Sacluti, and Dimaranan contended in their Memorandum Brief[15] that no irregularity attended the passage of Municipal Resolution No. 056-2008, and that Estregan transacted, negotiated, and contracted APA services with FRCV alone and never listened to anybody as he did what he wanted. They further claimed that there was no conspiracy but only pressure at the time to get the sympathy of the boatmen considering the amount of votes they can provide during the election.

Bruel argued in her Brief[16] that: (1) not all the elements of violation of Section 3(e) of Republic Act No. 3019 were present; (2) the subject municipal ordinances and resolution were not revenue raising measures but were issued in view of the municipality's governmental functions; (3) the MOA did not pertain to a casualty insurance contract but was for special services and thus did not require public bidding; and (4) there was no evidence of conspiracy.

The OSP, in their first Brief[17] dated June 18, 2020, retorted that: (1) accused-appellants availed of the wrong mode of appeal; thus, their conviction has already attained finality and is immutable; (2) the SBN correctly found them guilty beyond reasonable doubt of the charge; and (3) conspiracy attended the commission of the offense.

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12 *Id.*

13 *Rollo*, pp. 222–239. The July 5, 2019 Resolution in SB-16-CRM-0124 was penned by Associate Justice Bayani H. Jacinto and concurred in by Chairperson Associate Justice Alex L. Quiroz and Associate Justice Reynaldo P. Cruz of the Fourth Division, Sandiganbayan, Quezon City.

14 *Id.* at 118–142.

15 *Id.* at 241–249.

16 *Id.* at 144–179.

17 *Id.* at 259–298.

Estregan, on the other hand, requested additional time to file his Brief due to change of counsel,[18] which the Court granted in its March 2, 2020 Resolution.[19] However, since Estregan's new counsel, Atty. Bernas, failed to file the Brief within the extended period, the Court required him to show cause why he should not be disciplinarily dealt with or held in contempt, and reiterated its September 25, 2019 Resolution requiring him to file the Brief.[20] On June 25, 2021, Atty. Bernas filed an unsigned Motion for Extension to Comply with the Show Cause Order,[21] pointing to the pandemic and resignation of his associate as reasons for failing to comply, which the Court denied in its September 29, 2021 Resolution for being unsigned.[22] However, this Resolution was not sent to Atty. Bernas's office address in Makati City, but was mistakenly sent to the office address of Estregan's former counsel in Biñan, Laguna, and was, thus, returned to sender.[23] On September 15, 2023, Atty. Bernas filed a Compliance with Motion to Admit (Attached Appellant's Brief),[24] praying for leniency and apologizing for his delay in complying with the Court's orders due to incomplete file turnover, lack of access to relevant parties, and the successive resignations of his associates during the pandemic.

Atty. Bernas's excuses fail to persuade. Rule 7, Section 3 of the 2019 Amended Rules of Court commands that written submissions be signed by the party or counsel representing him or her, and that a violation of this Rule may warrant sanction. The fact that he filed Estregan's Brief more than three years after the Court granted his request for additional time in its March 2, 2020 Resolution betrays his negligence, if not abandonment, of the appeal. Finally, the same still utterly fails on the merits as will be later discussed.

Estregan's Brief[25] argues that the SBN erred in convicting him despite the prosecution's failure to prove criminal intent, the existence of evident bad faith, manifest partiality, or inexcusable negligence, and the existence of undue injury or unwarranted benefits given to any party. Further, he contends that the SBN disregarded the presumption of regularity in the performance of official duties. He insists that the boat ride fee did not form part of the municipality's public funds; that public bidding was not required for the APA program; and that the MOA was not an insurance contract.

The OSP, in its second Brief dated December 7, 2023,[26] moved for the denial of Estregan's appeal on the ground that the non-filing of his Brief within the period prayed for constitutes abandonment of appeal. Even granting it was timely filed, it should still be denied as the SBN correctly convicted

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18 *Id.* at 112.
19 *Id.* at 257.
20 *Id.* at 309.
21 *Id.* at 311.
22 *Id.* at 318.
23 *Id.* at 319.
24 *Id.* at 335.
25 *Id.* at 341–403.
26 *Id.* at 414–439.

him. In his Reply Brief,[27] Estregan retorts that: (1) the power to dismiss an appeal is discretionary; (2) there are compelling reasons to allow his Brief; (3) the evidence of the prosecution is grossly insufficient to prove his guilt beyond reasonable doubt; (4) the assailed Decision merely relied on the perceived weaknesses and the alleged inability of accused-appellants to prove or corroborate certain aspects of their defense; and (5) no evidence of fraudulent or corrupt motive was presented during trial, as there was no such motive.

