

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

FOURTH DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

SB-10-CRM-0093

For: Violation of Section 3(e)  
of R.A. No. 3019

*-versus-*

**GERRY MORALES y JOVILLA**  
Municipal Mayor,

**EMERITOS JOVILLA y MORALES**  
Municipal Accountant,

**FRANCISCO JIMENEZ, JR. y  
SERRA**  
Municipal Treasurer,

**REYMUNDO ESCAMILLAN y  
MANDAWE**  
General Service Officer,  
(all of) LGU of Baganga,  
Davao Oriental,

*Accused.*

Present:

**HERNANDEZ, J.  
QUIROZ, J., and  
MENDOZA-ARCEGA, J.\***

Promulgated on:

*November 21 2016*

*[Signature]*

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**DECISION**

**Quiroz, J.:**

Herein accused **GERRY MORALES y JOVILLA**, Municipal Mayor, **EMERITOS JOVILLA y MORALES**, Municipal Accountant, **FRANCISCO JIMENEZ, JR. y SERRA**, Municipal Treasurer, and **REYMUNDO ESCAMILLAN y MANDAWE**, General Service Officer, all from the Local

\* As per Administrative Order No. 274-2016 dated September 21, 2016.

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Government Unit (LGU) of Baganga, Davao Oriental, stand charged with the violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, in an Information which reads as follows:

That on or before 16 July 2001, or sometime prior or subsequent thereto, in the Municipality of Baganga, Davao Oriental, Philippines, and within the jurisdiction of the Honorable Court, above-named accused **Gerry Morales y Jovilla**, a high ranking public officer, being the Municipal Mayor of Baganga, in conspiracy with the following low ranking public officers, namely **Emeritos Jovilla y Morales**, Municipal Accountant, **Francisco Jimenez, Jr. y Serra**, Municipal Treasurer, and **Reymundo Escamillan y Mandawe**, General Service Officer, all while in the performance of their respective functions, with evident bad faith, did then and there willfully, unlawfully and criminally procure 110 boxes of mebendazole tablets in the total amount of P196,900.00 through an emergency purchase, which is not allowed under the prevailing circumstances, in order to avoid the conduct of public bidding which accorded partiality and resulted in unwarranted benefit or preference to E.G. Pharma Distributor represented by respondent Mayor's cousin, thereby causing undue injury to the government and to public interest in the said amount.

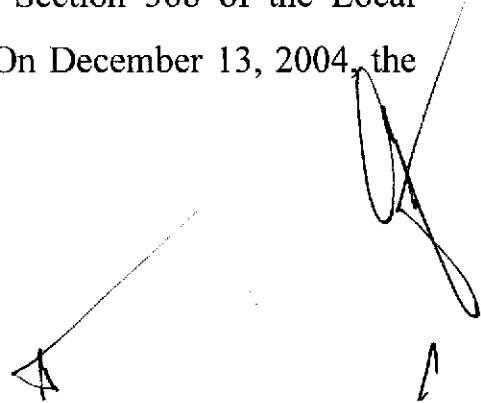
This case stemmed from an affidavit-complaint filed with the Office of the Ombudsman-Mindanao accusing Morales and Silverio Ferrando y Capalit, Municipal Health Officer, both from the LGU of Baganga, Davao Oriental, of having connived in the alleged "ghost purchase" of Mebendazole tablets amounting to an aggregate amount of ₱196,900.00.<sup>1</sup> On October 21, 2003, the Graft Investigation and Prosecution Officer of the Ombudsman-Mindanao requested the Commission on Audit (COA) to conduct the audit investigation on the transaction in question.<sup>2</sup> On February 24, 2004, the COA informed the Ombudsman-Mindanao that it could not act on the request due to lack of manpower and funds; and due to the subject matter of the case, which involved analysis of documentary evidence better performed by the Ombudsman.<sup>3</sup> Hence, on July 5, 2004, the Ombudsman-Mindanao requested that it be furnished with the original or certified true copies of the supporting documents for Disbursement Voucher (D.V.) No. 101-08-018-2001; a copy of the Audit Observation Memorandum; and a reply to the former's query if Section 368 of the Local Government Code (LGC) had been complied with.<sup>4</sup> On December 13, 2004, the

<sup>1</sup> Records, pp. 37-39.

<sup>2</sup> Ombudsman Resolution dated August 22, 2006, Records, pp. 6-27.

<sup>3</sup> Ombudsman Resolution dated August 22, 2006, Records, pp. 6-27.

<sup>4</sup> Ombudsman Resolution dated August 22, 2006, Records, pp. 6-27.



COA complied with said request and submitted that there was a need to conduct preliminary investigation.<sup>5</sup>

In its Minute Resolution dated May 28, 2010, the Court directed the Bureau of Immigration to prohibit Morales, Jovilla, Jimenez, Jr., and Escamillan from leaving the Philippines.<sup>6</sup>

On November 11, 2010, herein accused were arraigned, and they pleaded “not guilty” to the offense with which they were charged.<sup>7</sup>

On February 1, 2011, pre-trial proceedings were terminated which became the basis of the Pre-Trial Order dated March 4, 2011<sup>8</sup>, here reproduced in part:

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#### IV. STIPULATION OF FACTS

The parties failed to enter into any joint stipulation of facts.

#### V. ISSUES

The factual and/or legal issues to be resolved herein are the following:

- 1) Whether or not the accused procured 110 boxes of mebendazole tablets in the total amount of ₱196,900.00 from E.G. Pharma Distributor through an emergency purchase;
- 2) Whether or not the said emergency purchase as a mode of procurement was resorted to in order to avoid the conduct of public bidding;
- 3) Whether or not the resort to the said emergency purchase was in violation of the laws and rules governing the procurement/acquisition of supplies by local government units specifically Republic Act No. 7160 and COA Circular No. 92-386;
- 4) Whether or not the accused acted with evident bad faith;

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<sup>5</sup> Ombudsman Resolution dated August 22, 2006, Records, pp. 6-27.  
<sup>6</sup> Records, p. 69.  
<sup>7</sup> Records, p. 146.  
<sup>8</sup> Records, pp. 195-201.

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- 5) Whether or not the action of the accused gave unwarranted benefit, advantage or preference to E.G. Pharma Distributor in the amount of ₱196,900.00;
- 6) Whether or not the action of the accused caused undue injury to the government in the amount of ₱196,900.00;
- 7) Whether or not the accused conspired and confederated with each other in committing the offense charged in the information.<sup>9</sup>

Trial thereafter ensued.

On February 29, 2012, the defense finished presenting its evidence.<sup>10</sup> On April 16, 2012, it submitted its formal offer of evidence.<sup>11</sup>

In its Minute Resolution dated May 17, 2012, the Court admitted into evidence Exhibits "1" to "6", inclusive of all sub-markings.<sup>12</sup>

On July 12, 2012, the prosecution submitted a Supplemental Formal Offer.<sup>13</sup> In its Minute Resolution dated June 18, 2014, the Court admitted into evidence Exhibit "T", inclusive of sub-markings,<sup>14</sup> after which the case was considered submitted for decision.

