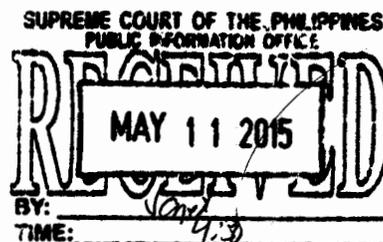




Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 23, 2015** which reads as follows:*

**“G.R. No. 193735 (Bernardino F. Alcaria, Jr. v. People of the Philippines).—** We resolve the Petition, filed by petitioner Bernardino F. Alcaria, Jr. assailing the Decision<sup>1</sup> dated 15 April 2010 and Resolution<sup>2</sup> dated 6 September 2010 issued by the Sandiganbayan Special First Division in Criminal Case No. 25795.

**THE FACTS**

Petitioner Bernardino F. Alcaria Jr. was charged with violation of Section 3(e) of Republic Act No. 3019. The Prosecutor of the Office of the Ombudsman for Mindanao charged him in an Information which reads:

That sometime between 1989 to 1998, in Cagdiano, Surigao del Norte, and within the jurisdiction of this Honorable Court, accused Bernardino Alcaria, Jr., a high ranking public official being the Municipal Mayor of Cagdiano, Surigao del Norte, while in the performance of his duties, committing the offense in relation to his office and taking advantage of his position did then and there, willfully, unlawfully and feloniously, fail to liquidate and pay the various cash advances and overpayments he drew from the Municipality in the total amount of ₱58,677.50 despite requests to do the same by the Commission on Audit thereby causing undue and manifest injury through evident bad faith or gross inexcusable negligence to the Municipal Government of Cagdiano, Surigao del Norte.

over - twelve (12 ) pages.....

<sup>1</sup>Rollo, pp. 31-50; Penned by Associate Justice Alexander G. Gesmundo and concurred in by Associate Justices Efren N. de la Cruz and Rodolfo A. Ponferrada.

<sup>2</sup>Id. at 51-55.

CONTRARY TO LAW.<sup>3</sup>

When arraigned on 8 November 2000, petitioner pleaded not guilty.<sup>4</sup>

**VERSION OF THE PROSECUTION**

The prosecution's lone witness was Commission on Audit (COA) State Auditor Ceferina P. Dolores. She conducted an audit of cash accounts of the Municipality of Cagdianao, Surigao del Norte, covering the period 1988-1996.<sup>5</sup> During her testimony, several documents were presented and subsequently offered in evidence by the prosecution, to wit:

Exhibit	Description
"A" also "1"	COA report dated 26 February 1999 in response to complaint filed by Rogelio P. Fideles, former Sangguniang Bayan (SB) member of Cagdianao, Surigao del Norte.
"A-1" also "2"	Notice of Disallowance No. 97-007-101 (94) dated 31 March 1997 in the amount of P725.00 addressed to Mayor Bernardino F. Alcaria, Jr. and OIC Assistant Municipal Treasurer/OIC Nere F. Longos/Eriberto C. Cabanan, Jr., Attention: Leonides B. Laluna Chief Accountant, received by the Municipal Accountant.
"A-1-A" also "3-A"	Certificate of Settlement and Balance CSB No. 97-003-101 (94) dated 31 March 1997 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer Nere F. Longos/Eriberto C. Cabanan, Jr., Attention: Leonides B. Laluna Chief Accountant, received by the Municipal Accountant.
"A-2" also "4"	Notice of Disallowance No. 97-014-101 (95) dated 22 April 1997 in the amount of P910.00 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal/OIC Treasurer Nere F. Longos Attention: Leonides B. Laluna Chief Accountant.
"A-2-A" also "4-A"	Certificate of Settlement and Balance CSB No. 97-005-101 (95) dated 16 June 1997 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer Nere F. Longos Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant.
"A-3" also "5"	Notice of Disallowance No. 97-020-101 (95) dated 26 November 1997 in the amount of P800.00 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer/OIC Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant
"A-3-A" also "5-A"	Certificate of Settlement and Balance CSB No. 97-007-101 (95) dated 27 November 1997 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer/Municipal Treasurer-Nere F. Longos/Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant.
"A-4" also "6"	Notice of Disallowances No. 97-021-101 (95) dated 25 November 1997 in

- over -

95

<sup>3</sup>Id. at 56.

<sup>4</sup>Records, pp. 142-143.

