



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

THIRD DIVISION

PEOPLE OF THE PHILIPPINES, **SB-09-CRM-0158 to 0161**
Plaintiff, For: Violation of Section 3(e)
of R.A. 3019

Present

- versus -

ANICETO A. FERNANDEZ
ET AL.

Accused.

CABOTAJE-TANG, P.J.,
Chairperson
FERNANDEZ, SJ, J. and
FERNANDEZ, B,* J.

Promulgated:

JUNE 29, 2017

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DECISION

FERNANDEZ, SJ, J.

Corazon L. Cabagnet¹ (Provincial Governor and PBAC Chairperson), Liberato R. Ibadlit² (Vice-Governor and PBAC member), Aniceto A. Fernandez (Sangguniang Panlalawigan member and PBAC member), Evan L. Timtiman³ (Provincial Treasurer and PBAC member), Victory M. Fernandez (Provincial Engineer), Felicisimo Y. Tanumtanum, Jr. (Engineer IV), Reynaldo B. Dionisio (Project Engineer) and private accused Delia B. Legaspi, owner of Jireh Construction and Supply (Jireh) are charged with violation of Section

* J. Martires was a member of the 3rd Division at the time the present cases were submitted for decision. In view of his appointment as Associate Justice in the Supreme Court on March 2, 2017, J. Fernandez, B., the junior member of the 3rd Division, participated in the decision in the present cases. (*Revised Internal Rules of the Sandiganbayan*, Rule XII, Sec. 3)

¹ Died on March 8, 2001 (p. 301, Record, Vol. 2; *Certificate of Death* attached as Annex "A" to the prosecution's Manifestation dated July 21, 2011)

² Died on September 12, 2014 (p. 382, Record, Vol. 4; *Certificate of Death* attached as Annex "A" to the prosecution's Comment dated March 23, 2015)

³ Died on March 19, 2012 (p. 174, Record, Vol. 3; *Certificate of Death* attached as Annex "A" to the prosecution's Manifestation dated June 1, 2012)

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3(e) of Republic Act No. 3019 (R.A. No. 3019), otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, for:

- (a) Awarding to Jireh the contracts for the construction of (1) Alibagon-Baybay Bridge (Phase III),⁴ (2) Buruanga Fishing Port,⁵ (3) Irrigation Canal Access Road⁶ and (4) Navitas Barangay Health Center,⁷ despite Jireh's unsatisfactory performance in another construction project; and,
- (b) Not taking action against private accused Legaspi when Jireh abandoned the said projects.

The cases against accused Cabagnot,⁸ Timtiman⁹ and Ibadlit¹⁰ were dismissed on account of their deaths.

The accusatory portion of the Informations read:

In SB-09-CRM-0158

That on February 24, 1995 or sometime prior or subsequent thereto, in the Municipality of Kalibo, Province of Aklan, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, CORAZON L. CABAGNOT, then Provincial Governor and Chairman of the Prequalification Bids and Awards Committee (PBAC), LIBERATO R. IBADLIT, then Vice-Governor and PBAC Member, ANICETO A. FERNANDEZ, then Sangguniang Panlalawigan Member and PBAC Member, EVAN L. TIMTIMAN, then Provincial Treasurer and PBAC Member, VICTORY M. FERNANDEZ, then Provincial Engineer, FELICISIMO Y. TANUMTANUM, JR., then Engineer IV, REYNALDO B. DIONISIO, then Project Engineer, all of the Provincial Government of Aklan, Kalibo, Aklan, while in the performance of their official and/or administrative functions and committing the offense in relation to their office, acting in evident bad faith and manifest partiality, mutually helping one another and conspiring and confederating with private accused DELIA B. LEGASPI, owner of Jireh Construction and Supply, did then and there willfully, unlawfully and criminally give said accused LEGASPI unwarranted benefit, privilege and advantage by awarding to Jireh Construction and Supply the project involving the Construction of the Alibagon-Baybay Bridge (Phase III)

⁴ SB-09-CRM-0158

⁵ SB-09-CRM-0159

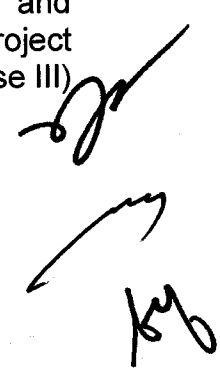
⁶ SB-09-CRM-0160

⁷ SB-09-CRM-0161

⁸ p. 317, Record, Vol. 2 (Resolution dated August 5, 2011)

⁹ p. 176, Record, Vol. 3 (Resolution dated June 15, 2012)

¹⁰ pp. 430-434, Record, Vol. 4 (Resolution dated May 13, 2015)



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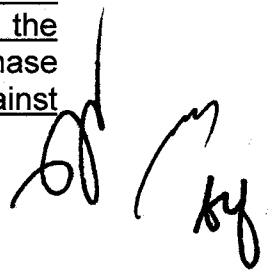
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with a total contract cost of NINE HUNDRED SEVENTY FIVE THOUSAND ONE HUNDRED FIFTY ONE (sic) AND THIRTY EIGHT CENTAVOS (P 975,151.38), Philippine Currency, of which ONE HUNDRED FORTY SIX THOUSAND TWO HUNDRED SEVENTY TWO (sic) AND SEVENTY CENTAVOS (P 146,272.70) was paid to accused LEGASPI despite the fact that, at the time of the award, said contractor had an unsatisfactory performance on an on-going project involving the construction of the Alibagon-Baybay Bridge at Makato, Aklan, Phase II and the accused public officers did not take any action against accused LEGASPI when the latter subsequently abandoned both projects, to the damage and injury of the Provincial Government of Aklan in the amount of the unrecouped mobilization fee of ONE HUNDRED FORTY SIX THOUSAND TWO HUNDRED SEVENTY TWO (sic) AND SEVENTY CENTAVOS (P 146,172.70).

