



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

Criminal Case Nos. SB-09-CRM-  
0153

- versus -

GREGORIO R. VIGILAR,  
VICENTE B. LOPEZ, NONITO f  
FANO, MACARIOLA S.  
BARTOLO, BERNARDO AMAN,  
FRANCISCO IMPERIAL, ISAMU  
KONAKAHARA, YOSHINORI  
IKEDA, HIROYUKI  
SHIMOMURA AND TAKAO  
OKA,  
*Accused.*

Present:  
LAGOS, J., *Chairperson,*  
CRUZ\* and  
MENDOZA-ARCEGA, JJ.

Promulgated:

August 09, 2017 *lal*

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DECISION

**LAGOS, J.:**

Accused Isamu Konakahara, Hiroyuki Shimomura and Takao Oka are charged with violating Section 3 (e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. The Information<sup>1</sup> against them reads as follows:

That on March 20, 1998, or sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused GREGORIO L. Vigilari, former Secretary with Salary Grade 31,

\*As per Administrative Order No. 025-2017 dated February 1, 2017.

<sup>1</sup> Dated May 31, 2004.

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VICENTE B. LOPEZ, former Undersecretary with Salary Grade 30, NONITO F. FANO, Project Director, Major Flood Control Projects, Project Management Office, with Salary Grade 28, MACARIOLA S. BARTOLO, Project Manager with salary grade 26, BERNARDO AMAN, Project Manager with salary grade 26, FRANCISCO IMPERIAL, Project Manager with salary grade 25, and ISAMO KONAKAHARA, Consultant, Members of the Negotiating Team for Major Flood Control Projects, all public officers of the Department of Public Works and Highways, Bonifacio Drive, Port Area, Manila, while in the performance of their official functions, committing the offense in relation to their office, and taking advantage of their official functions, acting with manifest partiality and evident bad faith, conspiring and confederating together and helping one another, together with YOSHINORI IKEDA, General Manager, HIROYUKI SHIMOMURA and TAKAO OKA, members of the Negotiating Team, all of the Toyo-Ebara Joint Venture, respectively, did then and there willfully, unlawfully and criminally give unwarranted benefits, advantage and preference to the said Toyo-Ebara Joint Venture by entering into Supplemental Agreement Contract No. 1 for the procurement/maintenance spare parts and for the replacement/maintenance spare parts and for the replacement/maintenance of the existing major pump stations of Vitas and Balut, Tondo, this city, in the total amount of Y305,000,000.00 or its equivalent in Philippine Currency in the total amount of P58,865,854.02 more or less, without a public bidding and not within the general scope of the aforementioned original project as bidden and awarded, thereby causing undue injury to the government in the aforementioned amount.

CONTRARY TO LAW.

**ANTECEDENT FACTS**

On June 30, 2015, while accused Konakahara, Shimomura and Oka were still at-large, this Court rendered a Decision acquitting accused Vigilant, Fano, Bartolo and Ikeda.

WHEREFORE, for failure of the prosecution to prove the guilt of accused GREGORIO R. VIGILANT, NONITO F. PANO, MACARIOLA S. BARTOLO, AND YOSHINORI IKEDA beyond reasonable doubt, they are ACQUITTED

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of the charge of violation of Section 3 (e) of R.A. 3019 otherwise known as the Anti-Graft and Corrupt Practices Act.

The case, insofar as accused Bernardo Aman, Francisco Imperial, Isamo Konakahara, Hiroyuki Shimomura and Takao Oka were concerned, was archived.

On December 5, 2016, accused Konakahara personally appeared and posted cash bail bond for his provisional liberty. The case against him was then subsequently revived. Accused Konakahara was arraigned on December 9, 2016. He pleaded NOT GUILTY.

On January 16, 2017, accused Shimomura and Oka personally appeared and posted cash bail bond for their provisional liberty. On January 19, 2017, accused Shimomura and Oka were arraigned. Both pleaded NOT GUILTY.

Pre-Trial for these three accused was concluded on February 15, 2017 with the issuance of the Pre-Trial Order.