<sup>5</sup>TSN, 8 June 2001, pp. 3-5.

	the amount of ₱1,000.00 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer/OIC Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant Note: The Certificate of Settlement and Balances is the same as the CSB of A-3-A, CSB No. 97-007-101 (95) dated 27 November 1997.
"A-5" also "7"	Notice of Disallowances No. 97-023-101 (97) dated 22 December 1997 in the amount of ₱1,200.00 addressed to Mayor Bernardino F. Alcaria, Jr. and Municipal Treasurer Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant
"A-5-A" also "7-A"	Certificate of Settlement and Balance CSB No. 97-008-101 (97) dated 22 December 1997 addressed to Mayor Bernardino F. Alcaria, Jr. and Municipal Treasurer Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant.
"A-6" also "8"	Notice of Suspension No. 97-010-101 (94) dated 31 March 1997 in the amount of ₱15,000.00 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Treasurer/OIC Nere F. Longos Attention: Leonides B. Laluna Chief Accountant.
"A-6-A" also "8-A"	Certificate of Settlement and Balance CSB No. 98-009-101 (97) dated 3 June 1998 addressed to Mayor Bernardino F. Alcaria, Jr. and Municipal Treasurer Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant.
"A-7" also "9"	Note: The same as A-6 also 8 Notice of Suspension No. 97-010-101 (94) dated 31 March 1997.
"A-7-A" also "9-A"	Note: The same as A-6-A also 8-A Certificate of Settlement and Balances CSB No. 98-009-101 (97) dated 3 June 1998
"A-8" also "10"	Notice of Suspension No. 97-011-101 (97) dated 31 March 1997 in the amount of ₱1,421.00 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer/OIC Nere F. Longos Attention: Leonides B. Laluna Chief Accountant
"A-8-A" also "10-A"	Certificate of Settlement and Balance CSB No. 94-003-101 (94) dated 31 March 1998 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer/OIC Nere F. Longos/Eriberto C. Cabanan, Jr. Attention: Leonides B. Laluna Chief Accountant received by the Municipal Accountant.
"A-9" also "11"	Notice of Suspension No. 97-011-101 (94) dated 31 March 1997 in the amount of P427.50 addressed to Mayor Bernardino F. Alcaria, Jr. and Assistant Municipal Treasurer/OIC Nere F. Longos Attention: Leonides B. Laluna Chief Accountant
"A-9-A" also "11-A"	Note: The same as A-8-A also 10-A Certificate of Settlement and Balance CSB No. 94-003-101 (94) dated 31 March 1998
"A-10" also "12"	Disbursement Voucher No. 101-97-05-013 (undated) in the amount of ₱1,056.00 with the following supporting documents:
"A-10-A" also "12-A"	Paper Duplicate of Check dated 02 May 97 in the amount of ₱1,056.00 signed by Nicanor D. Ape MT-ICO and Bernardino F. Alcaria, Jr., Mun. Mayor
"A-10-B" also "12-B"	Request for Obligation of Allotment Payee Bernardino F. Alcaria, Jr. Amount ₱1,056.00 or signed by Bernardino F. Alcaria, Jr. and Leonides B. Laluna
"A-10-C" also "12-C"	F. Alcaria, Jr. and Leonides B. Laluna Invoice No. 7357 dated 7 March 1997 of ROSALYD FOODHAUS & CATERING SERVICES
"A-10-D" also "12-D"	Attendance Sheet dated 7 March 1997