CONTRARY TO LAW.

In SB-09-CRM-0159

That on March 1, 1995 or sometime prior or subsequent thereto, in the Municipality of Kalibo, Province of Aklan, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, CORAZON L. CABAGNOT, then Provincial Governor and Chairman of the Prequalification Bids and Awards Committee (PBAC), LIBERATO R. IBADLIT, then Vice-Governor and PBAC Member, ANICETO A. FERNANDEZ, then Sangguniang Panlalawigan Member and PBAC Member, EVAN L. TIMTIMAN, then Provincial Treasurer and PBAC Member, VICTORY M. FERNANDEZ, then Provincial Engineer, FELICISIMO Y. TANUMTANUM, JR., then Engineer IV, REYNALDO B. DIONISIO, then Project Engineer, all of the Provincial Government of Aklan, Kalibo, Aklan, while in the performance of their official and/or administrative functions and committing the offense in relation to their office, acting in evident bad faith and manifest partiality, mutually helping one another and conspiring and confederating with private accused DELIA B. LEGASPI, owner of Jireh Construction and Supply, did then and there willfully, unlawfully and criminally give said accused LEGASPI unwarranted benefit, privilege and advantage by awarding to Jireh Construction and Supply the project involving the Construction of the Buruanga Fishing Port with a total contract cost of NINE HUNDRED SIXTY FIVE THOUSAND FOUR HUNDRED TWENTY (sic) AND TWENTY FOUR CENTAVOS (P 965,420.24), Philippine Currency, of which SIX HUNDRED FIVE THOUSAND SEVEN HUNDRED FIFTY ONE (sic) AND SIXTY EIGHT CENTAVOS (P 605,751.68) was paid to accused LEGASPI despite the fact that, at the time of the award, said contractor had an unsatisfactory performance on an on-going project involving the construction of the Alibagon-Baybay Bridge at Makato, Aklan, Phase II and the accused public officers did not take any action against



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accused LEGASPI when the latter subsequently abandoned both projects, to the damage and injury of the Provincial Government of Aklan in the amount of SIX HUNDRED FIVE THOUSAND SEVEN HUNDRED FIFTY ONE (sic) AND SIXTY EIGHT CENTAVOS (P 605,751.68).

CONTRARY TO LAW.

In SB-09-CRM-0160

That on March 8, 1995 or sometime prior or subsequent thereto, in the Municipality of Kalibo, Province of Aklan, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, CORAZON L. CABAGNOT, then Provincial Governor and Chairman of the Prequalification Bids and Awards Committee (PBAC), LIBERATO R. IBADLIT, then Vice-Governor and PBAC Member, ANICETO A. FERNANDEZ, then Sangguniang Panlalawigan Member and PBAC Member, EVAN L. TIMTIMAN, then Provincial Treasurer and PBAC Member, VICTORY M. FERNANDEZ, then Provincial Engineer, FELICISIMO Y. TANUMTANUM, JR., then Engineer IV, REYNALDO B. DIONISIO, then Project Engineer, all of the Provincial Government of Aklan, Kalibo, Aklan, while in the performance of their official and/or administrative functions and committing the offense in relation to their office, acting in evident bad faith and manifest partiality, mutually helping one another and conspiring and confederating with private accused DELIA B. LEGASPI, owner of Jireh Construction and Supply, did then and there willfully, unlawfully and criminally give said accused LEGASPI unwarranted benefit, privilege and advantage by awarding to Jireh Construction and Supply the project involving the Construction of the Irrigation Canal Access Road, Buruanga with a total contract cost of NINE HUNDRED FIFTY SIX THOUSAND SEVEN HUNDRED THIRTY THREE (sic) AND NINETY TWO CENTAVOS (P 956,733.92), Philippine Currency, of which THREE HUNDRED SEVENTY FIVE THOUSAND ONE HUNDRED NINETY NINE (sic) AND SEVENTY FIVE CENTAVOS (P 375,199.75) was paid to accused LEGASPI despite the fact that, at the time of the award, said contractor had an unsatisfactory performance on an on-going project involving the construction of the Alibagon-Baybay Bridge at Makato, Aklan, Phase II and the accused public officers did not take any action against accused LEGASPI when the latter subsequently abandoned both projects, to the damage and injury of the Provincial Government of Aklan in the amount of THREE HUNDRED SEVENTY FIVE THOUSAND ONE HUNDRED NINETY NINE (sic) AND SEVENTY FIVE CENTAVOS (P 375,199.75).

CONTRARY TO LAW



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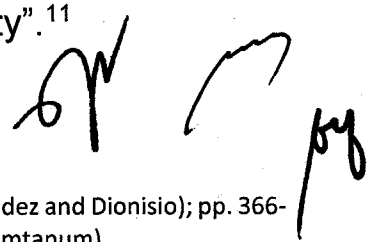
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In SB-09-CRM-0161