The parties stipulated on the following:

1. That at the time material to the instant case, the following accused were public officers employed with the Department of Public Works and Highways, holding the following positions, namely:
  - a. Gregorio Vigilar – Secretary of DPWH
  - b. Vicente Lopez – Undersecretary of the DPWH
  - c. Nonito Fano – Project Director, Major Flood Control Projects, Project Mgt. Office
  - d. Macariola Bartolo – Project manager
  - e. Bernardo Aman – Project manager
2. That accused Nonito Fano, Mariola Bartolo, Bernard Aman and Francisco Imperial were members of the Negotiating Team for the Supplemental Agreement No. 1.
3. That during the time material to this case, accused Hiroyuki Shimomura and Takao Oka were members of the Negotiating Team of Toyo-Ebara Joint Venture with respect to the Supplemental Agreement No. 1.
4. That accused Yoshinori Ikeda at that time was the General Manager of Toyo Construction and Project Manager of Toyo-Ebara Joint Venture.

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5. That on August 26, 1993, the Government of the Republic of the Philippines, through the Department of Public Works and Highways, represented by then Secretary Gregorio Vigilar and Toyo-Ebara Joint Venture entered into a contract denominated as Contract Agreement for the Construction of Vitas and Balut Pumping Stations and Drainage Main/Sub-main, Improvement of Ester and Supply and Installation of Plant and Power Supply System, Metro Manila Flood Control Project II Package A.
6. That then Secretary Gregorio Vigilar signed the Contract Agreement dated August 26, 1993 marked as Exhibit B of the prosecution.
7. That the project covered by this Contract was completed as shown by the project completion report dated May 1998 marked as Exhibit GG.
8. That on March 20, 1998, the government of the Republic of the Philippines, represented by Undersecretary Vicente B. Lopez, entered into a Supplemental Agreement No. 1 marked as Exhibit C with Toyo-Ebara Joint Venture for the procurement of replacement/maintenance spare parts of existing major pumping stations.
9. That this Supplemental Agreement was signed by Vicente Lopez and Yoshimori Ikeda, Hiroyuki Shimomura and Nonito Fano and approved by then Secretary Vigilar.
10. That the procurement of spare parts covered by Supplemental Agreement No. 1 in the amount of ¥305 million or equivalent to P58,865,854.02 more or less, was made without any public bidding and was in the form of a negotiated contract in favour of Toyo-Ebara Joint Venture.
11. That prior to the signing of the Supplemental Agreement, a Negotiating Team from the DPWH, composed of Nonito Fano, Bernardo Aman, Francisco Imperial and Macariola Bartolo together with Isamu Konakahara in his capacity as Project Consultant, was tasked to negotiate with the Toyo-Ebara Negotiating Team composed of Hiroyuki Shimomura and Takao Oka.
12. That the amount of ¥305 million or equivalent to P58,865,854.02 more or less covering the Supplemental Agreement was paid by DPWH to Toyo-Ebara Joint Venture.
13. That as shown by the Project Completion Report particularly Exhibit GG-2-, the construction of the project under the original Contract Agreement was completed on February 28, 1998.
14. That Toyo-Ebara Joint Venture was paid the total amount of P1,499,111,805 for the work done under the original contract as

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shown by Exhibit "6" of the defense and Exhibit "H" of the prosecution.

15. That there was a bidding conducted on the original main contract marked as Exhibit "B".
16. That during the material dates in question, Isamu Konakahara was a consultant of the DPWH.
17. That during the material dates in question, Hiroyuki Shimomura was the Head of the Negotiating Team of Toyo-Ebara Joint Venture.
18. That in Shimomura's capacity as the Head of the Negotiating Team of Toyo-Ebara Joint Venture he signed the Supplemental Agreement No. 1 marked as Exhibit "C" of the prosecution.
19. That during the material dates in question, Takao Oka was a member of the Toyo-Ebara Joint Venture Negotiating Team.
20. That both Shimomura and Oka participated in the series of negotiations for the procurement of replacement spare parts for the existing major pumping stations as shown by their signatures in the Minutes of Negotiations, such as the following:

Exhibit "N" which shows the signatures of Takao Oka and Isamu Konakahara.

Exhibit "O" also shows the signatures of Hiroyuki Shimomura and Takao Oka, among others.

21. That Konakahara, Oka and Shimomura signed the List of Spare Parts Procured for the Existing Major Pumping Stations in Metro Manila which was marked as Exhibit "4" up to "4-NN" of the defense and this is equivalent to Exhibit "T" up to "T-39" of the prosecution as shown by their signatures appearing in the said documents.