- over -

“A-11” also “13”	Notice of Disallowance No. 98-009-101 (8) dated 20 June 1998 in the amount of ₱600.00 addressed to Mayor Adolfo E. Longos and Municipal Treasurer Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant
“A-11-A” also “13-A”	Certificate of Settlement and Balance CSB No. 99-012-101 (98) dated 22 June 1999 addressed to Mayor Adolfo Longos and Municipal Treasurer Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant received by the Municipal Treasurer.
“A-12” also “14”	Notice of Disallowance No. 99-010-101 (98) dated 22 June 1999 in the amount of ₱1,601.00 addressed to Mayor Adolfo Longos and Municipal Treasurer Nicanor D. Ape Attention: Leonides B. Laluna Chief Accountant
“A-12-A”	Note: The same as A-11-A Certificate of Settlement and Balance CSB No. 99-012-101 (98) dated 22 June 1999
“B”	Commission on Audit follow-up report dated 16 March 1999 in response to the complaint filed by ROGELIO P. FIDELES, former SB member of Cagdianao, Surigao del Norte
“C”	Statement of Unsettled Disallowances as of 30 June 1995 of the Municipality of the Cagdianao, Surigao del Norte stating the Nos. of the ND/NC/CSB issued, the Amount, the Nature of the Disallowance, and the Major Causes of Non-Settlement prepared by Ceferina P. Dolores State Auditor II, COA and Noted by Gloria C. Rocha State Auditor IV Provincial Auditor Surigao del Norte consisting of six (6) pages
“D”	Memorandum To: All Personnel of the Office of the Provincial Auditor, Commission on Audit, Province of Surigao del Norte, Surigao City dated 22 February 1995 signed by Gloria C. Rocha, Provincial Auditor consisting of three (3) pages.
“E”	Letter to the Hon. Bernardino F. Alcaria, Jr., Municipal Mayor, Cagdianao, Surigao del Norte dated 14 January 1998, copy furnished the Municipal Treasurer containing the observation (Findings) suggested course of Action of the Audit Team which conducted the 1996 Annual Audit of the Municipality of Cagdianao, Surigao del Norte and which observation/findings/Suggested Course of Action are contained in its (Audit Team) 1996 Annual Audit Report (of the Municipality of Cagdianao, Surigao del Norte) consisting of two (2) pages signed by Dina T. Novalero, State Auditor V, Provincial Auditor, Province of Surigao del Norte and which letter also contained the Comment/Action taken by the Agency, that is, the Municipality of Cagdianao, Surigao del Norte. <sup>6</sup>

The defense admitted the authenticity of Exhibits “A”, and its sub-markings “A-1” to “A-12” and “B” and “D.” The testimony of Dolores was thus limited to Exhibit “C,” which she stated was a summary of the prior years’ Certificate of Settlement and Balances (CSB), whose subject matters were various claims for travel allowances, snacks and meals, cash advances and other transactions. On cross-examination, Dolores stated that Exhibits

- over -

<sup>6</sup>Rollo, pp. 58-65.

“A-1” to “A-12” were acknowledged by the municipal treasurer or municipal accountant, while Exhibit “C” was forwarded to the regional office of the COA and not to the accused.<sup>7</sup> When asked whether petitioner had been notified of the need to settle the items in the CSB, Dolores answered that she presumed thus, as these were received by either the municipal treasurer or municipal accountant who was tasked with reporting to the mayor.<sup>8</sup> She testified that a notice or a CSB would be accompanied by a demand to settle or clarify the accounts.<sup>9</sup> When asked if petitioner responded to the CSB, she answered in the affirmative, adding that COA issued Exhibit “E” or the Audit Observation Memorandum<sup>10</sup> addressed to the municipal mayor and dated 14 January 1998.<sup>11</sup>

#### VERSION OF THE DEFENSE

Three witnesses testified for the defense: (1) Samuel F. Alcaria, petitioner’s brother and private secretary from 1994 to 1998; (2) Rogelio L. Ontua, confidential aide assigned to the mayor from January 1997 to June 1998; and (3) petitioner Bernardino F. Alcaria, Jr.

Samuel Alcaria testified that he was the only person authorized by the mayor to receive all letters addressed to the latter coming from the different offices and to record them in a logbook. Alcaria claimed that he did not receive any of the two reports.<sup>12</sup>

Rogelio Ontua testified that he did not receive the report and its submarkings.<sup>13</sup> On cross, however, he admitted that it was his first time to work as a receiving clerk, and that he had no previous training as such.

Petitioner testified that he received a demand, which he clarified later on to be a Notice of Disallowance and then as a Notice of Suspension by the COA.<sup>14</sup> It was a demand to return the amount of ₱58,000-plus only in July 1998 or only after the end of his term on 30 June 1998.<sup>15</sup> He also received the Complaint of Rogelio Fideles in July 1998. During his incumbency, he did not receive any CSB dated 1997 and the addressees thereof – Nere Longos/Eriberto Cabanan – were not actually the assistant

- over -

---

<sup>7</sup>Id. at 33.

<sup>8</sup>Id.

<sup>9</sup>Id.

<sup>10</sup>Title III, Section 11.6.1 of COA’s Manual on Certificate of Settlement and Balances, states that the “Audit Observation Memorandum” form “shall be issued to the agency head and/or other officials concerned relative to the findings/observations/other deficiencies noted in the audit of accounts/transactions and requiring comment/reply thereto within the period specified therein. x xx”

<sup>11</sup>Rollo, p. 33.

<sup>12</sup>TSN, 12 September 2002, pp. 10-14.

<sup>13</sup>TSN, 29 January 2004, p. 6.

<sup>14</sup>Id.

<sup>15</sup>Id.

municipal treasurer/officer-in-charge at that time; the municipal treasurer was Nicanor Ape. Longos was municipal treasurer/OIC from March to September 1994, while Cabanan took over in September 1994. Petitioner claimed that the documents were spurious as there were none like these at the time they were supposedly made and prepared in 1997.

#### THE RULING OF THE SANDIGANBAYAN

On 15 April 2010, the Sandiganbayan First Division rendered a Decision,<sup>16</sup> the dispositive portion of which reads:

**WHEREFORE**, premises considered, judgment is hereby rendered finding accused BERNARDINO F. ALCARIA, JR. **GUILTY** beyond reasonable doubt of violation of Section 3 (e) of Republic Act No. 3019 and he is hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month to ten (10) years and six (6) months; to further suffer perpetual special disqualification; and to pay the Municipality of Cagadianao, Surigao del Norte the amount of Twenty-Six Thousand, Nine Hundred and Thirteen Pesos (₱26,913.00) as actual damages.

#### SO ORDERED.

Ruling that there was no dispute as to petitioner's status as a municipal mayor, the Sandiganbayan focused its discussion on the following issues: (1) whether he incurred various cash advances and overpayments in the total amount of ₱58,677.50; (2) whether he failed to liquidate and pay these items; (3) whether COA made requests for liquidation and payment by the accused; and (4) whether he acted in evident bad faith or gross inexcusable negligence.<sup>17</sup>

The Sandiganbayan ruled: (1) the amount, consisting of excessive claims for meal allowances and *per diems* as well as unliquidated cash advances, as indicated in the demand and/or notice, clearly remained outstanding and unsettled; (2) petitioner was effectively notified via Exhibit "E," which inquired about his degree of compliance and/or reasons or justifications for noncompliance with the audit recommendations of the 1996 Annual Audit Report; and (3) his acts amounted to gross, inexcusable negligence.

The Sandiganbayan had to limit the liability of the accused to that amount, since Exhibit "E" only referred to disallowances in 1996, while Exhibit "A" pertained to Certificate of Settlement and Balance (CSBs) in 1997 and 1998. The Sandiganbayan found that as far as the disallowances

- over -

<sup>16</sup>Rollo, pp. 31-50.

<sup>17</sup>Id. at 37.

in 1997 and 1998 were concerned, the prosecution failed to prove that petitioner knew of the disallowances when he was still mayor. The Sandiganbayan ruled that “any knowledge of the disallowances acquired after petitioner had already ceased to be mayor is already outside the scope of the indictment.”

Petitioner filed his Motion for Reconsideration. This undated motion was denied for lack of merit in a Resolution<sup>18</sup> dated 6 September 2010, which he received on 21 September 2010.

Petitioner then filed a Motion for Extension of Time<sup>19</sup> on 5 October 2010 asking for a 30-day period, or until 5 November, to file his Petition for Review. His motion was granted by this Court in a Resolution<sup>20</sup> dated 17 November 2010. Accordingly, he posted his Petition for Review<sup>21</sup> on 5 November 2010.

In a Resolution<sup>22</sup> dated 10 January 2011, the Court required the Office of the Special Prosecutor to comment thereon within 10 days from notice. The Office of the Special Prosecutor (OSP) asked for an extension of 30 days from receipt of the Resolution.<sup>23</sup> The Court granted this request in a Resolution<sup>24</sup> dated 4 April 2011. The Office of the Special Prosecutor filed a second motion for extension<sup>25</sup> which the Court granted in a Resolution<sup>26</sup> dated 3 August 2011.

The OSP filed its Comment<sup>27</sup> on 9 May 2011 stating that the Sandiganbayan did not err in convicting petitioner of the crime of violation of Section 3(e) of R.A. 3019.<sup>28</sup> The OSP claims that “it is a flawed argument on the part of the petitioner to claim that there was no proof of any formal demand for him to liquidate or account for his advances akin to dishonor required in B.P. 22 cases.” The OSP points out that a notice of dishonor was not an essential requirement for prosecution under R.A. 3019.<sup>29</sup> It reiterated that the Sandiganbayan correctly relied on Exhibit “E,” because this document proves that petitioner had been made aware of the disallowed transactions.<sup>30</sup>

- over -

---

<sup>18</sup>Id. at 51-55.

<sup>19</sup>Id. at 3-6.

<sup>20</sup>Id. at 7.

<sup>21</sup>Id. at 8-164.

<sup>22</sup>Id. at 168.

<sup>23</sup>Id. at 169-171.

<sup>24</sup>Id. at 171.

<sup>25</sup>Id. at 172-175.

<sup>26</sup>Id. at 189.

<sup>27</sup>Id. at 176-187.

<sup>28</sup>Id. at 181.

<sup>29</sup>Id. at 183.

<sup>30</sup>Id. at 184.

Petitioner filed his Reply,<sup>31</sup> which the Court noted.

The sole issue that petitioner seeks to be resolved by this Court is whether his guilt has been proven beyond reasonable doubt. Specifically he contends that (1) the element of manifest partiality, evident bad faith or inexcusable negligence on the part of petitioner is absent; (2) the demand to liquidate was received only after his incumbency; (3) the Audit Observation Memorandum cannot be appreciated against him since it was not properly authenticated; (4) the answers to the questions propounded by the presiding justices cannot be taken against him; (5) the admissions petitioner made during pre-trial cannot be taken against him; and (6) there was fraud committed against petitioner when he was refused a chance to secure the necessary documents for his exoneration.

#### THIS COURT'S RULING

We affirm petitioner's conviction.

The factual findings of the Sandiganbayan are conclusive upon this Court, except under any of the following circumstances: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are premised on want of evidence and are contradicted by evidence on record.<sup>32</sup>

After a careful perusal of the pieces of evidence against petitioner, we find no reason to depart from the findings of the Sandiganbayan.

We find Sections 82 and 83 of Presidential Decree No. 1445<sup>33</sup> insightful in this instance and quoted them in full as follows:

*SECTION 82. Auditor's notice to accountable officer of balance shown upon settlement.* The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges, or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. A charge of suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable

- over -

<sup>31</sup>Id. at 193-205.

<sup>32</sup>*Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 719-720 (2005).

<sup>33</sup>Also known as the Government Auditing Code of the Philippines.

officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

SECTION 83. *Transcript of auditor's record as evidence of liability.* In any criminal or civil proceeding against an officer for the embezzlement or misappropriation of government funds or property, or to recover an amount due the government from an accountable officer it shall be sufficient, for the purpose of showing a balance against him, to produce the working papers of the auditor concerned. A showing in this manner of any balance against the officer shall be *prima facie* evidence of the misappropriation of the funds or property unaccounted for or of civil liability of the officer as the case may be. The existence or contents of bonds, contracts, or other papers relating to or connected with the settlement of any account may be proved by the production of certified copies thereof but the court may require the production of the original when this appears to be necessary for the attainment of justice.

The pieces of evidence for the prosecution include Exhibit "E" or the Audit Observation Memorandum<sup>34</sup> dated 14 January 1998. It inquired from petitioner about his degree of compliance and/or reasons or justifications for his noncompliance with audit recommendations of the 1996 Annual Audit Report. In the space for Comments/Actions Taken was written:

The municipal treasurer is now starting communicating (sic) the previous treasurer to turn over the certificate of settlement.

Whereas, other disallowances has (sic) been slowly settled to reflect it (sic) with the next financial reports.

The explanations were, however, found unsatisfactory. Hence, Exhibit "A" or the Audit Report dated 26 February 1999 and Exhibit "B" or the follow-up Audit Report dated 16 March 1999 were issued. Exhibit "A" contains the disallowances issued from 1 October 1994 to 31 March 1998, while Exhibit "B" contains the disallowances from April 1988 to 30 September 1994.

The non-settlement of the amounts within the period indicated by law is not disputed by petitioner.<sup>35</sup> In the case of Notices of Suspension, this period is within ninety (90) days; in the case of Notices of Disallowance, six (6) months.<sup>36</sup> He merely argues that he received the demand to settle only after his incumbency.<sup>37</sup> His argument is, however,

- over -

95

<sup>34</sup>COA Circular No. 2009-06 defines it as "a written notification to the agency head and concerned officer/s informing of deficiencies noted in the audit of accounts, operations or transactions and requiring comments thereto and/or submission of documentary and other information requirements within a reasonable period."

<sup>35</sup>*Rollo*, p. 41.

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

belied by Exhibit "E" which petitioner received on 14 January 1998. That date was clearly within the period of his incumbency.

Petitioner's argument does not hold water either in light of his admissions during trial, to wit:

Q: Was there a demand by the COA for you to return the amount, ₱58,000.00 plus?

A: As far as I know, I received only a demand when I was no longer Mayor, Your Honor.

Q: But you were requested to liquidate by the COA based on their findings?

A: Yes, Your Honor.

Q: The request was made after you were no longer Mayor?

A: Yes, Your Honor.

Q: Because you are supposed to liquidate after your term. Is it not? Is it not that you are supposed to liquidate after your term, after you have served the government?

A: Yes, Your Honor.<sup>38</sup>

COA Circular No. 97-002 mandates that all cash advances shall be fully liquidated at the end of each year.<sup>39</sup> No liquidation documents were offered to rebut the *prima facie* evidence against petitioner. Indeed, as of the date of the auditor's testimony, petitioner had not settled the CSBs.<sup>40</sup>

Section 3(e) of R.A. 3019 is clear:

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:

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.

Petitioner does not dispute the existence of the other elements of the crime. He merely disputes the finding of gross inexcusable negligence.

- over -

<sup>38</sup>TSN, 12 September 2002, pp. 28-29.

<sup>39</sup>COA Circular No. 97-002, paragraph 5. 8 (10 February 1997).

<sup>40</sup>TSN, 08 June 2001, p. 22.

Gross negligence has been defined as “negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected or the omission of that care which even inattentive and thoughtless men never fail to take on their own property.”<sup>41</sup>

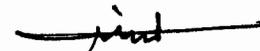
We affirm the conclusion of the Sandiganbayan that there was gross inexcusable negligence on the part of petitioner. He claims before this Court that there was fraud committed against him when he was not allowed to secure the necessary documents for his exoneration. Contrary to his claim, “[h]e was still in office when the disallowances were brought to his attention and he had all the opportunity to settle such amount, or at the very least, to question the findings of COA.”<sup>42</sup> It was thus gross inexcusable negligence on his part not to have done anything to settle the amount, given the circumstances.

We also affirm the finding that petitioner is only liable to the extent of ₱26,913.00 consisting of excessive claims for meal allowances and per diems, as well as unliquidated cash advances. Petitioner denied that he received the notices of disallowance for the years 1997 and 1998 and the prosecution also failed to prove that petitioner received them. The indictment states that the delictual or felonious act took place while he was mayor and in the performance of his duties, and that he committed the offense in relation to his office by taking advantage of his position.<sup>43</sup> Hence, any notice of disallowance when he had already ceased to be a mayor is not within the scope of the indictment.

**WHEREFORE**, premises considered, the petition is hereby **DENIED**. The assailed Decision dated 15 April 2010 and Resolution dated 6 September 2010 issued by the Sandiganbayan First Division in Criminal Case No. 25795 are hereby **AFFIRMED** *in toto*.

**SO ORDERED.**” **LEONARDO-DE CASTRO, J.** took no part; **VELASCO, JR., J.** designated additional member per raffle dated January 7, 2015.

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court, 4/8

95

<sup>41</sup>*Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655, 688-689.

<sup>42</sup>*Rollo*, p. 46.

<sup>43</sup>*Id.* at 47.

RESOLUTION

12

G.R. No. 193735  
March 23, 2015

CORONACION LACHICA &  
ASSOCIATES  
Counsel for Petitioner  
Rm. 201, Acre Bldg.  
137 Malakas St.  
Diliman 1128 Quezon City

SANDIGANBAYAN  
Centennial Building  
1126 Quezon City  
(Crim. Case No. 25795)

OFFICE OF THE SPECIAL  
PROSECUTOR  
Centennial Building  
1126 Quezon City

Public Information Office (x)  
Library Services (x)  
Supreme Court  
(For uploading pursuant to A.M.  
No. 12-7-1-SC)

Judgment Division (x)  
Supreme Court

95

SR

*rfi*