That on March 8, 1995 or sometime prior or subsequent thereto, in the Municipality of Kalibo, Province of Aklan, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, CORAZON L. CABAGNOT, then Provincial Governor and Chairman of the Prequalification Bids and Awards Committee (PBAC), LIBERATO R. IBADLIT, then Vice-Governor and PBAC Member, ANICETO A. FERNANDEZ, then Sangguniang Panlalawigan Member and PBAC Member, EVAN L. TIMTIMAN, then Provincial Treasurer and PBAC Member, VICTORY M. FERNANDEZ, then Provincial Engineer, FELICISIMO Y. TANUMTANUM, JR., then Engineer IV, REYNALDO B. DIONISIO, then Project Engineer, all of the Provincial Government of Aklan, Kalibo, Aklan, while in the performance of their official and/or administrative functions and committing the offense in relation to their office, acting in evident bad faith and manifest partiality, mutually helping one another and conspiring and confederating with private accused DELIA B. LEGASPI, owner of Jireh Construction and Supply, did then and there willfully, unlawfully and criminally give said accused LEGASPI unwarranted benefit, privilege and advantage by awarding to Jireh Construction and Supply the project involving the Construction of the Navitas Barangay Health Center with a total contract cost of TWO HUNDRED NINETY FOUR THOUSAND FOUR HUNDRED SIXTY NINE (sic) AND FORTY FIVE CENTAVOS (P 294,469.45), Philippine Currency, of which ONE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED FOURTEEN (sic) AND SIX CENTAVOS (P 133,314.06) was paid to accused LEGASPI despite the fact that, at the time of the award, said contractor had an unsatisfactory performance on an on-going project involving the construction of the Alibagon-Baybay Bridge at Makato, Aklan, Phase II and the accused public officers did not take any action against accused LEGASPI when the latter subsequently abandoned both projects, to the damage and injury of the Provincial Government of Aklan in the amount of ONE HUNDRED THIRTY THREE THOUSAND THREE HUNDRED FOURTEEN (sic) AND SIX CENTAVOS (P 133,314.06).

CONTRARY TO LAW.

When arraigned, the accused, assisted by their respective counsels, separately entered their pleas of "Not Guilty".¹¹



¹¹ pp. 350-357, Record, Vol. 2 (accused Ibadlit, A. Fernandez, Timtiman, V. Fernandez and Dionisio); pp. 366-367, Record, Vol. 2 (accused Legaspi); pp. 227-229, Record, Vol. 3 (accused Tanumtanum)

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During the Pre-trial,¹² the parties stipulated as follows:

With respect to all the accused¹³

1. That at all times relevant to the above-entitled cases, the following accused were public officers of the Provincial Government of Aklan:

Liberato R. Ibadlit	- Vice-Governor
Aniceto A. Fernandez	- SP member
Evan L. Timtiman	- Provincial Treasurer
Victory M. Fernandez	- Provincial Engineer
Felicitimo Y. Tanumtanum, Jr.	- Engineer IV
Reynaldo B. Dionisio	- Engineer II

x x x

3. That on or about February 24, 1995, or sometime prior or subsequent thereto, accused Liberato R. Ibadlit, Aniceto A. Fernandez and Evan L. Timtiman were members of the PBAC that awarded the project involving the construction of the Alibagon-Baybay Bridge (Phase III) in favor of Jireh Construction and Supply;

4. That on or about March 1, 1995, or sometime prior or subsequent thereto, accused Liberato R. Ibadlit, Aniceto A. Fernandez and Evan L. Timtiman were members of the PBAC that awarded the project involving the construction of the Buruanga Fishing Port in favor of Jireh Construction and Supply.

5. That on or about March 8, 1995, or sometime prior or subsequent thereto, accused Liberato R. Ibadlit, Aniceto A. Fernandez and Evan L. Timtiman were members of the PBAC that awarded the project involving the construction of the Irrigation Canal Access Road – Buruanga in favor of Jireh Construction and Supply;

6. That on or about March 16, 1995, or sometime prior or subsequent thereto, accused Liberato R. Ibadlit, Aniceto A. Fernandez and Evan L. Timtiman were members of the PBAC that awarded the project involving the construction of the Navitas Barangay Health Center in favor of Jireh Construction and Supply;

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¹² pp. 35-47 (accused Dionisio), 63-78 (accused Legaspi), 92-105 (accused Ibadlit, A. Fernandez, Timtiman and V. Fernandez), 272-285 (accused Tanumtanum) Record, Vol 3; Pre-trial Orders dated January 17, 18 and September 28, 2012

¹³ pp. 36-38, Record, Vol. 3 (Pre-trial Order dated January 17, 2012); pp. 64-66, Record, Vol. 3 (Pre-trial Order dated January 17, 2012); pp. 93-96, Record, Vol. 3) (Pre-trial Order dated January 18, 2012); pp. 273-276, Record, Vol 3 (Pre-trial Order dated September 28, 2012)

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7. That Jireh Construction and Supply was partially paid relative to the construction of the Alibagon-Baybay Bridge (Phase III);

8. That Jireh Construction and Supply was partially paid relative to the construction of the Buruanga Fishing Port;

9. That Jireh Construction and Supply was partially paid relative to the construction of the Irrigation Canal Access Road-Buruanga;

10. That Jireh Construction and Supply was partially paid relative to the construction of the Navitas Barangay Health Center;

11. That Jireh Construction and Supply undertook the construction of the Alibagon-Baybay Bridge (Phase II).

The parties also stipulated:

With respect to accused Dionisio,¹⁴ Ibadlit, A. Fernandez, Tintiman and V. Fernandez¹⁵ and Tanumtanum¹⁶

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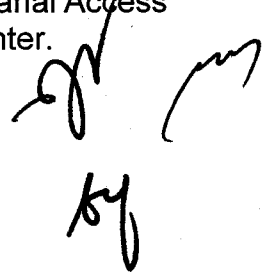
2. That at all times relevant to the cases, accused Delia B. Legaspi was the owner/contractor of Jireh Construction and Supply;

x x x

With respect to accused Tanumtanum¹⁷

x x x

12. That accused Felicisimo Y. Tanumtanum supervised the construction of the following projects: (a) Alibagon-Baybay Bridge, Phases I to III; (b) Buruanga Fishing Port; (c) Irrigation Canal Access Road – Buruanga; and (d) Navitas Barangay Health Center.