The prosecution adopted all the documents marked and presented during the trial. The prosecution and the defense likewise adopted all the documents marked, and the testimonies of the witnesses presented during the trial, which were made the basis of the Decision acquitting accused Vigilar, Fano, Bartolo and Ikeda.

Considering that the parties manifested that they were no longer presenting any additional evidence with respect to accused Konakahara, Shimomura and Oka, the Court no longer set dates for hearing for the accused. The parties were then given thirty days from receipt of the Court's

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order to file their respective memoranda<sup>2</sup> and the case, with respect to the three accused, was submitted for decision.

**ISSUE**

Whether accused Konakahara, Shimomura and Oka violated Section 3 (e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

**RULING**

The three essential elements for violation of Section 3(e) of RA 3019 are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>3</sup>

In criminal cases, the burden of proving guilt is with the prosecution. Rule 133, Section 2 of the Revised Rules on Evidence specifies the requisite quantum of evidence in criminal cases:

Section 2. Proof beyond reasonable doubt. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the

<sup>2</sup> The prosecution filed its Memorandum on March 30, 2017. Accused Konakahara, Shimomura and Oka filed their Memorandum on May 29, 2017.

<sup>3</sup> Danilo O. Garcia and Joven Sd. Brizuela v. Sandiganbayan and People of the Philippines (G.R. No. 197204, March 26, 2014).

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prosecution.” Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted.<sup>4</sup> Necessarily then, for accused Konakahara, Shimomura and Oka to be convicted, the prosecution here must prove all the essential elements of the crime of Section 3 (e) of Republic Act No. 3019 beyond reasonable. Failure to do so shall result in the dismissal of the charge and acquittal of the accused.

**First element, that the accused is a public officer discharging administrative, judicial or official functions.**

It has been settled that Shimomura and Oka are accused of having conspired and confederated with public officers discharging their official functions while Konakahara, himself, was a public officer, a consultant for the DPWH, and was discharging his official functions while in the commission of the alleged crime. Given these undisputed facts, the first element is present.

**Second element, that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence.**

The second element enumerates the different modes by which means the offense penalized in Section 3 (e) may be committed. “Partiality” is synonymous with “bias” which “excites a disposition to see and report matters as they are wished for rather than as they are”. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. “Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.”

In its June 30, 2015 Decision, this Court found that:

The prosecution’s case is anchored on the lack of public bidding prior to the execution of Supplemental

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<sup>4</sup> Nilo Macayan, Jr. Y Malana v. People of the Philippines (G.R. No. 175842, March 18, 2015).

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Agreement No. 1, and its failure to meet the requirements of either the negotiated contract or supplemental agreement sanctioned by P.D. 1594.

“Supplemental Agreement No. 1”, while so dubbed, is evidently not the supplemental agreement contemplated by the 1995 Implementing Rules and Regulations (IRR) of P.D. 1594. A supplemental agreement so sanctioned pertains to “activities during project construction, i. e., after contract award until completion”. Inarguably, Supplemental Agreement No. 1 was executed after the main contract or the Contract Agreement referring to the construction of the Vitas and Balut Pumping Stations has already been completed. Obviously, there was no more project to supplement. It remains accused’s contention, however, that despite the completion of the main contract, it was yet to be accepted by the DPWH before the Supplemental Agreement No. 1 was executed. A perusal of the Supplemental Agreement No. 1 would likewise reveal that none of its provisions relate to the construction of the Vitas and Balut Pumping Stations. Such Supplemental Agreement essentially provided for the procurement of replacement and maintenance spare parts of the existing pumping stations in Metro Manila.

On the other hand, a negotiated contract is allowed in exceptional cases (a) where time is of the essence, or (b) where there is lack of qualified bidders or contractors, or (c) where there is conclusive evidence that greater economy and efficiency would be achieved through this arrangement. While it remains the accused position that Supplemental Agreement No. 1 was contiguous to the Contract Agreement and was thus entered into in accordance with the IRR of P.D. 1594, the Prosecution asserts that for the accused to validly enter into a negotiated contract on this condition, P.D. 1594 required that they negotiate “at the same unit prices, adjusted to price levels prevailing at the time of negotiation”. They allegedly failed to establish this as they merely made estimates during the negotiation of Supplemental Agreement No. 1.



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At this point, it actually remains inconsequential whether Supplemental Agreement No. 1 was executed under the conditions stated in the IRR of P.D. 1594 on negotiated contracts. Rather, it remains the burden of the Prosecution to establish how the accused's participation in Supplemental Agreement No. 1 amounted to manifest partiality or evident bad faith. This, the prosecution failed to discharge.