II

Contrary to the OSP's procedural argument, since the appeal to this Court was from a criminal case decided by the SBN in the exercise of its original jurisdiction, accused-appellants correctly filed a notice of appeal pursuant to the 2018 Revised Internal Rules of the Sandiganbayan[28] which prevails over the procedure in Presidential Decree No. 1606.[29]

Proceeding now to the merits, We first address whether the MOA was indeed a contract of insurance, and if so, whether public bidding was necessary for its procurement.

As correctly observed by the SBN, citing the letter-opinion of the Insurance Commissioner, the MOA is a contract of insurance. A contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage, or liability arising from an unknown or contingent event.[30] The provisions of the MOA unmistakably show an agreement whereby FRCV undertakes to indemnify tourists and/or boatmen for accidental death or dismemberment, and the Municipality for actual expenses that it pays for the treatment and/or confinement of tourists and/or boatmen who suffer accidental injury, but not to exceed the amounts stated in the tables of coverage.

Seeking refuge in Our ruling in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[31] Bruel posits that if the assumption of risk and indemnification of loss are merely incidental to a business and service is the principal purpose, then it is not in the business of insurance. However, as previously discussed, the indemnification of loss is the principal object of the MOA. As testified by Estregan, he thought it was about time to have a

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27 *Id.* at 454–483.

28 2018 Revised Internal Rules of the Sandiganbayan, Rule IX, sec. 1(a) states: Section 1. *Methods of Review.* –

(a) In General. – The appeal to the Supreme Court in criminal cases decided by the Sandiganbayan in the exercise of its original jurisdiction shall be by **notice of appeal** filed with the Sandiganbayan and by service a copy thereof upon the adverse party.

. . . . (Emphasis supplied)

29 *People v. Talaue*, 893 Phil. 554, 562 (2021) [Per C.J. Peralta, First Division].

30 Presidential Decree No. 612, sec. 2(1).

31 616 Phil. 387, 412 (2009) [Per J. Corona, Special First Division].

specific program for tourists and boatmen since, on many occasions, freak accidents occurred and he had to personally shoulder the funeral services and repatriation of those who died.[32] If We were to believe his claim that he asked for and received offers from Philamlife and Oriental Insurance, which happen to be insurance companies, this would bolster the fact that indemnification was the principal object of the MOA while tourist protection through skills training and assistance for the boatmen was merely incidental. Moreover, in *Philippine Health Care Providers, Inc.*, We cited American jurisprudence distinguishing medical service corporations from health and accident insurers in that the former undertake to provide prepaid medical services through participating physicians, thus relieving subscribers of any further financial burden, while the latter only undertake to indemnify an insured for medical expenses up to, but not beyond, the schedule of rates contained in the policy.[33]

In the present case, FRCV is certainly an accident insurer, albeit operating without authority from the Insurance Commission, since as previously mentioned, it undertook in the MOA to indemnify tourists and/or boatmen for accidental death or dismemberment, and the Municipality for actual expenses that it pays for the treatment and/or confinement of tourists and/or boatmen who suffer accidental injury, but not to exceed the amounts stated in the tables of coverage.

Bruel contends that there is nothing in the MOA obliging the Municipality to pay an insurance premium which is an indispensable element of insurance agreements. However, the fact that no profit is derived from the making of insurance contracts, agreements, or transactions or that no separate or direct consideration is received therefore is not conclusive to show that the making thereof does not constitute the doing or transacting of an insurance business.[34] At any rate, contrary to her claim, We agree with the Insurance Commissioner that the consideration or premium under the MOA is termed as "coverage outlay" in the amount of PHP 48.00 per tourist.

In insisting that FRCV is not in the insurance business despite the MOA, on its face, showing the contrary, it appears that FRCV is doing or proposing to do business in substance equivalent to making, as insurer, an insurance contract in a manner designed to evade the provisions of Presidential Decree No. 612 or the old Insurance Code. Nonetheless, the Code itself states that the term "doing an insurance business" within the meaning of said Code shall include "doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code."[35] Bruel, of all people, should know this considering that she was an insurance agent for Malayan Insurance Company before she formed FRCV.

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32 TSN, Jorge Ejercito Estregan, August 1, 2018, pp. 59–60.

33 *Id., citing Somerset Orthopedic Associates, P.A. v. Horizon Blue Cross and Blue Shield of New Jersey*, 345 N.J. Super. 410, 785 A.2d 457 (2001).