¹⁴ p. 36, Record, Vol. 3 (p. 2, Pre-trial Order dated January 17, 2012)

¹⁵ p. 94, Record, Vol. 3 (p. 3, Pre-trial Order dated January 18, 2012)

¹⁶ p. 273, Record, Vol. 3 (p. 2, Pre-trial Order dated September 28, 2012)

¹⁷ p. 276, Record, Vol. 3 (p. 5, Pre-trial Order dated September 28, 2012)

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The parties agreed that the issues to be resolved are as follows:

**With respect to accused Dionisio,¹⁸ Ibadlit, A. Fernandez,
Tintiman, V. Fernandez¹⁹ and Tanumtanum²⁰**

1. Whether or not all the accused in the above-entitled cases, as alleged in the separate Informations, are criminally liable for four (4) counts of Violation of Section 3 (e) of Republic Act No. 3019, As Amended.

2. Whether or not there is conspiracy among the accused in these cases.

With respect to accused Legaspi²¹

Whether or not Accused Delia B. Legaspi validly entered into contracts with the Provincial Government of Aklan, Kalibo Aklan, for the construction of Alibagon-Baybay Bridge (Phase II); Alibagon-Baybay Bridge (Phase III), (SB-09-CRM-0158); Buruanga Fishing Port, (SB-09-CRM-0159); Irrigation Canal Access Road- Buruanga, (SB-09-CRM-0160); and Navitas Barangay Health Center; (SB-09-CRM-0161).

EVIDENCE FOR THE PROSECUTION

The prosecution presented three (3) witnesses, all from the Commission on Audit (COA), namely, **Lolita M. Soriano**,²² **Engr. Carlos Francis A. Santiago**,²³ and **Rosalinda Gomez Salvador**.²⁴

Lolita M. Soriano, State Auditor II, identified certain documents.²⁵ She explained that she brought only photocopies of documents listed in the *subpoena* because those were the only ones in the possession of her office. She does not know what happened to

¹⁸ p. 46, Record, Vol. 3 (p. 12, Pre-trial Order dated January 17, 2012)

¹⁹ p. 104, Record, Vol. 3 (p. 13, Pre-trial Order dated January 18, 2012)

²⁰ p. 284, Record, Vol. 3 (p. 13, Pre-trial Order dated September 28, 2012)

²¹ p. 77, Record, Vol. 3 (p. 15, Pre-trial Order dated January 17, 2012)

²² TSN, April 25, 2012

²³ TSNs, June 26, 2012, June 27, 2012, July 24, 2012, October 4, 2012

²⁴ TSNs, October 11, 2012, July 3, 2013, July 4, 2013 and August 22, 2013

²⁵ Exhibits AA-1 (Program of Work for the Construction of Alibagon-Baybay Bridge dated September 5, 1994), AA-2 (Cost estimates for the Construction of Alibagon-Baybay Bridge [Phase II]), BB (Program of Work/Budget Cost for Roads & Bridges dated January 17, 1995), BB-1 (Cost Estimate for the Construction of Alibagon-Baybay Bridge [Phase III]), CC (Program of Work/Budget Cost for Roads & Bridges dated February 2, 1995), CC-1 (Cost Estimate for the Construction of Buruanga Fishing Port), DD (Program of Work/Budget Cost for Roads & Bridges for the Construction of Irrigation Canal Access Road), DD-1 (Cost Estimate for the Construction of Irrigation Canal Access Road)

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the originals. She did not bring the *Program of Work and Cost Estimate*, both, for the Navitas Barangay Health Center, even when they are listed in the said subpoena, because the same were not turned over to the Special Audit Office of the COA.

Engr. Carlos Francis A. Santiago testified:

- a. He is a metrological engineer.²⁶
- b. He is a Senior Technical Audit Specialist. He was assigned at the Special Audit Office of the COA from 1994 to 1997.²⁷
- c. At that time, he was assigned to conduct a special audit for the infrastructure projects of local government units (LGU), government corporations and other government agencies. Among the LGUs he audited was the Provincial Government of Aklan.²⁸
- d. His team, composed of Rosalinda Salvador (then Rosalinda Gomez), Gloria De Guzman, Manuel Somido and another person, conducted a special audit on the projects of the Provincial Government of Aklan, covering the period January 1, 1994 to June 30, 1995. The following projects were audited:
 - i. Alibagon-Baybay Bridge (Phases II and III)
 - ii. Buruanga Fishing Port
 - iii. Irrigation Canal Access Road
 - iv. Navitas Barangay Health Center.²⁹
- e. He went to Aklan sometime in October 1995, after receiving COA Assignment Order No. 95-097-A (Exhibit "A-1"). They proceeded to a hotel and there, their team leader who had arrived ahead of them, gave them documents to study.³⁰
- f. He does not know if the team leader coordinated with the Provincial Engineer.³¹ Coordinating with the Provincial Engineer was not part of his duties. His duties were limited to

²⁶ p. 12, TSN, October 4, 2012

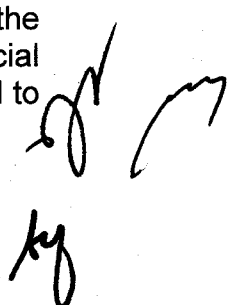
²⁷ p. 5, TSN, June 26, 2012

²⁸ p. 5, TSN, June 26, 2012

²⁹ pp. 7-8, TSN, June 26, 2012

³⁰ pp. 17-19, TSN, June 27, 2012

³¹ p. 19, TSN, June 27, 2012



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the evaluation of the projects and the documents given to them.³²

- g. He did not know the engineers involved in the projects. He recognized Engr. Tanumtanum as the person who signed the certification of time elapsed and the project accomplishments.³³
- h. They inspected the Alibagon-Baybay Bridge project site sometime in November 1995. They took measurements and also took photographs (Exhibits "F" to "F-3"), the originals of which were submitted to the COA. After examining the documents pertaining to the project, it was determined that Phase II of said project was only 22.89% complete.³⁴ They also discovered that the contractor was paid the 15% mobilization fee for Phase III sometime in May 1995.³⁵ The Alibagon-Baybay Bridge project site was less than an hour's ride from their hotel.³⁶
- i. They inspected the Buruanga Fishing Port project site sometime in October or November 1995. He was present when a member of the audit team took photographs of the project (Exhibits "N" to "N-3") but he does not remember which team member it was.³⁷ The Buruanga Fishing Port, located at the western tip of Aklan near the border of Antique, was more than an hour's ride from their hotel.³⁸
- j. Photographs of the projects were taken because it was part of the documentation of the inspection.³⁹
- k. The Buruanga Fishing Port appeared to be damaged when they conducted the inspection.⁴⁰
- l. They inspected the Irrigation Canal Access Road project site sometime in October or November 1995. He was present when another team member took photographs (Exhibits "S" to "S-2") of the project.⁴¹
- m. They inspected the Navitas Barangay Health Center project site sometime in October or November 1995. He was present

³² p. 20, TSN, June 27, 2012

³³ p. 20, TSN, June 27, 2012

³⁴ pp. 12, 14, 15, TSN, June 26, 2012

³⁵ p. 3, TSN, June 27, 2012

³⁶ p. 24, TSN, June 27, 2012

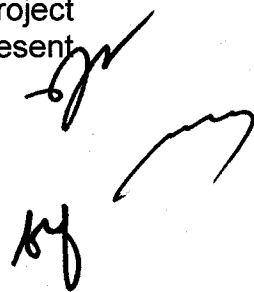
³⁷ pp. 6, 25, TSN, June 27, 2012

³⁸ p. 24, TSN, June 27, 2012

³⁹ p. 9, TSN, July 24, 2012

⁴⁰ pp. 12-13, TSN, October 4, 2012

⁴¹ p. 10, TSN, June 27, 2012



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when the photograph (Exhibit "X") of the site was taken.⁴² The project plans or program of works were not submitted to them so they had to rely on a certification (Exhibit "W") to determine that the project was only 45.27% complete as of March 23, 1995.⁴³

- n. His duty was limited to evaluating the technical aspect of the projects based on the documents provided to him by the team leader.⁴⁴
- o. Technical evaluation is limited to the specific structures in the infrastructure projects.⁴⁵
- p. He did not confer with the Provincial Engineer during the inspection, but an engineer from the Provincial Engineer's Office went with them. He could not remember the name or the face of that engineer.⁴⁶
- q. He never spoke to the governor during the course of the audit.⁴⁷
- r. He knew that the projects were supposed to be accomplished months before they conducted the inspection. None of the projects were actually completed.⁴⁸
- s. He concluded that none of the projects were complete based on the ocular inspection and the documents submitted to them.⁴⁹ Even the province itself reported that the projects were not 100% complete.⁵⁰
- t. Based on the reports of the Provincial Engineer's Office, the Alibagon-Baybay Bridge (Phase II) was 22.89% complete; the Buruanga Fishing Port was 58.09% complete; the Irrigation Canal Access Road was 81.7% complete; and the Navitas Barangay was 45.27% complete. There was no accomplishment for Alibagon-Baybay Bridge (Phase III).⁵¹ For the Buruanga Fishing Port project, they adopted the report of accomplishment made by the province because they could not ascertain the actual percentage accomplished before the

⁴² pp. 13-14, TSN, June 27, 2012

⁴³ pp. 12, 14-15, TSN, June 27, 2012

⁴⁴ p. 29, TSN, June 27, 2012

⁴⁵ p. 9, TSN, October 4, 2012

⁴⁶ pp. 16-17, TSN, October 4, 2012

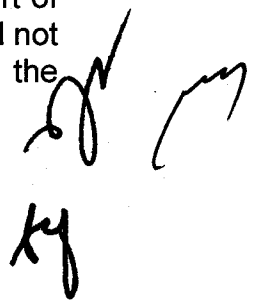
⁴⁷ p. 27, TSN, June 27, 2012

⁴⁸ p. 20, TSN, October 4, 2012

⁴⁹ p. 20, TSN, October 4, 2012

⁵⁰ p. 21, TSN, October 4, 2012

⁵¹ p. 21, TSN, October 4, 2012

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damage, if any.⁵² He adopted the figures in the reports prepared by the project engineers because he arrived at a lower figure when he did the computations himself.⁵³ The projects were based on the report or Percentage of Accomplishment on Time Elapsed.⁵⁴

- u. The contracts pertaining to the projects were among the documents that were used as basis for the investigation.⁵⁵
- v. He had seen the report of accomplishment as of the supposed date of the completion of the project.⁵⁶
- w. The Audit Report was prepared after the exit conference.⁵⁷
- x. The findings in the report were also based on measurements taken from the physical structures in the projects.⁵⁸
- y. The reasons for the contractor's failure to complete the projects were not included in the report.⁵⁹
- z. The engineers charged in the present cases were included in the report because their names appeared in the documents.⁶⁰
- aa. It was standard practice for the audit team to discuss the results of the audit with officials of the LGU in an exit conference. He does not remember attending the same but the other members of the audit team may have attended the said conference.⁶¹
- bb. He did not recommend the filing of criminal or administrative charges against the accused. He merely submitted his findings to his team leader, who, in turn submitted a report to the team supervisor, and thereafter, to the director.⁶²
- cc. He affixed his signature to the audit report because of his participation in the technical aspect thereof. In particular, he evaluated the projects and determined the percentage of accomplishment for each.⁶³

⁵² pp. 13-14, TSN, October 4, 2012

⁵³ pp. 14-15, TSN, October 4, 2012

⁵⁴ p. 11, TSN, July 24, 2012

⁵⁵ p. 33, TSN, June 27, 2012

⁵⁶ p. 10, TSN, July 24, 2012

⁵⁷ p. 30, TSN, June 27, 2012

⁵⁸ p. 9, TSN, July 24, 2012

⁵⁹ p. 15, TSN, July 24, 2012

⁶⁰ p. 26, TSN, June 27, 2012

⁶¹ p. 28, TSN, June 27, 2012

⁶² p. 27, TSN, June 27, 2012

⁶³ pp. 18-19, TSN, October 4, 2012

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- dd. He cannot recall if there was a typhoon prior to the inspection.⁶⁴
- ee. At the time of the inspection, he was not aware that the newly-elected governor ordered the suspension of the projects.⁶⁵ He has never seen the Memo dated July 5, 1995⁶⁶ directing the suspension of the implementation of the projects but he read in a report that there was such an order.⁶⁷
- ff. He was also not aware that the contractor was given an extension of time⁶⁸ to complete the project.⁶⁹

Rosalinda Gomez Salvador testified as follows:

- a. In 1995, she held the position of State Auditor III,⁷⁰ and was assigned at the Special Audit Office.⁷¹
- b. Pursuant to COA Assignment Order Nos. 95-097 and 95-097-A, she conducted a special audit of the infrastructure projects of the Provincial Government of Aklan.⁷²
- c. The infrastructure projects subject of the audit investigation were:
 - i. Alibagon-Baybay Bridge
 - ii. Buruanga Fishing Port
 - iii. Irrigation Canal Access Road
 - iv. Navitas Barangay Health Center
- d. The special audit was conducted from September 5, 1995 to November 24, 1995, covering the period from January 1, 1994 to June 30, 1995. She was the team leader. The other members of her team were Fernando Somido, Lerna Peralta, Gloria C. De Guzman and Engr. Carlos Santiago.⁷³

⁶⁴ p. 34, TSN, June 27, 2012

⁶⁵ p. 15, TSN, July 24, 2012

⁶⁶ Exhibits 4-Dionisio/4-Tanumtanum/4-Fernandez/4-Legaspi

⁶⁷ pp. 15-16, TSN, July 24, 2012

⁶⁸ Exhibits 7-Dionisio/7-Tanumtanum/7-Fernandez/8-Legaspi

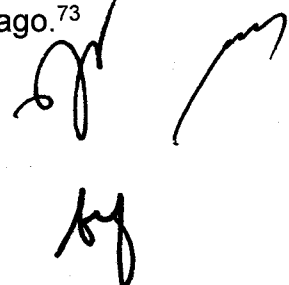
⁶⁹ p. 16, TSN, July 24, 2012

⁷⁰ p. 8, TSN, October 11, 2012

⁷¹ p. 9, TSN, October 11, 2012

⁷² p. 10, TSN, October 11, 2012

⁷³ p. 11, TSN, October 11, 2012



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- e. The audit investigation commenced on September 5, 1995 without the assistance of a technical specialist.⁷⁴
- f. In the initial conference, they discussed with the section chiefs of the provincial government about the availability of pertinent documents that may be required during the course of the audit.⁷⁵
- g. Subsequently, COA Assignment Order No. 95-097-A dated October 9, 1995 designated Engr. Carlos Francis A. Santiago as an additional member of the audit team created by virtue of COA Assignment Order No. 95-097.⁷⁶
- h. Engr. Carlos Francis Santiago is not a structural or civil engineer.⁷⁷
- i. They did not issue subpoenas because the documents required for the audit were made available to them.⁷⁸
- j. After conducting an initial conference, they gathered documents pertaining to the financial transactions involved in the projects, and inspected the equipment and the project sites. Finally, they conducted the exit conference and prepared a report.⁷⁹
- k. They did not administer oath or take testimonies from persons relevant to the audit investigation.⁸⁰
- l. They did not evaluate each and every document involved in the infrastructure projects – only the disbursement vouchers and the supporting documents attached thereto.⁸¹
- m. For the ocular inspection, they went to the project sites to verify the existence of the projects and to assist the engineer in the inspection of the project.⁸²
- n. When they conducted the ocular inspection, they were accompanied by a representative of the Engineering Office. The representative was an engineer involved in the project subject of the inspection.⁸³

⁷⁴ p. 17, TSN, July 4, 2013

⁷⁵ p. 15, TSN, October 11, 2012

⁷⁶ p. 16, TSN, July 4, 2013

⁷⁷ p. 18, TSN, July 4, 2013

⁷⁸ p. 7, TSN, August 22, 2013

⁷⁹ p. 12, TSN, October 11, 2012

⁸⁰ p. 9, TSN, July 4, 2013

⁸¹ pp. 21-22, TSN, July 4, 2013

⁸² pp. 21-22, TSN, July 4, 2013

⁸³ p. 54, TSN, July 4, 2013

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- o. She assisted Engr. Carlos Santiago during the ocular inspection of the Alibagon-Baybay Bridge (Phase II) project on November 10, 1995.⁸⁴
- p. She took pictures (Exhibits "F" to "F-3") during the ocular inspection.⁸⁵ The pictures show that the construction of the bridge was not completed.⁸⁶
- q. After the inspection, it was determined that the Alibagon-Baybay Bridge (Phase II) project was only 22.89% complete.⁸⁷
- r. The contract amount of the project was P933,335.90 and the amount actually paid for the accomplishment of the contractor was P140,895.16.⁸⁸
- s. The contractor defaulted in its undertaking for the Alibagon-Baybay Bridge (Phase II) project but the performance bond was not forfeited.⁸⁹
- t. Only one partial payment was made for the Alibagon-Baybay Bridge (Phase II) project. The said payment was made when the project was 22.89% complete.⁹⁰
- u. In the performance bond (Exhibit "HH"), there is a provision stating, in effect, that the surety may recover from the contractor in case the latter defaults in the performance of the contract.⁹¹
- v. For the Alibagon-Baybay Bridge (Phase III) project, they gathered supporting documents such as the disbursement voucher, (Exhibit "J"), the contract,⁹² bidding documents, accomplishment reports and abstract of bids. The bidding documents include the PBAC resolution and performance bond.⁹³
- w. Upon examining the disbursement voucher, she found that the accomplishment in the Alibagon-Baybay Bridge (Phase III) project was zero.⁹⁴ This was confirmed after they conducted

⁸⁴ p. 26, TSN, October 11, 2012

⁸⁵ p. 28, TSN, October 11, 2012

⁸⁶ p. 28, TSN, October 11, 2012

⁸⁷ p. 29, TSN, October 11, 2012

⁸⁸ p. 30, TSN, October 11, 2012

⁸⁹ pp. 26-27, TSN, October 11, 2012

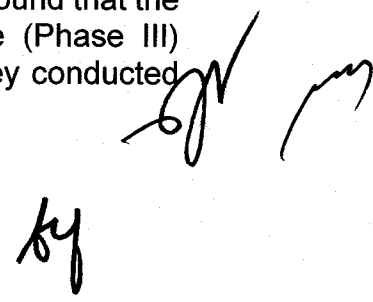
⁹⁰ p. 18, TSN, October 11, 2012

⁹¹ p. 18, TSN, July 3, 2013

⁹² Exhibits H/15-Fernandez/16-Legaspi

⁹³ p. 11, TSN, July 3, 2012

⁹⁴ p. 14, TSN, July 3, 2013

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an ocular inspection.⁹⁵ No further payments were made after the initial payment for the said project.⁹⁶

- x. She assisted Engr. Carlos Francis Santiago during the inspection of the Alibagon-Baybay Bridge (Phase III) project sometime in November 1995. A representative of the Provincial Engineering Office and the other members of the audit team were present during the inspection.⁹⁷
- y. For the Buruanga Fishing Port project, the documents gathered were the three (3) disbursement vouchers (Exhibits "O" to "O-2") and the supporting documents, including the contract (Exhibit "L"), bidding documents and PBAC resolution, performance bond, abstract of bids and accomplishment reports.⁹⁸
- z. As of April 11, 1995, the date of Check No. 13578771, the accomplishment for the project was 58.09%.⁹⁹
- aa. She accompanied Engr. Carlos Francis Santiago in conducting the ocular inspection of the Buruanga Fishing Port project. She was present when the pictures (Exhibits "N" to "N-3") of the project were taken.¹⁰⁰
- bb. For the Irrigation Canal Access Road project, they gathered the following documents: disbursement vouchers (Exhibits "T" and "T-1") and supporting documents such as the contract, abstract of bids, accomplishment report, acceptance report, statement of time elapsed and bidding documents including the PBAC resolution, performance bond and surety bond.¹⁰¹
- cc. They conducted an ocular inspection of the Irrigation Canal Access Road project site and took pictures (Exhibits "S" to "S-2").¹⁰²
- dd. For the Navitas Barangay Health Center project, they examined the Disbursement Voucher (Exhibit "Y") and supporting documents including the contract, accomplishment reports, abstract of bids, report of time elapsed and accomplishment. The bidding documents include the PBAC resolution, performance bond, surety bond and pictures

⁹⁵ p. 14, TSN, July 3, 2013

⁹⁶ p. 14, TSN, July 3, 2013

⁹⁷ pp. 20-21, TSN, July 3, 2013

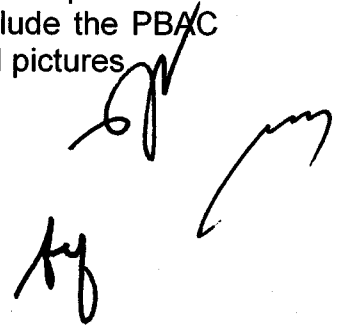
⁹⁸ pp. 29-31, TSN, July 3, 2013

⁹⁹ p. 33, TSN, July 3, 2013

¹⁰⁰ pp. 42-43, TSN, July 3, 2013

¹⁰¹ pp. 44-45, TSN, July 3, 2013

¹⁰² p. 52, TSN, July 3, 2013



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- ee. From the documents provided to them, it appeared that the Navitas Barangay Health Center was 45.27% complete as of the date of the disbursement voucher.¹⁰³
- ff. They took some pictures when they conducted the ocular inspection of the Navitas Barangay Health Center project sometime in November 1995.¹⁰⁴
- gg. The last of the projects should have been completed in April 1995. The ocular inspections were conducted sometime in November 1995.¹⁰⁵
- hh. They learned that calamities occurred sometime between April 1995 and November 1995.¹⁰⁶
- ii. At the time she examined the documents pertaining to the contracts, she did not know that the same were awarded after the contractor's request for extension of time to complete the Alibagon-Baybay Bridge (Phase II) project was granted.¹⁰⁷ They were not provided with copies of the documents pertaining to the contractor's request for extension of time to complete the project.¹⁰⁸
- jj. If she had known of the extension granted to the contractor, the results of the audit might have changed, depending on the number of days approved by the management.¹⁰⁹
- kk. She was also not aware of Memorandum No. 004 dated July 5, 1995, suspending the implementation of infrastructure projects of the provincial government.¹¹⁰
- ll. If calamities were taken into consideration, the results of the audit might have been different. It was possible that at the time the audit was conducted, the projects might have been destroyed by the calamities.¹¹¹
- mm. Accused Tanumtanum and Dionisio were not members of the PBAC.¹¹² On the other hand, some members of the PBAC were not included in the special audit report because they were not government employees. They were present during the

¹⁰³ p. 58, TSN, July 3, 2013

¹⁰⁴ pp. 65-66, TSN, July 3, 2013

¹⁰⁵ p. 24, TSN, July 4, 2013

¹⁰⁶ p. 24, TSN, July 4, 2013

¹⁰⁷ p. 71, TSN, July 4, 2013

¹⁰⁸ p. 72, TSN, July 4, 2013

¹⁰⁹ p. 24, TSN, August 22, 2013

¹¹⁰ p. 73, TSN, July 4, 2013

¹¹¹ p. 26, TSN, August 22, 2013

¹¹² p. 29, TSN, July 4, 2013

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bidding only because the rules and regulations required them to attend as observers.¹¹³

- nn. Delia Legaspi was not included in the Special Audit Report because she was a private individual.¹¹⁴ Private persons involved in the projects were not identified as accountable in the report.¹¹⁵
- oo. Based on the Accomplishment Report (Exhibit "R"), accused Tanumtanum failed to recommend action against the contractor despite the negative slippage and abandonment of the project.¹¹⁶ The certification in the report indicates that accused Dionisio and Tanumtanum were the engineers involved in the projects.¹¹⁷
- pp. The COA furnished the provincial government a copy of the audit report.¹¹⁸
- qq. She went to the exit conference held after they conducted the audit investigation. Accused Victory Fernandez was the only representative of the provincial government present during the exit conference.¹¹⁹
- rr. Only the incumbent Provincial Governor (Gov. Miraflores) was given an invitation to the exit conference. The other local government officials involved in the present cases were not given separate invitations because the Provincial Governor had direct supervision over them. They could not direct the other officials to attend the said exit conference.¹²⁰
- ss. (Former) Gov. Cabagnot was invited to another scheduled exit conference. She (accused Cabagnot) went to the COA Central Office and was furnished a copy of the tentative audit highlights.¹²¹
- tt. Only accused V. Fernandez submitted his comment. The other engineers did not submit their respective comments.¹²²

¹¹³ p. 32, TSN, July 4, 2013

¹¹⁴ pp. 78-79, TSN, July 3, 2013

¹¹⁵ p. 80, TSN, July 3, 2013

¹¹⁶ p. 33, TSN, July 4, 2013

¹¹⁷ p. 36, TSN, July 4, 2013

¹¹⁸ p. 55, TSN, July 4, 2013

¹¹⁹ pp. 56, 58, TSN, July 4, 2013

¹²⁰ p. 65, TSN, July 4, 2013

¹²¹ p. 61, TSN, July 4, 2013

¹²² p. 66, TSN, July 4, 2013

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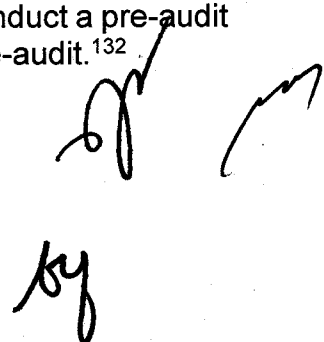
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- uu. She was not aware that the members of the PBAC were no longer public officials at the time of the exit conference.¹²³
- vv. The percentage of accomplishment of the projects should have been 100% regardless of the time of inspection.¹²⁴
- ww. The provincial government did not proceed against the contractor's performance bond.¹²⁵
- xx. The government officials concerned, specifically the Provincial Engineering Office, should have initiated the calling of the bond.¹²⁶
- yy. If not for the progress billing of the contractor, the partial payments would not have been made. The basis for the payment was the accomplishment of the contractor.¹²⁷
- zz. Considering that the audit investigation was conducted many years ago, she cannot remember if she spoke to accused Tanumtanum and Dionisio.¹²⁸
- aaa. Because they were involved in the implementation and monitoring of the project, accused Tanumtanum and Dionisio were in a position to recommend action against the contractor in cases of delay or abandonment.¹²⁹
- bbb. There was no overpayment made in all of the projects.¹³⁰
- ccc. From the documents provided to them, it did not appear that the contractor was made to pay liquidated damages for the delay in the completion of the project.¹³¹
- ddd. It was not necessary for the local auditor to conduct a pre-audit because not all transactions are subject to pre-audit.¹³²

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¹²³ p. 22, TSN, August 22, 2013

¹²⁴ p. 75, TSN, July 4, 2013

¹²⁵ p. 77, TSN, July 4, 2013

¹²⁶ pp. 77-78, TSN, July 4, 2013

¹²⁷ p. 79, TSN, July 4, 2013

¹²⁸ p. 51, TSN, July 4, 2013

¹²⁹ p. 51, TSN, July 4, 2013

¹³⁰ p. 42, TSN, July 4, 2013

¹³¹ p. 33, TSN, October 11, 2012

¹³² p. 40, TSN, July 4, 2013