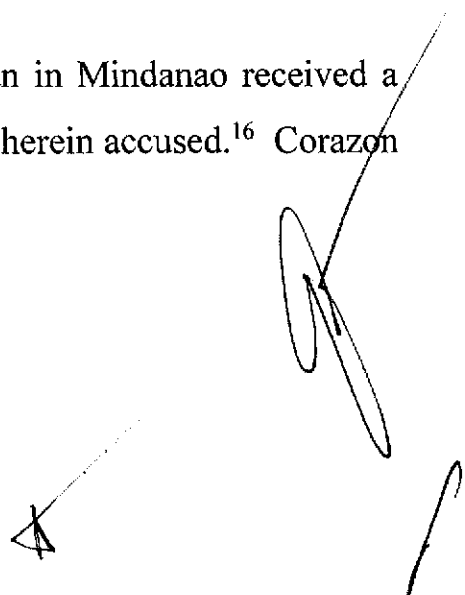
### **EVIDENCE FOR THE PROSECUTION**

The prosecution presented testimonial and documentary evidence through person of its witnesses Corazon Atienza Arancon and Felipe Perla Provido.

Sometime in 2003, the Office of the Ombudsman in Mindanao received a complaint affidavit filed by Bernardo S. Reyes<sup>15</sup> against herein accused.<sup>16</sup> Corazon

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<sup>9</sup> Records, pp. 195-201.  
<sup>10</sup> Records, p. 375.  
<sup>11</sup> Records, pp. 377-379.  
<sup>12</sup> Records, p. 397.  
<sup>13</sup> Records, pp. 410-413.  
<sup>14</sup> Records, p. 440.  
<sup>15</sup> Exhibit "B" with sub-markings.  
<sup>16</sup> TSN dated March 28, 2011, pp. 11-12.



Atienza Arancon, Graft Investigation Office III, Deputy Ombudsman for Mindanao, and head of the Fact Finding Complaints Unit of the Office of the Deputy Ombudsman for Mindanao, requested the Commission on Audit (COA) to conduct an audit investigation on the particular transaction being questioned in the complaint affidavit.<sup>17</sup> The COA replied, saying that the Office of the Ombudsman for Mindanao could make a determination of whether to proceed with the fact-finding investigation.<sup>18</sup> The auditor in charge of the transaction in question then submitted the pertinent documents to the Ombudsman-Mindanao for the latter to evaluate.<sup>19</sup> The Ombudsman-Mindanao thereafter studied the documents and found that there was basis to conduct preliminary investigation.<sup>20</sup> Arancon then executed an affidavit complaint<sup>21</sup> to initiate the filing of the complaint against Morales and some officials of the Municipality of Baganga.<sup>22</sup> After evaluating the documents submitted by the COA, they found that there were certain deficiencies in the procurement of said medicines and particularly, there was no public bidding conducted for the purpose and that the amount involved was ₱196,900.00.<sup>23</sup>

On cross, Arancon said that the COA did not conduct an audit or fact-finding because it said that it lacked manpower and that the Office of the Ombudsman could determine whether there was basis to proceed with the preliminary investigation of the case based on the documents.<sup>24</sup> She said that their office did not interview the officials concerned.<sup>25</sup>

On December 8, 2004, Felipe Perla Provido, State Auditor III assigned to the Province of Davao Oriental, issued a Notice of Suspension<sup>26</sup> for the transaction involving the purchase by the Municipality of Baganga of 11,000 pieces of Mebendazole tablets from E.G. Pharma Distributor.<sup>27</sup> As per notice of suspension,

<sup>17</sup> TSN dated March 28, 2011, p. 13.

<sup>18</sup> TSN dated March 28, 2011, p. 13.

<sup>19</sup> TSN dated March 28, 2011, p. 13.

<sup>20</sup> TSN dated March 28, 2011, p. 14.

<sup>21</sup> Exhibit "A" with sub-markings.

<sup>22</sup> TSN dated March 28, 2011, p. 14.

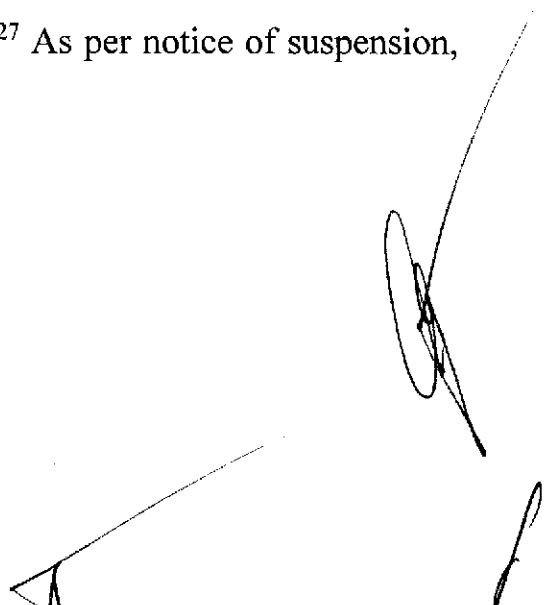
<sup>23</sup> TSN dated March 28, 2011, pp. 17-18.

<sup>24</sup> TSN dated March 28, 2011, p. 20.

<sup>25</sup> TSN dated March 28, 2011, p. 21.

<sup>26</sup> Exhibit "S" with sub-markings.

<sup>27</sup> TSN dated May 11, 2011, p. 6.

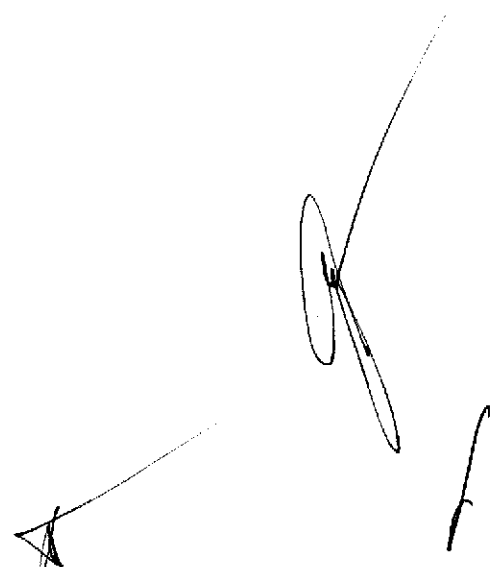


he issued a Certificate of Deficiency based on the documents he examined (the disbursement voucher, request for obligation of allotment, the purchase request, the purchase order, the bidding documents, abstract of quotation, sales invoice of the supplier, and inspection and acceptance report).<sup>28</sup> Provido observed the following:

1. The certification on availability of funds in the Request for Obligation of Allotment (ROA)<sup>29</sup> had not been signed by Jimenez, Jr.;<sup>30</sup>
2. The purchase order<sup>31</sup> was dated August 2, 2001 and, thus, prepared ahead and not received by the supplier as it had not been signed by the one named therein, and the date of receipt had not been indicated;<sup>32</sup>
3. The sales invoice<sup>33</sup> had been dated and prepared on July 30, 2001, which was ahead of the preparation of the purchase order dated August 2, 2001;<sup>34</sup>
4. The certificate of inspection and acceptance<sup>35</sup> had not been signed by the Inspector or the Inspection Committee while the acceptance was not signed by the Municipal Treasurer or the General Services officer-in-charge or the General Services Officer assigned; in short, the documents were signed by persons other than the Municipal Treasurer or the inspector;<sup>36</sup>
5. The Advertisement for Bids dated July 16, 2001<sup>37</sup> had not been signed by the municipal treasurer;<sup>38</sup>

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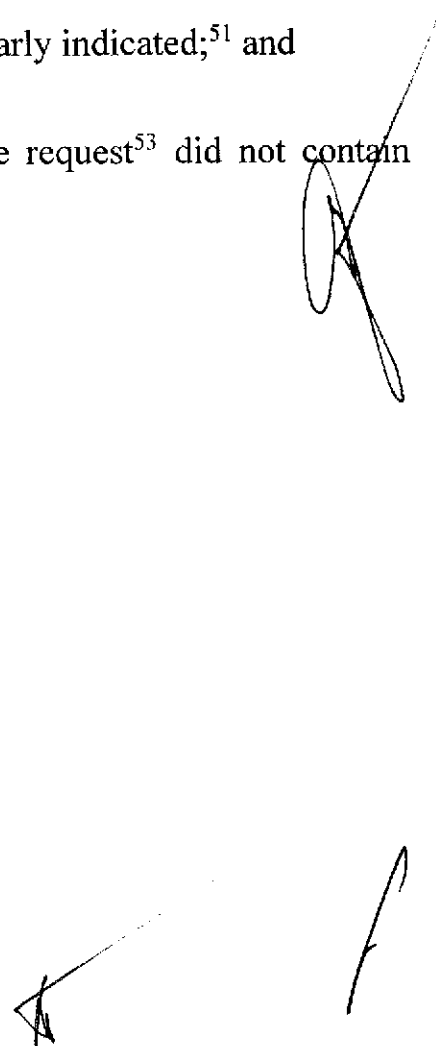
<sup>28</sup> TSN dated May 11, 2011, p. 8.  
<sup>29</sup> Exhibit "C" with sub-markings.  
<sup>30</sup> TSN dated May 11, 2011, p. 9.  
<sup>31</sup> Exhibit "D" with sub-markings.  
<sup>32</sup> TSN dated May 11, 2011, p. 10.  
<sup>33</sup> Exhibit "H" with sub-marking.  
<sup>34</sup> TSN dated May 11, 2011, p. 10.  
<sup>35</sup> Exhibit "J" with sub-marking.  
<sup>36</sup> TSN dated May 11, 2011, p. 11.  
<sup>37</sup> Exhibit "K" with sub-markings.  
<sup>38</sup> TSN dated May 11, 2011, p. 11.



6. The signatory in the bidding documents<sup>39</sup> bearing the price quotation of E.G. Pharma Distributor had not been identified;<sup>40</sup>
7. The Advertisement for Bids received by Mercury Drug<sup>41</sup> had not been signed by the municipal treasurer who was supposed to sign the same, and the signatory for Mercury Drug also had not been indicated;<sup>42</sup>
8. The Advertisement for Bids received by Farmacia Southern<sup>43</sup> had not been signed by the municipal treasurer and the signatory for the said company had not been indicated;<sup>44</sup>
9. The Advertisement for Bids indicating receipt of all the bidders<sup>45</sup> was not signed by the municipal treasurer;<sup>46</sup>
10. The Abstract of Quotation<sup>47</sup> had not been signed by all the members of the Bids and Awards Committee (BAC), and the certification by the committee had not been signed;<sup>48</sup>
11. The duplicate copy of the check in payment of the purchase of the Mebendazole tablets<sup>49</sup> had been signed by the municipal treasurer, but the date in the official receipt<sup>50</sup> was not clearly indicated;<sup>51</sup> and
12. The disbursement voucher<sup>52</sup> and purchase request<sup>53</sup> did not contain any deficiencies.<sup>54</sup>

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<sup>39</sup> Exhibit "L" with sub-markings.  
<sup>40</sup> TSN dated May 11, 2011, p. 11.  
<sup>41</sup> Exhibit "M" with sub-markings.  
<sup>42</sup> TSN dated May 11, 2011, p. 12.  
<sup>43</sup> Exhibit "N" with sub-markings.  
<sup>44</sup> TSN dated May 11, 2011, p. 12.  
<sup>45</sup> Exhibit "O" with sub-markings.  
<sup>46</sup> TSN dated May 11, 2011, p. 12.  
<sup>47</sup> Exhibit "P" with sub-markings.  
<sup>48</sup> TSN dated May 11, 2011, p. 13.  
<sup>49</sup> Exhibit "F".  
<sup>50</sup> Exhibit "G".  
<sup>51</sup> TSN dated May 11, 2011, p. 13.  
<sup>52</sup> Exhibit "E" with sub-marking.  
<sup>53</sup> Exhibit "I" with sub-markings.  
<sup>54</sup> TSN dated May 11, 2011, p. 10.

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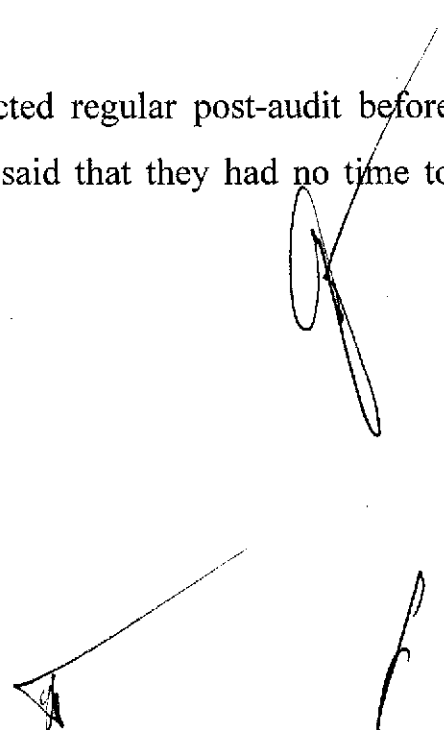
Provido said that as per their audit, the persons responsible for the deficiencies of the transaction were Morales, Dr. Silverio Ferrando, Emeritos, Jovilla, Jimenez, Jr., and Escamillan.<sup>55</sup> He also observed that the purchase should have been done through public bidding, but identified by the audit team as emergency purchase.<sup>56</sup> The amount of the transaction was the net amount of ₱189,561.00, less BIR taxes.<sup>57</sup> He identified the source of funds for the transaction as the local funds of the Municipality.<sup>58</sup> As per the ROA, the amount in question was taken from the appropriation of 5% calamity fund of the Municipality.<sup>59</sup> He explained that if the amount had been taken from the calamity fund, there should be supporting documents to prove that a calamity did occur, as declared by the *Sangguniang Bayan* of Baganga.<sup>60</sup>

Provido said that the deficiency occurred in the sales invoice that came after the purchase order.<sup>61</sup> He explained that the procurement order came first, after which a purchase order would be prepared, then a bidding would be conducted; and the purchase order would then be received by the winning bidder-supplier.<sup>62</sup> The supplier indicates therein the date when he issues the sales invoice, then acceptance and inspection take place, and payment is made.<sup>63</sup> He also claimed that as per Finding No. 10 in the Notice of Suspension, there was no finding or action by the local health board in the purchase of the medicine when it should have the participation of the health board to recommend the kind of medicine necessary in conducting the health program of the LGU, as provided under Section 102(b)(2) of R.A. No. 7160.<sup>64</sup>

On cross, Provido affirmed that they conducted regular post-audit before issuing the Notice of Suspension.<sup>65</sup> He, however, said that they had no time to

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<sup>55</sup> TSN dated May 11, 2011, p. 17.  
<sup>56</sup> TSN dated May 11, 2011, p. 17.  
<sup>57</sup> TSN dated May 11, 2011, p. 17.  
<sup>58</sup> TSN dated May 11, 2011, p. 18.  
<sup>59</sup> TSN dated May 11, 2011, p. 18.  
<sup>60</sup> TSN dated May 11, 2011, p. 19.  
<sup>61</sup> TSN dated May 11, 2011, p. 19.  
<sup>62</sup> TSN dated May 11, 2011, p. 20.  
<sup>63</sup> TSN dated May 11, 2011, p. 20.  
<sup>64</sup> TSN dated May 11, 2011, p. 20.  
<sup>65</sup> TSN dated May 11, 2011, p. 21.





inquire from the persons responsible for the deficiency.<sup>66</sup> He said that while he had no knowledge of the audit, he had not received any comment or reply from the Office of the Mayor.<sup>67</sup>

The prosecution initially intended to present Romualdo A. Garcia and Angelo E. Aguilon, but as the parties agreed that these witnesses would be able to identify Exhibits "AA",<sup>68</sup> "BB",<sup>69</sup> "CC",<sup>70</sup> "DD",<sup>71</sup> "U",<sup>72</sup> and "V",<sup>73</sup> their testimonies were dispensed with.<sup>74</sup>

The parties also dispensed with the testimonies of Dr. Silverio C. Ferrando, Leila P. Blasquez, Estrellita A. Garcia and Zarah M. Veloso after they agreed to stipulate on the following:

1. That Exhibit "W" (which is Exhibit "2" for the defense),<sup>75</sup> Exhibit "X" (which is Exhibit "5" for the defense),<sup>76</sup> Exhibit "Y" (which is Exhibit "3" for the defense),<sup>77</sup> and Exhibit "Z" (which is Exhibit "4" for the defense),<sup>78</sup> are common exhibits;
2. That the parties admit the existence and due execution of the aforementioned exhibits; and
3. That the affiants in the aforesaid exhibits, namely Dr. Silverio C. Ferrando, Leila P. Blasquez, Estrellita A. Garcia and Zarah M. Veloso,

<sup>66</sup> TSN dated May 11, 2011, p. 21.

<sup>67</sup> TSN dated May 11, 2011, p. 23.

<sup>68</sup> Personal Data Sheet, Oath of Office, Service Record of Gerry J. Morales.

<sup>69</sup> Personal Data Sheet, Oath of Office, Service Record of Emeritos M. Jovilla.

<sup>70</sup> Personal Data Sheet, Service Record of Francisco S. Jimenez, Jr.

<sup>71</sup> Personal Data Sheet, Service Record of Reymundo M. Escamillan.

<sup>72</sup> Resolution No. 32-2001 dated February 21, 2001 of the *Sangguniang Bayan* of Baganga, Davao Oriental entitled "A RESOLUTION DECLARING A STATE OF CALAMITY IN THE MUNICIPALITY OF BAGANGA, DAVAO ORIENTAL."

<sup>73</sup> Resolution No. 33-2001 dated February 21, 2001 of the *Sangguniang Bayan* of Baganga, Davao Oriental entitled "A RESOLUTION APPROVING AND AUTHORIZING THE RELEASE OF 25% OF THE 5% CALAMITY FUND IN THE AMOUNT OF ₱682,409.50 OF THE ANNUAL BUDGET CY-2001 IN THIS MUNICIPALITY."

<sup>74</sup> TSN dated March 28, 2011, p. 29.

<sup>75</sup> Affidavit of Dr. Silverio C. Ferrando dated 25 January 2006.

<sup>76</sup> Affidavit of Leila P. Blasquez dated 25 January 2006.

<sup>77</sup> Affidavit of Estrellita A. Garcia dated 25 January 2006.

<sup>78</sup> Affidavit of Zarah M. Veloso dated 25 January 2006.

whom the prosecution will present [on August 22, 2011] will be able to identify the same.<sup>79</sup>

The prosecution also presented the following documentary evidence:

| Exhibit | Description  |
|---------|--|
| "Q"     | Letter dated May 10, 2005 addressed to COA State Auditor III NENITA F. SERVANEZ from Director Corazon A. Arancon of Office of the Deputy Ombudsman for Mindanao. |
| "Q-1"   | Page 2 of the Letter dated May 10, 2005.   |
| "R"     | 1 <sup>st</sup> Indorsement dated May 26, 2005 of the Commission on Audit (COA), Capitol Hills, Mati, Davao Oriental, from State Auditor IV Nenita F. Servanez.  |
| "R-1"   | Page 2 of the 1 <sup>st</sup> Indorsement.   |
| "R-1-a" | Bracketed portion containing the signature above the printed name NENITA F. SERVANEZ, State Auditor IV.  |

On October 3, 2011, the prosecution finished presenting its witnesses<sup>80</sup> and on October 25, 2011, submitted its formal offer of evidence.<sup>81</sup>

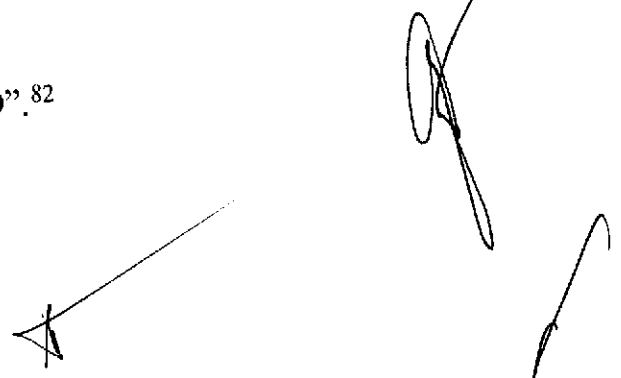
In its Minute Resolution dated January 4, 2012, the Court admitted into evidence:

1. Exhibits "A", "B-3" to "B-6", "C" to "S", inclusive of all sub-markings, subject to the appreciation of the Court as to the probative value thereof;
2. Exhibit "B" inclusive of all its sub-markings, not as independently relevant piece of evidence but merely as part of the testimony of the witnesses who testified thereon, considering that the person who executed the affidavit was not presented as a witness to identify the same; and
3. Exhibits "U" to "Z" and "AA" to "DD".<sup>82</sup>

<sup>79</sup> TSN dated August 22, 2011, p. 9.

<sup>80</sup> Records, p. 297.

<sup>81</sup> Records, pp. 302-313.



### EVIDENCE FOR THE DEFENSE

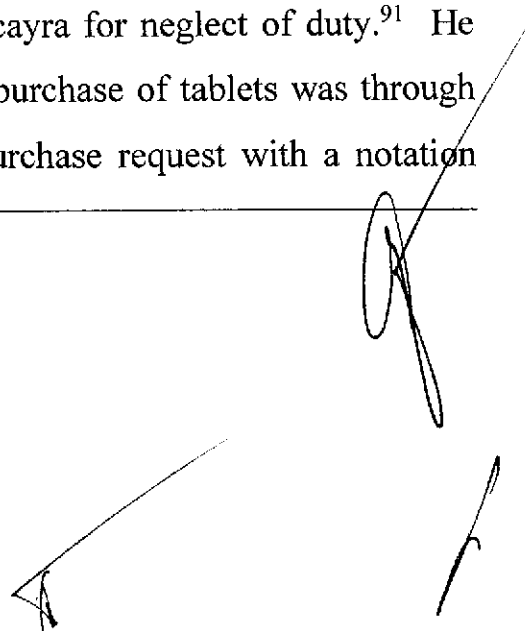
To support its case, the defense presented both documentary and testimonial evidence through the accused Emeritos Morales Jovilla, Francisco Serra Jimenez, Jr., and Gerry Jovilla Morales.

Sometime in July 2001, a transaction for the purchase of Mebendazole tablets for Baganga, Davao Oriental passed through the Office of the Municipal Accountant.<sup>83</sup> Accused Emeritos Morales Jovilla went over the disbursement vouchers, certification for availability and appropriation and for completeness of supporting documents and found that the requirements in the conduct of public bidding were complete.<sup>84</sup> Jovilla thus certified to the completeness of documents by signing the disbursement vouchers.<sup>85</sup> After their examination, the documents were forwarded to the Office of the Municipal Mayor for approval.<sup>86</sup> Jovilla affirmed that he was also a member of the BAC at that time but did not participate in the bidding transaction for the purchase of Mebendazole tablets.<sup>87</sup>

On cross, Jovilla affirmed that he assumed his position as Municipal Accountant sometime in September 1992.<sup>88</sup> He said he had been terminated from government service by the Municipal Mayor for not reporting to his new assignment when placed on floating status in the Office of the Mayor without any position and function.<sup>89</sup> He, however, received all perks and privileges attached to his position up to March 30, 2009.<sup>90</sup> He said he had been dismissed from the service by the Office of the Ombudsman on September 2, 2009 because of an administrative case filed by Engineer Rosalie Macayra for neglect of duty.<sup>91</sup> He maintained that the mode of procurement for the purchase of tablets was through public bidding despite having been shown the purchase request with a notation

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<sup>82</sup> Records, p. 367.  
<sup>83</sup> TSN dated January 11, 2012, pp. 9-10.  
<sup>84</sup> TSN dated January 11, 2012, p. 11.  
<sup>85</sup> TSN dated January 11, 2012, p. 11.  
<sup>86</sup> TSN dated January 11, 2012, p. 12.  
<sup>87</sup> TSN dated January 11, 2012, p. 12.  
<sup>88</sup> TSN dated January 11, 2012, pp. 13-17.  
<sup>89</sup> TSN dated January 11, 2012, pp. 18-19.  
<sup>90</sup> TSN dated January 11, 2012, p. 19.  
<sup>91</sup> TSN dated January 11, 2012, pp. 19-20.



thereon that it was an emergency purchase.<sup>92</sup> He said that the purchase request was supported by an invitation to bid, publication, quotations submitted by the suppliers, and an abstract quotation.<sup>93</sup> However, he also acknowledged having executed a counter-affidavit during preliminary investigation, wherein he had attested: "No evidence of conduct of competitive bidding as minutes of bidding and/or proceedings on the committee on award not attached to support the same as required under Section 36 of the Commission on Audit, Circular No. 92-386. Likewise, there was no notation as to the submission of bidders bond. The mode of procurement is categorized as emergency due to the *Sangguniang Bayan* Resolution declaring the Municipality of Baganga in a state of calamity, *infra*, and the personal canvass was done by the General Services office. No certification of the Municipal Treasurer, General Services Officer x x x."<sup>94</sup>

On re-direct, Jovilla affirmed that he was appointed Accountant of Baganga in 1992 by Mayor Edilberto Macayra.<sup>95</sup>

Accused Francisco Serra Jimenez, Jr., was appointed Municipal Treasurer of Baganga in 1989 and retired on November 1, 2010.<sup>96</sup> He recalled that the transaction for the purchase of Mebendazole tablets passed through their office sometime in July 2001.<sup>97</sup> Jimenez, Jr., said that when they received the disbursement vouchers therefor, they were already signed by some of the heads of office, had an appropriate fund, and had passed through the budget officer and the Office of the Municipal Accountant, so he issued the check for payment to the claimant of the voucher E.G. Pharma Distributor.<sup>98</sup> He identified the General Services Officer at that time as Reymundo Escamillan.<sup>99</sup> He said that before paying the obligation of the Municipality, the tablets had already been delivered to the General Services Office, and Escamillan delivered them to the Municipal

<sup>92</sup> TSN dated January 11, 2012, pp. 25-27.

<sup>93</sup> TSN dated January 11, 2012, p. 26.

<sup>94</sup> TSN dated January 11, 2012, pp. 32-35.

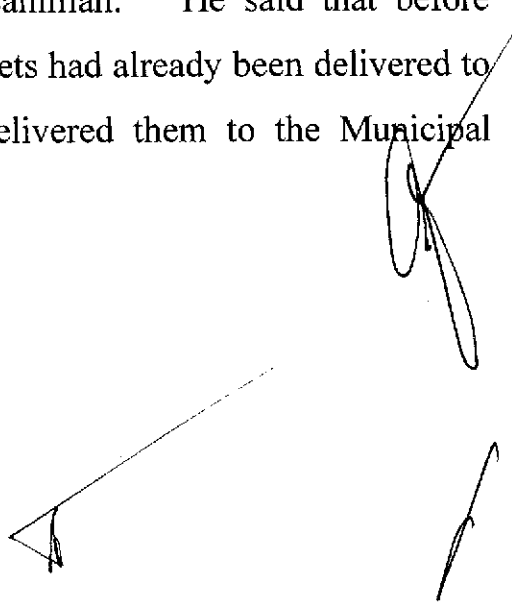
<sup>95</sup> TSN dated January 11, 2012, p. 38.

<sup>96</sup> TSN dated January 11, 2012, p. 44.

<sup>97</sup> TSN dated January 11, 2012, p. 45.

<sup>98</sup> TSN dated January 11, 2012, p. 45.

<sup>99</sup> TSN dated January 11, 2012, p. 46.



Health Office.<sup>100</sup> The owner of E.G. Pharrma Distributor then received the check.<sup>101</sup>

On cross, Jimenez, Jr., affirmed that he had been suspended for six months, from August 16, 2010 to February 17, 2011.<sup>102</sup> He said that there were five members in the BAC.<sup>103</sup> He said that he was not present during bidding, and he did not send a representative thereto.<sup>104</sup> He also did not actually see the delivery of the tablets to the local government unit of Baganga, as he was just informed by the General Services Officer.<sup>105</sup> When asked why he did not sign the Inspection and Acceptance Report, he replied that it was with the General Services Officer, Escamillan.<sup>106</sup> He said that it was Escamillan who would inform him of delivery so he could pay the claimants.<sup>107</sup> He said he did not sign the “recommending approval” portion of the purchase order because it should have been done by the General Services Officer.<sup>108</sup> When shown the Purchase Order dated August 2, 2001,<sup>109</sup> he maintained that even though it had no “recommending approval”, it was regular because it had been approved by the municipal mayor.<sup>110</sup> When shown ROA No. 101-08-044-2001<sup>111</sup> and asked why he did not certify if there were available funds to cover the transaction, he said he overlooked the same.<sup>112</sup> He maintained the ROA was valid because he signed the check, and there were funds available because he had paid the same.<sup>113</sup> He affirmed he had been previously suspended by the Ombudsman for gross neglect.<sup>114</sup>

Accused Gerry Jovilla Morales was Municipal Mayor of Baganga, Davao Oriental in July 2001.<sup>115</sup> He had approved a purchase order from the Municipal

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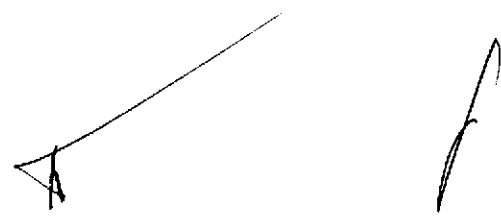
<sup>100</sup> TSN dated January 11, 2012, pp. 46-47.  
<sup>101</sup> TSN dated January 11, 2012, p. 47.  
<sup>102</sup> TSN dated January 11, 2012, p. 49.  
<sup>103</sup> TSN dated January 11, 2012, pp. 51-52.  
<sup>104</sup> TSN dated January 11, 2012, p. 52.  
<sup>105</sup> TSN dated January 11, 2012, p. 53.  
<sup>106</sup> TSN dated January 11, 2012, p. 54.  
<sup>107</sup> TSN dated January 11, 2012, p. 55.  
<sup>108</sup> TSN dated January 11, 2012, p. 57.  
<sup>109</sup> Exhibit “D”.  
<sup>110</sup> TSN dated January 11, 2012, pp. 59-60.  
<sup>111</sup> Exhibit “C”.  
<sup>112</sup> TSN dated January 11, 2012, pp. 63-64.  
<sup>113</sup> TSN dated January 11, 2012, pp. 65-66.  
<sup>114</sup> TSN dated January 11, 2012, p. 66.  
<sup>115</sup> TSN dated January 12, 2012, pp. 5-6.



Health Physician, Dr. Silverio Ferrando, to purchase Mebendazole tablets.<sup>116</sup> He said that before approving the purchase order, he called up his staff inviting all heads of offices.<sup>117</sup> Dr. Ferrando came to him, saying there was a problem with regard to his department, and told him of their feeding program.<sup>118</sup> Morales then asked Dr. Ferrando for basis to have the program approved by his office and asked him to submit pertinent documents.<sup>119</sup> Upon seeing from the document that it was urgent, and learning that majority of the population (particularly the children) were malnourished, he asked Dr. Ferrando to produce the papers for the purchase of the medicines.<sup>120</sup> Morales said that during his travels to the different *barangays* when he was vice mayor, he found that children in their municipality were suffering from malnourishment.<sup>121</sup> He then informed Dr. Ferrando to produce the requisition form together with the purchase order to which he affixed his signature.<sup>122</sup> He also called the General Services Officer, Escamillan, and told him that he would go through the bidding process.<sup>123</sup> He also told Escamillan to prepare a purchase order and an invitation to bid.<sup>124</sup> During the bidding, E.G. Pharma emerged as the lowest bidder.<sup>125</sup> Morales said that he, Escamillan, [Bill] Rojas, and Dr. Ferrando were present at the bidding.<sup>126</sup> After finding that the lowest bidder was E.G. Pharma, Morales signed the abstract.<sup>127</sup> He said that Escamillan told him that the medicines were already delivered so he and Dr. Ferrando went to the office of the GSO and scrutinized whether the purchase was complete; thus, the medicines were delivered.<sup>128</sup> Morales then signed an acceptance form.<sup>129</sup> After the documents were prepared, they were forwarded to the Office of the Treasurer, which in turn, made payment.<sup>130</sup> He said it was Dr. Ferrando who saw to it that the medicines

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<sup>116</sup> TSN dated January 12, 2012, p. 6.  
<sup>117</sup> TSN dated January 12, 2012, p. 6.  
<sup>118</sup> TSN dated January 12, 2012, p. 7.  
<sup>119</sup> TSN dated January 12, 2012, p. 7; Exhibit "6".  
<sup>120</sup> TSN dated January 12, 2012, p. 8.  
<sup>121</sup> TSN dated January 12, 2012, p. 8.  
<sup>122</sup> TSN dated January 12, 2012, p. 8.  
<sup>123</sup> TSN dated January 12, 2012, pp. 8-9.  
<sup>124</sup> TSN dated January 12, 2012, p. 10.  
<sup>125</sup> TSN dated January 12, 2012, p. 10.  
<sup>126</sup> TSN dated January 12, 2012, p. 10.  
<sup>127</sup> TSN dated January 12, 2012, p. 11.  
<sup>128</sup> TSN dated January 12, 2012, p. 11.  
<sup>129</sup> TSN dated January 12, 2012, p. 11.  
<sup>130</sup> TSN dated January 12, 2012, p. 12.



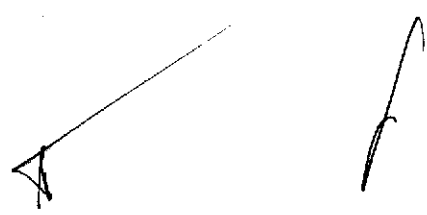
were delivered, and who told him that they had already been delivered to the *barangays*.<sup>131</sup> He also witnessed the feeding program.<sup>132</sup>

On cross, Morales said the members of the BAC were composed of himself as Chair, the budget officer, Dr. Ferrando as head of the Municipal Health Office, the municipal accountant, the budget officer, the treasurer, the general services officer, Escamillan, and the head of the office requisitioning the item.<sup>133</sup> He said that only three attended the public bidding.<sup>134</sup> He affirmed that before signing the disbursement voucher, he considered the documents supporting the transaction.<sup>135</sup> He said he overlooked the word "emergency" in the purchase order because he had instructed Dr. Ferrando to do the necessary documents, who in turn told him there was an urgency to purchase the medicines.<sup>136</sup> He clarified that in the purchase order, there was a statement "For Emergency Purpose" which he signed, failing to notice the word "emergency."<sup>137</sup> He clarified that there was no emergency, only an urgency.<sup>138</sup> He maintained that he did not instruct the GSO to place the words "emergency purchase."<sup>139</sup> As per his joint counter-affidavit, he stated "that the mode of procurement is categorized as emergency due to the *Sangguniang Bayan* resolution declaring the Municipality of Baganga in a state of calamity, *infra*, and personal canvass was done by the General Services Office."<sup>140</sup>

On re-direct, Morales said that the joint affidavit had been prepared by his former counsel, Atty. Rodolfo Rojas, and he immediately signed the same.<sup>141</sup>

The defense also presented the following documentary evidence:

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- <sup>131</sup> TSN dated January 12, 2012, p. 13.
  - <sup>132</sup> TSN dated January 12, 2012, p. 13.
  - <sup>133</sup> TSN dated January 12, 2012, pp. 14-15.
  - <sup>134</sup> TSN dated January 12, 2012, p. 16.
  - <sup>135</sup> TSN dated January 12, 2012, p. 18.
  - <sup>136</sup> TSN dated January 12, 2012, pp. 25-26.
  - <sup>137</sup> TSN dated January 12, 2012, p. 28.
  - <sup>138</sup> TSN dated January 12, 2012, p. 29.
  - <sup>139</sup> TSN dated January 12, 2012, p. 30.
  - <sup>140</sup> TSN dated January 12, 2012, p. 31.
  - <sup>141</sup> TSN dated January 12, 2012, p. 33.



| Exhibit      | Description  |
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| "1"          | <i>Sangguniang Bayan</i> Resolution No. 32-2001.   |
| "2" to "2-C" | Affidavit of the Municipal Health Officer.   |
| "3" to "3-B" | Affidavit of the Municipal Nurse.  |
| "4" to "4-B" | Affidavit of the Municipal Nutritionist.   |
| "5" to "5-B" | Affidavit of the Municipal Midwife.  |
| "6" to "6-H" | Comparative Report prepared by the Municipal Nutritionist on the nutritional status of children in different <i>barangays</i> are the Nutritional Deficiency Diseases. |

On February 29, 2012, the defense finished presenting its evidence<sup>142</sup> and on April 16, 2012, submitted its formal offer of evidence.<sup>143</sup>

In its Minute Resolution dated May 17, 2012, the Court admitted into evidence Exhibits "1" to "6", inclusive of all sub-markings.<sup>144</sup>

On July 12, 2012, the prosecution submitted a Supplemental Formal Offer.<sup>145</sup> In its Minute Resolution dated June 18, 2014, the Court admitted into evidence Exhibit "T",<sup>146</sup> inclusive of sub-markings.<sup>147</sup> In the same Resolution, the Court admitted the memorandum submitted by the accused, and as the prosecution failed to file its memorandum within the period given thereto, the case was considered submitted for decision.<sup>148</sup>

In their Memorandum, herein accused aver that the Office of the Ombudsman for Mindanao merely relied on documents in conducting its preliminary investigation. They allege that the documents were forwarded by the COA, which also did not conduct any audit or fact-finding investigation. They add that the COA did not issue a notice of disallowance as required in the COA Rules and Regulations. They claim that if the COA conducted an actual investigation, it could explain why there was a phrase apparently superimposed on the purchase order which reads "For Emergency Purchase used for Nutritional Program

<sup>142</sup> Records, p. 375.

<sup>143</sup> Records, pp. 377-379.

<sup>144</sup> Records, p. 397.

<sup>145</sup> Records, pp. 410-413.

<sup>146</sup> Joint Counter-Affidavit and Controverting Evidence executed by Gerry Jovilla Morales, Silverio Capalit Ferrando, Emeritos Morales Jovilla, Francisco Serra Jimenez, Jr., Reymundo Mandawe Escamillan, Elmer Golez dated 28 January 2006.

<sup>147</sup> Records, p. 440.

<sup>148</sup> *Id.*



Baganga, Davao Oriental.” They maintain that the prosecution did not present sufficient evidence to show that the accused committed the offense with which they are charged.

### ANALYSIS AND DISCUSSION

Herein accused are charged with violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended. To be indicted for the offense penalized by Section 3(e) of R.A. No. 3019, the following elements must concur: (1) the accused must be a public officer discharging administrative, judicial, or official functions; (2) he or she must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and (3) his or her action 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.<sup>149</sup> In the case at bar, the Court must determine whether herein accused, who are all public officers, acted in bad faith when they procured Mebendazole tablets amounting to an aggregate amount of ₱196,900.00 from E.G. Pharma Distributor.

Before proceeding to the substantive issues, however, it takes note of the fact that the COA did conduct its regular post-audit before issuing the Notice of Suspension. The Office of the Ombudsman-Mindanao, on the other hand, also examined the documents pertinent to the transaction. Neither can this Court consider the contention of herein accused that the COA failed to issue a Notice of Disallowance, as it observes that the COA did issue a Notice of Suspension dated December 8, 2004 which appears to have received in 2005 but was not acted upon. As provided for under Section 15.2 of the Manual on Certificate of Settlement and Balances, “a suspension which is not settled within 90 days from receipt of the

<sup>149</sup> *Reyes v. People*, G.R. Nos. 177105-106, August 12, 2010, 626 SCRA 782, 793.

Notice of Suspension, or within such extended period as may be authorized by the auditor concerned, shall become a disallowance." (emphasis supplied)<sup>150</sup>

In addressing the substantive issues in this case, the Court is guided by Sections 356 and 366 of the Local Government Code of 1991<sup>151</sup> which provide that:

Section 356. *General Rule in Procurement or Disposal.* – Except as otherwise provided herein, acquisition of supplies by local government units shall be through competitive bidding. Supplies which have become unserviceable or no longer needed shall be sold, whenever applicable, at public auction, subject to applicable rules and regulations.