34 Presidential Decree No. 612, sec. 2(2), last paragraph.

35 Presidential Decree No. 612, sec. 2(2)(d).

As an insurance contract, it falls within the definition of goods[36] under Republic Act No. 9184. As the SBN correctly observed, even assuming arguendo that FRCV's services were primarily for providing training to boatmen, such services would fall within the ambit of consulting services which are still within the purview of Republic Act No. 9184.

Under Rule IV, Section 10 of the Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184, all procurement shall be done through competitive bidding, except as provided in Rule XVI on alternative methods of procurement. Competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition, and to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts. Alternative methods of procurement which dispense with the requirement of open, public, and competitive bidding may be allowed but only in highly exceptional cases.[37]

In this case, however, instead of going through the default mode of procurement, the SB passed Municipal Ordinance No. 15-2008 authorizing Estregan to transact, negotiate, and enter a contract between the Municipality and any competent and qualified entity which can provide APA services to tourists and boatmen. In other words, the accused public officials immediately authorized resort to the alternative method of procurement known as negotiated procurement whereby the procuring entity directly negotiates a contract with a technically, legally, and financially capable supplier, contractor, or consultant.[38] However, under the IRR of Republic Act No. 9184, such may only be resorted to in particular cases such as when there are two failed biddings, emergency cases, etc.[39] None of the said cases are availing here. There is thus no doubt that the accused violated procurement law, rules and regulations. While Estregan attempts to justify the lack of public bidding by alleging that both the BAC and the Government Procurement Policy Board (GPPB) confirmed that the same was not required, there is no proof on record that the BAC or the GPPB opined so other than his bare allegation.

In criminal cases for violation of Section 3(e) of Republic Act No. 3019 in relation to procurement irregularities, however, violations of procurement laws, rules, and regulations do not *per se* lead to the conviction of the public officer under said special penal law. It must be established beyond reasonable

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36 Republic Act No. 9184, sec. 5(h) states: (h) Goods – refer to all items, supplies, materials and general support services, except consulting services and infrastructure projects, which may be needed in the transaction of public businesses or in the pursuit of any government undertaking, project or activity, whether in the nature of equipment, furniture, stationery, materials for construction, or personal property of any kind, including non-personal or contractual services…

37 *De Guzman v. Office of the Ombudsman*, 821 Phil. 681, 691 (2017) [Per J. Velasco, Jr., Third Division].

38 Republic Act No. 9184, sec. 48(e).

39 IRR of Republic Act No. 9184, sec. 53.

doubt that the essential elements of a Section 3(e) violation are present.[40]

Section 3(e) of Republic Act No. 3019 provides:

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

To be found guilty of a Section 3(e) violation, the prosecution must prove that: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) accused caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his or her functions.[41]

The presence of the first element being undisputed, only the presence of the second and third elements shall be jointly discussed.

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." Section 3(e) of Republic Act No. 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.[42]

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40 *Martel v. People of the Philippines*, 895 Phil. 270–271 (2021) [Per J. Caguioa, *En Banc*].

41 *Rivera v. People*, 865 Phil. 1003, 1012 (2019) [Per C.J. Bersamin, First Division].

42 *Uriarte v. People*, 540 PPhil. 477, 494–495 (2006) [Per J. Callejo, Sr., First Division].

Under the third element, the act or omission must have caused undue injury to any party, including the Government, and/or must have given any private party unwarranted benefit, advantage, or preference. Undue injury has been consistently interpreted as actual damage, akin to that in civil law. Under the second mode, which is by giving any private party unwarranted benefits, advantage, or preference, "unwarranted" means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. "Advantage" means a more favorable or improved position or condition; benefit or gain of any kind. "Preference" signifies priority, higher evaluation, or desirability; choice or estimation above another.[43]

In this case, Estregan's manifest partiality and evident bad faith was indubitably shown when he entered a MOA with FRCV despite glaringly questionable circumstances such as FRCV being registered with the Department of Trade and Industry (DTI) only on March 19, 2008 and with the Bureau of Internal Revenue (BIR) only on September 17, 2008—just five days prior to its letter-offer—and its lack of a Certificate of Authority from the Insurance Commission. Thus, Estregan's claim that FRCV was the only qualified company to render the service required by the Municipality deserves scant consideration. The supposed public consultative meetings conducted by the accused public officials with community stakeholders do not negate Estregan's manifest partiality as said meetings only pertained to the proposed increase in the boat ride service fee and had nothing to do with determining the qualifications of FRCV, as this was supposed to be the job of the BAC which Estregan arrogated upon himself. That he even made FRCV present before the SB despite the absence of public bidding and despite irregularities surrounding it further betray his manifest partiality and evident bad faith.