In said Decision, this Court ruled that no manifest partiality nor evident bad faith was shown to have been committed by the accused in entering into Supplemental Contract No. 1, viz:

In this case, manifest partiality and evident bad faith cannot be presumed from the accused's departure from the technicalities of P.D. 1594. On the contrary, this Court finds that such deviation was borne out of necessity, not partiality and in apparent good faith, not bad.

This conclusion was borne out of the prosecution's own evidence, as detailed in said Decision., to wit:

Not even the Prosecution's witnesses could discount the fact that at the time of the construction of the Vitas and Balut Pumping Stations, the existing pumping stations were already in dire need of repair, and had already diminished capacity to control floods. Prosecution witness Violenda Sucro testified:

ATTY. ARANETA

- Q: What was the status of the pumping station and the grading system at the time [of] the construction of Balut-Vitas Pumping Station?
- A: During our discussion with the Chief of the Pumping Station in the Flood Gate Division we have to coordinate in the implementation of the Balut-Vitas Pumping Station, we have known that they need of (sic) spare parts and this facility needs for (sic) rehabilitation.

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Q: Would you agree with me that these pumping stations were very old about 20 years old?

A: Yes sir.

Q: Would you agree with me that they often shut down and broke down?

A: Yes sir specially during operation.

Q: And that is why there is a need for rehabilitation and procurement of spare parts, is that correct?

A: Yes sir.

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Q: Would you agree with me that there was urgency to have the rehabilitation and the procurement of spare parts?

A: Yes sir.

As noted in said Decision, the prosecution's witnesses themselves acknowledged that the existing pumping stations used Ebara parts, which could be replaced only by Ebara parts. As testified by prosecution witness Baltazar Melgar:

JUSTICE GESMUNDO

Q: Mr. Witness, these thirteen (13) pumping stations, they would have the same brand or type of pumps?

A: Yes, Your Honor.

Q: Please tell the Court what is the brand or name of these pumps?

A: Ebara pumps, Your Honor.

Q: So these 13 pumping stations use the same type, capacity of pumps?

A: The same type but different capacity, Your Honor.

Q: And they have only one supplier, Ebara?

A: Because Ebara –

Q: What is the brand name?

A: Ebara Pumps, Your Honor?

ATTY. ARANETA

Q: Mr. Witness, do you agree with me that you cannot just get the spare parts from any supplier?

A: Yes, sir.

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Q: Most probably it has to be secured from Ebara because the original spare parts came from Ebara, is that correct?

A: Yes, sir.

JUSTICE GESMUNDO

Q: So this would refer to minor parts?

A: Yes, Your Honor.

Q: Replaceable minor parts?

A: Yes, Your Honor.

Q: But when it comes to vital and major parts, you have to procure it from Ebara?

A: That's right, Your Honor.

Q: And how do you procure it? Should it be by bidding?

A: Sole distributorship I think.

Q: Sole distributorship?

A: Yes, because they are the ones who manufacture the parts, Your Honor.

Q: So are you telling us that the present pumps used in our anti-flood controls installed in all the pumping stations, they are the same brand, Ebara, right?

A: So that is there is a need to replace them, you don't have a choice but to procure it from Ebara being the exclusive distributor?

A: We have a machine shop, if we can do it by administration –

Q: In other words, if you can fabricate the parts locally, you do that?

A: Yes, Your Honor.

Q: But for parts that cannot be fabricated locally, you have only one source and that is Ebara?

A: That is right, Your Honor.

When the urgent need to repair the existing pumping stations arose and the same coincided with the availability of funds from the unobligated/saved portion of the loan used to fund the contract with Toyo-Ebara for the construction of the Vitas and Balut Pumping Stations, the accused public officers had the choice of using the fund to procure the parts without public bidding or delaying procurement for the sake of conducting the public bidding , thereby losing the fund as a result and risking disaster due to the imminent flooding. In light of the evidence, there is scant basis to conclude that accused public officers' actions were tainted with manifest partiality or

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evident bad faith. On the contrary, it is understandable that they were, instead, impelled by the urgency of the situation and chose the latter more practical course of action. As this Court noted, it was convincingly explained by the accused that they would have conducted public bidding only if they had sufficient time, but the imminent closing date of the Loan Agreement made it impossible to carry out such public bidding in time for the expiration of the loan agreement. As this Court pronounced in the previous Decision:

Citing the same instances when negotiated contracts may be executed as an exception to the rule on public bidding, the Supreme Court, in Republic v. Bakunawa, et al. held:

At any rate, the Court must point out that negotiated contracts are not *per se* illegal. A negotiated contract is one that is awarded on the basis of a direct agreement between the Government and the contractor, without going through the normal procurement process, like obtaining the prior approval from another authority, or a competitive bidding process. It is generally resorted to for convenience, or "when time is of the essence, or where there is a lack of qualified bidders or contractors, or where there is conclusive evidence that *greater economy and efficiency* would be achieved." The Court has upheld the validity of a negotiated contract made pursuant to law, like a negotiated contract entered into by a City Mayor pursuant to the then existing Local Government Code, or a negotiated contract that eventually redounded to the benefit of the general public, even if there was no specific covering appropriation pursuant to COA rules, or a negotiated contract that was made due to an emergency in the health sector, or a negotiated contract for long overdue repair and renovation needed to provide better health services.

We find this situation analogous to those above-cited. Measures to improve flood control are better

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taken sooner than later. In view of the confluence of (a) the necessity for Ebara spare parts to replace the existing pumping stations' deteriorated Ebara-brand parts; (b) the availability of funds to answer for such replacement; and (c) the availability of a competent, if not most qualified, contractor to execute the task all at an opportune time, this Court believes that the accused exercised the best judgment they could when they proceeded with Supplemental Contract No. 1 after negotiations.

This Court also noted in said Decision that the nod of then President Fidel V. Ramos to proceed with the project stamps the act of the public officers with regularity thereby dispersing the cloud of suspicion over the public officers' actions.

Despite the time constraints, the accused public officers were, nevertheless, not grossly negligent in dealing with Toyo-Ebara as they engaged in negotiations with Toyo-Ebara before signing Supplemental Agreement No. 1 in ascertaining the capability of Toyo-Ebara to undertake the supply and installation of the spare parts at terms acceptable to the government.

Considering the foregoing and given this Court's previous ruling against the existence of manifest partiality, evident bad faith and gross negligence on the part of public officers Vigilar, Fano and Bartolo, there is likewise no basis to find accused Konakahara's actions to have been tainted with the same. In the same vein, there can be no basis for finding that accused Shimomura and Oka to have colluded, conspired or confederated with the public officers because there is no illegal act with which they could collude, conspire or confederate.

**Third element, that the accused caused undue injury to any party including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.**

It is a well-entrenched rule that, unlike in actions for torts, undue injury in Sec. 3[e] cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the

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elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.<sup>5</sup>

The Supreme Court, in the case of *Llorente, Jr. v. Sandiganbayan*<sup>6</sup> then goes on to say that:

In jurisprudence, undue injury is consistently interpreted as actual damage. *Undue* has been defined as more than necessary, not proper, [or] illegal; and *injury* as any wrong or damage done to another, either in his person, rights, reputation or property[;] [that is, the] invasion of any legally protected interest of another. Actual damage, in the context of these definitions, is akin to that in civil law.

In turn, actual or compensatory damages is defined by Article 2199 of the Civil Code as follows:

Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Fundamental in the law on damages is that one injured by a breach of a contract, or by a *wrongful or negligent act or omission* shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. Actual pecuniary compensation is awarded as a general rule, except where the circumstances warrant the allowance of other kinds of damages. Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Furthermore, damages must not only be capable of proof, but must be actually proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include

<sup>5</sup> Cresente Y. Llorente, Jr. v. Sandiganbayan and Leticia G. Fuertes (G.R. No. 122166. March 11, 1998).

<sup>6</sup> *Supra*.

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speculative damages which are too remote to be included in an accurate estimate of the loss or injury.

This Court has previously held in its earlier Decision that the prosecution failed to prove undue injury on the part of the government. This Court noted, in said Decision, that the Information charges the accused with having caused undue injury to the government in the amount of ₱305,000,000.00 or its peso equivalent by entering into Supplemental Agreement No. 1 with Toyo-Ebara. However, the parties have stipulated “[t]hat the spare parts had been delivered to the DPWH and are now being used in the different pumping stations in Metro Manila, except Vitas and Balut Pumping Stations”. Clearly then, there was no injury to the government. From the Minutes of Negotiations, it is clear that it was entirely up to the DPWH to proceed with Supplemental Agreement No. 1, the terms of which were evidently accomplished with the spare parts now in use by the existing pumping stations. There was likewise no evidence that the government had been short-changed by Toyo-Ebara. In fact, considering that Ebara was the sole distributor of the parts, it is inconceivable that the DPWH could have gotten a better deal than the one they negotiated.

As regards the second mode of committing a violation of Section 3 (e) of R.A. 3019, i.e., by giving any private party any unwarranted benefit, advantage or preference. The word “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. “Advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. “Preference” signifies priority or higher evaluation or desirability; choice or estimation above another. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.<sup>7</sup>

In this Court’s earlier Decision, We found that the Prosecution failed to prove that Toyo-Ebara Joint Venture was given unwarranted benefits, advantage or preference in the execution of Supplemental Agreement No. 1 mainly because the very logical basis for selecting Toyo-Ebara to supply and install the spare parts for the existing pumping stations was the fact that the parts due for replacement could only be manufactured by Ebara. Moreover,

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<sup>7</sup> Rolando Sison v. People of the Philippines (G.R. Nos. 170339, March 9, 2010).

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Toyo-Ebara has already been awarded the Contract Agreement for the construction of the Vitas and Balut Pumping Stations after a public bidding, which construction was satisfactorily finished only shortly before DPWH and Toyo-Ebara entered into Supplemental Agreement No. 1.

Furthermore, Toyo-Ebara was not given unwarranted advantage when it was engaged as contractor for the spare parts of the existing pumping stations even without a public bidding, as it was not only qualified, but was actually able to perform its obligations under Supplemental Agreement No. 1.

For the abovementioned reasons, accused public officers were exonerated from liability. With said public officers' exonerated and for the same findings cited above regarding the lack of the requisite element of undue injury or unwarranted benefit, accused Konakahara, Shimomura and Oka, who are charged with conspiring with them, must likewise be exonerated.

**WHEREFORE**, premises considered, this Court finds the accused Isamu Konakahara, Hiroyuki Shimomura and Takao Oka NOT GUILTY of violating Section 3 (e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act for failure of the prosecution to prove their guilt beyond reasonable doubt. Accused Konakahara, Shimomura and Oka's bail bonds are ordered RELEASED, subject to the usual accounting and auditing rules and regulations, and the Hold Departure Orders against them LIFTED and SET ASIDE.

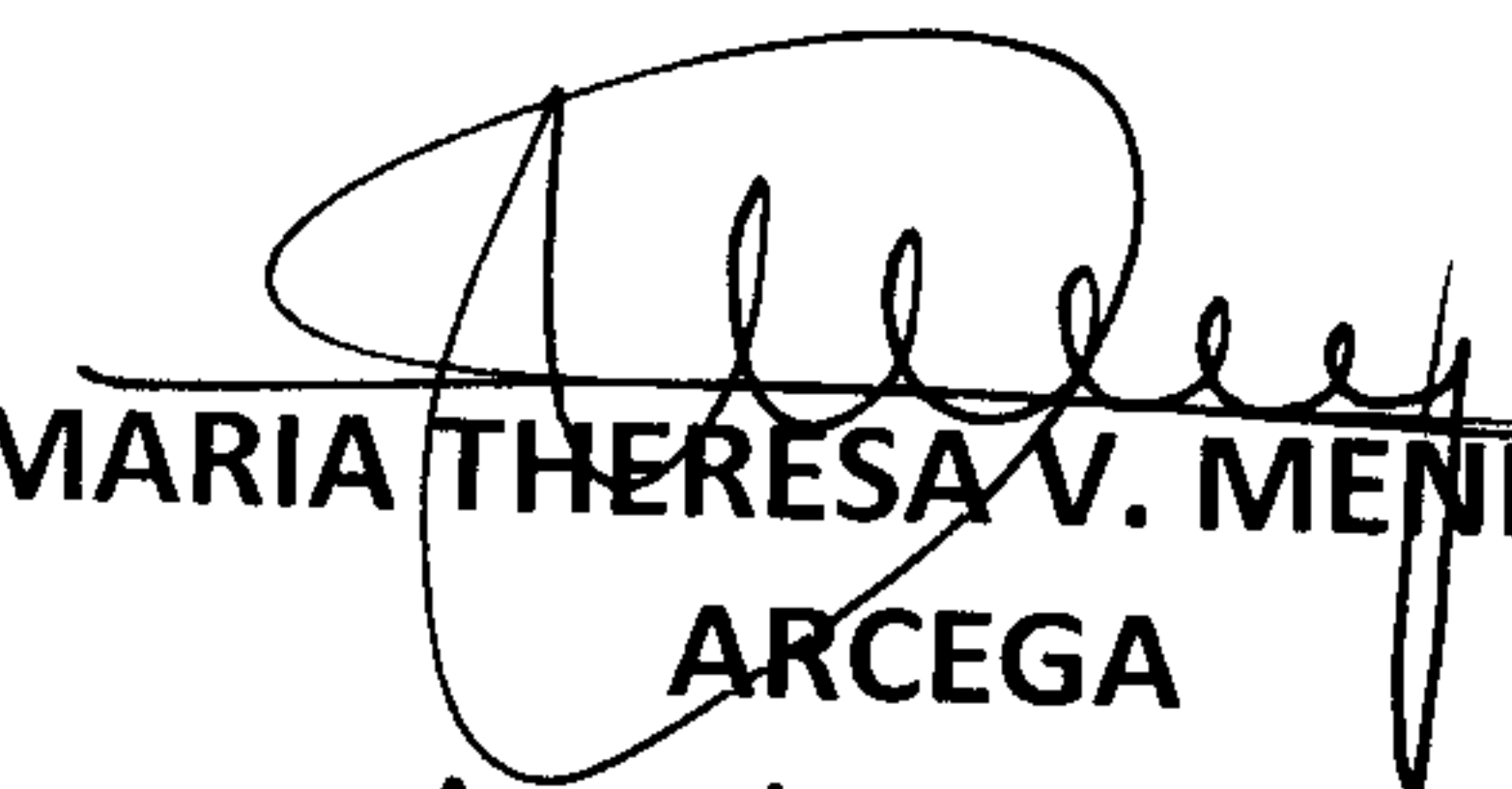
No costs.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
 Associate Justice  
 Chairperson

**WE CONCUR:**

  
**REYNALDO P. CRUZ**  
 Associate Justice

  
**MARIA THERESA V. MENDOZA-  
 ARCEGA**  
 Associate Justice

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ATTESTATION

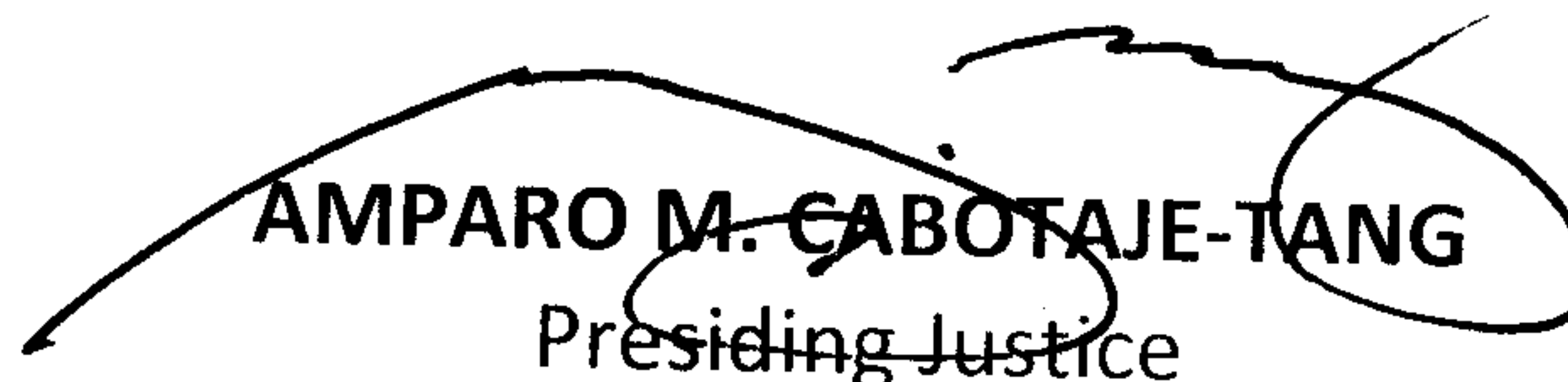
I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**RAFAEL R. LAGOS**  
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



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