X X X X

Section 366. *Procurement without Public Bidding.* – Procurement of supplies may be made without the benefit of a public bidding under any of the following modes:

- (a) Personal canvass of responsible merchants;
- (b) Emergency purchases;
- (c) Negotiated purchase;
- (d) Direct purchase from manufacturers or exclusive distributors; and
- (e) Purchase from other government entities.

Clearly, the aforementioned provisions show that the procurement of Mebendazole tablets must be through public bidding. The Court submits that medicine for deworming cannot be, in all honesty, considered as an emergency purchase even in the face of a *Sangguniang Bayan* Resolution which states that there is a calamity. Under the Government Auditing Rules and Regulations,<sup>152</sup> procurement through public bidding would necessitate the publication of call for bids,<sup>153</sup> the composition of a committee on bids and awards,<sup>154</sup> the rule on awards,<sup>155</sup> as well as the preparation of the required bidding documents. The records, however, show that there is nothing to support their claim that a public

<sup>150</sup> *People v. Pantaleon, Jr.*, G.R. No. 158694-96, March 13, 2009, 581 SCRA 140, 179-180.

<sup>151</sup> Otherwise known as Republic Act No. 7160, which took effect on January 1, 1992.

<sup>152</sup> Volume I of the Government Accounting and Auditing Manual.

<sup>153</sup> Section 433, Government Auditing Rules and Regulations, Volume I of the Government Accounting and Auditing Manual.

<sup>154</sup> Section 434, Government Auditing Rules and Regulations, Volume I of the Government Accounting and Auditing Manual.

<sup>155</sup> Section 435, Government Auditing Rules and Regulations, Volume I of the Government Accounting and Auditing Manual.

bidding took place, except for the Advertisement of Bids and disbursement voucher.

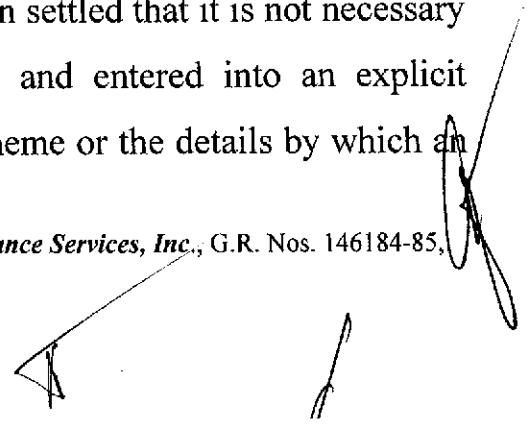
Moreover, the documents that herein accused did submit are beset with irregularities too difficult to ignore: the lack of signatures in the ROA, Purchase Order, Certificate of Inspection and Acceptance, Advertisements for Bids, and Abstract of Quotation; the preparation of the sales invoice before the purchase order; and the difficulty to identify the signatories for E.G. Pharma and the other bidders. As held by the Supreme Court:

The rationale behind the requirement of a public bidding as a mode of awarding government contracts, is to ensure that the people get maximum benefits and quality services from the contracts. More significantly, **the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers.** Public biddings are intended to minimize occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts. (emphasis supplied)<sup>156</sup>

Curiously, the statements of herein accused are conflicting as to whether the transaction in question was an emergency purchase. During trial, they maintained that the transaction was done through public bidding. However, the accused themselves presented SB Resolution No. 32-2001 to prove that the Municipality of Baganga was under a state of calamity at the time of the transaction, and some of the documents bear the words "for emergency purchase." Accused Jovilla himself executed an affidavit in which he averred that the purchase was an emergency. Accused Mayor Morales, on the other hand, said that he overlooked the word "emergency" in the purchase order. Their inconsistencies lead this Court to believe that they attempted to circumvent the more exacting rules for a public bidding by classifying the procurement as an emergency purchase.

Anent the issue of conspiracy, it has long been settled that it is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an

<sup>156</sup> *Manila International Airport Authority v. Olongapo Maintenance Services, Inc.*, G.R. Nos. 146184-85, January 31, 2008, 543 SCRA 269, 275.



illegal objective is to be carried out.<sup>157</sup> Conspiracy may be deduced from the mode or manner in which the offense was perpetrated; or from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.<sup>158</sup> In the present case, the collective acts of herein accused were necessary to facilitate the procurement of Mebendazole tablets without public bidding. None of them categorically denied their individual participation in a transaction which not only disregarded the rules of procurement but also caused injury to the Municipality of Baganga, Davao Oriental.

The penalty for a violation of Section 3(e) of R.A. No. 3019 is imprisonment for not less than six (6) years and one (1) month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest. Under Section 1 of the Indeterminate Sentence Law (ISL)<sup>159</sup> and taking its cue from a decided case of similar import,<sup>160</sup> this Court sentences herein accused to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, perpetual disqualification from public office, and to jointly return the amount of one hundred ninety-six thousand, nine hundred pesos (₱196,900.00).

**WHEREFORE**, the Court renders judgment finding Gerry Morales y Jovilla, Emeritos Jovilla y Morales, Francisco Jimenez y Serra, and Reymundo Escamillan y Mandawe, **GUILTY** beyond reasonable doubt of the violation of Section 3(e) of R.A. No. 3019, sentencing each of them to imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, perpetual disqualification from public office, and to jointly return the amount of one hundred ninety-six thousand, nine hundred pesos (₱196,900.00).

<sup>157</sup> *People v. Nueva*, G.R. No. 173248, November 3, 2008, 570 SCRA 449, 468-469.

<sup>158</sup> *Id.*

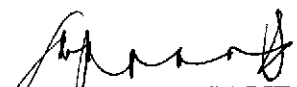
<sup>159</sup> SECTION 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (*As amended by Act No. 4225.*)

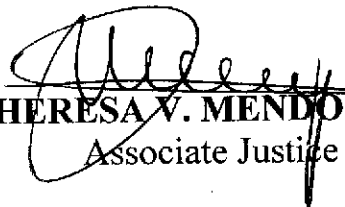
<sup>160</sup> *Ong v. People*, G.R. No. 176546, September 25, 2009, 601 SCRA 47, 52.

**SO ORDERED.**

  
**ALEX L. QUIROZ**  
Associate Justice

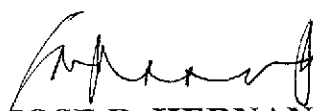
**WE CONCUR:**

  
**JOSE R. HERNANDEZ**  
Associate Justice  
Chairperson

  
**MA. THERESA V. MENDOZA-ARCEGA**  
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.

  
**HON. JOSE R. HERNANDEZ**  
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.

  
**HON. AMPARO M. CABOTAJE-TANG**  
Presiding Justice