As regards the third element, While there is indeed is no estimable proof of damage to any party in this case, said element is satisfied as to the second mode. By purposely sparing FRCV from the rigors of the processes under the procurement law and consciously turning a blind eye to irregularities, Estregan gave it unwarranted benefit, advantage, or preference. As earlier discussed, it was utterly unwarranted for FRCV to receive benefit, advantage, or preference because it did not have legal authority to engage in the insurance business in the first place, and did not undergo the proper procurement process.

With regard to Bruel, We once again agree with the SBN's findings that she fraudulently claimed that FRCV was fully capacitated to engage in the services enumerated in the MOA when, in truth and in fact, FRCV did not possess a Certificate of Authority from the Insurance Commission to engage in the business of insurance. The fact that she did not represent FRCV to be an insurance company is of no moment since a plain reading of the MOA itself

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43 *Renales v. People*, 904 Phil. 456, 470 (2021) [Per J. Carandang, First Division].

would show that FRCV is doing or transacting an insurance business. Her claim that FRCV is engaged in the specialized field of APA is also belied by its track record. As observed by the SBN, by Bruel's own evidence, FRCV was only registered with the DTI on March 19, 2008 and with the BIR on September 17, 2008, or five days prior to its letter-offer to Estregan, thus, showing that FRCV was merely created for the purpose of rendering the "specialized services" for the Municipality sans prior experience. In fact, FRCV's Certificate of Registration with the BIR indicates that its line of business or industry is "Other Computer Related Activities" which has nothing to do with APA services. Hence, she cannot claim good faith and escape liability for her actions. Even assuming that FRCV was able to comply with its duties under the MOA, the same will not serve to negate the fraud that Bruel had perpetrated.[44] Plainly, she conspired with Estregan for her company to be given preferential treatment and unwarranted benefit.

Insofar as accused SB members Torres, Talabong, Rabago, Sacluti, and Dimaranan are concerned, however, We find that the prosecution failed to prove beyond reasonable doubt their guilt for violation of Section 3(e) of Republic Act No. 3019. To recall, they passed Municipal Ordinance No. 15-2008 authorizing Estregan to transact, negotiate, and enter a contract between the Municipality and any competent and qualified entity which can provide APA services. Even assuming that the ordinance violated procurement law because it immediately authorized resort to negotiated procurement, the SB members did not thereby show manifest partiality and give unwarranted benefit to any particular entity because the ordinance itself states "any competent and qualified entity" and such entity was yet to be determined. It did not even prevent Estregan from resorting to public bidding as it merely authorized negotiated procurement, albeit erroneously. Neither did their eventual ratification of the MOA through Municipal Resolution No. 056-2008 make them liable because the validity of the MOA did not depend on the issuance of said resolution. No rights can be conferred by and be inferred from a resolution, which is but an embodiment of what the lawmaking body has to say in light of attendant circumstances.[45] As such, their acquittal is warranted.

ACCORDINGLY, the appeal is **PARTLY GRANTED.** The April 5, 2019 Decision and July 5, 2019 Resolution of the Sandiganbayan in SB-16-CRM-0124 are **AFFIRMED** insofar as accused-appellants Jeorge Ejercito Estregan and Marilyn M. Bruel were found **GUILTY** beyond reasonable doubt of violation of Section 3(e), Republic Act No. 3019 and were sentenced to suffer the indeterminate penalty of imprisonment of six years and one month as minimum to eight years as maximum with perpetual disqualification from holding public office. However, the same Decision and Resolution are **MODIFIED** in that accused-appellants Arlyn Lazaro-Torres, Terryl Gamit-Talabong, Kalahi U. Rabago, Erwin P. Sacluti, and Gener C. Dimaranan are

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44 *Republic v. Mega Pacific eSolutions, Inc.*, 788 Phil. 160 (2016) [Per C.J. Sereno, First Division].
45 *Spouses Yusay v. Court of Appeals*, 662 Phil. 634, 645 (2011) [Per J. Bersamin, Third Division].

ACQUITTED of the same crime on the ground of reasonable doubt.

Let entry of judgment be issued as to said acquitted accused-appellants.

SO ORDERED.

RICARDO R. ROSARIO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

RAMON PAUL L. HERNANDO
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice